

Notes from the Housing Committee Meeting

October 18, 2016

At the Town House

This meeting was devoted to going over the proposed Model Ordinance to present again to the Town Board in due course. The Committee reviewed its original recommendations, that were worked on for several years, and presented to the Town Board in 2014. The Committee compared that version to the one that was worked out and adopted by the Joint Task Force (composed of reps from the Housing Committee, Planning Board, Zoning Board of Appeals and ACARC). The Committee developed a list of questions and concerns to be put to Anthony Mole, Town Attorney (attached).

As emailed in the meeting notice, Peter Parsons reported that the main reason for the Town Board not considering the proposed Model Ordinance at this time, was that it did not recognize the Town's need for first responders. Discussion followed on the fact that preferences are not allowed in the AFFH housing. Linda also said that though demand is lively for our Middle income units (see below), first responders are very rarely among those applying to purchase or rent a unit. Not only that, but we have not had to use the preferential list in a long time, because not all those people who apply and are approved end up being able to get a mortgage and buy the unit (or in the case of renters, they sometimes decide to rent elsewhere).

The Committee discussed whether we should develop a survey again and put it on Survey Monkey, to try and ascertain whether there is a need for housing for first responders going unmet. Nothing was decided on that matter.

Linda reported on the status of our Middle Income units . We have approved applications for the following within the past few months:

- Anna Derwin (she may rent her ex-husband's unit)
- Gary Roerborn
- Martin Satara
- Corrado Pitcher
- William Hanlon
- Eileen Rudnick
- Nicholas Capalbo
- Guadalupe Gass

Linda distributed a copy of the current spreadsheet of the owners / occupants of the MI units.

Respectfully submitted,
Linda Rae

Subject: Housing Committee Mtg Oct 18

From: Linda Rae <lindasrae@optonline.net>

Date: 10/13/2016 10:57 AM

To: Glenn@alltroninc.com, Tonyjg63@gmail.com, ndaniello24@gmail.com, Rmvista@verizon.net, janelindau@gmail.com, presslinda@hotmail.com

CC: johnpapp@aol.com

Hi, everyone. First, a reminder that at our September meeting, we decided:

A) that we would like to discuss resubmitting our original recommendation to the Town Board that they adopt the County's proposed Model Ordinance, with some revisions for Lewisboro (our proposals were actually delegated to the joint committee of Planning, Zoning, Housing and ACARC, as you may recall, and then submitted as a 3-proposal package to the Town Board in December 2014). The Board adopted the other two proposals, to allow multifamily housing in business areas and not to require special permits for accessory apartments. Our decision to take up the Model Ordinance again was partly in response to our concern that the Town is in a precarious position, especially given the letter from U.S. Preet Bharara's office to the Town this summer that I passed out at the meeting.

B) We set the next Housing meeting, where we will discuss this, a week earlier than usual, next Tuesday, October 18 (7 pm, Town House), because some people were not available later in the month. Can you let me know if you plan to attend?

At our meeting, we couldn't remember exactly why the Town Board postponed action on the Model Ordinance. So I talked to Peter Parsons about it, and he reminded me that the main reason was that Town Board felt that the Model Ordinance didn't take into account the Town's need for housing for first responders, fire fighters and seniors (though, as I pointed out, we rarely receive applications for rentals or purchases of our Middle Income units in Oakridge from first responders, except for the two Onatru units). The Board spoke of doing another survey to ascertain need -- we had one some years ago -- but nothing came of it as far as I know.

I attach the last proposal that Anthony Mole, the Town Attorney, put together in December 2014 from the joint committee's recommendation to adopt the Model Ordinance as part of our Town Code ("Zoning Changes"). Most of the AFFH Model Ordinance can be found in Section 220.25.1 of "Zoning Changes", with a definition in 220.2. All our proposals are in red type, and also include the proposals on multi-family housing in business districts and accessible apartments, that the Town Board has adopted (I don't seem to have the final proposal with all type in black). Also, in case you don't have it, I attach the Model Ordinance that Jane sent us after the meeting (thank you Jane!).

A few differences between the Model Ordinance and our/the joint committee's:

1--the Housing Committee had actually proposed that the AFFH units be in perpetuity, rather than the 50 year limit proposed by the County, to be in accordance with our Middle Income Housing units, and that was part of the "Zoning Changes" proposal. We can discuss that on Tuesday at our meeting.

2--The floor area requirements are greater in our proposal, to accord with our building codes. How does this sound to you?

3--Section J says that the County of Westchester must administer the program, but I think we should adopt the Model Ordinance language which also specifies an agency designated by the County (such as the Housing Action Council that is in fact administering the two Kitchawan houses).

4--Section 220.25. (D), Unit appearance, is different than from the Model Ordinance Section #7 -- we'll have to take a close look at this, I can't remember why ours are different, whether this is because of the existing code or not.

5--Our Section D (3) also requires the Planning Board to consider authorizing clustering --

this came out of the joint committee's work.

I think we have to go through this original document, and compare it to the Model Ordinance, as there may be a few other differences.

Regards,

Linda S. Rae

Attachments:

Zoning Changes - Housing Matters (12- 29-14)-1.doc

106 KB

ModelOrdinanceAppendixD-1-i.pdf

29.4 KB

*Proposal from the Lewisboro Housing Committee
To the Lewisboro Town Board
To adopt a version of the Model Ordinance, revised for the Town of Lewisboro*

The following recommendations represent an amended and updated version of those sections of the December 14, 2014, draft proposal to the Town Board to amend Lewisboro's Zoning Code, that pertain to a Model Ordinance for Lewisboro regarding affordable housing. The proposal was developed by a Joint Task Force consisting of the Housing Committee, Planning Board, Zoning Board of Appeals and ACARC during meetings during the summer and fall of 2014. Its recommendations, which were drafted by Town Attorney Anthony Mole and presented to the Town Board, included three proposals; 1) to adopt a version of the County Model Ordinance; 2) to allow accessory apartments as of right; and 3) to permit multifamily housing in areas zoned for business and commercial use. Proposals #2 and 3 were approved by the Town Board, and one was tabled. The Housing Committee is now recommending that the Town Board consider the newly amended proposal pertaining to a Model Ordinance, following extensive revisions by the Housing Committee during Fall 2016.

Notes in red font detail and explain where the Housing Committee has departed from the original December 14 proposal, or from the County's Model Ordinance. Where there are no notes, the language is similar or identical to the County document. All references to the Lewisboro Middle Income program are, of course, unique to the Lewisboro proposal. Similarly, references to the Planning Board are also specific to the version recommended for Lewisboro.

Section 220-2. Definitions and word usage.

B. For the purposes of this chapter only, certain words and terms used herein are defined as follows:

AFFORDABLE AFFIRMATIVELY FURTHERING FAIR HOUSING (AFFH) UNIT – 1) A for-purchase housing unit that is affordable to a household whose income does not exceed 80% of the area median income (AMI) for Westchester as defined annually by the U.S. Department of Housing and Urban Development (HUD) and for which the annual housing cost of a unit including common charges, principal, interest, taxes and insurance (PITI) does not exceed 33% of 80% AMI, adjusted for family size and that is marketed in accordance with the Westchester County Fair & Affordable Housing Affirmative Marketing Plan. 2) A rental unit that is affordable to a household whose income does not exceed 60% of AMI and for which the annual housing cost of the unit, defined as rent plus any tenance paid utilities, does not exceed 30% of 60% AMI adjusted for family size, and that is marketed in accordance with the Westchester County Fair & Affordable Housing Affirmative Marketing Plan.

Section 220-25.1, Inclusionary Affirmatively Furthering Fair Housing (AFFH) Dwelling Units” is hereby enacted to read as follows:

- A. Required Affordable AFFH Dwelling Units. Within all residential developments of ten (10) or more dwelling units created by subdivision or site plan, one affordable AFFH dwelling unit must be created for each ten market-rate units planned.” [The County

Model Ordinance wording is that in all developments of ten or more units "...no less than 10% of the total number of units must be created as affordable AFFH units.. In residential development of five to nine units, at least one affordable unit shall be created." The Housing Committee felt that these requirements would be too onerous for developers, and would serve to discourage the creation of affordable units.]

No preferences shall be utilized to prioritize the selection of income-eligible tenants or purchasers for affordable AFFH dwelling units created under this section. Notwithstanding the above, all such affordable AFFH dwelling units, whether for purchase or for rent, shall be marketed in accordance with the Westchester County Fair & Affordable Housing Affirmative Marketing Plan.

This section shall not apply to any development of dwelling units constructed prior to the enactment of this section, or to any development of dwelling units to be constructed which has received Planning Board approval prior to the enactment hereof. Previously approved middle-income dwelling units shall continue to comply with Section 220-26 (F) of this chapter. [This section is to make it clear that the Middle Income program is grandfathered and will not be affected by proposals pertaining to AFFH housing.]

- B. Time period of affordability and property restriction. Dwelling units designated as affordable AFFH dwelling units must remain affordable for a minimum of 50 years from the date of initial certificate of occupancy for rental properties, or of original sale for ownership units. [The December 14 Joint Working Group recommendation called for the designation to be in perpetuity, presumably to accord with Lewisboro's Middle-Income provisions. On discussion this fall, the Housing Committee felt that this was not necessary, as the Middle-Income program is entirely separate, and that furthermore, such a designation could unduly restrict and discourage development of AFFH units].

A property containing any affordable AFFH dwelling units must be restricted using a mechanism such as a declaration of restrictive covenants in recordable form acceptable to the Town Attorney which shall ensure that the affordable AFFH dwelling unit shall remain subject to the affordable regulations for the minimum 50 year period of affordability. Among other provisions, the covenant shall require that the affordable AFFH dwelling unit be the primary residence of the resident household selected to occupy the unit. Upon approval, such declaration shall be recorded against the property containing the affordable AFFH dwelling prior to the issuance of a Certificate of Occupancy for the development.

- C. Eligibility. Such affordable AFFH dwelling units shall be available for sale, resale or continuing rental only to income-eligible families for AFFH dwelling units as defined in Section 220.2 of this chapter.
- D. Unit Appearance and integration.
- (1) Within one-family dwelling developments, the affordable AFFH dwelling units may be one-family dwellings or may be incorporated into one or more two-family dwellings, subject to the review and approval of the Planning

Board. [The housing committee has left in the Joint Committee's stipulation that this is subject to review of the Planning Board, which does not appear in the Model Ordinance]. Each one-family affordable AFFH dwelling unit may be located on a lot meeting 75%* of the minimum lot area for the one-family dwellings in the development. [The original recommendation was for 50% of the minimum lot area. The Housing Committee did not feel there was any reason to depart from the County's recommendations here, which would appear to be preferable for Lewisboro, in requiring a larger lot size.]

- (2) Each two-family affordable AFFH dwelling and each multifamily affordable AFFH dwelling unit shall be located on a lot meeting the minimum lot area for the one-family dwellings in the development. All such affordable AFFH units shall be as indistinguishable as possible in appearance from the other one-family dwellings in a development. Interior finishes and furnishings may be reduced in quality and cost to assist in the lowering of the cost of development of the affordable AFFH dwelling units. [The wording differs slightly from the 2014 version, which stipulates that "the Planning Board shall require this that AFFH units be as indistinguishable as possible"; however, to avoid dictating to the Planning Board, we have instead adopted the more neutral language of the Model Ordinance].
- (3) Within multifamily developments, affordable AFFH dwelling units shall be physically integrated into the design of the development, subject to review by the Planning Board, and shall be distributed among efficiency, one-, two-, three- and four- bedroom units in the same proportion as all other units in the development. Interior finishes and furnishings may be reduced in quality and cost to assist in the lowering of the cost of development of the affordable AFFH dwelling units. [Once again, the Housing Committee had adopted the more generic language of the Model ordinance as less specific and constraining than that in the original Joint Task Force proposal]
- (4) The Planning Board must consider authorizing the clustering of dwelling units in a residential development in order to permit the construction of the minimum number of affordable AFFH units required by this section. Any type of housing units may be incorporated into a residential development for this purposed. The Planning Board is not to distinguish the affordable AFFH units any more than is necessary to accommodate the construction of the minimum number of affordable AFFH units required by this section in a residential development. [The Joint Working Group has added this proposal, which is not included in the Model Ordinance, as part of a Lewisboro approach dating back to the Master Plan.]

E. Minimum Floor area.

- (1) The minimum gross Floor area per dwelling unit shall not be less than the following:

Dwelling Unit	Minimum Gross Floor Area (square feet)
---------------	--

Efficiency	450
1-bedroom	675
2-bedroom	750
3-bedroom	1,000 (including at least 1.5 baths)
4-bedroom	1,200 (including at least 1.5 baths)

[Note: the original task force recommendations adopted the same measurements as for Lewisboro's Middle-Income units (220-26 F. (2), which are slightly higher than the County's recommendations. The Housing Committee felt it was not necessary to accord with the Middle Income program, and so recommends adopting the measurements of the Model Ordinance]

(2) For purposes of this section, the Planning Board may allow paved terraces or balconies to be counted toward the minimum gross floor area requirements in an amount not to exceed 1/3 of the square footage of such terraces or balconies.

- F. Occupancy standards. For the sale or rental of affordable AFFH units, the following occupancy schedule shall apply, subject to the New York State Uniform Fire Prevention and Building Code requirements:

Number of bedrooms	Number of persons
Efficiency	1
1-bedroom	2
2-bedroom	5
3-bedroom	7
4-bedroom	9

[Note: the County allows 3 people in a 1-bedroom unit; the Housing Committee felt that current Middle Income requirement of 2 people was more appropriate.]

- G. Affirmative marketing. The affordable dwelling units created under the provisions of this section shall be sold or rented, and resold and re-rented during the required period of affordability, to only qualifying income-eligible households. Such income-eligible household shall be solicited in accordance with the requirements, policies and protocols established in the Westchester County Fair & Affordable Housing Affirmative Marketing Plan.

- H. Continued eligibility for occupancy of rental dwelling unit.

- (1) Applicants for rental units referred to in this section shall, if eligible and if selected for occupancy according to Section J of this chapter (220-25.1), sign leases for a term of not more than two years. As long as a resident remains eligible and has complied with the terms of the lease, said resident shall be offered renewal leases for a term of no more than two years each. [The December 14 proposal stated "...if selected for occupancy by the owner or manager of the development in accordance with the provisions of this Chapter..." The Housing Committee notes that the responsibility for selection of occupants rests with the County and the organizations to whom it delegates the task. See Section J, Administration.]

If a resident's annual gross income should subsequently exceed the maximum then allowable, as defined in this chapter, then:

Option (a): said resident may complete their current lease term and shall be offered a non-restricted (AFFH) rental unit available in the development at the termination of such lease term, if available. If no such dwelling unit shall be available at said time, the resident may be allowed to sign one additional one-year lease for the affordable AFFH unit they occupy but shall not be offered a renewal of the lease beyond the expiration of said term. [The original recommendation followed the Middle Income stipulation that the income would need to exceed the maximum allowable amount by more than 20%. The Housing Committee did not see any reason to adopt the Middle Income rule in this case, and preferred the County's language]

OR

Option (b): said resident shall pay the greater of (1) the rent amount payable under the provisions of this ordinance or (2) 30% of the resident's monthly adjusted household income provided that the increased rent may not exceed the market rent in that development for units with the same number of bedrooms.

OR

Option (c): said resident shall pay the greater of (1) the rent amount payable under the provisions of this ordinance or (2) 30% of the resident's monthly adjusted household income provided that the increased rent may not exceed the market rent in that development for units with the same number of bedrooms for a term of not more than one (1) year. [Options b and c, which appear in the Model Ordinance, were left out of the joint task force proposals, but appear to offer additional solutions to the problem of a renter who exceeds the income, so were added back in.]

(2) Notwithstanding the foregoing, renewal of a lease shall be subject to the conditions of federal, state or county provisions that may be imposed by the terms of the original development funding agreements for the development or to the provisions of other applicable local law.

I. Resale requirements. In the case owner-occupied affordable AFFH dwelling units, the title to said property shall be restricted so that in the event of any resale by the home buyer or any successor, the resale price shall not exceed the then-maximum sales price for said unit, as determined in this chapter, or the sum of:

(1) The net purchase price (i.e., gross sales prices minus subsidies paid for the unit by the selling owner, increased by the percentage increase, if any, in the Consumer price Index for Urban Wage Earners and Clerical Workers in the New York-Northern New Jersey Area, as published by the United States Bureau of Labor Statistics (the "Index") on any date between (a) the month that was two months earlier than the date on which the seller acquired the unit and (b) the month that is two months earlier than the month in which the seller contracts to sell the unit. If the Bureau stops publishing this index, and fails to designate a successor index, the Town will designate a substitute index; and

(2) The cost of major capital improvements made by the seller of the unit while said seller of the unit owned the unit as evidenced by paid receipts depreciated on a straight line basis over a 15-year period from the date of completion and such approval shall be requested for said major capital improvement no later than the time the seller of the unit desires to include it in the resale price.

(3) Notwithstanding the foregoing, in no event shall the resale price exceed an amount affordable to a household at 80% of AMI at the time of the re-sale.

J. Administration. The administration of the compliance and eligibility related to the rental, sales and marketing of such AFFH dwelling units shall be performed by the County of Westchester or an organization or agency designated by the County.

[The Committee decided not to include a clause on tax assessment in the original proposal as unnecessary for this chapter. The Committee also did not adopt the Model Ordinance's provisions for an expedited project review process, as inherently unfair to smaller developments that do not include affordable housing].

Preliminary Agenda
Housing Committee Meeting
Tuesday, September 27, at 7 pm
Lewisboro Town House

- 1—Town Board Adoption of Accessory Apartment recommendations
- 2—Update on Affordable Housing in Lewisboro
 - Letter to Lewisboro from US Attorney's Office & Peter Parson's reply (copies will be passed out)
 - Status of Wilder-Balder Proposal for Affordable Housing for Goldens Bridge
 - Report of Planning Board Meeting last week
 - Status of County housing underway (some through Housing Action Council and ACE)
 - Two houses in Kitchawan area -- Spruce Rd & Lake Kitchawan Dr.
(construction ongoing)
 - Two units at Oakridge (negotiations in progress)
 - St. Michael's in Old Golden's Bridge again (Engineering study being done on septic)
 - Two houses under consideration for 6 units of senior housing
- 3—Middle Income Units: Update

Notes on the Housing Committee Meeting
September 27, 2016
Lewisboro Town House

The meeting was called to order at approximately 7:00 PM. Ralph DeLucia, Glenn DeFaber, Janee Lindau, Tony Goncalves and John Pappalardo were present. Linda Press Wolfe and Nick Daniello were absent. This was the first meeting of the Housing Committee since last spring, as no meetings are held during the summer.

1—Town Board Adoption of Accessory Apartment recommendations.

The Committee discussed the Town Board's passage of two of the recommendations to amend the Zoning Code, first made to the Town Board by the Housing Committee. The Committee was reminded that the Town Board delegated consideration of the proposals to a Joint Task Force composed of representatives from the Housing Committee, Planning Board, Zoning Board of Appeals and ACARC. The Joint Task Force then held several meetings in the summer and fall of 2015, revised the proposals, and with the assistance of the Town Attorney, rewrote and submitted the new recommended Zoning Code changes to the Town Board, which then adopted them.

John explained that the Town Board did not vote on the Model Ordinance proposal (and has tabled discussion on that for the present. HUD's focus is on accessory apartments, and on marketing. The Committee discussed the possibility of resubmitting the proposed Model Ordinance at a future date, as it was pointed out that Lewisboro is one of the few Westchester towns left in the crosshairs of HUD, and others overseeing the settlement, that have not passed any form of Model Ordinance. Members of the Committee asked what the sticking point was with the Board. Linda Rae pointed out that the Housing Committee spent several years going word by word through the County Model Ordinance, in order to adapt it very carefully to suit the Town of Lewisboro; and that Task Force had revised our suggestions according to their own views. It was pointed out that there is little in the proposal that the Town Board might object to. It was suggested that the Board might object to the marketing plan, but Jane pointed out that this would be illegal, that the Board could not object on this grounds at least publically, that the Town could not afford a law suit which could ensue.

Regarding the Wilder Balter proposal: there is a Planning Board Meeting next week. Discussion followed on whether Wilder-Balter might sue Lewisboro, which is apparently a possibility. Glenn thought they would not, as he said they do not like to force themselves upon a community. As in the past, Ralph has reminded the Committee of the expense and difficulty that Yonkers faced in fighting and then losing the discrimination housing case when that city was sued while he was building inspector, and the problems that this can cause a municipality.

The Committee also discussed the letter from US Attorney Preet Bharara to the Town of Lewisboro, requesting answers to a number of questions, and Peter Parson's reply. It appears that the Attorney is possibly preparing a case against Lewisboro, but the Committee felt that Peter had done a good job in

replying to Bharara's concerns and questions. It remains to be seen whether the US Attorney's office will take legal action against the Town.

Linda reported on the status of proposed County AFFH housing underway (some through Housing Action Council and ACE) in Lewisboro. The County is purchasing two houses in the Kitchawan area, one on Spruce Road and the other on Lake Kitchawan Drive. Both houses are for purchase, with one including an accessory apartment for rental. A lottery will be held, and the properties will be listed on the County HOMeseeker website. Construction is needed, especially to the Spruce Road house, due to some water runoff problems that need to be resolved.

ACE is looking at St. Michael's Chapel in Old Golden's Bridge, and will report to the County on the feasibility. An engineering study is being conducted on putting in a septic system (there is no water, plumbing or septic currently at the chapel). Two additional houses in Lewisboro are under consideration for senior housing.

Linda updated the committee on the current status of our Middle Income Units.

The Committee agreed that the next meeting would be held on May 18, 2017, the last of the 15-16 year.

Respectfully submitted, Linda Rae

Brief Notes from Meeting of Housing Committee
May 24, 2016
Lewisboro Town House

The meeting was called to order a little after 7 pm. Nick Daniello and Linda Press Wolfe were absent.

1—Update on Wilder-Balder Proposal for Affordable Housing for Goldens Bridge:

Peter Parsons reported on the current status of the Wilder Balter proposal, which is currently in the Planning Board's hands. Peter also updated the Committee on the Monitor's Report. Lewisboro is still one of a very few towns that the Monitor has designated as possibly discriminating in its housing, as has been reported before. He is examining whether zoning codes pose impediments to fair and non-discriminatory housing. He has singled out towns that he considers are not meeting the criteria, and what he considers to be obligations under the settlement – and Lewisboro is among the three remaining on the list that he feels are not cooperating. Many other towns have passed measures like a model ordinance or allowing housing in commercial areas (as Lewisboro has now done), and have been removed from the list. The Committee has been distributed copies of the Monitor's views on the Town. Peter has spoken with the Monitor about measures that the Town has taken, and about its unique challenges, such as the large amount of land in the NYC watershed. He has taken the Monitor and a representative around to show them that there is very little buildable land (they were interested in Pound Ridge until he identified it as a County Park!).

2—Middle Income Units:

Linda reported on the first results of Annual Survey for 2016: great improvement over previous years, our tough language seems to be working. All but 6 owners replied, and Aimee Hodges has sent out the 2nd letter.

Linda also updated the Committee on the status of our Middle Income units and applications. There are a number of bidding wars in progress, especially with 24 Fox Run, but of course the top price is designated by the Town. Aimee continues to be vigilant and calls real estate owners whenever she sees an ad, and explains that they must comply. This is sometimes difficult to get across, but we feel that compliance is improving with the realtors too.

3—Volunteers are needed to fill in for Linda Rae from June 14 – July 30. Jane Lindau, who has experience in housing financing; Ralph DeLucia; and Tony Goncalves volunteered.

Respectfully submitted,

Linda S. Rae

Preliminary Agenda
Housing Committee Meeting
Tuesday, May 24, at 7 Pm
Lewisboro Town House

1—Update on Wilder-Balder Proposal for Affordable Housing for Goldens Bridge: Peter Parsons

2—Middle Income Units:

--Results of Annual Survey for 2016: all but 6 owners replied, 2nd letter has gone out

--Update on status of units and applications (there are a number of bidding wars in progress)

--No news on 263 Maplewood and 74 Fox Run (foreclosed, bank-owned)
(7 applicants approved)

--Applicant for 48 Bittersweet (ownership_

--Anna Derwin (ex-wife of owner) has now bought the unit from ex-husband.

-- 45 Bittersweet (Jean Luc LeGall's unit) now rented
(to Nicholas Capalbo)

3—Volunteers to fill in for me June 14 – July 30

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA *ex rel.*
ANTI-DISCRIMINATION CENTER OF
METRO NEW YORK, INC.,

Plaintiff,

v.

WESTCHESTER COUNTY, NEW YORK,

Defendant.
----- X

No. 06 Civ. 2860 (DLC)

ECF Case

**MONITOR’S THIRD BIENNIAL ASSESSMENT OF WESTCHESTER
COUNTY’S COMPLIANCE**

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(h) seven municipalities continue to have zoning that could result in liability under either *Berenson* or *Huntington*: Croton-on-Hudson, Harrison, Lewisboro, Pelham Manor, Larchmont, North Castle, Rye Brook. In the absence of remediation, the Department of Justice is encouraged to give serious consideration to bringing legal action against one or more of these municipalities under either *Berenson* or *Huntington* or, in the case of Harrison, both. The DOJ may of course conclude that action against other municipalities is appropriate and nothing in this or other reports of the Monitor should, or is intended to, have preclusive effect as to the DOJ's right to bring such litigation; and

(i) pursuant to Paragraph 17(b) of the Settlement, the Monitor will seek an order requiring the County to pay all costs incurred in overseeing this remedial plan, including the cost of consultants retained by the County or Monitor to prepare the AI; such costs should not be counted against the cap on costs and fees set forth in Paragraph 17(b).

VI. Monitor Costs

Debevoise & Plimpton LLP has handled this matter pro bono and absorbed \$4,028,836.94 in fees and expenses in 2014 and 2015. In addition to the Monitor, the firm has committed the time of one counsel and four associates. The Monitor's budget under the Settlement, \$175,000 for the year, has paid the costs of consultants, which have included two housing consultants, two architects, and a community liaison.

1. *Berenson* Report Progress

Released in 2013, the *Berenson* report explored the question of whether any of the eligible communities had zoning ordinances that acted as impediments to the development of affordable housing. Working with a team of housing consultants, the Monitor identified seven eligible municipalities—Croton-on-Hudson, Harrison, Lewisboro, Mamaroneck, Ossining, Pelham Manor, and Pound Ridge—that had zoning ordinances that limited affordable housing or made the development of affordable housing practically infeasible. *See Berenson* Report, at 35.

Representatives of each of these municipalities have since met with the Monitor and discussed reforms to their zoning codes that would provide improved access to affordable housing. After Mamaroneck revised its land use regulations in 2013, the Monitor in February 2014 determined that the revised regulations provided adequate opportunities for the development of affordable housing that will affirmatively further fair housing in the County. *See* 2014 Annual Report, at 31. Ossining and Pound Ridge also enacted revised zoning codes in a way that conformed to the model zoning ordinance and removed impediments to affordable housing. In April 2015, they too were removed from the list of communities found to have exclusionary zoning. *See id.* at 38-43.

Lewisboro, Pelham Manor, and Croton-on-Hudson have also met with the Monitor and have begun to make progress on zoning reforms. Lewisboro has adopted amendments to its zoning code that expand the potential use of accessory apartments and multifamily housing. Should the Department of Justice consider developing a list of priority targets for litigation, Lewisboro should be given substantial credit for these

discussed below, Lewisboro did, however, adopt certain provisions informed by the Ordinance in 2015. *See* Letter from Peter Parsons, Supervisor, Town of Lewisboro, to James E. Johnson, Nov. 19, 2015, attached hereto as Ex. 80. The remaining municipalities have not adopted the Ordinance and Yorktown recently announced that it was considering repealing its ordinance. Letter from Michael J. Grace, Supervisor, Town of Yorktown, to James E. Johnson, Apr. 13, 2016, attached hereto as Ex. 81. The County did not report undertaking any activities to provide incentives to the outstanding municipalities to adopt the Model Zoning Ordinance. *See* Ex. 8, 2015 Q4 Report, at 16–18.

B. Analysis of Impediments and Efforts to Remediate Exclusionary Zoning

During this reporting period, the County was engaged in a bitter war of words and litigation with HUD over HUD's refusal to accept the County's AI and its decision to withhold CDBG and Home funds. As that dispute dragged on, HUD and the Chair of the Board of Legislators, Michael Kaplowitz, asked the Monitor to take on one aspect of the AI: to analyze local zoning regulations in light of *Berenson* and *Huntington* in the hopes that the County might adopt that analysis, incorporate it into the AI, and meet the demand for an AI acceptable to HUD. The two reports are summarized below. Together, they found that ten municipalities had exclusionary zoning. The quarterly reports show that the County provided no incentives to encourage the identified municipalities to change their zoning.

As the Second Circuit noted:

Notes from Meeting of Housing Committee
March 29, 2016
Lewisboro Town House

The meeting was called to order at approx. 7 pm. Nick Daniello and Linda Press Wolfe were absent.

1—Wilder-Balter

The Committee discussed the current status of the Wilder-Balder Proposal for Affordable Housing for Goldens Bridge. Their application is currently before the Planning Board, with site plans, traffic, environmental impact and other issues to be resolved, and was discussed at the Planning Board meeting in February, which a couple of members attended.

2—AFFH Housing in Lewisboro

Linda gave a progress report from Rose Noonan, Exec Director of the Housing Action Council, on the two AFFH houses near Lake Kitchawan, on Spruce Road and Lake Kitchawan Drive. The lottery was held on March 23. 93 applications were received by Feb 29. They are currently reviewing the applications to see who will be eligible, and what properties they are interested in. They are also holding Open Houses for both houses in April. They have not yet begun renovating the properties. The County Dept. of Public Works is handling the bidding, contacting (and paying) for the water problems at the house on Spruce Rd. Renovations are estimated to cost about \$50,000. They are hoping to have occupants by the summer of 2016.

3—Middle Income Units:

Linda announced new income and rental limits for 2016-17, per the handout (determined as always according to the Town Code). Aimee Hodges has obtained the requisite figures on median Town Salary for us to calculate the new limits.

We also have to send out the Annual Survey by the end of the month. Aimee Hodges will be doing this. We hope for continued improvement in our response rate, now that we can get the Building Inspector to issue a violation for non-compliance. This has made it easier for us to administer our MI program.

It has been a busy winter/spring for our Middle Income units. Linda reported that the following applicants have been approved for 263 Maplewood (foreclosed, bank-owned):

- 1—Gary Roehrborn
- 2—William Hanlon
- 3—Tyler Dunlap

Applicants approved for 74 Fox Run (foreclosed, bank-owned):

- 1—Antonio Corrado & Katie Pitcher
- 2—Guadalupe Gass
- 3—Jean Luc LeGall
- 4—Marcin Satara

There is one applicant for 48 Bittersweet (rental): Anna Derwin (ex-wife of owner)

There is also one applicant for 45 Bittersweet (rental of Jean Luc LeGall's unit): Nicholas Capalbo

The next meeting, the last of the season, will be held on May 14 at the Town House, at 7 pm.

Respectfully submitted,
Linda S. Rae