

MAYOR MARVIN'S COLUMN

This past week Village Administrator Harold Porr and I attended the Pace Law School Symposium called "Welcome to My Backyard", which was an update on the Affordable Housing Settlement. In attendance, among many, were the County Executive, Rob Astorino, the Federal Monitor, Attorney James Johnson and the Assistant Secretary for Fair Housing and Equal Opportunity at HUD, John Trasvina.

As a refresher, the affordable housing agreement, signed in 2009 by then County Executive, Andrew Spano, requires 750 units of affordable housing to be built in 31 designated communities.

The agreement was the result of settling a lawsuit brought by the Anti-Discrimination Center of New York. The Department of Justice and the Department of Housing and Urban Development also voluntarily joined the suit as parties.

The suit itself was based on the False Claims Act. The plaintiff argued successfully that the County falsified documents when accepting Federal Community Development Block Grant money by certifying that the County had complied with written mandates to encourage affordable housing. As then County Executive Andrew Spano stated in his deposition, "I signed whatever I had to in order to get the money from HUD." Curiously, no personal liability was incurred by Mr. Spano.

Leadership at HUD is very pleased with the settlement. HUD Deputy Secretary, Ron Sims, said the signing of the Westchester agreement signaled that, "It is time to remove zip codes as a factor in the quality of life in America" and HUD Assistant Secretary Transvina echoed similar sentiments at the symposium.

In his remarks, County Executive Astorino noted that even before the settlement agreement, Westchester County was the 4th most integrated county in the State, trailing only Brooklyn, Queens and The Bronx. As to adherence to the agreement, the County is actually ahead of schedule with 206 approved units in the pipeline and 186 with financing - well ahead of the required 100 as of this date. Though we were the first county to be sued under the "false claim" premise, the HUD representative said HUD is "actively investigating" twenty other communities throughout the nation on the same grounds. HUD plans to "utilize the settlement" in Westchester as a blueprint for the nation.

The County Executive reiterated his concerns over some of the provisions of the settlement agreement including the requirement that most of the \$400,000 in the marketing budget be targeted to folks "least likely to apply" for the units. As a refresher, communities are forbidden to give preference for this housing to members of their local workforce such as teachers, nurses and firemen and police per the agreement.

HUD has not yet accepted the County's Implementation Plan, which is the document that must outline obstacles to fair housing choices in the County and solutions to overcome them. A requirement of the settlement, the document is in its fifth iteration. All of the compliance work required to date, including \$990 per hour paid to the HUD appointed Federal Monitor, has cost the County over \$20 million. As an added consequence, until

the Implementation Plan is accepted, HUD is withholding \$7 million in Federal funding to communities not bound by the settlement including Peekskill, Ossining and Port Chester. County Executive Astorino and HUD Secretary Transvina disagreed on the execution of the settlement terms, with the County Executive wanting to satisfy the fully negotiated written terms of the agreement while Mr. Transvina wants the County to “embrace” fair housing and “go outside the four corners of the agreement.” He said this is a “new day” for HUD.

Some of the ways Mr. Transvina and HUD want to go “beyond the four corners of the agreement” include:

Adding a requirement that half of the units be three or more bedrooms so more children can take advantage of schooling in the designated municipalities. He sees this as a “missed opportunity.”

That the units be built on sites in “above average school districts.”

That the County have a plan for additional housing units that go beyond those provided in the settlement.

He also commented on the positioning of certain proposed housing projects, noting that they were close to the borders of communities not in the settlement. For example, Larchmont’s project abuts New Rochelle thereby violating the “spirit” of the agreement.

A major point of contention is the provision that the designated communities adopt a “model ordinance” in their local zoning laws that promotes affordable housing. Sample provisions include requiring that in any new development of 10 units or more, 10% must be affordable units and that the County take action to counter any community opposition to proposed zoning changes, including the county suing its municipalities.

This requirement is at odds with a provision of the New York State Constitution which guarantees “Home Rule” - the power of local governments to engage in policy making concerning local matters including the power to set zoning laws. County Executive Astorino does not believe he has the power to force compliance or sue municipalities with their own tax dollars.

According to County Executive Astorino, “the bottom line is that HUD is asking us to spend money that we do not have, pick fights with our municipalities, do things we have no power to do and in fact may violate the New York State Constitution, local zoning and a host of environmental laws.”