

# ANTI-DISCRIMINATION CENTER, INC.

"ONE COMMUNITY, NO EXCLUSION"

April 17, 2014

Hon. Denise Cote  
United States District Judge  
500 Pearl Street  
New York, New York 10007

Re: U.S. ex rel. Anti-Discrimination Center v. Westchester County, 06-CV-2860

Your Honor:

As you previously affirmed in 2012, "Until parties to [a consent decree] have fulfilled their express obligations, the court has continuing authority and discretion -- pursuant to its independent, juridical interests -- to ensure compliance." *U.S. ex. rel. Anti-Discrimination Center v. Westchester County*, Order and Opinion of May 3, 2012 (Doc. 402, p. 17), *quoting E.E.O.C. v. Local 580, Int'l Ass'n of Bridge, Structural and Ornamental Ironworkers*, Joint Apprentice-Journeyman Educ. Fund, 925 F.2d 588, 593 (2d Cir. 1991).

Because defendant Westchester County continues to defy its obligations pursuant to Your Honor's order of August 10, 2009 ("the consent decree"), and because neither the Government nor its Monitor has been prepared to keep the court properly informed about defendant's misconduct,<sup>1</sup> let alone vindicate the integrity of the consent decree by seeking to hold defendant in contempt for its multiple violations of that decree, the Anti-Discrimination Center (ADC) feels constrained to bring the relevant facts to your attention in the hope that you will exercise your independent, juridical interest to see that the consent decree is enforced. I have attached a copy of our just-issued report, entitled "Cheating on Every Level." Among the findings:

(1) Westchester has improperly fomented opposition to your order -- the county executive in his campaign literature, for example, depicted dark and threatening clouds over a Westchester town with an apartment building suffocating single-family homes, with the headline, "Don't Let the Federal Government INVADE Tarrytown" (the theme of "invasion" is, of course, a traditional method used to stoke racial fears).

(2) Westchester has never developed a decree-compliant implementation plan, thereby giving itself more leeway to spend money on inappropriate sites that did not AFFH.

(3) Most development sites have been isolated or otherwise undesirable.

(4) When counting only units appropriate to the consent decree, Westchester is over two-thirds (more than 200 units) behind the development obligations it had by the end of 2013.

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<sup>1</sup> Indeed, it appears that the Monitor has not yet filed the biennial report on Westchester's performance that was due pursuant to Consent Decree, ¶ 15 on December 31, 2013.

(5) Westchester has refused, across-the-board and regardless of circumstance, to meet its obligations to use all means necessary to overturn restrictive municipal zoning.

(6) The County Executive, in an audiotaped conversation that came to be published, was urged by a supporter to defy the federal government. “Well, I’ve been doing that,” Mr. Astorino replied. The County was “holding our ground” on zoning. “Oh my God,” he said a moment later, “I’m not yielding an inch to these guys.”

(7) Westchester has failed to have the ending of de facto segregation be a goal of its housing policies and programs.

(8) Westchester has never submitted an analysis of impediments that is satisfactory to HUD.

You may recall that, at an initial hearing on ADC’s motion to enforce and to intervene almost three years ago, the Assistant United States Attorney said:

[T]he premise of much of ADC's papers are essentially that the County has failed to meet certain obligations, the government and monitor together has failed to enforce that. *I would anticipate by the middle of July, both because of the AI and I believe because of the progress of the implementation plan, that those premises may be undercut*” (emphasis added).<sup>2</sup>

Well, July 2011 has long since come and gone; the premises have, sadly, not been undercut; and noncompliance continues unabated. ADC is not by this letter seeking to intervene in this case, but pointing out that the importance of upholding the rule of law means that someone must take the initiative in holding Westchester accountable for *each and all* of its violations of a binding federal court order.

Respectfully submitted,

[Signed]

Craig Gurian  
Executive Director

cc: Robert F. Meehan, Counsel for Defendant  
David J. Kennedy, Assistant United States Attorney  
James E. Johnson, Monitor  
(all via email)

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<sup>2</sup> Transcript of proceedings, June 7, 2011, p. 9.

**Cheating On Every Level:**

**Anatomy of the Demise of a  
Civil Rights Consent Decree**

**Anti-Discrimination Center**

**April 2014**

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Why not just defy the federal government in connection with Westchester's obligations under a federal court order?

- Supporter of County Executive Rob Astorino in telephone call with the county executive

"Well, I've been doing that...I'm holding our ground...I'm not yielding an inch to these guys."

- County Executive Astorino in reply (audiotape recording)

## I. Introduction

Most people understand that it is fundamental to the operation of our society that federal court orders -- like them or not -- need to be obeyed. The days of Southern officials making their "states' rights" defense of segregation are, after all, long gone. But in liberal Westchester County, New York, a federal court housing desegregation order has been defied for almost five years, and Westchester has yet to be held to account. How can that be?

### A. Demographic and zoning perspective: creating and maintaining a segregated county

Prior to World War II and for decades thereafter, housing patterns in Westchester County, as elsewhere in the country, were shaped by open and active discriminatory policies engaged in by every category of player in the housing market: governmental entities, private developers, landlords, and individual homeowners. Once in place, housing patterns tend to remain in place even if nothing further is done to reinforce those patterns. That is especially true when members of a traditionally excluded group continue to feel unwelcome.

In Westchester, existing housing patterns were powerfully reinforced by municipal zoning restrictions that effectively prevented the construction of affordable housing with desegregation potential. The impact of these zoning policies was magnified by the county's policy of steering subsidized housing for lower-income families (most notably Section 8 housing) into areas of minority concentration.

**20 towns and villages in Westchester (nearly half of Westchester's local jurisdictions) have African-American populations of 2.0 percent or less.**

The results were predictable and visible today to anyone who does not close his eyes to demographic reality. 20 towns and villages in Westchester (nearly half of Westchester's local jurisdictions) have African-American populations of 2.0 percent or less.<sup>1</sup> This in a county whose overall African-American population is about 13 percent and that has cities with significant concentrations of African-Americans (including Mount Vernon, which is over 60 percent African-American). New York City -- the adjoining jurisdiction that is part of the same housing market and part of any reasonable calculation of regional housing need -- has an African-American population of about

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<sup>1</sup> 2010 United States Census data, with population in group quarters excluded. 13 of the 20 also have

23 percent; there are almost twice as many African-Americans living in New York City as there are people of all races and ethnicities living in Westchester.

## B. Challenging the status quo

Eight years ago, in 2006, the Anti-Discrimination Center (ADC) filed under seal a False Claims Act lawsuit against Westchester County, a wealthy New York suburb, because Westchester had been defrauding the federal government (which is to say defrauding American taxpayers) by falsely claiming that it had been meeting its affirmatively furthering fair housing (AFFH) obligations. Those are the obligations to analyze, identify, and take the necessary actions to eliminate barriers to fair housing choice.

All the while Westchester represented that it was complying -- a requirement in order to get tens of millions of dollars of federal housing funds -- it was really ignoring its AFFH obligations, instead taking a hands-off attitude toward ultra-white towns and villages in the County that were deeply resistant to the construction of affordable housing with desegregation potential.

After the U.S. Attorney declined to intervene in the case at the end of 2006, the complaint was unsealed, and two-and-a-half years of intense litigation followed. The evidence against Westchester was so strong that the federal judge presiding over the case, the Hon. Denise Cote, found in February 2009 as a matter of law that Westchester had "utterly failed" to meet its AFFH obligations and that more than a thousand representations that it had complied were either "false or fraudulent."

**Westchester "utterly failed" to meet its AFFH obligations and more than a thousand representations that it had complied were either "false or fraudulent."**

Even after that ruling, the U.S. Attorney's office refused to intervene in the case. It was unwilling to join with ADC and advocate a civil rights perspective.

Ultimately, in August 2009, a consent decree was entered, thereby resolving the litigation phase of the case. Because the case had been brought under the False Claims Act, the Government, not ADC, was a party to the decree. ADC, relying on promises that the decree would be enforced, did not, as was its right, interpose objections to the proposed decree.

### **-- Judge Cote, 2009**

The consent decree was designed to begin the process of ending the residential segregation that had long characterized Westchester. The County was obliged to take on a variety of obligations, all of which were intended to overcome barriers to fair housing choice. The most well known of these obligations was the requirement to fund the construction of at least 750 units of affordable housing that would AFFH and would be developed pursuant to an implementation plan that met the objectives of the decree to AFFH. But there were others.

Westchester had to agree to take all necessary actions both to facilitate the construction of the affordable housing units and, more generally, to overcome barriers to fair housing choice maintained by its municipalities, including zoning barriers. Litigating as necessary against those municipalities was explicitly specified as part of the obligation.

Westchester also had to start using all of its housing policies and programs to end residential segregation in the County. And Westchester had to submit an "analysis of impediments" to fair housing choice that was satisfactory to HUD.

Throughout the text of the consent decree -- as it had been throughout the litigation -- the conduct of municipalities took center stage. It was restrictive municipal zoning (and Westchester's acceptance of that zoning) that was the most powerful impediment to fair housing choice, and thus action to counter precisely that resistance was at the core of what was demanded.

### C. Westchester shows its contempt...and the Government and the Monitor accept window dressing

It became clear very quickly that Westchester was backing away from each and all of its commitments. That in itself was not terribly surprising: civil rights defendants often continue to resist change, even when a consent decree is in place.

What was surprising was the willingness of the Government and the Monitor that had been appointed (James Johnson) to allow Westchester to evade its obligations under a binding federal court order.

ADC warned within weeks of the entry of the consent decree that "appeasement only emboldens resistance," but the warning was not heeded.

- **Westchester failed to develop a decree-compliant implementation plan so that it had more leeway to spend money on inappropriate sites that did not AFFH**
- **Most of the sites picked have been isolated or otherwise undesirable**
- **When counting only units appropriate to the consent decree, Westchester is more than two-thirds (more than 200 units) behind the development obligations it had by the end of 2013**
- **Westchester has refused, across-the-board and regardless of circumstance, to meet its obligations to use all means necessary to overturn restrictive municipal zoning**
- **Westchester has failed to have the ending of de facto segregation be a goal of its housing policies and programs**
- **Westchester has fomented opposition to a lawful federal court order -- the county executive in his campaign literature, for example, depicted dark and threatening clouds over a Westchester town with an apartment building suffocating single-family homes, with the headline, "Don't Let the Federal Government INVADE Tarrytown" (the theme of "invasion" is, of course, a traditional method used to stoke racial fears)**
- **Westchester has never submitted an analysis of impediments that is satisfactory to HUD**

Despite these ongoing violations and provocations, the Government and the Monitor have not sought to have the court hold the County in contempt. Instead, the Government and the Monitor pretend that “progress” is being made.

#### D. What’s happening here?

Westchester tells the story that, despite doing great, it is being pressed by the Government to go beyond the requirements of the decree. The Government and the Monitor acknowledge that there have been bumps in the road, but insist that good progress is being made. ADC, by contrast, says that the consent decree process is entirely off the tracks. Who to believe?

We say: take the time to learn what the consent decree actually says. Then see which narrative fits the facts as they have developed over the last four and a half years the best.

In terms of Westchester, the answer is obvious: this is a civil rights defendant who wanted to maintain the status quo as much as it was able. The County was especially concerned to make sure that housing developments would be sited in ways to avoid raising the ire of residents of ultra-white neighborhoods as much as possible. Accordingly, every development *has* avoided taking on a barrier in the midst of any existing, ultra-white residential neighborhood.

**As a political matter, however, it takes some courage to stand behind a decree that, if actually enforced according to its terms, is apt to generate a political firestorm. Neither the U.S. Attorney, nor the Secretary of HUD, nor the Monitor has had that courage.**

Consistent with the goal of maintaining the status quo as much as possible, Westchester has tried to squeeze the greatest number of units into the fewest possible developments. Accordingly, most projects have consisted of 100 percent subsidized units (instead of including market rate units), and several are large projects in isolated areas.

And, of course, Westchester is committed -- politically and ideologically -- to maintaining the barriers of restrictive zoning. So it has flat out refused to meet its obligation to challenge them.

The willingness of the Government and the Monitor to go along -- and the Monitor was clear early on that he was looking for the easy road, to seek “low-hanging fruit” -- can only be understood as being governed first and foremost by considerations of political expediency. As a factual matter, it is not difficult to understand that a county whose residential zoning (especially in ultra-white jurisdictions) is overwhelmingly single-family cannot make significant progress on generating affordable housing with desegregation potential if it is agreed to allow all of that zoning to remain undisturbed. As a political matter, however, it takes some courage to stand behind a decree that, if actually enforced according to its terms, is apt to generate a political firestorm. Neither the U.S. Attorney, nor the Secretary of HUD, nor the Monitor has had that courage.

An additional factor (and sometime explicit rationale) is that easing the decree will yield “buy-in” (the misguided and naïve view that a long-time civil rights outlaw will magically volunteer to engage in structural civil rights change).

#### E. What's next?

In all likelihood, the promise of the consent decree has been lost.

It is possible, of course, that some combination of the U.S. Attorney, HUD, and the Monitor will see the light, although each has been consistently and persistently unresponsive to ADC's appeals.<sup>2</sup>

The best hope is that the presiding judge, who has acknowledged a court's own juridical interest in the enforcement of its orders, will take a close look at both Westchester's pattern of violating the decree and at the failure of the Government and the Monitor to vindicate the public interest in enforcement of the order.

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**"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."**

**-- Consent Decree, ¶ 31(c)**

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<sup>2</sup> For example, see the letter, annexed as Exhibit A, that ADC sent to the Assistant United States Attorney working on this case back in June seeking to find out if the U.S. Attorney disagreed with any of 25 propositions about Westchester's obligations and the County's violation of them. No response was ever forthcoming.

**II. Instead of enforcing the decree requirement that all development proceed pursuant to an Implementation Plan that furthers the decree's goal of affirmatively furthering fair housing, the Government and the Monitor have allowed Westchester to proceed with development on an ad hoc basis. The results have been predictable: a proper accounting shows that Westchester is way behind schedule in terms of its unit-specific obligations; more fundamentally, the units that have been allowed to be built represent a betrayal of the promise of the consent decree to secure affordable housing units that both affirmatively further fair housing on their own and act as catalysts to break down barriers to fair housing choice more broadly.**

A. Lack of a decree-compliant implementation plan

The consent decree could have been written so that all that had to be followed were municipal-level demographic limitations on where housing intended to meet the unit-specific requirements of the decree could be built. But that was *not* what was negotiated. Yes, there were municipal-level limitations, but: (a) the decree contemplated that they would be updated to include 2010 Census data; (b) there were requirements at the level of *census blocks* as well (such as seeking to place units on the census *blocks* with the lowest concentrations of African-Americans and Latinos); and (c) most importantly, all development was required to proceed pursuant to an Implementation Plan that affirmatively furthered fair housing, which is to say: all the units were supposed to overcome barriers to fair housing choice.

Why require an Implementation Plan ("IP") that affirmatively furthers fair housing? Because a civil rights defendant that had been committed to coddling municipal resistance to affordable housing with desegregation potential could reasonably be expected -- if left to its own devices -- to try to get away with as little structural change as it could.

**When a revised version was "insufficient to accomplish the objectives and terms set forth" in the decree, the consent decree commanded that "the Monitor *shall* specify revisions or additional items that the County *shall* incorporate into its implementation plan." Consent Decree ¶ 20(d).**

So not only did the decree demand an Implementation Plan to be developed within months of the entry of the August 2009 decree (paragraph 18), it came up with a mandatory "two-strikes-and-you're-out" rule with an accompanying mandatory remedial response (paragraph 20(d)).

In the event that the County's original IP wasn't acceptable, and a revised version was "insufficient to accomplish the objectives and terms set forth" in the decree, the consent decree commanded that "the Monitor *shall* specify revisions or additional items that the County *shall* incorporate into its implementation plan." Consent Decree ¶ 20(d) (emphasis added).

It is important to pause to understand that the "objectives" of the decree are not cloaked in mystery. As stated in paragraph 7(j), the purpose of the decree is "to AFFH." Paragraph 13 gives the Monitor the "powers, rights, and responsibilities" to accomplish "the AFFH purposes" of the decree. The purpose of the decree "to AFFH" is referenced again at paragraph 15(a)(iii).

Affirmatively furthering fair housing involves overcoming *barriers* to fair housing choice. Restrictive municipal zoning was the barrier most on the mind of ADC during its litigation against Westchester, and that overriding concern was reflected in the consent decree.

But, despite his not accepting Westchester's first two submissions (his rejection of the second occurred in July 2010), the Monitor has refused to fulfill his obligation to specify a decree-compliant IP -- either then or in the years that have followed.<sup>3</sup>

*In other words, Westchester remains in violation of its obligation to produce a compliant IP and, through the complicity of the Monitor and the Government, nothing has been done about it.*

The results of throwing the IP requirement overboard have been enormously consequential. Basic provisions necessary to make sure that an IP affirmatively furthers fair housing have never been put in place. These include requirements that developments: (a) actually overcome barriers to fair housing choice; (b) are not sited on or near undesirable sites (like brownfield sites or those that abut railroad tracks or large highways); (c) are not isolated away from existing white residential neighborhoods; and (d) are themselves mixed income (to provide, among other things, cross-subsidy from market-rate units for the subsidized units, economic integration within the development, protection against poor siting, and a greater ability to integrate into the broader community).

▫ **Could the Monitor really be violating a mandatory duty?**

**It seems so incongruous that the officer charged with making sure that a court order was being obeyed would himself pick and chose the obligations he obeys, but the text of paragraph 20(d) leaves no doubt that he is. There is no "defer indefinitely" proviso.**

They also include locational requirements designed to maximize the number of units on blocks with the lowest concentrations of African-Americans and Latinos (consistent with paragraph 22(f) of the decree).

Critically, they would include actual plans to overcome municipal zoning barriers. As noted earlier, the acknowledgment the County was forced to make in the decree that it had the authority and responsibility to litigate against resistant municipalities pursuant to, among other powers, the *County of Monroe* and *Berenson* doctrines would have no meaning if the County failed to plan to acquire interests -- direct or indirect -- in properties whose desegregation potential was stymied by restrictive zoning.

Westchester's IP submissions had none of this, and the Monitor failed to impose any of these requirements. Indeed, most of the relief that ADC had sought in its May 2011 motion to enforce the decree consisted of action items that belong in a compliant IP.<sup>4</sup> Instead of acknowledging this to the Court, the Government and the Monitor joined Westchester in urging the Court not to hear an enforcement motion at all.

Three years after successfully keeping the questions ADC raised from the Court, the IP process lies abandoned, and the necessary AFFH components of an IP ignored.



<sup>3</sup> A screen shot taken on April 16, 2014 of the implementation plan page of the Monitor's website is annexed hereto as Exhibit B. The text describes the IP submitted in August 2010 as being "currently under review by the Monitor." See also the April 2013 revision to Westchester's Analysis of Impediments, p. 165 ("the full and final approval of the Implementation Plan remains pending").

<sup>4</sup> Annexed hereto as Exhibit C is the declaration of ADC's executive director in support of ADC's May 2011 motion to enforce the decree. It explains the relief sought.

It has never been difficult to see the writing on the wall. The Monitor revealed early on that he was not interested in having the units built under the decree be catalysts for broader change -- or even have them be the means by which to overcome barriers to fair housing choice.

Instead, within weeks of his appointment in 2009, he said that he would be looking for "low-hanging fruit," that is, properties that could yield "countable units" without difficulty.

Indeed, looking for units to count -- instead of looking for units that *should* count -- has been the procedure all along.

#### B. Westchester has failed to meet even half of its unit-specific obligations due by the end of 2013

Because the Government and the Monitor have gone along with the County's unit-specific deceptions, Westchester has been able to claim repeatedly that it is ahead of schedule in terms of building units (the most recent year-end claim was that financing was in place for 399 units at the end of 2013, more than the 300 units required by that time).

In fact, Westchester has produced well under half of its unit-specific obligations. There have been four principal methods of cheating that have concealed that fact:

##### 1. Isolated or otherwise undesirable sites

It should be obvious, but when an isolated or otherwise undesirable site is selected for affordable housing, the units are unlikely to affirmatively further fair housing. That is especially the case when the project contains only subsidized units. The development is not integrated into the existing community in any respect; on the contrary, it is easily stigmatized as being separate and different. It does not offer the experience of genuinely living within an established residential neighborhood. It means that the price of admission for prospective African-American and Latino residents is the acceptance of conditions that market-rate residents would customarily avoid. Crucially, it is also reflective of a decision to *avoid* finding sites in a jurisdiction that are free of negative features because doing so would require Westchester to confront the restrictive single-family zoning that characterizes so much of the County.

**In fact, Westchester has produced well under half of its unit-specific obligations. There have been four principal methods of cheating that have concealed that fact.**

The initial projects submitted by the County and approved by the Monitor provide useful illustrations:

Larchmont development (46 units): a brownfield site, located where a moving company used to be. Its census block is separated from I-95 only by the railroad tracks that directly abut the block. The census block extends to within 500 feet of New Rochelle, a municipality that already has a high percentage of African-American and Latino residents. No market-rate units.

Cortlandt development (83 units): the site abuts a major Veterans Administration psychiatric and substance abuse facility, a major road, and railroad tracks. Other than VA facility residents, the block was unpopulated. No market-rate units.

City of Rye development (18 units): the site is located next to two major highways (I-95 and I-287) and is distinctly separated from almost the entire city. It abuts Port Chester, a Latino-majority jurisdiction -- so much so that, to get to the public street from the property, one has to cross into Port Chester. The census block itself is majority-minority. The units -- studios and one-bedrooms -- were designed for seniors but allowed to count as housing without age restriction because the "seniors-only" label was removed (without changing the configuration of units to make them family-friendly). No market-rate units.

Even were these the only projects sited in ways that meant that they failed to AFFH -- and they're not -- that would be 147 inappropriately counted units. Thus, not even taking into account other forms of cheating, Westchester could count no more than 252 units (399 minus 147), already under the 300 required by the end of 2013.

## 2. Sites where pre-decree litigation meant that there was no longer a barrier to overcome

A central element of the strategy to avoid taking on restrictive single-family zoning was the decision to seek out sites where a zoning barrier had already been removed by litigation concluded prior to the entry of the decree. These sites are some of the "low-hanging fruit" to which the Monitor has referred. The result -- unacceptable in consent decree terms because AFFH means *removing* barriers -- is that the opportunity to expand the universe of possible sites for affordable housing was sacrificed.

Both the Larchmont and Cortlandt sites, already mentioned, fall into this category. The North Salem site (June Road, 65 units) does as well. That represents a total of 194 units of cheating on these grounds. Leaving aside units already deducted because they should not have been counted because of site isolation and desirability, this brings Westchester down to 187 units.

It is important to note that the 194 units of cheating (or 212 units if you include the undesirably sited City of Rye development that was already underway prior to the entry of the consent decree) are not simply a large percentage of 750 units. Westchester was obliged to have newly constructed units that are not age-restricted constitute at least half of that total (375 units). Thus, the cheating units discussed here represent over 50 percent of the minimum consent decree obligation for such housing.

**The cheating units discussed in this subsection represent over 50 percent of the minimum consent decree obligation for new construction that is not age-restricted.**

## 3. Double-counting

The Somers site (Clayton Boulevard, 75 units) is another that is not properly counted. This is a circumstance where Somers had a pre-existing agreement with Westchester to build at least 188 units of affordable housing or lose \$2 million of \$4 million the County had given Somers to help purchase open

space (the Angle Fly Preserve). It is nothing more than a shameless accounting trick to count units for consent decree purposes that were already required to be built (and which will be counted towards the Angle Fly obligation). Here again, Westchester, with the collaboration of the Monitor and the Government, is getting away with *failing to expand* the sites where affordable housing can be built. This does not constitute affirmatively furthering fair housing, as all units were supposed to do.

Subtracting out these units, Westchester is down to 119 units, only about 40 percent of its 2013 year-end obligation and 181 units short.

#### 4. Ignoring 2010 census data to evade municipal-level limits

If what one wanted to do was to be faithful to the consent decree's desire to have the overwhelming bulk of housing (84 percent) built in the municipalities that have the lowest concentrations of African-American and Latino residents (less than 3 percent and 7 percent, respectively), one would naturally have looked to 2010 Census data as soon as it became available, as the decree empowered the Monitor to do.<sup>5</sup>

Failing to do that would allow housing to be built even in jurisdictions that had come to have percentages higher than the caps. This was not especially relevant in respect to African-Americans, whose numbers remained basically flat from 2000 to 2010, but was very much relevant to Latinos, the population of which had grown substantially (although in still powerfully segregated patterns).

Why would the Monitor and the Government choose not to look at 2010 data? Because there would be fewer towns and villages within which to build a minimum of 630 units and thus greater difficulty in avoiding taking on existing zoning barrier or facing down opposition to construction on a block that was part of an existing white residential block.

ADC has examined 2010 Census data, and found that, of the units being developed, only 172 of the total claimed units comply with the demographic requirements of paragraph 7(a) (the ultra-white jurisdictions, required at the municipal level to have an African-American population of less than 3 percent and a Latino population of less than 7 percent). This represents only 27.30 percent of the *minimum* ultimately required by the decree.

68 of the total claimed units are located in paragraph 7(b) jurisdictions (those where the African-American population is less than 7 percent and the Latino population is less than 10 percent). This violates the Decree because only a *maximum* of 60 such units are permitted by the Decree. In other words, the defendant is already at 113.33 percent of the maximum.

Finally, fully 159 of the total claimed units are located in paragraph 7(c) jurisdictions (those where the African-American population is less than 14 percent and the Latino population is less than 16 percent). This violates the decree by a wide margin because only a *maximum* of 60 such units are permitted by the decree. In other words, the defendant is already at 265.00 percent of the maximum.

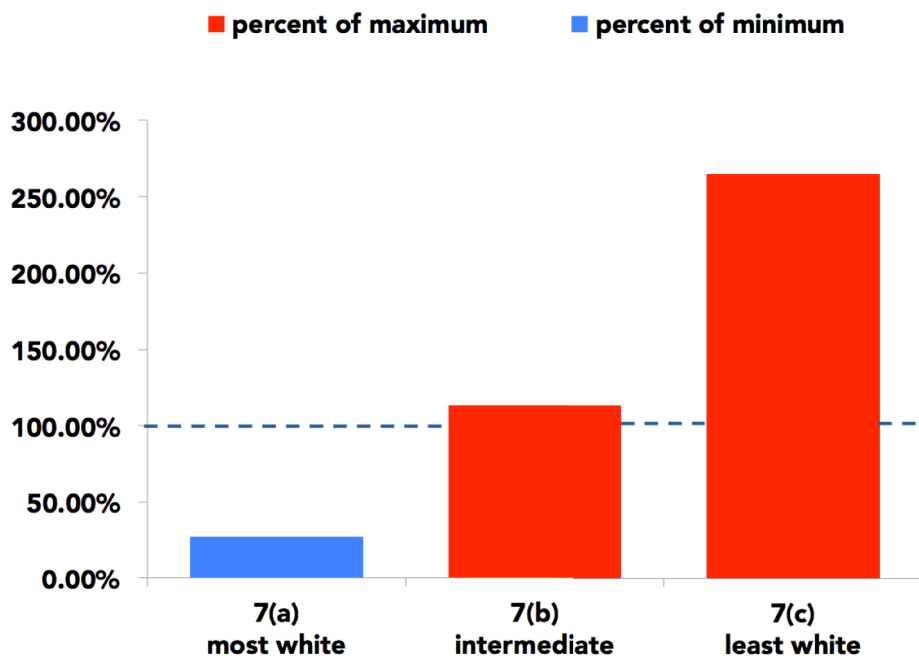
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<sup>5</sup> A proper IP would have taken population change into account; see also Consent Decree, ¶ 15(a)(3) (giving the Monitor additional authority to do so).

□

### Ignoring the facts on the ground

The decree's municipal-level requirements set a minimum of 630 units in the whitest towns and villages, a maximum of 60 units in the intermediate group of municipalities, and a maximum of 60 in the least white group. Counting ALL claimed units, and looking at up-to-date Census data, here's how Westchester has performed in relation to those standards through the end of 2013.



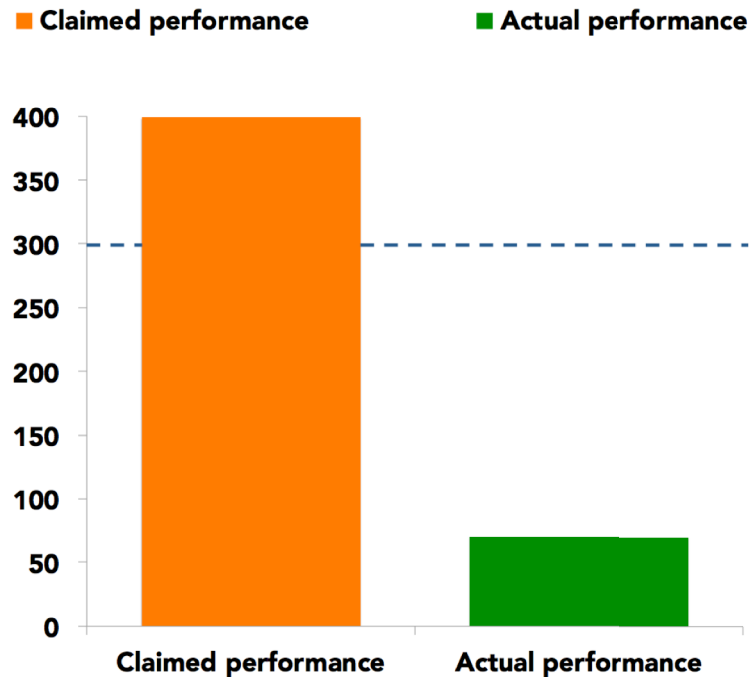
So Westchester, in addition to performing disproportionately poorly in the whitest jurisdictions, is cheating by 107 units on the dimension of municipal-level requirements (8 in paragraph 7(b) municipalities and 99 in paragraph 7(c) municipalities).

Because our accounting has already removed the North Salem and Cortlandt sites, we only deduct an additional 16 excess paragraph 7(c) units, bringing Westchester's overall total down to 103 units, little more than a third of the minimum requirement by the end of 2013. And this is without a comprehensive analysis of sites for isolation or proximity to undesirable features.

Included in the remaining 103 units are 4 units in Rye Brook on a block that is 43 percent Latino and 12 percent African-American (majority minority); 2 units in Tarrytown on a block that is 37 percent Latino and 11 percent African-American; 26 units in Yorktown Heights on a block that is 13 percent Latino; and a single unit in Buchanan on a block that is 32 percent Latino. None of these units would have been counted if development had proceeded according to an IP that required AFFH development in general and was obliged to figure out even more specifically the means by which to maximize development on the census blocks with the lowest concentrations of African-Americans and Latinos. Remove these 33 units, and Westchester is down to 70 units, less than 25 percent of its minimum by the end of 2013.



By the end of 2013, Westchester was supposed to have at least 300 units with financing in place. The County has trumpeted its success, and the Government and the Monitor haven't challenged its claims. But once you exclude units improperly counted (the "cheating units"), there is a much different story.



### C. Squandering the potential multiplier effect that decree-compliant units would have created

In a county of nearly one million people, 750 units of housing over seven years is, in terms of people actually housed, a drop in the bucket. (That is one of the reasons the decree treats Westchester's unit-specific obligations as only one of its many duties under the decree.) But the units built were supposed to do more than provide housing for slightly more than 100 families a year. They were supposed to act as catalysts that would spur future development by private developers. The way that would have worked would have been for the units to be sited on parcels that required a town or village to relax a zoning barrier, including the barrier created by single-family zoning.<sup>6</sup>

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<sup>6</sup> Some of that zoning -- large-lot zoning, in particular -- has long been recognized as being exclusionary. But there are ways to build more than a single unit even on smaller lots while at the same time being cautious to avoid building more units on a site than can reasonably be sustained. In short, despite fear tactics that have been employed by Westchester, neither ADC nor anyone else is proposing to have apartment buildings built on small lots.

Once the zoning barrier had been relaxed, two things would have occurred. First, existing residents would have learned that the sky did not fall: affordable housing can be placed in the midst of an existing single-family neighborhood and co-exist harmoniously. Second, the consent decree housing would have done the heavy lifting of removing a zoning barrier, so the private developers would have been able to follow along with the easier task of constructing affordable housing with desegregation potential under a reformed zoning regime.

Instead, Westchester -- joined by the Government and the Monitor -- took the path of least resistance (the low-hanging fruit, as the Monitor puts it). That, of course, leaves no low hanging fruit for private developers. They will be forced to try to overcome barriers without the tools and the resources provided under the decree.

As noted, the motivation is simple to understand: trying to build on the most appropriate sites -- including, pursuant to paragraph 22(f) of the decree, on the census blocks with the lowest percentages of African-Americans and Latinos -- is more controversial than building on sites set apart from existing ultra-white residential neighborhoods.

It is also the case that implementing the decree without taking single-family zones off the table would have required each development to be smaller, and thus more developments in total. More developments would have meant more barriers to overcome. That is a positive in consent decree terms, but the additional battles are something that Westchester, the Government, and the Monitor wanted very much to avoid.

### **Playing games with paragraph 22(f)**

**This provision of the decree requires Westchester to maximize the housing built on census blocks "with the lowest concentrations of African-American and Hispanic residents."**

**Westchester has claimed that building on vacant blocks meets the requirement: that is, zero members of any group means that there is a low concentration of every group.**

**In fact, this command contemplates that one is looking for blocks that are residential in character. "Lowest concentrations" is meant as a relative term: low concentrations of African-Americans and Hispanics in comparison to high concentrations of whites.**

**Housing on blocks that were vacant or not residential in character might have counted for 22(f) purposes if the requirement were only to avoid *high* concentrations of African-Americans and Hispanics (a vacant block can't be said to have such concentrations), but not when the requirement was an affirmative one to seek out *low* concentrations.**

**III. Westchester has flatly refused to obey the dual obligations of paragraph 7(j) to litigate against municipalities that continued to maintain barriers to fair housing choice, and the Government and the Monitor have never called the County to account for its failure to act.**

The consent decree does impose analysis and planning obligations on the County (see, for example, the discussion at page 34 of Westchester's failure to comply with its obligation to develop an analysis of impediments to fair housing choice that is deemed acceptable by HUD).

But one cannot appreciate the scope of Westchester's misconduct -- or the extent to which the Government and the Monitor have failed to meet their enforcement obligations -- if one doesn't understand that there are *action* obligations as well, action obligations that go beyond the construction of a minimum of 750 units of housing.

A. The obligation to take legal action

It has been, for example, a core obligation of the Monitor to assess -- first at the end of 2011, next at the end of 2013 -- whether "the County has taken *all possible actions* to meet its obligations" under the decree (emphasis supplied). Specifically included in the Monitor's obligation was determining whether all possible steps were taken by Westchester to promote "inclusionary and other appropriate zoning by municipalities" by "taking legal action." Consent Decree, ¶ 15.

The most important action obligations are the two separate obligations contained in paragraph 7(j). The first obligation relates to unit-specific obligations (building units that affirmatively further fair housing). It states:

In the event that a municipality does not take actions needed to promote the objectives of this paragraph, or undertakes actions that hinder the objectives of this paragraph, the County shall use all available means as appropriate to address such action or inaction, including, but not limited to, pursuing legal action.

**We are not talking here about the "spirit" of the decree, an elective matter, or an obligation subject to negotiation. The obligation on the County is mandatory: it is required ("the County shall") to use all available means as appropriate (not a limited and predetermined subset) to address a municipality's action or inaction.**

We are not talking here about the "spirit" of the decree, an elective matter, or an obligation subject to negotiation. The obligation on the County is mandatory: it is required ("the County shall") to use all available means as appropriate (not a limited and predetermined subset) to address a municipality's action or inaction. The only item specifically mentioned was "pursuing legal action." This had to be specified because the voluntary means used over the years had already proven to be insufficient, and because the County -- prior to and throughout the litigation -- had falsely claimed that it had not authority to take such action.

Each municipality is supposed to be examined to see if it is either failing to promote the construction of units or hindering the construction of units. No municipality is excepted, and no municipality is given a pass in the

circumstance that other municipalities are compliant.

The failure to eliminate zoning rules that pose an impediment to the construction of decree-appropriate affordable housing obviously constitutes a failure to take action needed to promote the construction of affordable housing with desegregation potential (the continued enforcement of such zoning provisions is also properly seen as actions that hinder the objective of building such housing).

The second obligation of paragraph 7(j), unlike the first obligation, is *not* limited to securing the objectives of the decree's paragraph on developing a minimum number of units of affordable housing with desegregation potential.

It states that:

The County shall initiate such legal action as appropriate to accomplish the purpose of this [consent decree] to AFFH.

It is impossible to construe this second obligation as being merely duplicative of the first. The first is framed in terms of the objectives of a single paragraph of the decree; this second obligation is framed in terms of the purposes of the decree as a whole.

The sweeping nature of this obligation cannot be overstated. Here is a mandatory obligation to initiate the legal action needed to accomplish the purpose of the decree to AFFH, which is to say overcome the barriers to fair housing choice.

As a final preliminary matter, it is also important to note that paragraph 7(j) had no delayed implementation date. Westchester's obligations under paragraph 7(j) began on August 10, 2009.

#### B. An open, continuous, and across-the-board refusal to comply

That numerous Westchester towns and villages have had and still maintain zoning that creates impediments to fair housing choice is not subject to serious dispute (illustrations are discussed at pages 24-26, below). But it is important first of all to understand that it has been the express position of the County -- as expressed in numerous venues and in numerous ways by the county executive -- to refuse on an across-the-board basis -- to perform either of its paragraph 7(j) action obligations in relation to even a single municipality.

The county executive began to express his position early in his term. In his first month of office, for example, he said in connection with the possibility of taking municipalities to court, "I won't do that. I will not do that." He added that "we don't want to use...a stick...*the approach we're*

**"The County shall initiate such legal action as appropriate to accomplish the purpose of this [consent decree] to AFFH." It is impossible to construe this second obligation as being merely duplicative of the first. The first is framed in terms of the objectives of a single paragraph of the decree; this second obligation is framed in terms of the purposes of the decree as a whole.**

This is the exact opposite of an attempt to shape action to varying conditions in different municipalities, and his posture has not varied.

C. The county executive's position is flatly contradicted by the decree

Westchester was forced to acknowledge and agree that, “pursuant to New York state law,” “municipal land use policies and actions shall take into consideration the housing needs of the surrounding region.” Consent Decree, page 2, para. 1, subpara. (i). That’s an acknowledgment of the *Berenson* doctrine, the law in New York since 1975.<sup>9</sup>

Westchester was forced to acknowledge and agree that “municipal land use policies and actions...may not impede the County in its performance of duties for the benefit of the health and welfare of the residents of the County.” *Id.* That’s an acknowledgment of the *County of Monroe* doctrine,<sup>10</sup> the

<sup>7</sup> Note that HUD was focused on the analysis of impediments, ignoring the action requirements of paragraph (7)(i)

<sup>9</sup> *Berenson v. Town of New Castle*, 378 N.Y.S.2d 672 (N.Y. 1975).

<sup>10</sup> *Matter of County of Monroe (City of Rochester)*, 533 N.Y.S.2d 702 (N.Y. 1988). Ironically, Westchester itself made use of this doctrine. The County argued successfully that the *County of Monroe* test was applicable to the County's interest in creating a family shelter and that the interests of the County and its developer agent in forming such an essential governmental function outweighed those of the Village. *Westhab, Inc. v. Village of Elmsford*, 574 N.Y.S.2d 888 (N.Y. Sup. Ct., Westchester County, 1991).

The consent decree didn't leave any room for Westchester to argue that the county's interest wasn't substantial. The first clause of the entire decree states that "the development of affordable housing in a way that affirmatively furthers fair housing is a matter of significant public interest." Consent Decree, page 1, para. 1.

The decree goes on to state explicitly that “the broad and equitable distribution of affordable housing promotes sustainable and integrated residential patterns...and advances the health and safety of the residents” of the county and its municipalities. Consent Decree, page 1, para. 2.

For good measure, the consent decree evaluates in advance the circumstance where a municipality hinders or impedes the County in the performance of duties for the benefit of the health and welfare of the residents of the County. Westchester was forced to acknowledge and agree that “it is appropriate for the County to take legal action to compel compliance if municipalities hinder or impede the County in

#### D. County Executive Astorino's contempt escalates further

Zherka responded by saying that if Astorino "just stood up a little more and defied it" he would be "governor and presidential" material; "if you told the Feds 'I'm not doing it; you can arrest me,' and let them put handcuffs on you."

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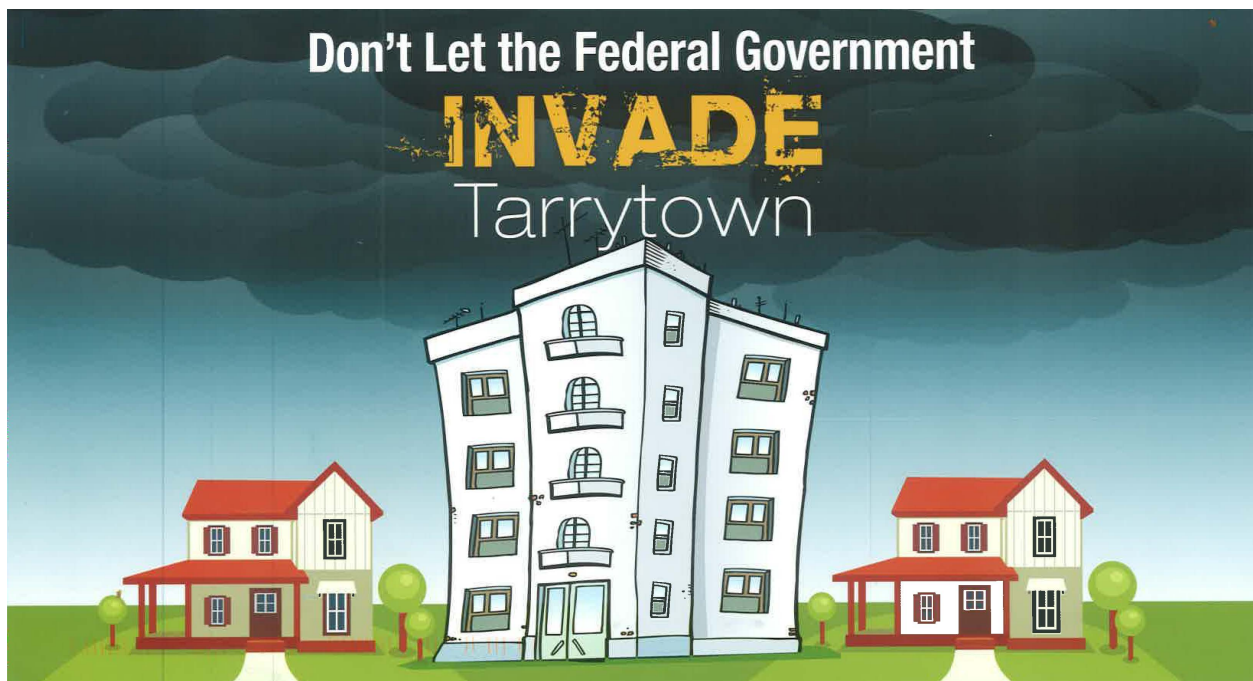
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Zherka said, "Hold your ground. Hold it hard, hard, hard." Astorino replied: "Oh my God, I'm not yielding an inch to these guys."

The promise not to yield an inch on zoning is nothing more or less than a promise to continue to violate the requirements of the decree.

Astorino's version of standing on the schoolhouse steps in defense of the status quo -- and in defiance of the consent decree -- did not stop.

In campaign literature that can only be described as constituting disgusting appeals to fear and prejudice (see below), he depicted dark and threatening clouds over a Westchester town with an apartment building suffocating single-family homes, with the headline, "Don't Let the Federal Government INVADE Tarrytown." The theme of "invasion" is, of course, a traditional method used to stoke racial fears.



Another flyer (see next page) poses the electoral choice as "DEFEND or SURRENDER?" and promises that Astorino will "continue to DEFEND our local communities." The flyer -- again featuring dark storm clouds to represent the threat -- says that Astorino has been "a tireless DEFENDER of the home rule rights" of municipalities and will "fight for our communities" against the threat to "our neighborhoods."

There are two points to be made. The first: shame on the county executive for such conduct. The second: this is not the posture of someone who has even the smallest intention to obey paragraph 7(j).

# DEFEND vs. SURRENDER?

Your neighborhood is **AT RISK** on Tuesday



**Rob Astorino will continue to DEFEND our local communities.**

**ON TUESDAY, NOV. 5TH  
VOTE ROB ASTORINO**



## Washington Bureaucrats


want to bulldoze local zoning — safeguards that protect all of our communities from overdevelopment, overcrowded schools and dirty drinking water.



**Noam Bramson would SURRENDER to Washington.**

## Defend vs. Surrender That's the choice on Tuesday

Rob Astorino has been a tireless DEFENDER of the home rule rights of Westchester's cities, towns and villages.



**Noam Bramson would SURRENDER to Washington.**

In fact, Bramson says the county and local communities should work to ***"meet tests that have been outlined by the federal government."***

— (RNN, 4/25/13)

Those "tests" include removing local "restrictions that limit: size of a development; multifamily housing; Section 8 or other affordable housing; number of bedrooms in a unit; and lot size."

— (U.S. Department of Housing and Urban Development, 3/13/13)

**The threat to home rule—and our neighborhoods—is very real.  
We can count on Rob Astorino to fight for our communities.**

**ON TUESDAY, NOV. 5TH  
VOTE TO RE-ELECT  
ROB ASTORINO**

Read the HUD letters: [robastorino.com/issues/affordable-housing-settlement](http://robastorino.com/issues/affordable-housing-settlement)

E. The barriers to fair housing choice imposed by municipalities are deep and widespread

The techniques of the big lie are well known: just keep insisting on a proposition -- regardless of its falsity -- and hope that: (a) some people will believe it to be true; and (b) "he said, she said" media sources will report, "People disagree." This is what Westchester has done. "There is no exclusionary zoning," it says. Let's be clear: that is a lie. The barriers to the construction of affordable housing that would AFFH are enormous and exist in virtually every municipality where such housing is supposed to be built pursuant to the decree.

The fact that there is very little land zoned for multiple-family housing, and the fact that many of the municipalities have remarkably low population density, is well known, *and was actually documented by Westchester itself back in 2010.*

Its "Parcel-Based Land Use Map," annexed hereto as Exhibit D, provides a striking visual representation of the fact that residential property (depicted in yellow) is overwhelmingly single-family and that multi-family housing (depicted in orange) is hardly anywhere to be found in the towns and villages where consent decree housing is supposed to be built.

**Multi-family housing including condominiums constitutes less than 1.0 percent of all residential acreage in eight municipalities,<sup>1</sup> and between 1.0 and 4.75 percent in another 10 municipalities.<sup>1</sup>**

**Residential density (units per acre) is only 0.27 in Pound Ridge, 0.32 in North Salem, 0.441 in Bedford, 0.48 in Lewisboro, 0.57 in North Castle, and 0.70 in New Castle.**

Westchester's 2010 Land Use Report provides the back-up data. For example, multi-family housing *including condominiums* constitutes less than 1.0 percent of all residential acreage in eight municipalities,<sup>12</sup> and between 1.0 and 4.75 percent in another 10 municipalities.<sup>13</sup>

Residential density (units per acre) is only 0.27 in Pound Ridge, 0.32 in North Salem, 0.441 in Bedford, 0.48 in Lewisboro, 0.57 in North Castle, and 0.70 in New Castle.

Data gathered by consultants to the Monitor and submitted in connection with a September 13, 2013 report from the Monitor also paints a devastating picture of the failure of Westchester municipalities to remove zoning restrictions that are impediments to fair housing choice (and thus continue to constitute both conduct that hinders the development of consent decree housing and conditions that undercut the purpose of the decree to AFFH). That is, the conditions that exist are conditions that triggered both of

Westchester's paragraph 7(j) obligations.

The Monitor's commentary on the data tries to play down its significance, and his exclusionary zoning analysis is remarkably incomplete (as discussed in pages 23-30 of this report). But even the Monitor

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<sup>12</sup> Bedford, Harrison, Lewisboro, North Castle, North Salem, Pound Ridge, Rye Brook, and Scarsdale.

<sup>13</sup> Ardsley, Briarcliff Manor, Buchanan, Croton-on-Hudson, Larchmont, Mamaroneck, Mount Pleasant, New Castle, Pelham, and Pelham Manor.



Monitor has gone to Judge Cote and sought to hold the County In contempt for failing to take the actions required by paragraph 7(j).

There are a variety of distractions that will be interposed in an attempt to distract people from this dereliction of duty. None have merit.

The Government will say that it *has* sought to have Westchester *identify* exclusionary zoning and a program to respond to such zoning. But that is not what paragraph 7(j) demands. The first prong of paragraph 7(j) speaks in terms of "pursuing legal action"; the second prong speaks in terms of "initiating such legal action as appropriate to accomplish the purpose of this [consent decree] to AFFH." Neither the Government nor the Monitor has sought to hold the Westchester responsible for failing to have done so.

The Government will also point to the fact that it belatedly began to withhold federal grant money from Westchester. In doing that without holding Westchester to account under paragraph 7(j), the Government is very seriously undercutting the rule of law.

Westchester, like all jurisdictions, is subject to having funding withheld if it fails to meet its AFFH obligations. HUD has done that.

But Westchester is not like other jurisdictions -- it is operating under a federal court consent decree that imposes additional obligations.

The Government's position tells Westchester -- and all other jurisdictions across the country -- that there are no more consequences to violating both the general AFFH obligation and a separate consent decree obligation than there are to violating only the general AFFH obligation. That reduces the consent decree obligation to a nullity.

The way that the funds cutoff does bear on the degree of culpability the Government bears for its failing to enforce the decree is that *the funds cutoff reflects the fact that the Government does actually recognize that Westchester has failed to confront the zoning barriers that continue to exist.* As such, the Government's failure to vindicate the paragraph 7(j) requirements does not come merely from inexcusable ignorance of the facts, but rather from an inexcusable unwillingness to enforce the consent decree.

**The Government's position tells Westchester -- and all other jurisdictions across the country -- that there are no more consequences to violating both the general AFFH obligation and a separate consent decree obligation than there are to violating only the general AFFH obligation. That reduces the consent decree obligation to a nullity.**

The Monitor, who has consistently operated under the belief that he can substitute his own judgment for the course of action demanded by the consent decree itself, will doubtless say that he has undertaken discussions with some municipalities about their zoning. But the consent decree imposes obligations on Westchester, and simply does not permit the Monitor (or the Government) to decide that discussions with non-parties are an acceptable alternative to holding the defendant to its paragraph 7(j) obligations.

G. The Monitor downplays the scope and significance of restrictive zoning and the United States Attorney stands idly by

The Monitor's report on exclusionary zoning is woefully incomplete, does not focus on the consent decree, and fails to apply the appropriate standards.

(1) *Paragraph 7(j).*

In his September 13, 2013 report to the Court on zoning, the Monitor simply did not evaluate the zoning data from the perspective of how much of it represented a "failure to promote" or a "hindering" of the construction of consent decree units, nor did he evaluate the data from the perspective of whether the zoning contradicted the decree's purpose to AFFH. He likewise failed to examine whether Westchester had taken any actions (let alone "all possible actions," Consent Decree ¶ 15) to meet its paragraph 7(j) obligations. The United States Attorney did not bring this to the Court's attention.

(2) *County of Monroe.*

The Monitor also failed to consider the fact that Westchester was unjustifiably failing to exercise its rights under the *County of Monroe* doctrine in respect to the seven jurisdictions he found to have exclusionary zoning nor in respect to the fact that, "There is evidence of exclusionary zoning in many of the 20 category 2 ["warrants improvement"] municipalities."<sup>18</sup> Even if it were true that there were factors that "militated" against a finding that zoning was exclusionary under the *Berenson* doctrine (and it isn't true), that wouldn't change the fact that the consent decree began by identifying a stronger interest on the part of the County (and of the citizens of its municipalities) to encourage affordable housing with AFFH potential than municipalities have in maintaining restrictive zoning, and by forcing Westchester to acknowledge its authority and responsibility to challenge such zoning, *inter alia*, pursuant to *County of Monroe*. The United States Attorney did not bring these facts to the Court's attention.

(3) *Berenson*

As to whether municipalities failed to comply with the *Berenson* doctrine, the Monitor's primary focus -- the Monitor mangled the legal standards and failed to apply the facts to the law.

Take the requirement that a municipality must have a "properly balanced and well ordered plan for the community."<sup>19</sup> In addition to those the Monitor found to be exclusionary on this ground, the Monitor rated 17 jurisdictions as "warrant[ing] improvement."<sup>20</sup>

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<sup>18</sup> Monitor's Sept. 2013 Report, p. 57.

<sup>19</sup> *Berenson*, *supra*, 378 N.Y.S.2d at 680.

<sup>20</sup> Exhibit 2 to the Monitor's Sept. 2013 Report, annexed hereto as Exhibit E, contains three charts: the first is intended to show whether municipalities have provided a properly balanced and well-ordered plan for the community (the "Balanced Plan Chart"); it is that chart that contains the rankings referred to

These are all jurisdictions where the Monitor was unable to find that they *did* provide a well-ordered plan, but where he was unwilling to say that the jurisdictions were exclusionary. It is the equivalent of a school district using a very lenient grading scale to avoid being seen as having too many failing students.

Indeed, the Monitor explicitly states that jurisdictions are being given “credit” for “addressing” affordable housing need even if their comprehensive plans only mention that affordable housing should be considered without making detailed recommendations on how to develop that housing.<sup>21</sup>

Here are a few of the jurisdictions that the Monitor was unwilling to put into the exclusionary category. According to the Monitor’s reported data:

Ardasley only has 1 percent of residential land zoned for multi-family use. The *undeveloped* land that is zoned multi-family is only 0.3 percent of the village’s total acreage.

Bedford only has 0.5 percent of residential land zoned for multi-family use. The *undeveloped* land that is zoned multi-family is only 0.01 percent of the village’s total acreage.

Mount Pleasant only has 1.2 percent of residential land zoned for multi-family use. The *undeveloped* land that is zoned multi-family is only 0.03 percent of the village’s total acreage. Mount Pleasant’s ability to meet “future need” for affordable housing is a total of only five units.

Scarsdale only has 0.26 percent of residential land zoned for multi-family use. The *undeveloped* land that is zoned multi-family is only 0 percent of the village’s total acreage -- there is no such land. Scarsdale’s ability to meet future need for affordable housing is a total of zero units.

**Scarsdale only has 0.26 percent of residential land zoned for multi-family use. The *undeveloped* land that is zoned multi-family is only 0 percent of the village’s total acreage -- there is no such land. Scarsdale’s ability to meet future need for affordable housing is a total of zero units.**

To reiterate, the Monitor declined to place any of these jurisdictions in the exclusionary category of failing to provide a properly balanced and well-ordered plan for the jurisdiction.

The other *Berenson* obligation is that the municipality must consider *and* provide for its share of regional affordable housing need.<sup>22</sup> The Monitor took as his guide to regional need the report prepared in 2005

~~above. The second chart contained in the exhibit is intended to show whether municipalities have or can meet their share of regional affordable housing need (the “Regional Share Chart”); the third is intended to show factors that could justify restrictive zoning (the “Rebuttal Factors Chart”).~~

<sup>21</sup> Balanced Plan Chart, n. 8.

<sup>22</sup> *Berenson*, *supra*, 378 N.Y.S.2d at 681-82.

by the Center for Urban Policy Research at Rutgers University for Westchester's Housing Opportunity Commission. That Commission determined that regional need was for over 10,000 units of affordable housing.<sup>23</sup>

The first problem with this aspect of the Monitor's analysis is that Westchester is part of a broader housing market that includes New York City. To treat the affordable housing needs of New York City households as zero units profoundly understates the regional need for affordable housing in the metropolitan area, and thus understates each municipality's obligation in relation to that regional need.

The second problem is that the Monitor did not ultimately take the question of meeting regional need seriously. Bronxville, Buchanan, Dobbs Ferry, Mount Pleasant, and Scarsdale have each failed to build a single unit of their allocation from 2000 (when initial allocations were made) through 2013. Eastchester built only 2; New Castle, only 3;<sup>24</sup> and Irvington only 4. In terms of "potential" to meet regional need as measured by the allocation, Bronxville and Scarsdale, the Monitor states, have the potential to meet 0 percent of the benchmark; Mount Pleasant, 0.5 percent; Irvington, 2.6 percent; Buchanan, 12.5 percent; and New Castle only 13.7 percent.

North Castle only has the potential, the Monitor says, to get to 18 percent of its share of countywide need (again, ignoring the needs of that part of the region that is outside Westchester).

None of these nine jurisdictions were treated by the Monitor as having failed to provide for its share of regional need.<sup>25</sup>

A critical means by which the Monitor avoided making findings of exclusionary zoning pursuant to *Berenson* was to treat "certain other factors" (not made transparent) as providing a "rebuttal to the presumption that [the municipalities'] ordinances are exclusionary."<sup>26</sup>

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<sup>23</sup> Monitor's Sept. 2013 Report, p. 21. The Monitor provides only a portion of the picture when he focused on the fact that those units do not "expand" the County's unit-specific obligations under the decree. *Id.*, n. 8. What the Monitor doesn't discuss is that the County's abandonment of those goals runs directly contrary to its obligation under paragraph 31(a) of the decree. See discussion, below, at pp. 33-34.

<sup>24</sup> The Monitor made a point of noting that a developer was seeking approvals for the "Chappaqua Crossing" development, which would include 20 affordable units. The development shares some of the undesirable characteristics of several other projects "counted" by the Monitor: it is a brownfield site, it is separated from residential Chappaqua, and it is squeezed between the railroad tracks and the Saw Mill River Parkway.

<sup>25</sup> This may be, in part, because of a linguistic trick in the Monitor's categorization scheme. The exclusionary category is reserved for municipalities that have "not considered" and "does not have the potential to satisfy its share of regional need." Regional Share Chart, n. 8. In fact, a municipality is exclusionary under *Berenson* if it does not have the potential to satisfy its share of regional need, even if that municipality has "considered" the question of regional need.

<sup>26</sup> Monitor's Sept. 2013 Report, p. 34

In the Monitor's chart of rebuttal factors, one category is "rebuttal unsuccessful because the zoning ordinance, though it may have provisions addressing affordable housing opportunities, is too narrow in scope to provide genuine opportunities sufficient to meet local and regional need."<sup>27</sup>

Leaving aside municipalities ultimately found by the Monitor to be exclusionary under *Berenson*, there were an additional 11 jurisdictions with *unsuccessful* rebuttals that the Monitor nonetheless placed only in the "warrants improvement" category instead of in the "fails *Berenson*" category.<sup>28</sup> In fact, zoning ordinances that are "too narrow in scope to provide genuine opportunities sufficient to meet local and regional need" are indeed exclusionary.

One factor treated as a significant positive development by the Monitor is if a municipality adopted the so-called Model Ordinance. The consent decree had provided that one of the obligations of Westchester under the decree was to develop and promote a "model inclusionary housing ordinance." Consent Decree, ¶ 25(a).


Model ordinances can serve an important purpose. But the version that the Monitor approved is entirely inadequate. It has literally no provision to expand the acreage that a municipality is required to devote to as-of-right multi-family housing. It is only when municipality is *already* permitting building to go forward that a modest component of affordable units is required. Municipalities most committed to preserving an anti-development, anti-affordable-housing status quo, in other words, are let off the hook.

Put another way, even if every jurisdiction were to adopt the model ordinance, that would not mean that even a single additional unit of as-of-right multi-family housing was required to be built anywhere in the County.

**Even if every jurisdiction were to adopt the model ordinance, that would not mean that even a single additional unit of as-of-right multi-family housing was required to be built anywhere in the County.**

Nevertheless, at least in some cases, the Monitor used the adoption of the model ordinance as the basis by which to say that municipalities met their rebuttal burden (Bedford and New Castle are two examples.)

It is ironic that the Monitor did so because he himself cited in his report *Continental Building Co., Inc. v. Town of North Salem*, 625 N.Y.S.2d 700, 704 (3rd Dept. 1995), a case in which the court cautioned that provisions (like the density bonuses at issue in that case) that are "intrinsically narrow in scope and do very



<sup>27</sup> Rebuttal Factors Chart, n. 6.

<sup>28</sup> Briarcliff Manor, Bronxville, Buchanan, Cortlandt, Eastchester, Larchmont, Mamaroneck, Pelham, Rye, Somers, and Tuckahoe.

little to genuinely address the established need for multifamily housing” are insufficient to meet a jurisdiction’s burden of proof of non-exclusion, and also cited *Land Master Montg I. LLC v. Town of Montgomery*, 821 N.Y.S.2d 432, 440 (Sup. Ct., Orange Cty. 2006 (a case that rejected a zoning scheme that, “effectively, creates the illusion of affordable housing availability while limiting its reality to a few chosen sectors and vesting almost total control in the Town”).<sup>29</sup>

The model ordinance is exactly the kind of illusory gain for multi-family housing that the decisions condemned, but Monitor didn’t apply the law to the incentives or mandates that were similar to the model ordinance. As elsewhere, the U.S. Attorney failed to bring the wider scope of *Berenson* violations to the Court’s attention.

#### (4) Disparate impact under the Fair Housing Act

The Monitor does reference the fact the municipal zoning can violate the Fair Housing Act if it has a disparate impact on the basis of race, national origin, or other protected class, either by having a disproportionate adverse impact on a minority group or by perpetuating segregated housing patterns, citing, *inter alia*, *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 937 (2nd Cir. 1988) and *United States ex rel. Anti-Discrimination Center*, 495 F. Supp. 2d 376, 387 (S.D.N.Y. 2007).<sup>30</sup>

But he fails to perform basic, relevant analysis necessary to identify the various expressions of disparate impact. The focus of his inquiry is whether there is large variation between the African-American or Latino population of zoning districts within a municipality and the African-American or Latino population of zoning districts *within the same municipality*. The Monitor saw the relevant “import of *Huntington*” to be to “identify the types of housing that appear to correspond to the preferences of blacks and Hispanics *in the community* and whether such housing is then restricted to one or two segments of *that community*” (emphasis added).<sup>31</sup>

Such restrictions indeed constitute one form of disparate impact in violation of the Fair Housing Act, but

~~REDACTED~~

<sup>29</sup> Sept. 2013 Monitor Report, p. 22.

<sup>30</sup> *Id.*, p. 24.

<sup>31</sup> *Id.*, p. 42, n. 14.

#### **Why would the monitor accept an inadequate model ordinance?**

**The Monitor was explicit that the model ordinance he approved was suboptimal. But he argued that it had to be one that was not unpalatable to municipalities. In other words, instead of requiring Westchester to do the things that would cause municipalities to adapt to the goals of the consent decree (including litigation), the Monitor had the consent decree adapt to anticipated intransigence on the part of municipalities. See Monitor’s Oct. 2010 Report, Doc. 334, p. 7.**

the scope of disparate impact doctrine sweeps much broader. *Huntington* itself pointed out that permitting the housing that the defendant town had denied “would likely [result in] a desegregative effect on Huntington Township as a whole in comparison to the region, given the tight housing market throughout the area.”<sup>32</sup> The court did not make a factual finding on this question, however, only “because we find sufficient desegregative impact with Huntington itself from the project.”<sup>33</sup> In other words, the question of whether a governmental entity perpetuates segregation is not just a local question, but a regional one as well.

In *Metropolitan Housing Development Corp. v. Village of Arlington Heights*, for example, the court held as follows:

We reaffirm our earlier holding that the Village's refusal to rezone had a discriminatory effect. The construction of Lincoln Green [the project that had been blocked] would create a substantial number of federally subsidized low-cost housing units which are not presently available in Arlington Heights. Because a greater number of black people than white people in the *Chicago metropolitan area* satisfy the income requirements for federally subsidized housing, the Village's refusal to permit MHDC to construct the project had a greater impact on black people than on white people. Moreover, Arlington Heights remains almost totally white in a metropolitan area with a significant percentage of black people. Since Lincoln Green would have to be racially integrated in order to qualify for federal subsidization, the Village's action in preventing the project from being built had the effect of perpetuating segregation in Arlington Heights.<sup>34</sup>

The regional perspective is crucial. Consider a municipality that has limited multiple-family housing available, and little if any of that is now affordable. Because the municipality had historically been unwelcoming to African-Americans when the multiple-family housing was constructed and tenanted (and when it was more affordable), even the multi-family zones have just as low a percentage of African-Americans as the zones that do not allow multi-family housing. To use that lack of variation in the African-American population between types of zones to suggest the municipality's current zoning perversely rewards the whitest municipalities that most effectively kept African-Americans out, and is unsuited to answering the question, “What would be the impact on segregation if zoning restrictions were loosened?”

**Only a regional perspective can go beyond the housing needs of the people who *haven't* been excluded altogether from a jurisdiction and look to *the housing needs of the people who have been excluded.***

Only a regional perspective can go beyond the housing needs of the people who *haven't* been excluded altogether from a jurisdiction and look to *the housing*

~~Metropolitan Housing Development Corp. v. Village of Arlington Heights, 558 F.2d 1283, 1288 (7th Cir. 1977) (emphasis added).~~

<sup>32</sup> *Huntington*, *supra*, 844 F.2d at 938, fn. 8.

<sup>33</sup> *Id.*

<sup>34</sup> *Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 558 F.2d 1283, 1288 (7th Cir. 1977) (emphasis added).



exclusionary in Fair Housing Act terms), regardless of whether African-Americans may be relatively evenly distributed between and among a single municipality's different types of zoning districts.

The Monitor acknowledged that his analysis provided "only an initial step in identifying whether the municipal zoning ordinances are such that they may impede integration by placing a barrier on the ability to build affordable housing" and that "further analysis would be necessary."<sup>36</sup>

Stop and consider how remarkable that is. More than four years after the entry of a housing desegregation consent decree, and the person charged with monitoring compliance professes not to be able to say whether municipalities that Westchester was supposed to sue on the basis of practices that contravened the purpose of the decree to AFFH are continuing practices that rise to the level of disparate impact violations of the Fair Housing Act.

The only thing more extraordinary is the deafening silence from the U.S. Attorney for the Southern District of New York. As it surely cannot take that office more than four years to conduct a disparate impact analysis, the only reasonable conclusion is that the U.S. Attorney has chosen to avert his eyes from the disparate impact (and from Westchester's refusal to act against it).

**The only thing more extraordinary is the deafening silence from the U.S. Attorney for the Southern District of New York.**

A powerful contrast is provided by the case just filed by the U.S. Attorney for the Eastern District of New York against Oyster Bay, a town in Nassau County.<sup>37</sup> The complaint challenges preferences for town residents and relatives of town residents for below-market-rate housing because "African-Americans constituted less than 1% of families living in Oyster Bay who were income eligible and otherwise qualified" as compared with the fact that the "eligible population of Nassau County and Suffolk County residents was approximately 10% African-American" and the "*eligible population in the New York metropolitan areas was approximately 20.5% African-American.*"<sup>38</sup>

In other words, the U.S. Attorney for the Eastern District (working with the Civil Rights Division of the Justice Department) had no difficulty determining that in-jurisdiction demographics has to be measured against out-of-jurisdiction demographics, even to the extent of including the New York metropolitan area.

The failure of the Government and the Monitor to highlight the disparate impact of the zoning of many Westchester municipalities simply cannot be explained by the facts or the law.

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<sup>36</sup> Monitor's Sept. 2013 Report, pp. 40-41, 58

<sup>37</sup> United States of America v The Town of Oyster Bay et al., 14-CV-2317 (Spatt, J.), filed April 10, 2014. The complaint is annexed hereto as Exhibit F.

<sup>38</sup> Complaint, ¶ 20; see also Complaint, ¶ 9 (referencing the demographics of the population of the five boroughs of New York City).

H. Paragraph 7(j) does not have a "litigation last" provision

The Monitor describes paragraph 7(j) as placing the County under a duty to “engage with municipalities.”<sup>39</sup> He then claims that that engagement “may” encompass “a variety of tools, from technical assistance, through litigation.”<sup>40</sup> Noticeably absent, as discussed earlier, is any assessment that the County should have litigated at any point from 2009 through 2013, or any demand that it do so now.

The approach is consistent with the Monitor's desire to avoid litigation, but not with the language of the decree. Paragraph 7(j) requires Westchester to use *all* available means to address hindrances to its unit-specific obligations, and states that the County *shall* initiate the legal action needed to accomplish the purpose of the consent decree to AFFH.

Throughout the text of the consent decree -- as it had been throughout the litigation -- the conduct of municipalities took center stage. It was restrictive municipal zoning (and Westchester's acceptance of that zoning) that was the most powerful impediment to fair housing choice, and thus *action* to counter precisely that resistance was at the core of what was demanded.

Paragraph 15(a) of the decree underlines the fact that litigation is not supposed to be reserved as a last option: Westchester's compliance -- including in the first biennial report of the Monitor that was due at the end of 2011 -- was supposed to be evaluated on the basis of whether it has taken "all possible actions to meet its obligations" under the decree. These actions include taking legal action to secure appropriate zoning. Paragraph one of page two of the decree also recites that it is appropriate for the County to take legal action against municipalities that hinder the County in the fulfillment of the terms of the consent decree or, more generally, in its duty to develop housing that promotes integrated residential patterns.

In the absence of the consent decree, the Monitor or the Government would certainly be free to pursue policy options that demoted or ignored altogether the lever of litigation. But, of course, the consent decree exists, and neither is free to ignore the course of conduct the decree prescribes.

It is a very basic failing of oversight and enforcement that the question, "Has Westchester been using all available means at its disposal to overcome municipal barriers to fair housing choice?" has never been addressed by the Monitor or the Government.<sup>41</sup>

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<sup>39</sup> Monitor's Sept. 2013 Report, p. 7.

<sup>40</sup> *Id.*

<sup>41</sup> It is true that, in its eagerness to make sure that ADC's motion to intervene was denied and its motion to enforce not heard, the U.S. Attorney cynically used a declaration from a Westchester legislator -- that is, a representative of the defendant -- that said, "To my knowledge, no municipality has sought to obstruct the development of Affordable AFFH Units." Declaration of John M. Nonna, July 29, 2011, Doc 370, ¶ 6. If the U.S. Attorney actually believes that Westchester has been using all available means to overcome municipal barriers to fair housing choice, he should say so and explain why he disagrees with HUD, his client.

### I. Other basic steps not taken

A useful tip-off to the fundamental unwillingness of the Government and Monitor to enforce the decree has been their failure to push Westchester to acquire -- directly or indirectly -- interests in sites with desegregation potential where AFFH development is stymied by restrictive zoning.

Such interests would, in the normal course, be the basis on which Westchester could use its *Berenson* and *County of Monroe* litigation tools. The same would generally be necessary for Westchester to have standing to pursue a disparate impact claim under the Fair Housing Act.<sup>42</sup>

The decree contemplated that such interests would be acquired. If it hadn't, the extensive recitations in the first two pages of the decree about Westchester's authority under *Berenson* and *County of Monroe* and its responsibility to litigate against municipalities would have been of no practical consequence.

We are unaware of a single circumstance where the Government or the Monitor has asked Westchester to take this prerequisite step. Given the fact that acquiring a site and working up a development proposal and seeking municipal approval takes time (before the inevitable turndown), Westchester's inaction on this front -- and the failure of the Government and the Monitor to push Westchester to act -- means that Westchester has already guaranteed that most of the seven-year period initially contemplated as the term of the consent decree will have been squandered without any required litigation being commenced.

Another useful tip-off as to the reluctance to enforce is the unwillingness of the Government and Monitor to discuss the fact that single-family zoning cannot remain unchanged throughout the County if genuine AFFH is to occur. To be clear: given how much of Westchester is already zoned and occupied as single-family housing, the ability to generate affordable housing units with desegregation potential is significantly more limited if redevelopment of existing residential sites is excluded.

Neither the Government nor the Monitor appears willing to recognize this. On the contrary, there is a willingness to look principally for other alternatives.

In a recent court filing, for example, the Monitor reported that Mamaroneck had made "great strides" towards the provision of affordable housing and the meeting of regional need for such housing.<sup>43</sup> It turns out, however, that the rezoning that occurred involved permitting residential development as of right in what had previously been a business district and allowing residential development by special permit in what had previously been a service business district. These are not bad changes, by any means. But they don't change the reality that development remains strictly limited in residential districts.

One other element of that recent filing bears mention. The Monitor describes recent meetings with exclusionary municipalities as "an important starting point for a collaborative process designed to

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<sup>42</sup> This is not intended to exclude the possibility that Westchester could bring one or more claims under a *parens patriae* theory.

<sup>43</sup> Monitor's Report, Feb. 10, 2014, Doc. 463, p. 9.

improve opportunities for affordable housing development.”<sup>44</sup> Optimism is fine, but it is simply unacceptable to treat the first four and a half years of the consent decree’s term as nothing more than a warming-up period, with the prospect that open-ended negotiations will consume the balance of the consent decree’s present term.

**IV. The Government and the Monitor refuse to bring to the Court’s attention Westchester’s ongoing violation of paragraph 31(a): the obligation to use all the County’s housing policies and programs to eliminate de facto residential segregation throughout the County.**

Another consent decree obligation that goes well beyond the obligation to build a minimum of 750 units of AFFH housing is set out in paragraph 31(a) of the decree. Westchester had to establish as “official goals of the County’s housing policies and programs” the “elimination of de facto residential segregation.”

Notice that the obligation is not simply to eliminate *intentional* segregation; the focus is on housing patterns characterized by residential segregation -- regardless of one’s view of the original cause of those patterns.

The obligation is not limited by time, does not expire when a set number of units (let alone as few as 750) are built, and was operational as of November 2009.

Westchester has done nothing to meet this obligation; on the contrary, it has taken the existing Housing Allocation Plan (which reflected more than 6,000 un-built units in the municipalities covered by the decree and had desegregation potential if implemented) and thrown it out the window.

It wouldn’t be surprising to hear a civil rights defendant try to wheedle its way out of its commitment by saying that, as an “official” matter, a policy statement reciting the goal of using all housing policies and programs to end de facto segregation has been issued, and the obligation ends there.

What is shocking, however, is that this is apparently the view of the Government and the Monitor. Under that view, there is no substantive point to the provision, only window dressing: “We don’t care if you *actually* have the ending of de facto residential segregation as a policy or goal; we only want the goal to be on paper as ‘official’ so as to create the appearance of a policy or goal.”

In fact, the clear and natural import of the paragraph 31(a) requirement is, in plain terms, “We’re not only going to require the County to marshal all its housing policies and programs towards the goal of ending de facto residential segregation, this consent decree objective is so fundamental that we’re going to require the County to embed that objective as part of its own laws.” In short, the obligation is for the County to have as a real goal in all its housing policies and programs the ending of de facto residential segregation. That is something that is judged by the County’s conduct, not by whether it nominally has set forth something “official.”

As the Government and the Monitor have refused to vindicate this provision of the consent decree, it

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<sup>44</sup> *Id.*, p. 4.

falls to the court to hold Westchester to account for failing to have the ending of de facto residential segregation as a goal of its housing policies and programs.

**V. The Government and the Monitor refuse to seek to hold Westchester in contempt for being in violation of paragraph 32, notwithstanding the undisputed fact that Westchester has not submitted an analysis of impediments that has been deemed acceptable by HUD.**

Every recipient of federal housing funds is subject to having funding withheld or rescinded if it fails to meet its AFFH obligations, including its obligation to submit an adequate analysis of impediments to fair housing choice ("AI").

Westchester has an additional obligation: paragraph 32 of the consent decree required it to develop an AI that was "deemed acceptable by HUD," one that included analysis of impediments to fair housing choice based on "race or municipal resistance to the development of affordable housing."

It is clear that Westchester never submitted such an AI, either in November 2009 when originally due, in Spring 2010 (per an agreed-upon extension), or in the years thereafter.<sup>45</sup> Indeed, when the Assistant U.S. Attorney appeared before the Court almost a year ago, he noted that, as opposed to the 120 days originally allotted under the consent decree, there had already been 1,200 days that had elapsed without the submission of an adequate AI.<sup>46</sup>

Simply put, there is no question that Westchester has violated its paragraph 32 obligations for years, and the Government and the Monitor have never sought to have the Court hold defendant in contempt for this violation.

The fact that the Government has withheld funding from Westchester does not excuse its failure to vindicate this consent decree provision; on the contrary, its failure to act when its funding actions confirm that it has not deemed any AI submission satisfactory is especially pernicious to the rule of law.

The Government and the Monitor have sent a remarkably destructive message: a jurisdiction that is a civil rights defendant under a consent decree will not face consequences beyond those faced by jurisdictions *not* under consent decrees. It is hard to imagine a posture more conducive to encouraging disrespect for the law in general and for the integrity of the court's orders in particular.

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<sup>45</sup> That Westchester thinks that HUD *should* have deemed one or more iterations of its AI acceptable is not relevant. That doesn't change the fact that what the consent decree demands of Westchester is an AI that HUD *has* deemed acceptable, and that type of AI has not been produced.

<sup>46</sup> Transcript of conference of April 26, 2013, p. 15.

## VI. The problems with “buy-in” theory

Over the years, we have heard from many people who shake their head in wonder at why the Government and the Monitor have such a difficult time understanding that court orders are supposed to be obeyed in full. But we have also heard from people who say, in effect, “What’s so bad about trying to work things out?”

The answer: nothing...so long as you insist on full compliance and don’t think of “buy-in” as a substitute for enforcement.

Unfortunately, it is not uncommon for people to indulge in the fantasy that “engagement” is a surefire means by which to achieve change in any and all circumstances. The party that is being wooed will “buy in” to what you are selling. Often paired with the cult of buy-in is strong skepticism that a forced-compliance approach is appropriate.

As ProPublica has reported, the Monitor has “argued that *persuading* the county to draw up an acceptable [implementation] plan would achieve more than *forcing* one upon it” (emphasis added). “Actually engaging with those whose behavior you would like to change has yielded results,” he said.<sup>47</sup>

### **“Appeasement only emboldens resistance”**

**- ADC to Monitor, Aug. 2009**

What about actually enforcing the consent decree? “I can’t predict what the county’s behavior would have been in that circumstance,” he said. “I could have played a game of chicken, but I wasn’t going to do that.”<sup>48</sup>

As is evident from the foregoing, it is clear that *the Monitor* had bought in to the idea that old-fashioned enforcement of a court order was too fraught with peril (in this he is not alone; the Government has expressed similar sentiments).

The problem, of course, is that Westchester has *not* bought in to the idea that fundamental zoning change was good for it.

Why would anyone have staked the fate of the consent decree on achieving buy-in? Westchester and its municipalities had for decades maintained exclusionary zoning; there was in 2009 (and there remains today) a powerful commitment to the status quo.

But when people are committed first and foremost to the idea that engagement will yield cooperation,

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<sup>47</sup> Nikole Hannah-Jones, “Soft on Segregation: How the Feds Failed to Integrate Westchester County” (ProPublica, Nov. 2, 2012).

<sup>48</sup> *Id.* HUD’s fear of genuine enforcement was also palpable. A “former high-ranking HUD official who worked on Westchester strategy” said that HUD was worried that the decree could fall apart entirely if they pushed too hard. “The key was not to make mistakes,” the former official said. “HUD loses this case, we’re back to a loss of confidence and people would say we’re worthless.” *Id.*

three things tend to happen.

First, the “engagement” is imagined as a negotiation. That may be fine when one is sent to mediate an international dispute between two warring factions in circumstances where there is no authority to compel a resolution. There, fostering mutual understanding -- or at least a sense of mutual self-interest - is the only tool one has. But a federal court order is not supposed to represent the starting point for a negotiation. It is the culmination of a negotiation and the task is to see that it is obeyed. Negotiating away any part of a court order represents a betrayal of that order and of the rule of law. Moreover, unlike the international mediation, there are very clearly powerful means to compel compliance available, if only they were not disdained by those with the authority to employ them.

**“Westchester is banking on an old strategy: adopt an extreme position, and hope you can negotiate a middle ground...The terms of the [consent decree], however, are non-negotiable. Negotiating away either portions of the letter or the spirit of the [consent decree] would be improper and impermissible.”**

**- ADC’s “Prescription for Failure” report, February 2010**

Second, a commitment to buy-in often means that proponent of that strategy often comes to measure success by whether he has yielded an agreement to do *something*, not whether there is agreement to do the *required thing*. Here again, the allure of “cooperation” is allowed to trump the actual demands of the court order.

Third, a commitment to buy-in frequently goes along with a failure to appreciate how strict enforcement is itself the best hope for yielding cooperation *with the terms that are actually required*.

Where a party is permitted to choose between and among three options – full compliance, nominal compliance, and maintaining the status quo – many will pick maintaining the status quo, and most of the others will elect nominal compliance. Few if any will opt for full compliance.

This has been the experience in Westchester for close to five years now.

The only way to maximize voluntary cooperation is to make people understand that full compliance is a given; and that neither maintaining the status quo nor some facsimile of it is a viable option. The only choice that should have been offered is whether full compliance was going to be achieved with local input (the choice made available to those who would cooperate), or whether full compliance was going to be achieved without that local input (the choice made available to those who would resist).

It should also be noted that the idea that strong enforcement will just “wear off” and that matters return to the status quo ante (in a manner similar to that which might occur if a peacekeeping force left without having altered attitudes and power relations) ignores the changes that strong enforcement would stimulate.

Opening towns and villages to affordable housing would spur new construction by developers encouraged by the breaking down of zoning barriers. When a town or village is no longer seen as an all-white preserve, there is a consequent increase in the willingness of those members of groups traditionally excluded to move into that town or village.

If, as currently seems likely, the consent decree fails to achieve what it set out to achieve, let it not be said that the failure was a failure of a litigation-based or enforcement-based model. Let it be recognized that the failure was the failure to try to enforce compliance.

## **VII. Conclusion**

Westchester's violations of the consent decree have continued unabated. The Government and the Monitor are unwilling to enforce the consent decree as written. It falls to the Court, exercising its power to vindicate its own juridical interest in the enforcement of its order, to step in and independently examine the facts; to direct Westchester to show cause why it should not be held in contempt and why remedial obligations should not be put in place; to order Westchester to comply with its existing obligations; to create a process of effective oversight and direction for the County; to extend the term of the decree to defeat Westchester's run-out-the-clock strategy; and to direct such other relief as is necessary to vindicate the decree.

# ANTI-DISCRIMINATION CENTER, INC.

“ONE COMMUNITY, NO EXCLUSION “

June 13, 2013

## VIA EMAIL

David J. Kennedy, Esq.  
Chief, Civil Rights Unit  
United States Attorney for the Southern District of New York  
86 Chambers Street, 3rd Floor  
New York, New York 10007

Re: U.S. ex rel. Anti-Discrimination Center v. Westchester County

Dear David:

Enclosed please find letters sent yesterday and today to the Monitor and to HUD's Deputy Secretary, respectively. I'd ask you to read and reflect on their contents. My question for you is whether the U.S. Attorney disagrees with any of the following propositions, and, if so, which ones.

1. The Consent Decree provides that one of Westchester's duties is the broad and equitable distribution of affordable housing that promotes sustainable and integrated residential patterns.

2. The Consent Decree required Westchester to acknowledge the existence, and agree to the applicability of, the *Berenson* doctrine, established by New York's Court of Appeals in 1975 (municipal land use policies and actions shall take into consideration the housing needs of the surrounding region).

3. The Consent Decree required Westchester to acknowledge the existence, and agree to the applicability of, the *County of Monroe* doctrine, established by New York's Court of Appeals in 1988 (the interests of a county can outweigh a locality's interest in zoning restrictions).

4. The Consent Decree required Westchester to acknowledge and agree that it was "appropriate for the County to take legal action to compel compliance" if municipalities hindered or impeded the County in the performance of duties such as the providing for the broad and equitable distribution of affordable housing that promotes sustainable and integrated residential patterns.

5. The zoning of many Westchester municipalities was exclusionary at the time of the Consent Decree and remains exclusionary today.<sup>1</sup>

6. A principal objective of the Consent Decree — independent of any unit-specific requirements — is to affirmatively further fair housing (AFFH). *See, e.g.*, paragraph (7)(j) (referencing “the purpose” of the Consent Decree “to AFFH”; paragraph 15(a)(3) (again referencing “the purpose” of the Consent Decree “to AFFH”);

7. By failing to remove exclusionary zoning, many Westchester municipalities have failed to take the actions needed to promote the objectives of constructing Affordable AFFH units pursuant to paragraph 7 of the Consent Decree.

8. By failing to remove exclusionary zoning, many Westchester municipalities have left standing barriers to fair housing choice (that is, have impeded action to AFFH).

9. Paragraph (7)(j) of the Consent Decree obligated Westchester to use *all* available means to redress the circumstances described in paragraph 7, above, including pursuing legal action against offending municipalities.<sup>2</sup>

10. Paragraph (7)(j) of the Consent Decree obligated Westchester to initiate such legal action as appropriate to redress the circumstances describe in paragraph 8, above, and thereby accomplish the purpose of the Consent Decree to AFFH.<sup>3</sup>

11. Westchester has not taken any legal action against any municipality, and has an across-the-board policy of refusing to do so.

**12. Westchester has violated both of its paragraph (7)(j) obligations.**

13. As reflected in its conduct, Westchester does not have the elimination of *de facto* residential segregation as a goal of its housing policies and programs.

**14. Westchester has violated its paragraph (31)(a) obligations.**

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<sup>1</sup> In this connection, note that 2010 Census data show that 19 Westchester municipalities have non-Latino, African-American populations of less than 2 percent. In contrast, 16.4 percent of households with income of \$75,000 or more in Westchester and New York City combined were non-Latino, African-American.

<sup>2</sup> Unlike the *analysis* requirement set out by paragraph 32 of the Consent Decree, this paragraph (7)(j) obligation is an *action* requirement.

<sup>3</sup> Unlike the *analysis* requirement set out by paragraph 32 of the Consent Decree, this second paragraph (7)(j) obligation is also an *action* requirement.

15. Westchester has not completed an Analysis of Impediments (AI) deemed acceptable by HUD.<sup>4</sup>

**16. Westchester has violated its paragraph 32 obligations.**

17. All development under the Consent Decree was intended to proceed pursuant to an Implementation Plan (IP) that met the objective of the Consent Decree to AFFH.

18. Westchester did not submit such a plan.

**19. Westchester has violated its paragraph 18 obligations.<sup>5</sup>**

20. As discussed in some detail in the letter to HUD Deputy Secretary Jones, most of the units that have been “counted” for paragraph (7) purposes are either anti-AFFH or non-AFFH units that should not be counted.

21. Pursuant to 2010 Census data, there is significant overbuilding in paragraph (7)(b) and (7)(c) jurisdictions.

22. None or virtually none of the housing developments have included a market-rate component.

**23. Westchester is behind in meeting the “interim benchmarks” set forth in paragraph 23 of the Consent Decree.**

24. The Consent Decree contemplated the promulgation of additional benchmarks, incorporating AFFH elements of a Decree-compliant IP.

25. No additional benchmarks have been adopted.

\* \* \*

This is not a pretty picture. It’s a result of an excessively passive and accommodationist posture on the part of HUD, the Monitor, and the U.S. Attorney. It’s exactly what we warned about in 2009 — just two weeks after the entry of the Decree — when we said “appeasement only emboldens resistance. It’s exactly what we warned about when we issued a report in 2010 entitled “Prescription for Failure.” It’s exactly

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<sup>4</sup> As you pointed out in court on April 26th, the County was supposed to complete an acceptable AI within 120 days; as of that court appearance, 1,200 days had elapsed without an acceptable AI.

<sup>5</sup> In the face of two non-compliant submissions, the Consent Decree provided that “the Monitor *shall* specify revisions or additional items” that “the County *shall* incorporate into its implementation plan.” Consent Decree ¶ 20(d). The Monitor has failed to meet his mandatory obligations pursuant to ¶ 20(d).

why, independent of whether ADC was permitted to intervene, we made the 2011 motion to enforce the Decree that your office opposed.<sup>6</sup>

U.S. Attorney Bharara must surely appreciate the fact that Westchester's resistance to the rule of law has very serious consequences for civil rights both here in the New York region and throughout the country. Nearly four years after the entry of the Consent Decree, the process of holding Westchester to account for all of its violations of all elements of the Consent Decree should be delayed no longer.

Very truly yours,

Craig Gurian

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<sup>6</sup> At the June 7, 2011 conference on ADC motions to intervene and enforce, the representative from your office confirmed that the U.S. Attorney was not itself going to move to enforce the Decree "at the moment," and noted the following: "I will say that the premise of much of ADC's papers are essentially that the County has failed to meet certain obligations, the government and monitor together has failed to enforce that. I would anticipate by the middle of July, both because of the AI and I believe because of the progress of the implementation plan, that those premises may be undercut." Two years later, there is no acceptable AI and no Decree-compliant implementation plan, there is not the slightest hint that Westchester would ever comply with its paragraph (7)(j) obligations, and Westchester's failure to have the ending of segregation as a goal remain tucked firmly out of view of Judge Cote.

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# Westchester Housing Monitor

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## Implementation Plan

Pursuant to Paragraph 18 of the settlement, Westchester County is required to submit an implementation plan (referred to as the "IP"). The draft IP the County submitted in August 2010 is currently under review by the Monitor. The Model Zoning Ordinance, attached to the August 2010 as [Appendix D-1\(i\)](#), was approved in the Monitor's [October 2010 Report](#). The [Affirmative Marketing Plan](#) was finalized in December 2011, and the [Discretionary Funding Policy](#) was finalized in January 2012.

- [Narrative Plan](#)
- [Appendix A](#)
- [Appendix B](#)
- [Appendix C](#)
- [Appendix D](#)
- [Appendix E](#)
- [Appendix F](#)
- [Appendix G](#)
- [Appendix H](#)
- [Appendix I](#)
- [The August 2010 IP does not include an Appendix J.]
- [Appendix K](#)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

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

**ECF CASE**

Plaintiff/Relator, :

06 CV 2860 (DLC)

-v- :

WESTCHESTER COUNTY, NEW YORK, :

Defendant. :

-----X

**DECLARATION OF CRAIG GURIAN  
IN SUPPORT OF MOTION TO ENFORCE CONSENT DECREE  
PURSUANT TO CONSENT DECREE, ¶ 58**

CRAIG GURIAN, an attorney admitted to practice before this Court, declares, pursuant to 28 U.S.C. §1746, that the following is true and correct:

1. I am the Executive Director of, and co-counsel for, the Anti-Discrimination Center (“ADC”),<sup>1</sup> and make this declaration in support of ADC’s motion to enforce the Consent Decree pursuant to Consent Decree, ¶ 58.

2. From 2005 to 2009, I conceptualized, investigated, commenced, and actively co-counseled the litigation that resulted in this Court’s landmark decision on ADC’s motion for partial summary judgment and this Court’s entry of a historic housing desegregation Consent Decree from 2005 through 2009.

3. I actively participated in the negotiations that led to the entry of the Consent Decree.

4. I, with the assistance of ADC colleagues, have actively monitored events in Westchester throughout the last 21 months.

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<sup>1</sup> ADC’s name has been officially shortened from “Anti-Discrimination Center of Metro New York” to “Anti-Discrimination Center,” and the case caption should hereafter be altered accordingly.

5. As such, I am uniquely positioned to see both how Westchester's current attitudes and policies reprise those that landed it in trouble in the first place, and how Westchester's conduct is utterly incompatible with the terms, objectives, and intent of the Consent Decree.

6. My experience includes 23 years of civil rights experience in litigation, policy advocacy, legislative drafting, teaching, and writing, most of it focused on fair housing.

7. ADC's corporate purposes specifically include combating housing discrimination (whether that discrimination occurs by design or effect); analyzing, conducting research on, and investigating the factors that have historically perpetuated, and those that currently perpetuate, improper discrimination, including segregation and unequal opportunity, especially with regard to the systemic operation of those factors within metropolitan areas; and increasing access to and the availability of affordable housing to members of all communities.

### **Relief requested**

1. As the Court knows from previous litigation, Westchester has a long history of not taking its AFFH obligations seriously.

2. The Consent Decree was designed to make Westchester remedy those failures and to obey those obligations going forward.

3. Westchester's behavior over the last 21 months — a course of conduct that includes violation of its Consent Decree, ¶ 7 obligations to develop housing that overcomes barriers to fair housing choice and to commence litigation against municipalities that hinder or fail to promote AFFH; its Consent Decree, ¶ 18 obligation to develop a genuine Implementation Plan ("IP"); its Consent Decree, ¶ 31 obligation to use all its housing programs and policies to end segregation; and its Consent Decree, ¶ 32 obligation to identify, analyze, and act to overcome barriers to fair

housing choice — demonstrates that it is still not taking its AFFH obligations seriously.

4. In these circumstances, the Court should order Westchester, as requested in ADC's Enforcement Motion, ¶ (a),<sup>2</sup> to take all actions necessary to overcome all impediments to fair housing choice in Westchester County, and to overcome the effects of all impediments to fair housing choice in Westchester County, including, but not limited to, all impediments and effects of impediments that are, in whole or in part, caused by or result from exclusionary zoning or other municipal resistance to the development of affordable housing that has desegregation potential.

5. The order would allow the Court to oversee Westchester's future AFFH compliance directly, and deter non-compliance thereby.

6. One of the features that has marked Westchester's conduct has been its failure to develop a compliant IP (even after being given more chances than allowed under the terms of the Decree). That failure has never been cured, and thus, contrary to a fundamental tenet of the Decree, development and other activity has proceeded in the absence of a specific plan designed to assure that the objectives of the Decree are carried out.

7. At this point, the Court, among the other relief it directs, should order that Westchester act according to certain fundamental elements that would be included in a genuine IP, as set forth hereinafter.

8. Thus, a genuine IP would plan and execute a strategy to develop housing on parcels that have maximum desegregation potential. That includes maximizing development on census blocks with the lowest concentration of African-Americans and Latinos, (Consent Decree, ¶ 22(f)) and using development to AFFH (*i.e.*, to overcome barriers to fair housing choice).

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<sup>2</sup> References to "Enforcement Motion, ¶" are references to the paragraphs of the portion of the motion wherein relief is requested.

9. The latter means, *inter alia*, that various of Westchester's tactics to *avoid* overcoming barriers must be foreclosed. For example, the stratagem of building on non-populated blocks to avoid both maximum NIMBY pressure and to avoid the need for rezoning cannot be countenanced. Likewise, the stratagem of building near census geographies with high minority population undercuts the Decree. *See, e.g.*, Consent Decree, ¶ 31(c) (recognizing that the location of 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).

10. To limit such avoidance, the Court should order Westchester, as requested in Enforcement Motion, ¶ (b), to develop all AFFH units, regardless of municipality, only on census blocks where the census block itself, the census block group of which it is part, and the census tract of which it is part, have, according to Census 2010, non-Latino, African-American population of less than 3.0 percent and Latino population of less 7.0 percent; order further that at least one-third of the units shall be developed on census blocks that have, according to Census 2010, non-Latino, African-American population of less than 1.0 percent and Latino population of less 3.0 percent; and order further that at least one-third of the units shall be developed on census blocks that have, according to Census 2010, non-Latino, African-American population of less than 2.0 percent and Latino population of less 5.0 percent.

11. In addition, the Court should order Westchester, as requested in Enforcement Motion, ¶ (c), to refrain from developing more than 10 percent of AFFH Units on census blocks that are shown by Census 2010 to be non-populated, and that such AFFH units be located within census block groups and census tracts that meet the criteria of Enforcement Motion, ¶ (b).

12. A genuine IP would seek to maximize the number of larger units. Doing so would help overcome the scarcity of housing for families with children, a scarcity that, for example, has

a disproportionate impact on African-American and Latino female-headed households. It would help overcome widespread efforts to retard development of housing for children (efforts illegal under the Fair Housing Act). As such, the larger units would help AFFH in ways that smaller units would not.

13. Not maximizing larger units would improperly cater to resistance on the part of municipalities and existing residents, resistance that can be based on racial stereotyping or on wanting to keep children out of the neighborhood (and out of the school district). Not doing so also improperly expands the number of units that effectively are more desirable to seniors than to others (as with the City of Rye project that remains a one-bedroom and studio development despite being nominally relabeled as not age-restricted).

14. Accordingly, the Court should direct, as requested in Enforcement Motion, ¶ (d), that, with the exception of AFFH Units described in Consent Decree, ¶ 7(f) (“senior units”), no more than 10 percent of other AFFH units be permitted to be smaller than two-bedroom units.

15. A genuine IP would have sought to assure that municipal locations of sites were meeting or exceeding the demographic requirements of Consent Decree, ¶¶ 7 and 22(f).

16. Consent Decree, ¶ 7(a)(i) contemplates that at least 84 percent of the minimum units to be developed (630 units) be developed in municipalities with non-Latino, African-American populations of less than 3.0 percent and Latino populations of less than 7.0 percent (“Tier A” development).

17. Consent Decree, ¶ 22(f) goes even further, directing, *inter alia*, that all development be maximized in the municipalities with the *lowest* concentrations of African-Americans and Latinos.

18. Westchester has done just the opposite, placing, for example, units equal to 11

percent of all that would need to be developed on one site in Cortlandt, which 2010 Census data show has the demographic characteristics of a “Tier C,” or Consent Decree, ¶ 7(c)(i) jurisdiction (highest permissible minority population).<sup>3</sup> More broadly, “Tier B” and “Tier C” developments with financing constitute 74.2 percent of *all* the Tiers B and C development that is permitted throughout the life of the Consent Decree, whereas the Tier A developments constitute only 10.2 percent of the minimum Tier A units required.

19. To reach the results intended by the Decree, the Court should therefore order the imposition of the type of benchmark that a genuine IP would have had in place over a year ago: that in each calendar year, commencing in 2011, at least 84% of AFFH Units for which financing, building permits, or certificates of occupancy are received must be AFFH Units located in municipalities that have, according to Census 2010 data, the demographic composition described in Consent Decree, ¶¶ 7(a)(i). If Westchester fails to do so, it should be deemed in violation of the Decree. That is the relief sought by Enforcement Motion, ¶ (e).

20. A genuine IP would have made sure that Westchester did not try to avoid the obligation to confront barriers to fair housing choice in the Whitest jurisdictions. Two obvious ways of trying to avoid that obligation would be the placing of disproportionate numbers of less controversial senior units and conversion-to-affordable units in the Whitest jurisdictions. And Westchester’s conduct and intentions to date — developing disproportionately in the highest minority eligible municipalities, and planning on maximizing senior and conversion-to-

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<sup>3</sup> Tier C developments are those in municipalities with populations less than 14.0 percent non-Latino, African-American and less than 16.0 percent Latino, and no more than 60 such units may be included over the life of the Decree; Consent Decree, ¶ 7(b)(i) or “Tier B” developments are those in municipalities with populations less than 7.0 percent non-Latino, African-American and less than 10.0 percent Latino, and no more than 60 such units may be included over the life of the Decree. *See* Declaration of Andrew A. Beveridge (“Beveridge Decl.”), ¶ 27, submitted herewith, for estimated composition of Cortlandt, Pelham, Yorktown, Larchmont, and City of Rye with group quarters population excluded.

affordable units — warrant a remedial response.

21. As such, the Court should direct, as requested in Enforcement Motion, ¶ (f), that no more than 50 percent of senior units shall be permitted to be developed in municipalities that have, according to Census 2010 data, the demographic composition described in Consent Decree, ¶¶ 7(a)(i) or 7(b)(i).

22. Likewise, the Court should direct, as requested in Enforcement Motion, ¶ (g), that no more than 50 percent of AFFH Units described in Consent Decree, ¶ 7(h) shall be permitted to be developed in municipalities that have, according to Census 2010 data, the demographic composition described in Consent Decree, ¶¶ 7(a)(i) or 7(b)(i).

23. A genuine IP would have provided specific contours to Westchester's obligation pursuant, *inter alia*, to Consent Decree, ¶ 26(d)(iii), to refuse to provide County and federal funds to municipalities who fail to “actively further implementation of [the Consent Decree] through their land use regulations and other affirmative measures to assist development of affordable housing.”

24. Not only has Westchester failed to do so in an IP, it has clearly announced in word and deed its refusal to take seriously its obligation to confront and overcome municipal resistance to affordable housing with desegregation potential, particularly the exclusionary zoning that characterizes so much of the County.

25. As such, the Court should order Westchester, as requested in Enforcement Motion, ¶ (h), to refrain after September 30, 2011 from disbursing any County funds described in Consent Decree, ¶ 25 to any municipality that has failed to amend its zoning ordinance on or before that date to materially reduce exclusionary zoning.

26. The term “materially reduce exclusionary zoning” needs to be defined, and ADC

respectfully submits that three guideposts be borne in mind:

(a) The municipality-by-municipality affordable housing targets that the Housing Allocation Commission established in the 1990s and then updated in 2005 show that, as of that point, the eligible municipalities were collectively more than 6,500 units short — and little has been done since then;

(b) Westchester is obliged, pursuant, *inter alia*, to Consent Decree, ¶ 31(a), to use all its housing programs and policies, including those originally developed by its Housing Opportunity Commission, to end housing segregation throughout the County; and

(c) In view of the fact that municipalities have the greatest information about local conditions, and have their own obligations to AFFH, it is reasonable to place on municipalities the burden of demonstrating that zoning changes they are making are sufficient to achieve a desired benchmark.

27. Accordingly, the term “materially reduce exclusionary zoning” should be defined as zoning changes sufficient to demonstrate that AFFH units will be able to be developed at a rate that would allow the number of such units that can realistically be developed in the municipality by the year 2015 to equal or exceed the difference between: (i) the number of units specified as “Remaining Obligation” in Table C of the November 2005 Housing Opportunity Commission Affordable Housing Allocation Plan (“Plan”);<sup>4</sup> and (ii) the number of affordable AFFH units that have been developed in the municipality subsequent to the issuance of that Plan (the “allocation target”). The term “can realistically be developed” would be defined to mean developed in a fashion that is financially feasible, environmentally sensitive, and desirable to prospective renters

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<sup>4</sup> The Housing Opportunity Commission allocations were actually conservative because its assessment of need did not take into account the regional needs of the broader metropolitan area, and because the allocations were constrained by a “feasibility” formula pegged to existing zoning, not the zoning that would exist in the absence of exclusionary zoning.

or owners.

28. A genuine IP would have required municipalities to report with specificity on their AFFH activities, and would have committed the County to identify with specificity how municipalities were performing. Westchester, by contrast, has been striking in its *failure* to report the extent to which each municipality is or is not cooperating with the facilitation of the development of affordable AFFH units with maximum desegregation potential, and the nature of the cooperation or lack of cooperation, including, but not limited to, each municipality's actions to comply with the reduction in exclusionary zoning that Westchester would be obligated to promote pursuant to Enforcement Motion, ¶ (h). As such, Enforcement Motion, ¶ (i) proposes that the Court direct Westchester to do so in its quarterly reports.

29. In a similar vein, Enforcement Motion, ¶ (j) proposes that the Court direct Westchester to identify potential sites in each municipality on which sufficient AFFH units can be developed by 2015 to equal or exceed the allocation target. The identifications would be contained in quarterly reports, and would include the number of projected units per site and the assumptions that yielded the projection. At least one-third of sites would have to be identified in time for inclusion in the 2011 Third Quarter report, another third in time for the 2011 Fourth Quarter report, and the balance in time for inclusion in the 2012 First Quarter report.

30. The identification of sites is absolutely essential. If Westchester doesn't do this, the County will never be in a position to fulfill its obligations to challenge resistant municipalities — and the municipalities know that. The County cannot be allowed to continue its across-the-board, regardless-of-circumstance refusal to confront municipalities.

31. It has always been the case that a concurrent two-track approach needed to be incorporated into an IP and into Westchester's practice. Only that way would municipalities

know that the status quo was no longer an option — housing was going to be built, with the only question being whether it would be built with their cooperation or over their resistance.

32. Westchester never put this into an IP, and, indeed, has made clear that it will *not* force municipalities to change.

33. Faced with the continuation of the never-confront strategy — a strategy that violates profoundly, *inter alia*, Westchester's obligations to take legal action against resistant municipalities pursuant to Consent Decree, ¶¶ 7(i) and 7(j) — we believe that it is necessary to direct that Westchester, no later than December 31, 2011, acquire in each municipality with a non-Latino African-American population of less than 3.0 percent and a Latino population of less than 7.0 percent (based on 2010 Census data) interests in at least two sites (whether an ownership interest, a long-term leasehold interest, or an option to purchase or to enter into a long-term lease) that require material zoning modifications to make possible the development of affordable housing with maximum desegregation potential. Enforcement Motion, ¶ (k) asks the Court to order such relief.

34. It is, after all, only with interests in parcels secured that Westchester will be able to vindicate its interests using the full array of its legal remedies, including those available under the Fair Housing Act, the *Berenson* doctrine, and the *County of Monroe* doctrine (the latter two being the doctrines that Westchester specifically acknowledged and agreed in the Consent Decree to be applicable and appropriate to use in connection with resistant municipalities). If Westchester doesn't do so, exclusionary zoning will remain in place, stymieing both the accomplishment of Consent Decree, ¶ 7 development for the purpose of AFFH and the accomplishment of the more far-reaching Consent Decree, ¶ 31(a) goal of ending segregation throughout the County.

35. A genuine IP would surely, therefore, have included a strategy to move forward in connection with resistant municipalities. As such, and because it is clear that municipalities have resisted over these last 21 months, Enforcement Motion, ¶ (l) asks the Court to direct Westchester to begin to develop and implement in connection with each acquired parcel the prerequisite steps to vindicate its interests pursuant to the aforementioned legal doctrines. Notably, that proposed relief is framed in terms of Westchester doing so concurrently with attempts to seek voluntary cooperation from municipalities to overcome the barriers to development on the selected sites, in keeping with the need for a two-track policy.

36. A genuine IP would have included strategies and benchmarks for using all of the County's housing policies and programs to end segregation, as required by Consent Decree, ¶ 31(a). Westchester's submissions did not, and Westchester's conduct reflects no attempt to meet that obligation.

37. As such, Enforcement Motion, ¶ (m) asks the Court to direct that Westchester include in its Quarterly Report for the Second Quarter of 2011 an identification of all of its housing programs and policies, an assessment of the extent to which any of those programs or policies currently perpetuate or act to reduce residential segregation, and a concrete plan by which each and all of those programs and policies shall be used to end *de facto* residential segregation throughout Westchester.

38. Westchester is supposed to be interested in leveraging resources. *See* Consent Decree, ¶ (7)(i) (Affordable AFFH development to be achieved by leveraging Consent Decree funds with supplemental funds); ¶ 15 (assessment of County's performance includes whether it has explored "all opportunities to leverage funds").

39. One way to leverage funds is to taking advantage of the cross-subsidy that market-

rate units provide to affordable units in a mixed income development. A genuine IP would provide for mixed income development, especially because the existence of a substantial percentage of market rate units would make it less likely that Westchester could select undesirable sites on which to place AFFH units.

40. Westchester didn't do so in its IP submissions, and has shown by its conduct that it prefers to avoid confronting resistance by concentrating units in developments where all- or close-to-all units are subsidized.

41. Enforcement Motion, ¶ (n), therefore, asks the Court to direct that all future AFFH developments funded pursuant to the Consent Decree — other than units permitted pursuant to Consent Decree, ¶¶ 7(f) or 7(h) — shall be mixed income developments with no less than 40 percent and no more than 70 percent of the units being market-rate units. “Market-rate units” would be defined as units being sold or rented at or above the median cost of non-subsidized dwellings sold or rented in a jurisdiction in the 12-months preceding the commencement of marketing.

42. ADC's Memorandum in Support of its Motion to Enforce discusses four specific developments that Westchester has sought to “count” towards its Consent Decree, ¶ 7 AFFH Unit obligations (Cortlandt, Larchmont, City of Rye, and Armonk). These developments represent almost all development thus far, and, in each case, there are multiple reasons why the developments do not meet the Consent Decree's fundamental requirement that development AFFH (*i.e.*, overcome barriers to fair housing choice).

43. The 18 units in the City of Rye, for example, are senior housing units masquerading as non-senior units, and are on a census block with 50.87 percent African-American and Latino

residents.<sup>5</sup> As shown in the map/photo annexed hereto as Exhibit 17, the units are placed in an undesirable location next to two major highways, and abut the non-eligible municipality of Port Chester (Port Chester has a high percentage of minority residents). As such, Enforcement Motion, ¶ (o) asks that the Court direct that the 18 units in the City of Rye that Westchester has sought to count as AFFH Units not be counted, or, in the alternative, be counted as senior units.

44. The 83 units in Cortlandt are not located in a municipality or on a census block with the lowest concentration of minority residents as required by Consent Decree, ¶ 22(f), and, as previously noted, the development is located in a municipality that Census 2010 data show is demographically a Consent Decree, ¶ 7(c)(i) jurisdiction (*i.e.*, jurisdictions that, collectively, over the life of the Consent Decree, are permitted a maximum of 60 units).

45. As shown in the map/photo annexed hereto as Exhibit 14, the development is located by railroad tracks and a Veterans Administration psychiatric and substance abuse facility. Other than those who are in the VA facility (*i.e.*, those in institutional or “group quarters” housing), the census block on which the development is located is unpopulated. This is not a development that is integrated with the general community.

46. The development does not overcome barriers to fair housing choice; on the contrary, pre-Consent Decree litigation made development possible well before the Decree was entered.

47. As such, Enforcement Motion, ¶ (p) asks that the Court direct that the 83 units in Cortlandt that Westchester has sought to count as AFFH Units not be counted, or, in the alternative, only be counted to the extent that doing so would not exceed the maximum number of units permitted by Consent Decree, ¶ 7(c)(i) (60 units), or, in the alternative, only be counted

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<sup>5</sup> See Beveridge Decl. *supra*, at ¶ 23.

as Consent Decree, ¶ 7(h) units.<sup>6</sup>

48. The Larchmont development was also approved prior to the entry of the Decree, and, as shown in the map/photo annexed here to as Exhibit 16, is located on a census block that abuts the railroad tracks (with I-95 just beyond), and is less than 500 feet from the New Rochelle line (New Rochelle is another non-eligible municipality with a large minority population). This development, too, does not overcome barriers to fair housing choice. As such, Enforcement Motion, ¶ (q) asks that the Court direct that the 46 units in Larchmont that Westchester has sought to count as AFFH Units not be counted, or, in the alternative, only be counted as Consent Decree, ¶ 7(h) units.

49. Finally, the Armonk development, for which Westchester seek to count 10 units, is another development on a non-populated census block, and, as shown in the map/photo annexed here to as Exhibit 19, is isolated from the rest of the community. Indeed, the parcel is literally an island between two roads, with various types of surrounding non-residential development. The units were already required to be built as the affordable component of a market-rate development. They do not add to the stock of affordable units, and do not overcome barriers to fair housing choice.

50. As such, Enforcement Motion, ¶ (r) asks that the Court direct that the 10 units in Armonk that Westchester seeks to count as AFFH Units not be counted, or, in the alternative, only be counted as Consent Decree, ¶ 7(h) units.

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<sup>6</sup> Consent Decree, ¶ 7(h) units are existing units that are being made affordable. It is closer to the intention of the Decree to count the Cortlandt units this way (if they are to be counted at all) than as new units because they are not truly new units. Indeed, not counting them as new units would be consistent with the intention of Consent Decree, ¶ 8 to prevent Westchester from trading on development already in the pipeline at the time the Decree was entered. That Decree provision precludes, absent a special showing from Westchester, the counting of affordable housing units “in housing developments that have received preliminary or final land use or financing approval at the time of the Court’s entry” of the Consent Decree.

**Exhibits annexed**

51. “Housing Opportunities in Westchester,” a 1997 report by Westchester’s Housing Opportunity Commission, is annexed hereto as Exhibit 1.

52. “Affordable Housing Action Plan,” a 2004 report by Westchester’s Housing Opportunity Commission, is annexed hereto as Exhibit 2.

53. Westchester is required by Consent Decree, ¶ 28 to submit a quarterly report. The quarterly report for the first quarter of 2011 is annexed as Exhibit 3.

54. Westchester’s Planning Department has a web page that lists “initiatives.” A print-out of that web page is annexed hereto as Exhibit 4.

55. “Affordable Housing Allocation Plan,” a 2005 report by Westchester’s Housing Opportunity Commission that delineates municipality-by-municipality allocations for affordable housing, is annexed hereto as Exhibit 5

56. A Westchester County press release containing a December 23, 2010 statement by County Executive Rob Astorino regarding the County’s decision to no longer administer a Section 8 program is annexed hereto as Exhibit 6.

57. Excerpts from Westchester County’s brief in the case of *Westhab, Inc. v. Village of Elmsford*, 574 N.Y.S. 2d 888 (N.Y. Sup. Ct., Westchester County 1991), where the County successfully argued that the *County of Monroe* test was applicable to its interest in creating a family shelter and that the interests of the County and its developer agent in performing such an essential governmental function outweighed those of the Village of Elmsford, is annexed hereto as Exhibit 7.

58. The Dec. 21, 2010 letter from the U.S. Department of Housing and Urban Development (“HUD”) to Westchester wherein HUD rejected the Analysis of Impediments

Westchester was required to prepare pursuant to the terms of Consent Decree, ¶ 32, is annexed hereto as Exhibit 8.

59. The Apr. 28, 2011 letter from HUD to Westchester wherein HUD rejected Westchester's second Analysis of Impediments submission is annexed hereto as Exhibit 9.

60. An Oct. 27, 2010 article from the Scarsdale Inquirer reporting on the fact that county officials had been continuously reiterating that the County does not intend to use its legal tools to force municipalities to eliminate their exclusionary zoning is annexed hereto as Exhibit 10.

61. ADC's Feb. 2010 "Prescription for Failure" report on the inadequacies of Westchester's first IP submission (including its Decree-defying premises) is annexed hereto as Exhibit 11.

62. Excerpts from the Apr. 2, 2008 deposition of Norma Drummond, Westchester's Deputy Planning Commissioner, in which she acknowledged that the development of senior housing is less controversial among those who tend to resist affordable housing development than other housing because senior housing "it's not families with children," is annexed hereto as Exhibit 12.

63. A Mar. 30, 2011 article from the Peekskill-Cortlandt Patch describing how the Cortlandt development site had been approved long before the Consent Decree was entered is annexed hereto as Exhibit 13.

64. A combination map and photo of the Cortlandt site and surrounding area is annexed hereto as Exhibit 14. This and the other combination map and photo exhibits annexed hereto are taken from the Westchester County Geographic Information Systems website. Exhibit 14 contains an ADC annotation.

65. A Nov. 16, 2010 article from the Larchmont Patch describing how the Larchmont development site had been approved long before the Consent Decree was entered is annexed hereto as Exhibit 15.

66. A combination map and photo of the Cortlandt site and surrounding area is annexed hereto as Exhibit 16, an exhibit that contains an ADC annotation.

67. A combination map and photo of the City of Rye site and surrounding area is annexed hereto as Exhibit 17, an exhibit that contains an ADC annotation.

68. A Mar. 4, 2010 article from the Rye Sound Shore Report describing the nominal change in designation of the City of Rye development away from “seniors only” — while keeping effective senior design and preference — is annexed hereto as Exhibit 18.

69. A combination map and photo of the Armonk site and surrounding area is annexed hereto as Exhibit 19.

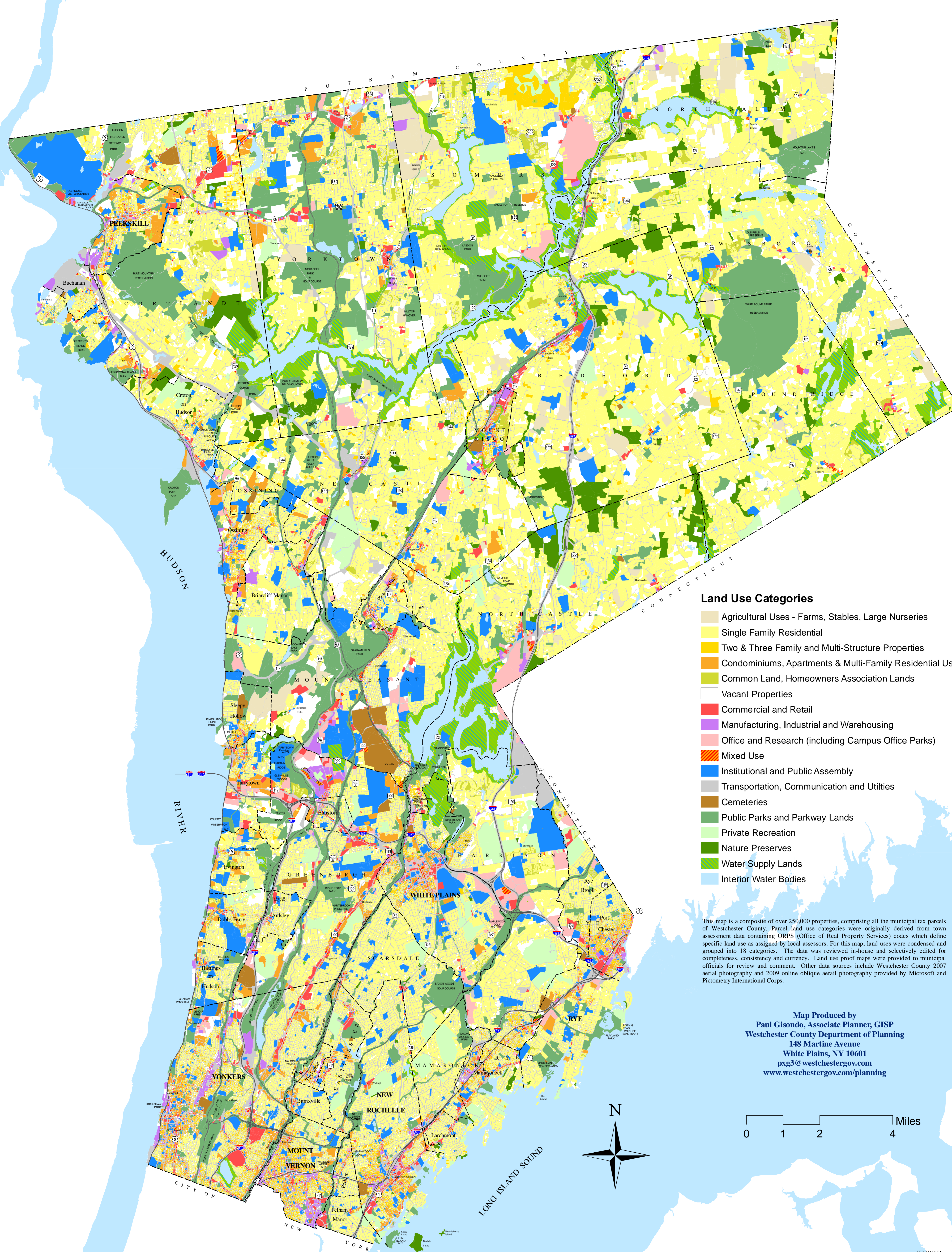
WHEREFORE, it is respectfully requested that ADC’s Motion to Enforce be granted, and the Court order the relief requested.

Executed on May 31, 2011.

[Signed]

Craig Gurian

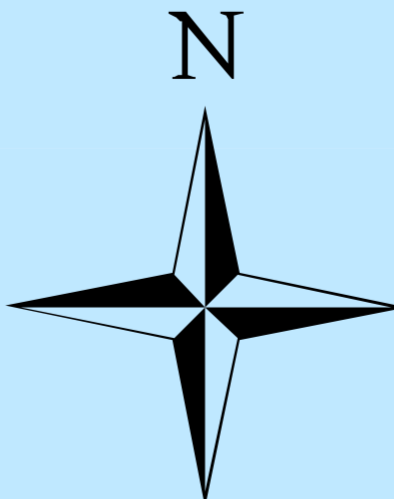
# WESTCHESTER COUNTY, NEW YORK



- Land Use Categories**
- Agricultural Uses - Farms, Stables, Large Nurseries
  - Single Family Residential
  - Two & Three Family and Multi-Structure Properties
  - Condominiums, Apartments & Multi-Family Residential Use
  - Common Land, Homeowners Association Lands
  - Vacant Properties
  - Commercial and Retail
  - Manufacturing, Industrial and Warehousing
  - Office and Research (including Campus Office Parks)
  - Mixed Use
  - Institutional and Public Assembly
  - Transportation, Communication and Utilities
  - Cemeteries
  - Public Parks and Parkway Lands
  - Private Recreation
  - Nature Preserves
  - Water Supply Lands
  - Interior Water Bodies

This map is a composite of over 250,000 properties, comprising all the municipal tax parcels of Westchester County. Parcel land use categories were originally derived from town assessment data containing ORPS (Office of Real Property Services) codes which define specific land use as assigned by local assessors. For this map, land uses were condensed and grouped into 18 categories. The data was reviewed in-house and selectively edited for completeness, consistency and currency. Land use proof maps were provided to municipal officials for review and comment. Other data sources include Westchester County 2007 aerial photography and 2009 online oblique aerial photography provided by Microsoft and Pictometry International Corp.

Map Produced by  
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0 1 2 4 Miles

WCDP December 2009

Chart of Zoning Data for *Berenson* Test Prong 1<sup>1</sup>

| Municipality | Comprehensive Plan <sup>2</sup> |                              |                                                          |                                                 | Housing Types <sup>3</sup>                                                                                      |                                                                                                                                   |                        |                                                                       | Land Use: Quantity of Presently Available/Developed Housing <sup>4</sup> |                          |                 |                           |                            |                           | Ability to Meet Future Need <sup>5</sup> |                       |                    | Prong<br>1<br>Rank <sup>6</sup> |
|--------------|---------------------------------|------------------------------|----------------------------------------------------------|-------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|------------------------|-----------------------------------------------------------------------|--------------------------------------------------------------------------|--------------------------|-----------------|---------------------------|----------------------------|---------------------------|------------------------------------------|-----------------------|--------------------|---------------------------------|
|              | Has a<br>Comp.<br>Plan          | Whether<br>Adopted<br>& Year | Recognizes<br>Affordable<br>Housing<br>Need <sup>7</sup> | Addresses<br>Affordable<br>Housing <sup>8</sup> | Multi-<br>Family                                                                                                | Two<br>Family                                                                                                                     | Accessory<br>Apartment | Mixed<br>Use                                                          | Residential Use                                                          |                          | Multifamily Use |                           | Two or Three Family<br>Use |                           | Undeveloped Land<br>Zoned Multifamily    |                       | Potential<br>Units |                                 |
|              |                                 |                              |                                                          |                                                 |                                                                                                                 |                                                                                                                                   |                        |                                                                       | Acres                                                                    | % of<br>Total<br>Acreage | Acres           | % of Resi-<br>dential Use | Acres                      | % of Resi-<br>dential Use | Acres                                    | % of Multi-<br>family |                    |                                 |
| Ardsley      | Yes                             | Yes<br>1964                  | No                                                       | No                                              | As-of-<br>Right<br>1 dis-<br>trict; 1<br>overlay<br>district<br>SP<br>1 district<br>Clus-<br>ters<br>1 district | As-of-<br>Right<br>None,<br>but if<br>qualifies<br>as af-<br>fordable<br>then per-<br>mitted in<br>single-<br>family<br>districts | None                   | As-of-<br>Right<br>1 com-<br>com-<br>mercial<br>district <sup>9</sup> | 413.35                                                                   | 49.55%                   | 4.23            | 1%                        | 6.01                       | 1.5%                      | 2.7                                      | 0.3%                  | 19                 | 2                               |

<sup>1</sup> Under this prong, the municipality must “provide[] a properly balanced and well-ordered plan for the community.” *Berenson v. Town of New Castle*, 38 N.Y.2d 102, 110 (1975).

<sup>2</sup> The plan need not be written, but if it is, it may be considered by the court. *See Asian Ams. for Equality v. Koch*, 72 N.Y.2d 121, 131 (1988).

<sup>3</sup> The adequacy of municipal plans is examined by: (1) identifying the types of housing in each municipality; (2) specifying both quantity and quality of the available housing; (3) determining whether the housing meets the current local need for affordable housing; and (4) determining whether and what type of new construction is necessary to fulfill future needs in each municipality. *See Berenson*, 38 N.Y.2d at 110. SP = Special permit.

<sup>4</sup> *Id.* *See also Cont'l Bldg. Co. v. Town of N. Salem*, 211 A.D.2d 88, 92-93 (N.Y. App. Div. 3d Dep't 1995). The source of this data does not account for residential uses within mixed-use developments. Ex. J, Table 2 Residential Land Use Acreage by Municipality, *Land Use in Westchester*, at 17, 2010. The analysis of this prong also requires that the court analyze the quality of the available housing, however, the data collected thus far does not provide a means of doing so.

<sup>5</sup> *Berenson*, 38 N.Y.2d at 110. These columns refer to points (e) and (h) in the data sheets found in each municipal-specific report. *See* Ex. E, Methodology II-D(1) Table August 2012 (submitted Sep. 6, 2012); *id.* at Methodology II-C and II-D Map August 2012 (submitted Sep. 6, 2012). There is a lack of data to confirm that each municipality individually has a need for affordable housing development.

<sup>6</sup> Category 1 = Not exclusionary because the municipality provides a well-ordered plan for its community. Category 2 = Not exclusionary, but warrants improvement. Category 3 = Exclusionary because the municipality does not provide a well-ordered plan for its community.

<sup>7</sup> This column gives credit to those municipal plans that explicitly state that there is a need for affordable housing within the municipality or regionally.

<sup>8</sup> This column acknowledges municipal plans that address affordable housing, whether by way of mention that such housing should be considered or by more specific means amounting to detailed recommendations of how to develop affordable housing within the municipality.

<sup>9</sup> The County Planning Department's February 29, 2012, analysis of zoning in the County's municipalities is silent on the issue of mixed-use development in Ardsley, but a review of the Village's zoning ordinance reveals that upper floor residential use is permitted in the B-1 district. *Compare* Ex. F, Village of Ardsley Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012), with VILLAGE OF ARDSLEY CODE § 200-65.B(8).

Chart of Zoning Data for *Berenson Test Prong 1*

| Municipality        | Comprehensive Plan <sup>2</sup> |                              |                                                          |                                                 | Housing Types <sup>3</sup>                                                                                                                                                                                  |                                                                                                                                                                                                               |                        |                                                          | Land Use: Quantity of Presently Available/Developed Housing <sup>4</sup> |                          |                 |                           |                            |                           | Ability to Meet Future Need <sup>5</sup> |                       |                    | Prong<br>1<br>Rank <sup>6</sup> |
|---------------------|---------------------------------|------------------------------|----------------------------------------------------------|-------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|----------------------------------------------------------|--------------------------------------------------------------------------|--------------------------|-----------------|---------------------------|----------------------------|---------------------------|------------------------------------------|-----------------------|--------------------|---------------------------------|
|                     | Has a<br>Comp.<br>Plan          | Whether<br>Adopted<br>& Year | Recognizes<br>Affordable<br>Housing<br>Need <sup>7</sup> | Addresses<br>Affordable<br>Housing <sup>8</sup> | Multi-<br>Family                                                                                                                                                                                            | Two<br>Family                                                                                                                                                                                                 | Accessory<br>Apartment | Mixed<br>Use                                             | Residential Use                                                          |                          | Multifamily Use |                           | Two or Three Family<br>Use |                           | Undeveloped Land<br>Zoned Multifamily    |                       | Potential<br>Units |                                 |
|                     |                                 |                              |                                                          |                                                 |                                                                                                                                                                                                             |                                                                                                                                                                                                               |                        |                                                          | Acres                                                                    | % of<br>Total<br>Acreage | Acres           | % of Resi-<br>dential Use | Acres                      | % of Resi-<br>dential Use | Acres                                    | % of Multi-<br>family |                    |                                 |
| Bedford             | Yes                             | Yes<br>2002                  | Yes                                                      | Yes                                             | As-of-<br>Right<br>12<br>districts<br>SP<br>1 district<br>and<br>else-<br>where<br>by con-<br>version<br>in resi-<br>dences<br>existing<br>prior to<br>Sep.1,<br>1985,<br>on lots<br><<br>20,000<br>sq. ft. | As-of-<br>Right<br>12 dis-<br>tricts<br>SP<br>1 district<br>and<br>else-<br>where<br>by con-<br>version<br>in resi-<br>dences<br>existing<br>prior to<br>Sep.1,<br>1985,<br>on lots<br><<br>20,000<br>sq. ft. | SP<br>9 districts      | As-of-<br>Right<br>3 dis-<br>tricts                      | 13966.<br>46                                                             | 54.92%                   | 68.43           | 0.5%                      | 108.4<br>1                 | 0.8%                      | 2.7                                      | 0.01%                 | 45                 | 2                               |
| Briarcliff<br>Manor | Yes                             | Yes<br>2007                  | Yes                                                      | Yes                                             | As-of-<br>Right<br>2 dis-<br>tricts; 1<br>com-<br>mercial<br>district<br>SP<br>all resi-<br>dential<br>districts                                                                                            | SP<br>all resi-<br>dential<br>districts                                                                                                                                                                       | None                   | As-of-<br>Right<br>1 com-<br>com-<br>mercial<br>district | 1937.1<br>6                                                              | 50.62%                   | 88.05           | 4.6%                      | 4.98                       | 0.3%                      | 0.2                                      | 0.01%                 | 0                  | 2                               |

Chart of Zoning Data for *Berenson Test Prong 1*

| Municipality | Comprehensive Plan <sup>2</sup> |                        |                                                 |                                           | Housing Types <sup>3</sup>                                                                  |                              |                                                                                               |                                                                       | Land Use: Quantity of Presently Available/Developed Housing <sup>4</sup> |                    |                 |                      |                         |                      | Ability to Meet Future Need <sup>5</sup> |                   |                 | Prong 1 Rank <sup>6</sup> |
|--------------|---------------------------------|------------------------|-------------------------------------------------|-------------------------------------------|---------------------------------------------------------------------------------------------|------------------------------|-----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|--------------------------------------------------------------------------|--------------------|-----------------|----------------------|-------------------------|----------------------|------------------------------------------|-------------------|-----------------|---------------------------|
|              | Has a Comp. Plan                | Whether Adopted & Year | Recognizes Affordable Housing Need <sup>7</sup> | Addresses Affordable Housing <sup>8</sup> | Multi-Family                                                                                | Two Family                   | Accessory Apartment                                                                           | Mixed Use                                                             | Residential Use                                                          |                    | Multifamily Use |                      | Two or Three Family Use |                      | Undeveloped Land Zoned Multifamily       |                   | Potential Units |                           |
|              |                                 |                        |                                                 |                                           |                                                                                             |                              |                                                                                               |                                                                       | Acres                                                                    | % of Total Acreage | Acres           | % of Residential Use | Acres                   | % of Residential Use | Acres                                    | % of Multi-family |                 |                           |
| Bronxville   | Yes                             | Yes 2009               | No                                              | No but 2002 plan did                      | As-of-Right<br>3 districts; 1 commercial district                                           | None                         | None although existing accessory apartments are grandfathered, permitted non-conforming uses. | As-of-Right<br>all retail districts                                   | 387.37                                                                   | 62%                | 33.67           | 8.7%                 | 2.14                    | 0.5%                 | 0                                        | 0%                | 0               | 2                         |
| Buchanan     | Yes                             | Yes 2005               | No                                              | Yes                                       | As-of-Right<br>2 commercial districts<br>SP<br>2 commercial districts                       | SP<br>2 commercial districts | SP<br>in residential and commercial districts                                                 | As-of-Right<br>2 commercial districts<br>SP<br>2 commercial districts | 225.29                                                                   | 24.17%             | 3.18            | 1.4%                 | 24.32                   | 10.8%                | 3.6                                      | 0.4%              | 7               | 2                         |
| Cortlandt    | Yes                             | Yes 2004               | No                                              | Yes                                       | As-of-Right<br>1 district, 2 special districts<br>SP<br>1 district<br>Cluster<br>1 district | None                         | SP<br>9 districts                                                                             | As-of-Right<br>1 district                                             | 8064.3<br>1                                                              | 36.41%             | 412.3<br>5      | 5.1%                 | 243.9                   | 3%                   | 15.7                                     | 0.1%              | 60              | 1                         |

Chart of Zoning Data for *Berenson Test Prong 1*

| Municipality           | Comprehensive Plan <sup>2</sup> |                              |                                                          |                                                 | Housing Types <sup>3</sup>                                                                        |                                                            |                                                          |                                                                                            | Land Use: Quantity of Presently Available/Developed Housing <sup>4</sup> |                          |                 |                           |                            |                           | Ability to Meet Future Need <sup>5</sup> |                       |                    | Prong<br>1<br>Rank <sup>6</sup> |
|------------------------|---------------------------------|------------------------------|----------------------------------------------------------|-------------------------------------------------|---------------------------------------------------------------------------------------------------|------------------------------------------------------------|----------------------------------------------------------|--------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|--------------------------|-----------------|---------------------------|----------------------------|---------------------------|------------------------------------------|-----------------------|--------------------|---------------------------------|
|                        | Has a<br>Comp.<br>Plan          | Whether<br>Adopted<br>& Year | Recognizes<br>Affordable<br>Housing<br>Need <sup>7</sup> | Addresses<br>Affordable<br>Housing <sup>8</sup> | Multi-<br>Family                                                                                  | Two<br>Family                                              | Accessory<br>Apartment                                   | Mixed<br>Use                                                                               | Residential Use                                                          |                          | Multifamily Use |                           | Two or Three Family<br>Use |                           | Undeveloped Land<br>Zoned Multifamily    |                       | Potential<br>Units |                                 |
|                        |                                 |                              |                                                          |                                                 |                                                                                                   |                                                            |                                                          |                                                                                            | Acres                                                                    | % of<br>Total<br>Acreage | Acres           | % of Resi-<br>dential Use | Acres                      | % of Resi-<br>dential Use | Acres                                    | % of Multi-<br>family |                    |                                 |
| Croton-on-<br>Hudson   | Yes                             | Yes<br>2003                  | No                                                       | Yes                                             | As-of-<br>Right<br>2 dis-<br>tricts; 1<br>overlay<br>district<br>SP<br>1 over-<br>lay<br>district | As-of-<br>Right<br>4 dis-<br>tricts                        | SP<br>all but 1<br>residential<br>district               | As-of-<br>Right<br>1 over-<br>lay<br>district<br>SP<br>2 com-<br>mer-<br>cial<br>districts | 1097.5<br>3                                                              | 36.13%                   | 51.88           | 4.7%                      | 37.95                      | 3.5%                      | 0                                        | 0%                    | 0                  | 2                               |
| Dobbs Ferry            | Yes                             | Yes<br>2010                  | No                                                       | Yes                                             | As-of-<br>Right<br>13<br>districts                                                                | As-of-<br>Right<br>11<br>districts<br>SP<br>2<br>districts | None                                                     | As-of-<br>Right<br>6<br>districts                                                          | 596.44                                                                   | 38.57%                   | 83.27           | 14%                       | 38.62                      | 6.5%                      | 7.2                                      | 0.46%                 | 273                | 1                               |
| Eastchester            | Yes                             | Yes<br>1997                  | Yes                                                      | Yes                                             | As-of-<br>Right<br>9 dis-<br>tricts<br>SP<br>1 district                                           | As-of-<br>Right<br>10<br>districts                         | None                                                     | As-of-<br>Right<br>3<br>districts                                                          | 927.31                                                                   | 42.51%                   | 79.13           | 8.5%                      | 38.15                      | 4.1%                      | 1.6                                      | 0.1%                  | 84                 | 1                               |
| Harrison               | Yes                             | No<br>2012                   | Yes                                                      | Yes                                             | As-of-<br>Right<br>3<br>districts<br>SP<br>1 district                                             | As-of-<br>Right<br>3 dis-<br>tricts                        | None                                                     | As-of-<br>Right<br>1 dis-<br>trict<br>SP<br>4 dis-<br>tricts                               | 4283.7<br>2                                                              | 38.43%                   | 32.32           | 0.8%                      | 203.9<br>1                 | 4.8%                      | 0.9                                      | 0.01%                 | 45                 | 2                               |
| Hastings-on-<br>Hudson | Yes                             | Yes<br>2011                  | Yes                                                      | Yes                                             | As-of-<br>Right<br>6<br>districts<br>SP<br>2<br>districts                                         | As-of-<br>Right<br>6<br>districts                          | As-of-<br>Right<br>11 dis-<br>tricts<br>SP<br>1 district | As-of-<br>Right<br>in all<br>retail<br>districts                                           | 504.39                                                                   | 39.91%                   | 34.71           | 6.9%                      | 35.13                      | 7%                        | 6.4                                      | 0.5%                  | 71                 | 1                               |

Chart of Zoning Data for *Berenson Test Prong 1*

| Municipality | Comprehensive Plan <sup>2</sup> |                          |                                                 |                                                                          | Housing Types <sup>3</sup>                                            |                                                                       |                                                                                                            |                                                | Land Use: Quantity of Presently Available/Developed Housing <sup>4</sup> |                    |                 |                      |                         |                      | Ability to Meet Future Need <sup>5</sup> |                   |                 | Prong 1 Rank <sup>6</sup> |
|--------------|---------------------------------|--------------------------|-------------------------------------------------|--------------------------------------------------------------------------|-----------------------------------------------------------------------|-----------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|------------------------------------------------|--------------------------------------------------------------------------|--------------------|-----------------|----------------------|-------------------------|----------------------|------------------------------------------|-------------------|-----------------|---------------------------|
|              | Has a Comp. Plan                | Whether Adopted & Year   | Recognizes Affordable Housing Need <sup>7</sup> | Addresses Affordable Housing <sup>8</sup>                                | Multi-Family                                                          | Two Family                                                            | Accessory Apartment                                                                                        | Mixed Use                                      | Residential Use                                                          |                    | Multifamily Use |                      | Two or Three Family Use |                      | Undeveloped Land Zoned Multifamily       |                   | Potential Units |                           |
|              |                                 |                          |                                                 |                                                                          |                                                                       |                                                                       |                                                                                                            |                                                | Acres                                                                    | % of Total Acreage | Acres           | % of Residential Use | Acres                   | % of Residential Use | Acres                                    | % of Multi-family |                 |                           |
| Irvington    | Yes                             | Yes 2003                 | No                                              | Yes                                                                      | As-of-Right<br>1 district<br>SP<br>1 district                         | As-of-Right<br>2 districts<br>SP<br>1 district                        | As-of-Right<br>all single-family districts                                                                 | As-of-Right<br>2 districts                     | 831.67                                                                   | 45.93%             | 121.8<br>2      | 14.6%                | 22.51                   | 2.77%                | 0.3                                      | 0.01%             | 0               | 2                         |
| Larchmont    | Yes                             | Yes 1966 and update 1987 | N/A                                             | N/A                                                                      | As-of-Right<br>1 district; 2 commercial districts<br>SP<br>1 district | As-of-Right<br>1 district; 2 commercial districts<br>SP<br>1 district | None                                                                                                       | As-of-Right<br>2 commercial districts          | 393.09                                                                   | 57.22%             | 4.05            | 1.03%                | 3.18                    | 0.81%                | 1.9                                      | 0.3%              | 53              | 2                         |
| Lewisboro    | Yes                             | Yes 1985                 | No                                              | Yes but states multifamily housing for regional need is “not imperative” | As-of-Right<br>1 district                                             | As-of-Right<br>2 districts                                            | SP apartment on single family lots min. ½ acre; accessory residence dwellings on lots of at least 20 acres | As-of-Right<br>2 commercial districts          | 9590.1<br>1                                                              | 51.39%             | 24.42           | 0.25%                | 37.44                   | 0.4%                 | 4.5                                      | 0.02%             | 18              | 3                         |
| Mamaroneck   | Yes                             | N/A                      | N/A                                             | N/A                                                                      | As-of-Right<br>4 districts<br>SP<br>1 district                        | As-of-Right<br>1 district                                             | Only buildings or trailers for domestic employee in single-family districts                                | As-of-Right<br>2 districts<br>SP<br>1 district | 1074.1<br>5                                                              | 47.32%             | 28.69           | 2.7%                 | 16.43                   | 1.5%                 | 0                                        | 0%                | 0               | 3                         |

Chart of Zoning Data for *Berenson Test Prong 1*

| Municipality   | Comprehensive Plan <sup>2</sup> |                              |                                                          |                                                 | Housing Types <sup>3</sup>                                                                            |                                                                                            |                                                     |                                                       | Land Use: Quantity of Presently Available/Developed Housing <sup>4</sup> |                          |                 |                           |                            |                           | Ability to Meet Future Need <sup>5</sup> |                       |                    | Prong<br>1<br>Rank <sup>6</sup> |
|----------------|---------------------------------|------------------------------|----------------------------------------------------------|-------------------------------------------------|-------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------|--------------------------------------------------------------------------|--------------------------|-----------------|---------------------------|----------------------------|---------------------------|------------------------------------------|-----------------------|--------------------|---------------------------------|
|                | Has a<br>Comp.<br>Plan          | Whether<br>Adopted<br>& Year | Recognizes<br>Affordable<br>Housing<br>Need <sup>7</sup> | Addresses<br>Affordable<br>Housing <sup>8</sup> | Multi-<br>Family                                                                                      | Two<br>Family                                                                              | Accessory<br>Apartment                              | Mixed<br>Use                                          | Residential Use                                                          |                          | Multifamily Use |                           | Two or Three Family<br>Use |                           | Undeveloped Land<br>Zoned Multifamily    |                       | Potential<br>Units |                                 |
|                |                                 |                              |                                                          |                                                 |                                                                                                       |                                                                                            |                                                     |                                                       | Acres                                                                    | % of<br>Total<br>Acreage | Acres           | % of Resi-<br>dential Use | Acres                      | % of Resi-<br>dential Use | Acres                                    | % of Multi-<br>family |                    |                                 |
| Mount Pleasant | Yes                             | Yes<br>1970                  | No                                                       | Yes                                             | As-of-<br>Right<br>10<br>districts<br>SP<br>3<br>districts                                            | As-of-<br>Right<br>11<br>districts                                                         | SP<br>28<br>districts                               | As-of-<br>Right<br>14<br>dis-<br>tricts <sup>10</sup> | 4647.4<br>5                                                              | 30.19%                   | 55.29           | 1.2%                      | 70.46                      | 1.5%                      | 5.2                                      | 0.03%                 | 5                  | 2                               |
| New Castle     | Yes                             | Yes<br>1989                  | No                                                       | Yes                                             | As-of-<br>Right<br>5<br>districts;<br>1<br>floating<br>district <sup>11</sup><br>SP<br>9<br>districts | As-of-<br>Right<br>all<br>single-<br>family<br>districts<br>but only<br>if af-<br>fordable | SP<br>8 districts                                   | As-of-<br>Right<br>9<br>districts                     | 8306.1<br>2                                                              | 55.38%                   | 302.1<br>3      | 3.6%                      | 139.8<br>9                 | 1.7%                      | 5                                        | 0.03%                 | 32                 | 1                               |
| North Castle   | Yes                             | Yes<br>1996                  | No                                                       | Yes                                             | As-of-<br>Right<br>8<br>districts                                                                     | As-of-<br>Right<br>1 district                                                              | As-of-<br>Right<br>4 districts<br>SP<br>8 districts | As-of-<br>Right<br>6<br>districts                     | 7125.5<br>6                                                              | 42.47%                   | 3.06            | 0.04%                     | 79.43                      | 1.1%                      | 6.3                                      | 0.04%                 | 82                 | 2                               |

<sup>10</sup> Based on the data submitted by the County, it is unclear exactly how many districts permit mixed-use development as-of-right. We have given Mount Pleasant credit for the largest number of districts. Ex. F, Town of Mount Pleasant Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012).

<sup>11</sup> There is some confusion about which zoning districts were identified by the County Planning Department as allowing multifamily housing as-of-right. In its Feb. 29, 2012, analysis of the zoning ordinances of Westchester municipalities, it identifies only the MFR-C, MFR-M and MFPD districts as allowing the use "as of right," but it identifies the B-D, B-R, B-RP and I-G districts as allowing multifamily housing upon site plan review rather than as a special use., and the Planning Department has identified potential multifamily housing development sites in the B-D and B-R districts. Ex. F, Town of New Castle Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012; Ex. E, Methodology II-D(2) Table August 2012 (submitted Sep. 6, 2012). The acreage figure that the Planning Department has provided for districts allowing multifamily housing as-of-right does not appear, however, to include the I-G district, and a review of the zoning ordinance clearly indicates that residential use is allowed in the I-G district only by special permit. Schedule of regulations for business and industrial districts, TOWN OF NEW CASTLE CODE § 60 Attachment 4 (July 1, 2012).

Chart of Zoning Data for *Berenson Test Prong 1*

| Municipality  | Comprehensive Plan <sup>2</sup> |                        |                                                 |                                           | Housing Types <sup>3</sup>                              |                                                         |                                           |                                           | Land Use: Quantity of Presently Available/Developed Housing <sup>4</sup> |                    |                 |                      |                         |                      | Ability to Meet Future Need <sup>5</sup> |                   |                 | Prong 1 Rank <sup>6</sup> |
|---------------|---------------------------------|------------------------|-------------------------------------------------|-------------------------------------------|---------------------------------------------------------|---------------------------------------------------------|-------------------------------------------|-------------------------------------------|--------------------------------------------------------------------------|--------------------|-----------------|----------------------|-------------------------|----------------------|------------------------------------------|-------------------|-----------------|---------------------------|
|               | Has a Comp. Plan                | Whether Adopted & Year | Recognizes Affordable Housing Need <sup>7</sup> | Addresses Affordable Housing <sup>8</sup> | Multi-Family                                            | Two Family                                              | Accessory Apartment                       | Mixed Use                                 | Residential Use                                                          |                    | Multifamily Use |                      | Two or Three Family Use |                      | Undeveloped Land Zoned Multifamily       |                   | Potential Units |                           |
|               |                                 |                        |                                                 |                                           |                                                         |                                                         |                                           |                                           | Acres                                                                    | % of Total Acreage | Acres           | % of Residential Use | Acres                   | % of Residential Use | Acres                                    | % of Multi-family |                 |                           |
| North Salem   | Yes                             | Yes 2011               | Yes                                             | Yes                                       | As-of-Right 5 districts <sup>12</sup><br>SP 5 districts | As-of-Right 3 districts <sup>13</sup><br>SP 4 districts | As-of-Right 1 district<br>SP 10 districts | None <sup>14</sup>                        | 5642.07                                                                  | 37.96%             | 7.88            | 0.14%                | 46.53                   | 0.82%                | 77.3                                     | 0.5%              | 307             | 1                         |
| Ossining      | Yes                             | Yes 2002               | Yes                                             | Yes                                       | SP 3 districts                                          | SP 5 districts                                          | SP 8 districts                            | SP 1 district                             | 989.14                                                                   | 50.87%             | 158.03          | 16%                  | 28.96                   | 2.9%                 | 0                                        | 0%                | 0               | 2                         |
| Pelham        | Yes                             | Yes 2008               | Yes                                             | Yes                                       | As-of-Right 4 districts                                 | As-of-Right 8 districts                                 | None                                      | As-of-Right 3 districts                   | 285.72                                                                   | 53.85%             | 4.73            | 1.7%                 | 34.93                   | 12.2%                | 1.1                                      | 0.2%              | 54              | 2                         |
| Pelham Manor  | N/A                             | N/A                    | N/A                                             | N/A                                       | As-of-Right 1 district                                  | As-of-Right 1 district                                  | None                                      | None                                      | 455.11                                                                   | 52.66%             | 10.31           | 2.3%                 | 1.89                    | 0.4%                 | 0                                        | 0%                | 0               | 3                         |
| Pleasantville | Yes                             | Yes 1996               | No                                              | Yes in 2007 addendum                      | As-of-Right 3 districts<br>SP 3 districts               | As-of-Right 7 districts<br>SP 3 districts               | SP 6 districts                            | As-of-Right 2 districts<br>SP 3 districts | 551.68                                                                   | 48.07%             | 42.78           | 7.8%                 | 39.12                   | 7%                   | 0.8                                      | 0.1%              | 10              | 1                         |

<sup>12</sup> In Figure 7 of the County's Eighth Zoning Submission regarding North Salem, the County lists additional districts as permitting multifamily housing as-of-right: the NB, PO and RO districts, all of which are listed as not permitting multifamily housing in the County's February submission. Compare Ex. I, Town of North Salem, at 19-22, Eighth Zoning Submission, dated July 23, 2013, with Ex. F, Town of North Salem Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012). A review of the Town's zoning code reveals that residential uses are not permitted in the NB and RO districts and that only single-family detached dwellings are permitted in the PO district. Table of General Use Requirements, TOWN OF NORTH SALEM CODE § 250 Attachment 9, Nov. 1, 2011; Table of General Use Requirements, TOWN OF NORTH SALEM CODE § 250 Attachment 11, Nov. 1, 2011; Table of General Use Requirements, TOWN OF NORTH SALEM CODE § 250 Attachment 12, Nov. 1, 2011.

<sup>13</sup> In a letter dated April 18, 2013, Supervisor Warren J. Lucas stated that, contrary to the County Planning Department's February 29, 2012 analysis of zoning districts in the County's municipalities, two-family dwellings are also allowed as-of-right in R-MF/4 and R-MF/6. Ex. H.

<sup>14</sup> In a letter dated April 18, 2013, Supervisor Warren J. Lucas stated that, contrary to the County Planning Department's February 29, 2012, analysis of zoning districts in the County's municipalities, mixed-use development is allowed in the GB, PO, RO, NB, PD and PD-CCRC districts, but this is not supported by a reading of the zoning ordinance. Ex. H.

Chart of Zoning Data for *Berenson Test Prong 1*

| Municipality | Comprehensive Plan <sup>2</sup> |                        |                                                 |                                           | Housing Types <sup>3</sup>                                                                      |                                                |                             |                                       | Land Use: Quantity of Presently Available/Developed Housing <sup>4</sup> |                    |                 |                      |                         |                      | Ability to Meet Future Need <sup>5</sup> |                   |                 | Prong 1 Rank <sup>6</sup> |
|--------------|---------------------------------|------------------------|-------------------------------------------------|-------------------------------------------|-------------------------------------------------------------------------------------------------|------------------------------------------------|-----------------------------|---------------------------------------|--------------------------------------------------------------------------|--------------------|-----------------|----------------------|-------------------------|----------------------|------------------------------------------|-------------------|-----------------|---------------------------|
|              | Has a Comp. Plan                | Whether Adopted & Year | Recognizes Affordable Housing Need <sup>7</sup> | Addresses Affordable Housing <sup>8</sup> | Multi-Family                                                                                    | Two Family                                     | Accessory Apartment         | Mixed Use                             | Residential Use                                                          |                    | Multifamily Use |                      | Two or Three Family Use |                      | Undeveloped Land Zoned Multifamily       |                   | Potential Units |                           |
|              |                                 |                        |                                                 |                                           |                                                                                                 |                                                |                             |                                       | Acres                                                                    | % of Total Acreage | Acres           | % of Residential Use | Acres                   | % of Residential Use | Acres                                    | % of Multi-family |                 |                           |
| Pound Ridge  | Yes                             | Yes 2010               | No                                              | Yes                                       | As-of-Right<br>3 commercial districts<br>SP<br>4 districts                                      | None                                           | As-of-Right<br>2 districts  | As-of-Right<br>3 commercial districts | 6930.97                                                                  | 46.92%             | 0               | 0%                   | 0                       | 0%                   | 3.6                                      | 0.02%             | 23              | 2                         |
| Rye          | Yes                             | Yes 1985               | No                                              | Yes                                       | As-of-Right<br>9 districts<br>SP<br>2 districts                                                 | As-of-Right<br>10 districts                    | As-of-Right<br>15 districts | As-of-Right<br>4 districts            | 1809.44                                                                  | 48.43%             | 137.5           | 7.6%                 | 38.22                   | 2.1%                 | 1.6                                      | 0.04%             | 38              | 1                         |
| Rye Brook    | No                              | Has Vision Plan 2000   | No                                              | Yes                                       | As-of-Right<br>4 districts;<br>2 floating districts<br>SP<br>1 district;<br>1 floating district | As-of-Right<br>5 districts<br>SP<br>1 district | None                        | SP<br>1 floating district             | 841.27                                                                   | 19.66%             | 10.88           | 1.3%                 | 39.68                   | 4.7%                 | 1.2                                      | 0.1%              | 38              | 2                         |

Chart of Zoning Data for *Berenson Test Prong 1*

| Municipality | Comprehensive Plan <sup>2</sup> |                        |                                                 |                                           | Housing Types <sup>3</sup>                                           |                                             |                          |                                             | Land Use: Quantity of Presently Available/Developed Housing <sup>4</sup> |                      |                 |                      |                         |                      | Ability to Meet Future Need <sup>5</sup> |                   |                 | Prong 1 Rank <sup>6</sup> |
|--------------|---------------------------------|------------------------|-------------------------------------------------|-------------------------------------------|----------------------------------------------------------------------|---------------------------------------------|--------------------------|---------------------------------------------|--------------------------------------------------------------------------|----------------------|-----------------|----------------------|-------------------------|----------------------|------------------------------------------|-------------------|-----------------|---------------------------|
|              | Has a Comp. Plan                | Whether Adopted & Year | Recognizes Affordable Housing Need <sup>7</sup> | Addresses Affordable Housing <sup>8</sup> | Multi-Family                                                         | Two Family                                  | Accessory Apartment      | Mixed Use                                   | Residential Use                                                          |                      | Multifamily Use |                      | Two or Three Family Use |                      | Undeveloped Land Zoned Multifamily       |                   | Potential Units |                           |
|              |                                 |                        |                                                 |                                           |                                                                      |                                             |                          |                                             | Acres                                                                    | % of Total Acreage   | Acres           | % of Residential Use | Acres                   | % of Residential Use | Acres                                    | % of Multi-family |                 |                           |
| Scarsdale    | Yes                             | Yes 1994               | No                                              | Yes and in 2010 update                    | As-of-Right <sup>7</sup> districts <sup>15</sup>                     | As-of-Right up to 5 districts <sup>16</sup> | None <sup>17</sup>       | As-of-Right up to 8 districts <sup>18</sup> | 2377.82                                                                  | 55.58% <sup>19</sup> | 6.08            | 0.26%                | 0                       | 0%                   | 0 <sup>20</sup>                          | 0%                | 0               | 2                         |
| Somers       | Yes                             | No 2005                | No                                              | Yes                                       | As-of-Right 1 district, 3 floating districts; 3 commercial districts | None                                        | As-of-Right 10 districts | As-of-Right 4 districts                     | 8274.39                                                                  | 40.2%                | 75.91           | 0.9%                 | 91.81                   | 1.1%                 | 73.9                                     | 0.4%              | 260             | 2                         |

<sup>15</sup> In its February 2012 analysis, the County Planning Department stated that multifamily housing is allowed as-of-right in only three zoning districts: Res C, PUD-1 and PUD-8. Ex. F, Town/Village of Scarsdale Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012). This appeared to be an uncharacteristically narrow reading of the zoning ordinance. For other municipalities, if a business district allows “residences” (without further elaboration) as a principal use, even if confined to the upper floors of a mixed-use development, the County Planning Department indicates that they permit multifamily housing as-of-right. The Scarsdale zoning ordinance states that “residences” are among the permitted uses in the VCO-2.0 district. See VILLAGE OF SCARSDALE CODE § 310-12.B(4)(b)(1). It also states that residences are permitted upper floor uses in the Business A, VCR-2.0 and VCR-1.0 districts. The County’s most recent zoning submission corrects the prior omission of the Business A, VCR-2.0 and VCR-1.0 districts but not the omission of the VCO-2.0 district. Ex. I, Town/Village of Scarsdale Zoning Analysis, at Figure 7, Eighth Zoning Submission, dated July 23, 2013. The July 2013 submission also states incorrectly that the VCR-8 district also allows multifamily housing as-of-right. *Id.* A review of the zoning code reveals that the VCR-8 district does not permit residential uses. VILLAGE OF SCARSDALE CODE § 310-12.B(3)(b). All analyses of the acreage zoned for multifamily residential development, the number of available sites in those districts and the potential number of housing units that could be developed on those sites were based on the County’s earlier conclusion that only three districts permit multifamily housing as-of-right.

<sup>16</sup> In its February 2012 submission, the County Planning Department identified three zoning districts that allow for two-family housing development as-of-right (Res C, PUD 1 and PUD8-1.4). Ex. F, Town/Village of Scarsdale Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012). The July 2013 submission also identifies the VCR-2.0 and VCR-1.0 districts as allowing two-family housing as-of-right; however, two of those districts allow residences only above the ground floor in a mixed-use development, and thus exclude what is generally thought of as two-family homes. Ex. I, Town/Village of Scarsdale Zoning Analysis, at Figure 7, Eighth Zoning Submission, dated July 23, 2013; VILLAGE OF SCARSDALE CODE §§ 310-12.B(1)(b)(2), 12.B(2)(b)(2).

<sup>17</sup> In its February 2012 analysis, the County Planning Department erroneously stated that accessory apartments are allowed as-of-right in five nonresidential zoning districts, but it has corrected this error in its July 2013 analysis. Compare Ex. F, Town/Village of Scarsdale Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012), with Ex. I, Town/Village of Scarsdale Zoning Analysis, at Figure 7, Eighth Zoning Submission, dated July 23, 2013.

<sup>18</sup> In its analysis, the County Planning Department identifies 8 districts as permitting mixed-use development as-of-right, which includes the VCO-0.8 district. Ex. F, Town/Village of Scarsdale Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012). However, the zoning ordinance does not mention residential use of any kind as a permitted use in the VCO-0.8 district. VILLAGE OF SCARSDALE CODE § 310-12.B(5)(b).

<sup>19</sup> The data provided by the County indicates that 106.92% of the land in Scarsdale is residential. Ex. J, Table 2 Residential Land Use Acreage by Municipality, *Land Use in Westchester*, at 17, 2010. Due to this unclear figure, and for the purposes of this analysis, this percentage figure was changed to 55.58% after dividing the total acreage of Scarsdale (point a on the data sheet) by the number of acres currently subject to residential use. *Id.*; Ex. E, Methodology III-C-2 Table August 2012 (submitted Sep. 6, 2012).

<sup>20</sup> The analysis has been performed only on the areas zoned Res C, PUD-1 and PUD8-1.4, the districts identified by the County as allowing multifamily housing as-of-right in Ex. F, Town/Village of Scarsdale Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012).

Chart of Zoning Data for *Berenson Test Prong 1*

| Municipality | Comprehensive Plan <sup>2</sup> |                              |                                                          |                                                 | Housing Types <sup>3</sup>                                                |                                                           |                                                        |                                   | Land Use: Quantity of Presently Available/Developed Housing <sup>4</sup> |                          |                 |                           |                            |                           | Ability to Meet Future Need <sup>5</sup> |                       |                    | Prong<br>1<br>Rank <sup>6</sup> |
|--------------|---------------------------------|------------------------------|----------------------------------------------------------|-------------------------------------------------|---------------------------------------------------------------------------|-----------------------------------------------------------|--------------------------------------------------------|-----------------------------------|--------------------------------------------------------------------------|--------------------------|-----------------|---------------------------|----------------------------|---------------------------|------------------------------------------|-----------------------|--------------------|---------------------------------|
|              | Has a<br>Comp.<br>Plan          | Whether<br>Adopted<br>& Year | Recognizes<br>Affordable<br>Housing<br>Need <sup>7</sup> | Addresses<br>Affordable<br>Housing <sup>8</sup> | Multi-<br>Family                                                          | Two<br>Family                                             | Accessory<br>Apartment                                 | Mixed<br>Use                      | Residential Use                                                          |                          | Multifamily Use |                           | Two or Three Family<br>Use |                           | Undeveloped Land<br>Zoned Multifamily    |                       | Potential<br>Units |                                 |
|              |                                 |                              |                                                          |                                                 |                                                                           |                                                           |                                                        |                                   | Acres                                                                    | % of<br>Total<br>Acreage | Acres           | % of Resi-<br>dential Use | Acres                      | % of Resi-<br>dential Use | Acres                                    | % of Multi-<br>family |                    |                                 |
| Tarrytown    | Yes                             | Yes<br>2007                  | No                                                       | Yes                                             | As-of-<br>Right<br>8<br>districts                                         | As-of-<br>Right<br>10<br>districts                        | None                                                   | As-of-<br>Right<br>3<br>districts | 679.30                                                                   | 34.45%                   | 216.8<br>6      | 32%                       | 39.99                      | 6%                        | 2.3                                      | 0.1%                  | 50                 | 1                               |
| Tuckahoe     | Yes                             | Yes<br>2008                  | No                                                       | Yes                                             | As-of-<br>Right<br>2 dis-<br>tricts <sup>21</sup>                         | As-of-<br>Right<br>2<br>districts                         | None                                                   | As-of-<br>Right<br>5<br>districts | 169.27                                                                   | 44.25%                   | 29.51           | 17.4%                     | 32.93                      | 19.5%                     | 0.7                                      | 0.2%                  | 17                 | 1                               |
| Yorktown     | Yes                             | Yes<br>2010                  | No                                                       | Yes                                             | As-of-<br>Right<br>3 dis-<br>tricts <sup>22</sup><br>SP<br>9<br>districts | As-of-<br>Right<br>3<br>districts<br>SP<br>8<br>districts | SP<br>in all<br>residential<br>districts <sup>23</sup> | As-of-<br>Right<br>1<br>district  | 9317.9<br>9                                                              | 37%                      | 617.0<br>1      | 6.6%                      | 57.91                      | 0.6%                      | 40                                       | 0.2%                  | 479                | 1                               |

<sup>21</sup> The data provided by the County only credits the AP-3 district as permitting multifamily housing as-of-right. Ex. F, Village of Tuckahoe Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012). However, under the Village code and consistent with the Village's response letter, the B/R district should also be included. VILLAGE OF TUCKAHOE CODE § 4-5.1; Ex. H, Village of Tuckahoe Response Letter from John D. Cavallaro, Village of Tuckahoe Attorney, at 3, dated May 16, 2013.

<sup>22</sup> The table provided by the County identifies R-3, R-3A and RSP-3 as districts permitting multifamily housing as-of-right. Ex. F, Town of Yorktown Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012). Yet, the County's Methodology II-C and II-D tables and maps provide information about sites and acreage in RSP-1 rather than RSP-3, indicating that the descriptions of the two districts may have been inadvertently reversed in the review and analysis table. Compare Ex. F, Town of Yorktown Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012), with Ex. E, Town of Yorktown Methodology II-C and II-D Map August 2012 (submitted Sep. 6, 2012). Based on the zoning code, it does indeed appear that RSP-1, rather than RSP-3, permits multifamily as-of-right. TOWN OF YORKTOWN CODE §§ 300-124.C, 300-160.

<sup>23</sup> Although the data submitted by the County credits 9 zoning districts as permitting accessory apartments as-of-right, the County also provides an explanatory note stating that these accessory dwelling units are limited to one dwelling unit for the owner, operator or janitor of the establishment, and the zoning ordinance does indeed contain this restriction.. Compare Ex. F, Town of Yorktown Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012), with TOWN OF YORKTOWN CODE §§ 300-21.C(7)(b)(1), 300-21.C(8)(c)(4), 300-21.C(9)(c)(6), 300-21.C(10)(c)(1), 300-21.C(11)(c)(6), 300-21.C(12)(c)(1), 300-21.A(13)(c)(1), 300-21(15)(c)(5).

Chart of Zoning Data for *Berenson* Test Prong 2<sup>1</sup>

| Municipality | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                             | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|--------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|-------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|              | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                 | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
| Ardsley      | 100                                 | 19                                    | 19%                    | 12                | 19                                                                         | 38                                 | 38%                                          | Yes                                                                             | 1 MF district is an overlay district. MF SP only allowed in | 834                                                              | 5.7                                               | 2.7                                             | 0.3%                                 | Insufficient                  | 2                         |

<sup>1</sup> Under this prong, municipalities must consider, weigh and balance both local and regional housing needs, due to the ripple effects zoning may have on areas outside a municipality's boundaries. *Berenson v. Town of New Castle*, 38 N.Y.2d 102, 110 (1975) ("There must be a balancing of the local desire to maintain the *status quo* within the community and the greater public interest that regional needs be met."); *Triglia v. Town of Cortlandt*, No. 17976/96, 1998 WL 35394393, at \*4 (N.Y. Sup. Ct. Westchester Cnty. Jan. 6, 1998).

<sup>2</sup> A party challenging a municipal zoning ordinance must first demonstrate that there is an identifiable regional need for affordable housing. See, e.g., *Land Master Montg I, LLC v. Town of Montgomery*, 821 N.Y.S.2d 432, 439 (N.Y. Sup. Orange Cnty. 2006); *Triglia*, No. 17976/96, 1998 WL 35394393, at \*4. Westchester County has not submitted evidence of regional need. The only available assessment is a study that was commissioned by the County in 2005. The study was conducted by the Center for Urban Policy Research of Rutgers University (CUPR), which estimated that Westchester municipalities must collectively build 10,768 new affordable housing units by 2015 to meet the County's growing regional need for affordable housing. See *Westchester County Affordable Housing Needs Assessment*, Rutgers University Center for Urban Policy Research, at 67 (2004) (available at [http://homes.westchestergov.com/images/stories/pdfs/HOUSING\\_RutgersReport033004.pdf](http://homes.westchestergov.com/images/stories/pdfs/HOUSING_RutgersReport033004.pdf)) (last accessed July 31, 2013). The Westchester Housing Opportunity Commission ("HOC"), a body commissioned by the County, has issued recommendations that allocate a share of the regional affordable housing needs to each municipality. See HOC, *Affordable Housing Allocation Plan 2000-2015* (2005) (available at [http://homes.westchestergov.com/images/stories/pdfs/HOUSING\\_HOCAllocation05.pdf](http://homes.westchestergov.com/images/stories/pdfs/HOUSING_HOCAllocation05.pdf)) (last accessed July 31, 2013). This allocation plan has been cited by the County in many of its AI submissions, the County relies on it in distributing funds from the County's Legacy Program, and it is the only needs assessment that has been prepared to date. See, e.g., Ex. D, Westchester County, Analysis of Impediments to Fair Housing Choice (updated April 2013), p. 59-60. See also Ex. 10, Letter from James E. Johnson to Robert P. Astorino, dated June 12, 2013. Accordingly, this analysis goes forward with the best, indeed, only available relevant evidence.

<sup>3</sup> Once the regional need is established, the next step in the analysis requires addressing the question whether, on its face, the zoning ordinance fails to allow for "the construction of sufficient housing to meet the [municipality's] share of the region's housing needs." *Blitz v. Town of New Castle*, 94 A.D.2d 92, 99 (N.Y. App. Div. 2d Dep't 1983).

<sup>4</sup> Municipal zoning ordinances that fail to provide a provision for multifamily housing as-of-right or significantly reduce or limit such housing are facially exclusionary. *Id.* at 94; *Land Master Montg I, LLC*, 821 N.Y.S.2d at 439; *Triglia*, No. 17976/96, 1998 WL 35394393, at \*6.

<sup>5</sup> Municipalities commonly facilitate this by identifying, through zoning, areas of a municipality where multifamily housing may be built as-of-right. See *Cont'l Bldg. Co. v. Town of N. Salem*, 211 A.D.2d 88, 93 (N.Y. App. Div. 3d Dep't 1995). ("[M]ultifamily housing, given the nature of its construction and function as a whole, is one of the most affordable types of housing."). These columns refer to points (a), (b) and (c) on the data sheets included in each municipality's report.

<sup>6</sup> Since a zoning ordinance merely determines "what *may* or *may not be built*" as opposed to deciding "what will actually be built, in the absence of government subsidies," the question is not simply whether the zoning ordinance provides for the legal possibility of multifamily housing. *Blitz*, 94 A.D.2d at 99 (emphasis in original). Rather, the analysis must address the question of whether it is both "*physically and economically feasible*" that affordable housing could be built under the present zoning regime. See *id.*; *Cont'l Bldg. Co.*, 211 A.D.2d at 94 (citation and quotation omitted). This column indicates whether the market conditions within the municipality are such that condo sale prices are sufficient, meaning above the county-wide average of \$375,000, or insufficient, meaning below that average. Municipalities that have insufficient market conditions will likely need a subsidy to aid in new development of affordable housing.

<sup>7</sup> Category 1 = Not exclusionary because the municipality has considered and has the potential to satisfy regional need. Category 2 = Not exclusionary, but warrants improvement. Category 3 = Exclusionary because the municipality has not considered and does not have the potential to satisfy its fair share of regional need.

<sup>8</sup> Despite being given multiple opportunities to respond to a survey conducted by the County Planning Department, some municipalities have not reported the construction or approval of any affordable housing units since 2000. Ex. C, Table, Status of Allocation per Affordable Housing Allocation Plan 2000-2012 – As of November 20, 2012 (submitted Nov. 20, 2012). For the purposes of this analysis, these municipalities are assumed to have built or approved zero units and can be identified by an entry of "0\*".

<sup>9</sup> This column provides a ranking of the municipalities based on the percentage of affordable units that have been reported as built or approved since 2000. The lowest rank is 24, as more than one municipality has built or approved zero units since 2000. Ex. C, Table, Status of Allocation per Affordable Housing Allocation Plan 2000-2012 – As of November 20, 2012 (submitted Nov. 20, 2012).

<sup>10</sup> This column provides data from point b on the data sheets of the Housing Consultant Reports: Total acreage in zoning districts where multifamily housing is permitted as-of-right.

Chart of Zoning Data for Berenson Test Prong 2

| Municipality     | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                                                                                                                                                                                                                                                                      | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|------------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|                  | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                                                                                                                                                                                                                                                          | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
|                  |                                     |                                       |                        |                   |                                                                            |                                    |                                              |                                                                                 | connection with conversion of former school (not available anymore); Cluster district only allows apartment development of only 6 units attached, semidetached or clustered with assisted living facilities. No more than 25% of the units may contain more than 3 bedrooms in the cluster district. |                                                                  |                                                   |                                                 |                                      |                               |                           |
| Bedford          | 396                                 | 95                                    | 24%                    | 10                | 45                                                                         | 140                                | 35.4%                                        | Yes                                                                             | 1 district requires min. lot size of 2 acres. For MF by SP, can develop in 1 district or elsewhere by conversion in residences existing prior to Sep.1, 1985, on lots of less than 20,000 sq. ft.                                                                                                    | 25,444                                                           | 221                                               | 2.7                                             | 0.01%                                | Insufficient                  | 2                         |
| Briarcliff Manor | 141                                 | 49 <sup>11</sup>                      | 34.8%                  | 9                 | 0                                                                          | 49                                 | 34.8%                                        | Yes                                                                             | 1 MF district is commercial and only allows mixed-use development, where residential use must not exceed 80% of the gross floor area, and no ground floor dwelling units shall front any public right-of-way. 1 MF district is intended                                                              | 3808                                                             | 48.7                                              | 0.2                                             | 0.01%                                | Sufficient                    | 2                         |

<sup>11</sup> A developer is seeking approvals for a proposed affordable housing development that would contain 14 affordable units. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013).

Chart of Zoning Data for Berenson Test Prong 2

| Municipality | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|--------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|              | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
|              |                                     |                                       |                        |                   |                                                                            |                                    |                                              |                                                                                 | for elderly communities. SP only allowed for conversion of an existing house on a parcel of 10 or more acres.                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                  |                                                   |                                                 |                                      |                               |                           |
| Bronxville   | 101                                 | 0*                                    | 0%                     | 24                | 0                                                                          | 0                                  | 0%                                           | Yes                                                                             | None                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 622                                                              | 79.5                                              | 0                                               | 0                                    | Sufficient                    | 2                         |
| Buchanan     | 56                                  | 0* <sup>12</sup>                      | 0%                     | 24                | 7                                                                          | 7                                  | 12.5%                                        | Yes                                                                             | MF as-of-right is only in 2 commercial districts and is limited to mixed-use development; the residential use must be in the back of or above a commercial establishment w a max. of 4 dwellings per acre. SP may be granted in 2 commercial districts for multifamily dwellings without commercial use but the districts require parcels of land not less than 40,000 sq.ft., each dwelling unit contains a min. of 750 sq.ft., the max. density is 5 dwelling units per 40,000 sq.ft., and the parcel must adjoin a residentially zoned district. | 932                                                              | 42.3                                              | 3.6                                             | 0.4%                                 | Insufficient                  | 2                         |

<sup>12</sup> The County has reported that there is currently a proposal to rehabilitate one three-bedroom affordable housing unit, pursuant to the County's obligations under the Settlement. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013).

Chart of Zoning Data for Berenson Test Prong 2

| Municipality     | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                                                                                                                                                                                                                                                                                                                  | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|------------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|                  | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                                                                                                                                                                                                                                                                                                      | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
| Cortlandt        | 403                                 | 201                                   | 49.9%                  | 3                 | 60                                                                         | 261                                | 64.8%                                        | Yes                                                                             | MF district restricted to 3- and 4- family dwelling w max. of 2 bedrooms per unit; 1 special district is not mapped; 1 special district is limited to senior housing. Some of the multifamily housing is only allowed at very low densities, less than 3 units per acre in 1 case, and up to 10 bedrooms per acre in another case.               | 22147                                                            | 171.9                                             | 15.7                                            | 0.1%                                 | Insufficient                  | 2                         |
| Croton-on-Hudson | 115                                 | 17                                    | 14.8%                  | 14                | 0                                                                          | 17                                 | 14.8%                                        | Yes                                                                             | 1 MF district is an overlay district intended to simplify the development of large tracts of 10 or more contiguous acres and permits as-of-right multifamily housing consistent with the underlying districts. SP district is also an overlay district dependent on underlying districts permitted uses, unless in 1 of 3 residential districts. | 3034                                                             | 58.5                                              | 0                                               | 0%                                   | Sufficient                    | 3                         |
| Dobbs Ferry      | 105                                 | 0* <sup>13</sup>                      | 0%                     | 24                | 273                                                                        | 273                                | 260%                                         | Yes                                                                             | All but 1 MF district requires min. lot size per unit ranging from low of 800 sq.ft. to a high of                                                                                                                                                                                                                                                | 1580                                                             | 263.8                                             | 7.2                                             | 0.46%                                | Sufficient                    | 2                         |

<sup>13</sup> A developer is seeking approvals for a 202-unit mixed-income development at Rivertowns Square that would contain 10 affordable housing units. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013).

Chart of Zoning Data for Berenson Test Prong 2

| Municipality       | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                                                                                                                                                                                                                                                                              | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|--------------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|                    | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                                                                                                                                                                                                                                                                  | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
|                    |                                     |                                       |                        |                   |                                                                            |                                    |                                              |                                                                                 | 6,000 sq.ft., and min. lot area of 5,000 sq.ft.                                                                                                                                                                                                                                                              |                                                                  |                                                   |                                                 |                                      |                               |                           |
| Eastchester        | 104                                 | 2 <sup>14</sup>                       | 1.9%                   | 22                | 84                                                                         | 86                                 | 82.7%                                        | Yes                                                                             | SP district is limited to senior housing with max. 2 occupants in efficiency and 1 bedroom units and 3 occupants in 2 bedroom units and has preferences for Eastchester residents and relatives. The max. density for senior housing is 1 unit per 700 sq.ft., which yields approximately 60 units per acre. | 2184                                                             | 224.6                                             | 1.6                                             | 0.1%                                 | Insufficient                  | 2                         |
| Harrison           | 756                                 | 0*                                    | 0%                     | 24                | 45                                                                         | 45                                 | 6%                                           | Yes                                                                             | None                                                                                                                                                                                                                                                                                                         | 11147                                                            | 32.9                                              | 0.9                                             | 0.01%                                | Sufficient                    | 3                         |
| Hastings-on-Hudson | 97                                  | 21 <sup>15</sup>                      | 21.6%                  | 11                | 71                                                                         | 92                                 | 94.8%                                        | Yes                                                                             | 1 of the 6 MF districts allows only 3-family homes as-of-right but more with SP                                                                                                                                                                                                                              | 1264                                                             | 84.9                                              | 6.4                                             | 0.5%                                 | Sufficient                    | 1                         |
| Irvington          | 156                                 | 4                                     | 2.6%                   | 21                | 0                                                                          | 4                                  | 2.6%                                         | Yes                                                                             | None                                                                                                                                                                                                                                                                                                         | 1809                                                             | 56.4                                              | 0.3                                             | 0.01%                                | Sufficient                    | 2                         |

<sup>14</sup> Despite being given multiple opportunities to respond to a survey conducted by the County Planning Department, Eastchester has not reported the construction or approval of any affordable housing units since 2000. Ex. C, Table, Status of Allocation per Affordable Housing Allocation Plan 2000-2012 – As of November 20, 2012 (submitted Nov. 20, 2012). However, based on a recent submission by the County, Eastchester has approved 2 affordable units. Ex. N, Funding Advisory to Monitor, No. 19, (submitted June 27, 2013).

<sup>15</sup> Developers are seeking approvals for two proposed affordable housing projects that would contain a combined total of 14 affordable units. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013). Additionally, the County has reported that there is currently a proposal to rehabilitate one three-family home and convert it to three condominium affordable housing units, pursuant to the County's obligations under the Settlement. *Id.*

Chart of Zoning Data for Berenson Test Prong 2

| Municipality | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                                                                                                                                                                                                                                                 | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|--------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|              | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                                                                                                                                                                                                                                     | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
| Larchmont    | 105                                 | 51 <sup>16</sup>                      | 48.6%                  | 5                 | 53                                                                         | 104                                | 99%                                          | Yes                                                                             | 2 MF districts are commercial allowing mixed-use development only. MF buildings cannot be larger than 20 unit or taller than 2.5 stories. SP district is for townhouse developments restricted to cites of 6 or more acres, w no more than 2 bedrooms per townhouse dwelling.   | 687                                                              | 66.3                                              | 1.9                                             | 0.3%                                 | Sufficient                    | 2                         |
| Lewisboro    | 239                                 | 0*                                    | 0%                     | 24                | 18                                                                         | 18                                 | 7.5%                                         | Yes                                                                             | Only MF district requires min. lot size for developments served by public water and sewer infrastructure of 15,000 sq.ft. If a development will not be served by public water and sewer, the min. lot size is 15 acres. The max. permitted density is 2 density units per acre. | 18648                                                            | 142.7                                             | 4.5                                             | 0.02%                                | Insufficient                  | 3                         |
| Mamaroneck   | 125                                 | 10                                    | 8%                     | 16                | 0                                                                          | 10                                 | 8%                                           | Yes                                                                             | 1 MF district limits MF development to 1 3 bedroom unit for every 25 dwelling units, and has a min. lot size of 80,000 sq.ft. 1 MF district may have no more than an average of                                                                                                 | 2315                                                             | 39.7                                              | 0                                               | 0%                                   | Sufficient                    | 3                         |

<sup>16</sup> A 149-unit development on Byron Place that would contain 10 affordable housing units also appears to be under construction. See Ex. O, *Westchester County 2013 2Q Report*, at App'x I-1, 2Q 2013 AFFH Sites Progress List (submitted July 19, 2013).

Chart of Zoning Data for Berenson Test Prong 2

| Municipality   | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|----------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|                | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
|                |                                     |                                       |                        |                   |                                                                            |                                    |                                              |                                                                                 | 2 bedrooms per unit, and no unit may have more than 3 bedrooms. SP district is for new, large mixed-use developments.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                  |                                                   |                                                 |                                      |                               |                           |
| Mount Pleasant | 975                                 | 0*                                    | 0%                     | 24                | 5                                                                          | 5                                  | 0.5%                                         | Yes                                                                             | 1 MF district is commercial, is not mapped and requires min. site size of 100 acres; 1 MF district converted a school to dwelling units for seniors over 62 or families under 29 provided the development averages 750 sq.ft. The units were set aside for residents or parents or children of residents on the basis of economic and social need – criteria set by Town Board. 6 transitional districts restrict to average of 2 bedrooms with no more than 3 and no less than 1 bedroom. The 3 MF SP districts only allows multifamily housing if it is part of a conversion of an existing building. | 15392                                                            | 1014.8                                            | 5.2                                             | 0.03%                                | Sufficient                    | 2                         |

Chart of Zoning Data for Berenson Test Prong 2

| Municipality | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                                                                                                                                                                                                                                                                                                                                  | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|--------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|              | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                                                                                                                                                                                                                                                                                                                      | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
| New Castle   | 255                                 | 3 <sup>17</sup>                       | 1.2%                   | 23                | 32                                                                         | 35                                 | 13.7%                                        | Yes                                                                             | 1 MF district is an unmapped floating district. Min. lot area for MF developments ranges from 1 to 5 acres, though they may be reduced for affordable units.                                                                                                                                                                                                     | 14999                                                            | 303.6                                             | 5                                               | 0.03%                                | Sufficient                    | 2                         |
| North Castle | 712                                 | 46                                    | 6.5%                   | 18                | 82                                                                         | 128                                | 18%                                          | Yes                                                                             | 5 MF districts allow stand-alone multiple housing developments. In 3 MF districts, the multifamily developments must be apartments on the second floor as part of a mixed-use development. 1 district the max. density is restricted to 1 density unit per 25,000 sq.ft. of net lot area; 1 district requires a max. density of 1 density unit per 14,000 sq.ft. | 16763                                                            | 312.4                                             | 6.3                                             | 0.04%                                | Insufficient                  | 2                         |
| North Salem  | 152                                 | 74 <sup>18</sup>                      | 48.7%                  | 4                 | 307                                                                        | 381                                | 250.7%                                       | Yes                                                                             | MF developments must be on lots of at least 5 acres. In 2 MF districts, the max. density is 4 units per acre or 6                                                                                                                                                                                                                                                | 14864                                                            | 142.7                                             | 77.3                                            | 0.5%                                 | Insufficient                  | 1                         |

<sup>17</sup> A developer is seeking approvals as part of the pending Chappaqua Crossing development, which will include 20 affordable units. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013). Another developer is seeking approvals for a proposed 28-unit affordable housing development on Hunts Place. *Id.*

<sup>18</sup> A developer is currently seeking approvals to build 102 units of affordable housing on a site on Route 22. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013). Another developer is seeking approvals to build 2 affordable units on a different site on Route 22. See Ex. O, *Westchester County 2013 2Q Report*, at App'x I-1, 2Q 2013 AFFH Sites Progress List (submitted July, 19, 2013).

Chart of Zoning Data for Berenson Test Prong 2

| Municipality  | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                                                                                                                                                                                                                                                                                     | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|---------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|               | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                                                                                                                                                                                                                                                                         | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
|               |                                     |                                       |                        |                   |                                                                            |                                    |                                              |                                                                                 | multifamily units per acre. 1 of the MF districts is for senior housing with assisted living only; 1 of the MF districts is limited to lots of 160,000 sq. ft., but is reduced to 5,000 sq.ft. for affordable units.                                                                                                |                                                                  |                                                   |                                                 |                                      |                               |                           |
| Ossining      | 113                                 | 5                                     | 4.4%                   | 19                | 0                                                                          | 5                                  | 4.4%                                         | No                                                                              | Only allow for MF housing by SP and must be in lots of at least 40,000 sq.ft.                                                                                                                                                                                                                                       | 1945                                                             | 0                                                 | 0                                               | 0%                                   | Insufficient                  | 3                         |
| Pelham        | 74                                  | 3                                     | 4.1%                   | 20                | 54                                                                         | 57                                 | 77%                                          | Yes                                                                             | 3 MF districts are commercial districts.                                                                                                                                                                                                                                                                            | 531                                                              | 32.8                                              | 1.1                                             | 0.2%                                 | Sufficient                    | 2                         |
| Pelham Manor  | 101                                 | 0*                                    | 0%                     | 24                | 0                                                                          | 0                                  | 0%                                           | Yes                                                                             | Only 1 district of 10. No MF by SP.                                                                                                                                                                                                                                                                                 | 871                                                              | 24.4                                              | 0                                               | 0%                                   | Insufficient                  | 3                         |
| Pleasantville | 129                                 | 56 <sup>19</sup>                      | 43.4%                  | 7                 | 10                                                                         | 66                                 | 51.2%                                        | Yes                                                                             | SP districts are limited to 2 bedrooms per dwelling unit.                                                                                                                                                                                                                                                           | 1148                                                             | 114.2                                             | 1                                               | 0.1%                                 | Insufficient                  | 2                         |
| Pound Ridge   | 184                                 | 12                                    | 6.5%                   | 17                | 23                                                                         | 35                                 | 19%                                          | Yes                                                                             | MF development as-of-right only allowed in commercial districts as mixed-use developments limited to 2,500 sq.ft. max. coverage per building and max. height of 2 or 3 stories. SP districts are restricted to senior housing or residential care facilities w min. lot sizes ranging from 1 to 3 acres, precluding | 14771                                                            | 43.8                                              | 3.6                                             | 0.02%                                | Insufficient                  | 3                         |

<sup>19</sup> Developers are seeking approvals to construct another nine affordable housing units (seven within a 70-unit mixed-income multifamily housing development on Washington Avenue, plus a proposed two-family home). See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013).

Chart of Zoning Data for Berenson Test Prong 2

| Municipality | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                                                                                                                                                                                                                                                                  | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|--------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|              | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                                                                                                                                                                                                                                                      | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
|              |                                     |                                       |                        |                   |                                                                            |                                    |                                              |                                                                                 | development of small multifamily developments. Senior housing may not contain more than 50 dwelling units.                                                                                                                                                                                       |                                                                  |                                                   |                                                 |                                      |                               |                           |
| Rye          | 167                                 | 27                                    | 16.2%                  | 13                | 38                                                                         | 65                                 | 38.9%                                        | Yes                                                                             | 1 district is for senior and handicapped housing only. 1 district is restricted to 2 historic properties and cannot contain more than 9 multifamily dwelling units. MF buildings may contain no more than 6 dwelling units per floor and cannot exceed 120 feet in maximum horizontal dimension. | 3738                                                             | 201.2                                             | 1.6                                             | 0.04%                                | Sufficient                    | 2                         |
| Rye Brook    | 171                                 | 64 <sup>20</sup>                      | 37.4%                  | 8                 | 38                                                                         | 102                                | 59.6%                                        | Yes                                                                             | 1 MF district limits MF to existing parcels of 15 to 20 acres. 2 MF districts are floating districts. 1 SP district is for MF senior housing.                                                                                                                                                    | 2224                                                             | 344.2                                             | 1.2                                             | 0.1%                                 | Insufficient                  | 2                         |
| Scarsdale    | 160                                 | 0 <sup>*21</sup>                      | 0%                     | 24                | 0                                                                          | 0                                  | 0%                                           | Yes                                                                             | None                                                                                                                                                                                                                                                                                             | 4278                                                             | 15.6 <sup>22</sup>                                | 0 <sup>23</sup>                                 | 0%                                   | Sufficient                    | 2                         |

<sup>20</sup> A developer is seeking approvals for 13 units of affordable housing at a site on North Ridge Street. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013).

<sup>21</sup> Developers are currently seeking approvals to construct five affordable housing units in Scarsdale: four affordable SROs as part of a 138-unit development on Saxon Woods Road and one affordable unit as part of an 11-unit development on Weaver Street. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013).

<sup>22</sup> The Methodology III-C-2 Table included only three districts as permitting multifamily housing as-of-right, which are mapped over 15.6 acres, or 0.4% of Scarsdale's land area. See Ex. E. The County's July 2013 zoning analysis adds four additional districts. Ex. I, Town/Village of Scarsdale Zoning Analysis, at Figure 7, Eighth Zoning Submission, dated July 23, 2013. The estimates of acreage by zoning district in the Racial Composition Table indicate that the Business A, VCR-2.0, VCR-1.0 and VCO-2.0 districts contain another 6.7 acres, bringing the total to 22.5 acres, or 0.5% of the Village's land area. Ex. K, Racial Composition Table, Village of Scarsdale – 2000 & 2010 Census Data (submitted Aug. 15, 2012).

<sup>23</sup> The analysis has been performed only on the areas zoned Res C, PUD-1 and PUD8-1.4, the districts identified by the County as allowing multifamily housing as-of-right in Ex. F, Town/Village of Scarsdale Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012).

Chart of Zoning Data for Berenson Test Prong 2

| Municipality | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                                                                                                                                                                       | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|--------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|              | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                                                                                                                                                           | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
| Somers       | 224                                 | 149 <sup>24</sup>                     | 66.5%                  | 1                 | 260                                                                        | 409                                | 182.6%                                       | Yes                                                                             | 1 MF district requires 500 acre min. site size; 2 MF districts min. lot of 10 acres; 1 MF has max. 3 density units per acre; 1 MF has max. 2 density units per acres; 2 districts limit to 2 bedrooms | 20583                                                            | 1,499                                             | 73.9                                            | 0.4%                                 | Insufficient                  | 1                         |
| Tarrytown    | 111                                 | 66                                    | 59.5%                  | 2                 | 50                                                                         | 116                                | 104.5%                                       | Yes                                                                             | 1 MF district is for mixed-use only with max. 55% of floor area for residential use.                                                                                                                  | 1972                                                             | 363.8                                             | 2.3                                             | 0.1%                                 | Sufficient                    | 1                         |
| Tuckahoe     | 56                                  | 6                                     | 10.7%                  | 15                | 17                                                                         | 23                                 | 41.1%                                        | Yes                                                                             | MF development as-of-right only in 2 districts. In 1 district, MF must be apartments w min of 7 units or townhouses w max of 7 units and must be on lots of at least 12,000 sq.ft.                    | 383                                                              | 42                                                | 0.7                                             | 0.2%                                 | Sufficient                    | 2                         |
| Yorktown     | 378                                 | 169                                   | 44.7%                  | 6                 | 479                                                                        | 648                                | 171.4%                                       | Yes                                                                             | 1 MF district is for senior housing; 1 SP district is for either senior housing or conversion of existing homes constructed prior to 1930 and restricts the min. lot size to 15 acres.                | 25186                                                            | 386.5                                             | 40                                              | 0.2%                                 | Insufficient                  | 1                         |

<sup>24</sup> A developer is seeking approvals for 72 units of affordable housing on Route 6, which would be known as the Green at Somers. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013). After the Monitor sent the Town of Somers a supplemental information request on September 6, 2013 regarding the status of this proposed development, see Ex. T, Letter from James E. Johnson to the Town of Somers Supervisor Mary Beth Murphy, dated Sep. 6, 2013, the Town responded that it has not adopted an amendment to its zoning code that would be required for this development to move forward. Ex. U, Letter from Town of Somers Supervisor to James E. Johnson, at 2, dated Sep. 10, 2013. In its letter, the Town did note, however, that a developer has applied to build a 60 unit development in the Somers Hamlet on Route 100 and 202, in which "the Town Board will require a percentage of the units [to] be affordable." *Id.* Another developer has applied to build 45 town homes near Mahopac Avenue and Route 6, which would include "eight affordable town homes with an additional affordable apartment attached for a total of 16 affordable units." *Id.*

Chart of Municipal Rebuttal Factors under *Berenson* Test<sup>1</sup>

| Municipality   | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                               | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                  |                                                              |                                   |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|-----------------------------------|------------------------------------|-----------------------------------------------------|---------------------------|---------------------------|----------------------------|-----------------------------------|
|                | Incentives                                                                                                                                                                                                                                                                                                                                                                                      | Mandates                                                                                                                                                                                                                                                                                                                                                                                                                                      | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                  | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup>    | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
| <b>Ardsley</b> | <b>[Score: 1]</b><br>The otherwise applicable min. lot area requirement for a single-family home is reduced by 25% for an affordable housing unit. Although 2-family homes are not otherwise permitted in single-family zoning districts, an affordable 2-family home may be located on a lot that meets the otherwise applicable min. lot area requirement for a single-family home. In the MF | <b>[Score: 1]</b><br>In all districts, all residential developments of 10 or more units must have at least 10% of the units be affordable. In residential developments of 5 to 9 units, at least 1 unit must be affordable. The MF overlay district mandates that 20% of units must be workforce housing for emergency service, public service, and quality of life occupations workers, and another 20% of units must be affordable housing. | <b>[Score: 3]</b><br>Accessory apartments are not allowed in any district. Preferences for Ardsley residents etc. in workforce housing developments. 1 MF district is an overlay district. MF SP only allowed in connection with conversion of former school (not available anymore); Cluster district only allows apartment development of only 6 | <b>No</b>                                                    | <b>Yes</b><br>but only 1 district | <b>Yes</b><br>workforce housing    | <b>No</b>                                           | <b>2</b>                  | <b>2</b>                  | <b>2</b>                   | <b>2</b>                          |

<sup>1</sup> If a municipality's zoning ordinance is exclusionary under either or both prongs of the *Berenson* test, there must be a showing that the zoning practices are, in actuality, not exclusionary. *Robert E. Kurzius, Inc. v. Incorporated Vil. of Upper Brookville*, 51 N.Y.2d 338, 345 (N.Y. 1980); *Allen v. Town of N. Hempstead*, 103 A.D.2d 144, 147 (N.Y. App. Div. 2d Dep't 1984).

<sup>2</sup> Score of 1 = The zoning ordinance has provisions that are equal to or better than the model ordinance. *See* Ex. B, Westchester County Implementation Plan, Appendix D-1(i): Model Ordinance Provisions. Score of 2 = The zoning ordinance has provisions that are similar to the model ordinance, but the provisions are not as inclusive. Score of 3 = The zoning ordinance does not provide the relevant provisions.

<sup>3</sup> Although incentives such as density bonuses or provisions allowing accessory apartments or multifamily housing development may suggest that a zoning ordinance is not exclusionary, these provisions must not be "intrinsically narrow in scope [such that they] do very little to genuinely address the established need for multifamily housing." *Cont'l Bldg. Co. v. Town of N. Salem*, 211 A.D.2d 88, 94 (N.Y. App. Div. 3d Dep't 1995); *Land Master Montg I, LLC v. Town of Montgomery*, 821 N.Y.S.2d 432, 440 (N.Y. Sup. Ct. Orange Cnty. 2006) (citation omitted).

<sup>4</sup> Category 1 = Not exclusionary because the municipality provides a well-ordered plan for its community. Category 2 = Not exclusionary, but warrants improvement. Category 3 = Exclusionary because the municipality does not provide a well-ordered plan for its community.

<sup>5</sup> Category 1 = Not exclusionary because the municipality has considered and has the potential to satisfy regional need. Category 2 = Not exclusionary, but warrants improvement. Category 3 = Exclusionary because the municipality has not considered and does not have the potential to satisfy its fair share of regional need.

<sup>6</sup> Category 1 = Rebuttal successful because the zoning ordinance provides a wide array of affordable housing opportunities sufficient to meet local and regional need. Category 2 = Rebuttal may be sufficient, but the zoning ordinance warrants improvement. Category 3 = Rebuttal unsuccessful because the zoning ordinance, though it may have provisions addressing affordable housing opportunities, is too narrow in scope to provide genuine opportunities sufficient to meet local and regional need.

<sup>7</sup> Category 1 = Municipalities whose zoning ordinances meet prong one and prong two of the *Berenson* analysis and are therefore not exclusionary. Category 2 = Municipalities whose zoning ordinances do not necessarily meet either prong of the *Berenson* analysis, but certain other factors provide a rebuttal to the presumption that their ordinances are exclusionary. Category 3 = Municipalities whose zoning ordinances fail either prong one or two of the *Berenson* analysis and where there are insufficient factors to provide for a viable rebuttal against a finding of exclusionary zoning.

<sup>8</sup> This column examines other ordinance provisions such as prohibitions on accessory uses and special permit restrictions. If the municipality receives a score of 1, the provisions are some of the least restrictive practices. A score of 3 means the municipality has some of the most restrictive practices.

<sup>9</sup> Zoning ordinances that provide a wide array of affordable housing opportunities via special permits "create[] the illusion of affordable housing availability," but vest a large amount of discretion in municipal officials and are therefore insufficient. *Land Master Montg I, LLC*, 821 N.Y.S.2d at 440.

<sup>10</sup> *Cont'l Bldg. Co.*, 211 A.D.2d at 94.

<sup>11</sup> *Allen*, 103 A.D.2d at 148; *Triglia v. Town of Cortlandt*, No. 17976/96, 1998 WL 35394393, at \*6 (N.Y. Sup. Ct. Westchester Cnty. Jan. 6, 1998).

<sup>12</sup> *Cont'l Bldg. Co.*, 211 A.D.2d at 94.

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                   | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|--------------------------------|------------------------------------|-----------------------------------------------------|---------------------------|---------------------------|----------------------------|-----------------------------------|
|              | Incentives                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Mandates                                                                                                                                                                                                                                                                          | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
|              | overlay district, the Village may waive fees or provide assistance in obtaining additional local, state or federal funds for a multifamily development that includes 20% or more of workforce and/or affordable housing units.                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                   | units attached, semidetached or clustered with assisted living facilities. No more than 25% of the units may contain more than 3 bedrooms in the cluster district.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                              |                                |                                    |                                                     |                           |                           |                            |                                   |
| Bedford      | <p><b>[Score: 1]</b></p> <p>In a development where at least 20% of residential units are affordable, the Planning Board may waive or reduce fees, provide local assistance or actively assist in procuring federal, state or other agency support for affordable housing. In these affordable or mixed-income developments, the Town allows a reduction of dimensional requirements of not more than 25%, and shared parking to reduce infrastructure costs.</p> | <p><b>[Score: 1]</b></p> <p>At least 20% of any multifamily development in any multifamily residential zoning district must be affordable units. In all residential developments of 5 or more units in single-family districts, at least 10% of all units must be affordable.</p> | <p><b>[Score: 2]</b></p> <p>Accessory units are not allowed as-of-right. By special permit they may only be in existing homes, not in accessory buildings. The accessory apartment shall contain at least 400 sq.ft. but not more than 800 sq.ft. of gross floor area and shall not exceed 25% of the total floor area of the principal residence structure. There can be no more than 1 accessory apartment per lot and no more than 5 residents per lot. 1 MF district requires min. lot size of 2 acres. For MF by SP, can develop in 1 district or elsewhere only by conversion in residences existing prior to Sep.1, 1985, on lots of less than 20,000 sq. ft.</p> | No                                                           | No                             | No                                 | No                                                  | 2                         | 2                         | 1                          | 2                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality     | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                           | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                        |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|                  | Incentives                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Mandates                  | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                        | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
| Briarcliff Manor | <b>[Score: 2]</b><br>1 district provides a 50% increase in the usually applicable max. dwelling-units-per-acre density if at least 50% of the units are moderate income dwelling units, but has preference given to employees of the Village or the school district, residents of the Village, members of the fire department, former residents who still own residential property in the Village, other persons employed in the Village, relatives of Village residents and other Westchester residents | <b>[Score: 3]</b><br>None | <b>[Score: 2]</b><br>1 MF district is commercial and only allows mixed-use development, where residential use must not exceed 80% of the gross floor area, and no ground floor dwelling units shall front any public right-of-way. 1 MF district is intended for elderly communities. SP for MF and 2-family homes are only allowed for conversion of an existing house on a parcel of 10 or more acres. | Yes                                                          | Yes                            | Yes                                | Yes                                                 | 2                         | 2                         | 3                          | 2                                 |
| Bronxville       | <b>[Score: 3]</b><br>None                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <b>[Score: 3]</b><br>None | <b>[Score: 3]</b><br>No specific reference to affordable housing in the zoning code. New accessory apartments are not listed as a permitted use as-of-right or by SP in any district, contrary to what is indicated in the County's Municipal Zoning Analysis Appendix Table, although existing accessory apartments are grandfathered, permitted non-conforming uses.                                   | No                                                           | No                             | No                                 | No                                                  | 2                         | 2                         | 3                          | 2                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality | Model Ordinance <sup>2</sup> |                    | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
|--------------|------------------------------|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|--------------------------------|------------------------------------|-----------------------------------------------------|---------------------------|---------------------------|----------------------------|-----------------------------------|
|              | Incentives                   | Mandates           | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
| Buchanan     | [Score: 3]<br>None           | [Score: 3]<br>None | [Score: 2]<br>Accessory apartments limited to only 1 bedroom units, between 300 and 600 sq.ft. in size and not to exceed 33% of the gross area of the building. MF as-of-right is only in 2 commercial districts and is limited to mixed-use development; the residential use must be in the back of or above a commercial establishment w a max. of 4 dwellings per acre. SP may be granted in 2 commercial districts for multifamily or 2-family dwellings without commercial use but the districts require parcels of land not less than 40,000 sq.ft., each dwelling unit contains a min. of 750 sq.ft., the max. density is 5 dwelling units per 40,000 sq.ft., and the parcel must adjoin a residentially zoned district. | No                                                           | No                             | No                                 | Yes                                                 | 2                         | 2                         | 3                          | 2                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality     | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                               | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|                  | Incentives                                                                                                                                                                                                                                                                                                                    | Mandates                                                                                                                                                                                                                                                                                                      | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
| Cortlandt        | <b>[Score: 2]</b><br>In 1 special district, if higher than 10% of affordable housing is provided, density may be increased by 66% (from 3 units / 6 bedrooms per acre to 5 units / 10 bedrooms per acre). In RRSP district, the new housing may be developed at a density of up to 20% greater than the existing development. | <b>[Score: 2]</b><br>In 1 special district, at least 10% of the final unit count must be affordable. All senior housing units in 1 special district must meet the Westchester County definition of affordability. In a RRSP development, all new units above the existing number of units must be affordable. | <b>[Score: 2]</b><br>Accessory units require SP approval. Although accessory units are permitted by special permit in 9 zoning districts (representing all but one multifamily district), in some districts a 1-bedroom / 2-occupant restriction forestalls the ability of families of three or more persons to be potential residents. The only MF district is restricted to 3- and 4-family dwelling w max. of 2 bedrooms per unit; 1 special MF district is not mapped; 1 special MF district is limited to senior housing. Some of the multifamily housing is only allowed at very low densities, less than 3 units per acre in one case, and up to 10 bedrooms per acre in another case. | Yes                                                          | Yes<br>But only 1 district     | No                                 | Yes                                                 | 1                         | 2                         | 3                          | 2                                 |
| Croton-on-Hudson | <b>[Score: 2]</b><br>1 district permits an increase in density of 5% of the number of market-rate units if the additional units are affordable; 1 overlay district permits a 10% increase in density over the underlying residential districts requirements.                                                                  | <b>[Score: 3]<br/>None</b>                                                                                                                                                                                                                                                                                    | <b>[Score: 2]</b><br>Accessory apartments may only be in existing buildings and the owner or lessee must be at least 55 years old. Only 1 accessory apartment is allowed per unit and it must be at least 400 sq.ft. but not greater than the lesser of 750 sq.ft. or 1/3 of the habitable floor area                                                                                                                                                                                                                                                                                                                                                                                         | No                                                           | Yes<br>accessory units         | No                                 | Yes<br>incentives                                   | 2                         | 3                         | 3                          | 3                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality | Model Ordinance <sup>2</sup> |                                                                                                                                                                                 | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                     |                                                              |                                |                                    | Prong 1 Rank <sup>4</sup>                           | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|              | Incentives                   | Mandates                                                                                                                                                                        | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                     | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                            |                                   |
|              |                              |                                                                                                                                                                                 | of the dwelling. 1 MF district is an overlay district intended to simplify the development of large tracts of 10 or more contiguous acres and permits as-of-right multifamily housing consistent with the underlying districts. SP district is also an overlay district dependent on underlying districts permitted uses, unless in 1 of 3 residential districts.     |                                                              |                                |                                    |                                                     |                           |                            |                                   |
| Dobbs Ferry  | [Score: 3]<br>None           | [Score: 1]<br>At least 10% of all residential developments of more than 10 units must be affordable. Offers alternative to meet requirement either off-site or through payment. | [Score: 3]<br>Village Code explicitly states that accessory dwelling units are illegal in the Village. All but 1 MF district requires min. lot size per unit ranging from low of 800 sq.ft. to a high of 6,000 sq.ft., and min. lot area of 5,000 sq.ft.                                                                                                              | No                                                           | No                             | No                                 | No                                                  | 1                         | 2                          | 2                                 |
| Eastchester  | [Score: 3]<br>None           | [Score: 2]<br>15% of units must be affordable in the SP district limited to senior housing                                                                                      | [Score: 3]<br>Accessory dwelling units are not permitted. In 1 mixed-use district, the commercial use may not take up more than 50% of the total floor area, and may only be located on the ground floor. SP district is limited to senior housing with max. 2 occupants in efficiency and 1 bedroom units and 3 occupants in 2 bedroom units and has preferences for | No                                                           | Yes<br>but only 1 district     | Yes<br>but only 1 district         | Yes<br>mandate only for 1 district                  | 1                         | 2                          | 3                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality       | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                               | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                          |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|                    | Incentives                                                                                                                                                                                                                                                                                                                                                                                                                     | Mandates                                                                                                                                                                                                                                      | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                          | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
|                    |                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                               | Eastchester residents and relatives. The max. density for senior housing is 1 unit per 700 sq.ft., which yields approximately 60 units per acre.                                                                                                                                                                                                                                                                           |                                                              |                                |                                    |                                                     |                           |                           |                            |                                   |
| Harrison           | [Score: 3]<br>None                                                                                                                                                                                                                                                                                                                                                                                                             | [Score: 3]<br>None                                                                                                                                                                                                                            | [Score: 3]<br>Accessory apartments are prohibited.                                                                                                                                                                                                                                                                                                                                                                         | N/A                                                          | N/A                            | N/A                                | N/A                                                 | 2                         | 3                         | 3                          | 3                                 |
| Hastings-on-Hudson | [Score: 1]<br>If a single-family home is to be an affordable housing unit, the minimum lot size is reduced by 25%. Planning Board may increase density requirements by 10% if, for every market rate unit in excess of the usually applicable max., one affordable housing unit is also provided.                                                                                                                              | [Score: 1]<br>At least 10% of any development of eight or more units must be affordable and at least 5% more must be either affordable or workforce. Alternative of meeting mandate either off-site or by contributing to housing trust fund. | [Score: 1]<br>Accessory units are permitted in existing buildings. Only affordable accessory housing units are permitted in newly constructed single-family homes and are limited to one bedroom, while other accessory units can include up to two bedrooms.                                                                                                                                                              | No                                                           | No                             | No                                 | No                                                  | 1                         | 1                         | 1                          | 1                                 |
| Irvington          | [Score: 2]<br>Each single-family affordable housing unit may be located on a lot meeting 75% of the otherwise applicable min. lot area. Each affordable 2-family home may be located on a lot meeting the min. lot area applicable to a single-family home. For SP below-market-rate units developed in 1 district, Village increases the allowable number of housing units and issues a waiver of site capacity requirements. | [Score: 1]<br>Any development of more than 10 units must include 10% affordable units, and any development of 5 to 9 units must include at least 1 affordable unit.                                                                           | [Score: 2]<br>Accessory units are permitted as-of-right in single-family zoning districts, but only on lots of at least 60,000 sq.ft., and occupancy is restricted to the son or daughter of the primary building residents. The zoning code has a special permit for below-market-rate units developed in 1 district, but these units are limited to Village employees, fire/EMS volunteers and resident senior citizens. | No                                                           | No                             | Yes<br>but only 1 district         | No                                                  | 2                         | 2                         | 2                          | 2                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality | Model Ordinance <sup>2</sup>                                                                                                                                    |                    | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|--------------------------------|------------------------------------|-----------------------------------------------------|---------------------------|---------------------------|----------------------------|-----------------------------------|
|              | Incentives                                                                                                                                                      | Mandates           | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
| Larchmont    | [Score: 3]<br>None                                                                                                                                              | [Score: 3]<br>None | [Score: 3]<br>Accessory housing is not listed as a permitted use. No single-family house can be smaller than 1,000 sq.ft. outside of the multifamily districts, and 1,400 sq.ft. in most of the Village, which forestalls cottage-style housing. 2 MF and two-family districts are commercial allowing mixed-use development only. MF buildings cannot be larger than 20 unit or taller than 2.5 stories. SP district is for townhouse developments restricted to cites of 6 or more acres, w no more than 2 bedrooms per townhouse dwelling. | N/A                                                          | N/A                            | N/A                                | N/A                                                 | 2                         | 2                         | 3                          | 2                                 |
| Lewisboro    | [Score: 2]<br>In only MF district, density may be increased by up to 40% if the applicant builds at least 1/3 of the additional density as middle-income units. | [Score: 3]<br>None | [Score: 2]<br>Accessory apartments cannot contain more than two bedrooms or four occupants and must be on lots of at least ½ acre. Accessory dwelling residences are allowed by SP on lots of at least 20 acres. The only MF district requires min. lot size for developments served by public water and sewer infrastructure of 15,000 sq.ft. If a development will not be served by public water and sewer, the min. lot size is 15 acres. The max. permitted density is 2                                                                  | No                                                           | No                             | No                                 | Yes                                                 | 3                         | 3                         | 3                          | 3                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality   | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                         | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                                                                        |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|                | Incentives                                                                                                                                                                                                                                                                                                                                                                            | Mandates                                                                                                                                                                                                                                                                                                                                                                                                                                | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                                                                        | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
|                |                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                         | density units per acre.                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                              |                                |                                    |                                                     |                           |                           |                            |                                   |
| Mamaroneck     | [Score: 3]<br>None                                                                                                                                                                                                                                                                                                                                                                    | [Score: 2]<br>1 district requires that one of every 17 dwelling units must be workforce housing occupied permanently by individuals or families whose household incomes do not exceed 80 percent of the Westchester County area median income.                                                                                                                                                                                          | [Score: 3]<br>Accessory apartments are prohibited, with the exception of accessory buildings or trailers for domestic employees in single-family zoning districts. 1 MF district limits MF development to 1 3 bedroom unit for every 25 dwelling units, and has a min. lot size of 80,000 sq.ft. 1 MF district may have no more than an average of 2 bedrooms per unit, and no unit may have more than 3 bedrooms. SP district is for new, large mixed-use developments. | No                                                           | No                             | No                                 | Yes                                                 | 3                         | 3                         | 3                          | 3                                 |
| Mount Pleasant | [Score: 2]<br>5 MF districts permit a density bonus of up to 1/3 beyond the basic permitted density if the applicant provides affordable housing. There is no guidance regarding whether all or some percentage of the units must be affordable for the development to qualify for the bonus, nor are there any provisions regarding the location or quality of the affordable units. | [Score: 2]<br>Except for the maximum costs established for certain units in a single specified project, the residential conversion of a former school (units in the building may be set aside for seniors or those under 29 years of age who are either Town residents or their parents or children and that any such units must be sold at specified below-market prices), the Town has established no mandate for affordable housing. | [Score: 3]<br>Accessory apartments are permitted only by special permit, in existing buildings at least 10 yrs. old, and with a maximum of 600 sq. ft. Transitional districts restrict the number of bedrooms per unit in a development to an average of 2, with no more than 3 and no less than 1 bedroom. 1 MF district is commercial, is not mapped and requires min. site size of 100 acres; 1 MF district converted a                                               | No                                                           | Yes<br>but only 1 development  | Yes<br>but only 1 development      | Yes<br>but only mandate                             | 2                         | 2                         | 2                          | 2                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                  | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|              | Incentives                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Mandates                                                                                                                                                                                                                                                                                                                                                                                                                         | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
|              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                  | school to dwelling units for seniors over 62 or families under 29 provided the development averages 750 sq.ft. The units were set aside for residents or parents or children of residents on the basis of economic and social need – criteria set by Town Board. 6 transitional districts restrict to average of 2 bedrooms with no more than 3 and no less than 1 bedroom. The 3 MF SP districts only allows multifamily housing if it is part of a conversion of an existing building.                       |                                                              |                                |                                    |                                                     |                           |                           |                            |                                   |
| New Castle   | <b>[Score: 1]</b><br>For affordable single-family homes, the usually applicable min. lot size is reduced by 25%. In a single-family home district, a 2-family home including an affordable unit may occupy a lot meeting the specified min. lot size for a single-family home. At the discretion of the Planning Board, density bonuses of up to 100% beyond the basic permitted density may be awarded in 1 district in exchange for the development of special features or facilities, including affordable units. Density bonuses may be considered in 1 district, but the ordinance is silent about the | <b>[Score: 1]</b><br>In 3 MF districts, within any multifamily development of 10 or more units, at least 10% must be affordable, and within any multifamily development of 5 to 9 units, at least 1 unit must be affordable. Within subdivisions of 10 or more building lots, affordable units must occupy at least 10% of the lots. Within subdivisions of 8 or 9 building lots, an affordable unit must occupy at least 1 lot. | <b>[Score: 1]</b><br>The zonig code has a provision for workforce housing, which does not allow for multifamily developments, but is restricted to mixed-use developments. The regulations regarding workforce housing units specify that no workforce units may be built within a tenth of a mile of 5 other workforce units and that such units have a max. unit size of 2 bedrooms. 1 MF district is an unmapped floating district. Min. lot area for MF developments ranges from 1 to 5 acres, though they | No                                                           | No                             | No                                 | No                                                  | 1                         | 2                         | 1                          | 2                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                           | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                                                                                        |                                                              |                                     |                                    | Prong 1 Rank <sup>4</sup>                           | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|              | Incentives                                                                                                                                                                                                                                                                                                                                                                                                     | Mandates                                                                                                                                                                                                                                                                                                                                                  | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                        | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup>      | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                            |                                   |
|              | purposes for which they may be awarded. Also has a workforce housing provision in 3 districts by SP.                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                           | may be reduced for affordable units.                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                              |                                     |                                    |                                                     |                           |                            |                                   |
| North Castle | <b>[Score: 2]</b><br>The maximum density in 1 district may be increased by up to 45% if more than 40% of the increase is built as middle-income units. In 1 district, the permitted density may be increased by not more than 40% if the applicant constructs at least 20% of the increase as middle-income dwelling units.                                                                                    | <b>[Score: 2]</b><br>At least 15% of permitted floor area ratio in 1 district must be set aside for middle-income units for seniors. At least 35% of units in a single structure in 1 district must be set aside for middle-income units. At least 20% of units in a single structure in 1 commercial district must be set aside for middle-income units. | <b>[Score: 1]</b><br>Accessory units are permitted in 4 districts up to 1 unit as-of-right, but need SP for more units. 5 MF districts allow stand-alone multiple housing developments. In 3 MF districts, the multifamily developments must be apartments on the second floor as part of a mixed-use development. 1 district the max. density is restricted to 1 density unit per 25,000 sq.ft. of net lot area; 1 district requires a max. density of 1 density unit per 14,000 sq.ft. | No                                                           | Yes<br>but only 1 district          | No                                 | Yes                                                 | 2                         | 2                          | 2                                 |
| North Salem  | <b>[Score: 1]</b><br>6 districts provide density bonuses of 25% for developments that provide more than the min. required number of affordable units, or, in subdivisions of less than 10 lots, a reasonable number. Bonuses of 20% may be awarded in 2 other districts. In 1 district, the min. required lot area for multifamily housing is reduced from 160,000 sq.ft. to 5,000 sq.ft for affordable units. | <b>[Score: 1]</b><br>At least 10% of all units in subdivisions of 10 or more units must be affordable. The requirement is increased to 20% in 4 of the MF districts.                                                                                                                                                                                      | <b>[Score: 2]</b><br>MF developments must be on lots of at least 5 acres. In 2 MF districts, the max. density is 4 units per acre or 6 multifamily units per acre. 1 of the MF districts is for senior housing with assisted living only; 1 of the MF districts is limited to lots of 160,000 sq. ft., but is reduced to 5,000 sq.ft. for affordable units. Mixed-use development is not permitted as-of-right in any zoning district.                                                   | No                                                           | Yes<br>but only 1 of 5 MF districts | No                                 | No                                                  | 1                         | 1                          | 1                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality | Model Ordinance <sup>2</sup>                                                                                                                                                      |                                                                                                                                                                                                                 | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                                                                                             |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|              | Incentives                                                                                                                                                                        | Mandates                                                                                                                                                                                                        | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                             | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
| Ossining     | <b>[Score: 2]</b><br>Density bonuses are awarded in residential districts and 1 commercial district, so long as 1/2 of the density awarded is made up of below-market rate units. | <b>[Score: 1]</b><br>Within all residential developments of 10 or more units, 10% must be below-market-rate units, and residential developments of 5 to 9 units must contain at least 1 below-market-rate unit. | <b>[Score: 3]</b><br>MF housing development, two-family homes and mixed-use development are not permitted as-of-right. Accessory apartments are permitted by SP but with restrictions. Mixed-use development allowed by SP must be on a lot of at least 20,000 sq.ft. w min. housing unit size of 850 sq.ft. for a studio, efficiency or 1 bedroom unit, 1,150 sq.ft. for a 2 bedroom unit, and 1,450 sq.ft. for a 3 bedroom unit. MF housing by SP must be in lots of at least 40,000 sq.ft. | Yes                                                          | No                             | No                                 | Yes                                                 | 2                         | 3                         | 3                          | 3                                 |
| Pelham       | <b>[Score: 3]</b><br>None                                                                                                                                                         | <b>[Score: 3]</b><br>None                                                                                                                                                                                       | <b>[Score: 3]</b><br>Accessory apartments are prohibited. 3 MF districts are commercial districts.                                                                                                                                                                                                                                                                                                                                                                                            | N/A                                                          | N/A                            | N/A                                | N/A                                                 | 2                         | 2                         | 3                          | 2                                 |
| Pelham Manor | <b>[Score: 3]</b><br>None                                                                                                                                                         | <b>[Score: 3]</b><br>None                                                                                                                                                                                       | <b>[Score: 3]</b><br>Accessory apartments and mixed-use development is prohibited. No single multifamily unit may be used to accommodate more than one family or household for each 3,000 square feet of lot area within the district, which translates into a max. density of 14 units per acre. On the min. lot size of 7,000 sq. ft., only a 2-family home could be built.                                                                                                                 | No                                                           | No                             | No                                 | Yes                                                 | 3                         | 3                         | 3                          | 3                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality  | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                               | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|               | Incentives                                                                                                                                                                                                                                                                                                                                                                                                                   | Mandates                                                                                                                                                                      | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
| Pleasantville | <b>[Score: 2]</b><br>For affordable occupied by a household that does not earn more than 50% of the Westchester County median income, have at least 1 occupant over the age of 62, and have a rent that does not exceed 30% of the annual gross household income, off-street parking requirements are waived for dwelling units that contain no more than 2 bedrooms, are rental units, and are designated affordable units. | <b>[Score: 1]</b><br>10% of any development of 10 or more units must be affordable units. 5% of assisted living facility units in 1 district must be set aside as affordable. | <b>[Score: 2]</b><br>A max. of 50 accessory apartments may be issued as of date the provision of the code was adopted, not including pre-existing ones. MF SP districts are limited to 2 bedrooms per dwelling unit.                                                                                                                                                                                                                                                                                                                                    | No                                                           | Yes                            | No                                 | Yes incentives                                      | 1                         | 2                         | 2                          | 2                                 |
| Pound Ridge   | <b>[Score: 1]</b><br>For affordable housing units, the minimum lot size for a single-family home is reduced by 25%. The Planning Board, at its discretion, may waive up to 50% of the otherwise applicable recreation fee for an affordable housing unit.                                                                                                                                                                    | <b>[Score: 1]</b><br>Within all residential developments of 10 or more dwellings, at least 10% of the units must be affordable.                                               | <b>[Score: 3]</b><br>Accessory units may not contain more than 2 bedrooms. 2 Family homes are not permitted in the town. MF development as-of-right only allowed in commercial districts as mixed-use developments limited to 2,500 sq.ft. max. coverage per building and max. height of 2 or 3 stories. SP districts are restricted to senior housing or residential care facilities w min. lot sizes ranging from 1 to 3 acres, precluding development of small multifamily developments. Senior housing may not contain more than 50 dwelling units. | Yes                                                          | Yes                            | No                                 | Yes                                                 | 2                         | 3                         | 3                          | 3                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality | Model Ordinance <sup>2</sup>                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                              | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                     |                                                              |                                   |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|              | Incentives                                                                                                                             | Mandates                                                                                                                                                                                                                                                                                                                                                                                                                     | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                     | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup>    | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
| Rye          | [Score: 3]<br>None                                                                                                                     | [Score: 3]<br>None                                                                                                                                                                                                                                                                                                                                                                                                           | [Score: 2]<br>Accessory units may only be granted by special permit. 1 district is for senior and handicapped housing only. 1 district is restricted to 2 historic properties and cannot contain more than 9 multifamily dwelling units. MF buildings may contain no more than 6 dwelling units per floor and cannot exceed 120 feet in maximum horizontal dimension. | Yes<br>for<br>accessory<br>apartment<br>s                    | Yes<br>but only for<br>1 district | No                                 | No                                                  | 1                         | 2                         | 3                          | 2                                 |
| Rye Brook    | [Score: 2]<br>Only in 2 floating zones that allow for the Board to waive or modify dimensional or bulk requirements at its discretion. | [Score: 1]<br>In all residential districts, at least 1 of each 10 units built in addition to the first 10 must be affordable. At least 25% of units of senior housing developments must be affordable, though senior housing needs a special permit and only either immediately adjacent to or south of Westchester Avenue. At least 50% of developments of 2 or more units in the FAH floating district must be affordable. | [Score: 3]<br>Accessory apartments and mixed-use development are prohibited throughout the Village, except that mixed-use developments are permitted in the FAH floating district. 1 MF district limits MF to existing parcels of 15 to 20 acres. 2 MF districts are floating districts. 1 SP district is for MF senior housing                                       | No                                                           | Yes<br>but only 1<br>district     | No                                 | No                                                  | 2                         | 2                         | 2                          | 2                                 |
| Scarsdale    | [Score:3]<br>None                                                                                                                      | [Score: 1]<br>All residential developments of 10 or more units must contain at least 10% affordable units. In a development of from 5 to 9 units,                                                                                                                                                                                                                                                                            | [Score: 3]<br>Accessory housing units are not permitted.                                                                                                                                                                                                                                                                                                              | No                                                           | No                                | No                                 | No                                                  | 2                         | 2                         | 2                          | 2                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality     | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                         | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|                  | Incentives                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Mandates                                                                                                                                                                                                                                                                | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
|                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | at least 1 unit must be affordable.                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                              |                                |                                    |                                                     |                           |                           |                            |                                   |
| <b>Somers</b>    | <p><b>[Score: 2]</b></p> <p>1 district allows a base number of density units to be increased by up to 50% if the development includes more than the required affordable component. One additional market-rate unit may be developed for each affordable unit in excess of the required 15%, but not to exceed 20%. In 1 district, if at least 50% of units in a development are affordable, the Town Board may permit a floor area ratio increase up to 50%, a reduction in the number of required parking spaces, and/or an increase in building height to 3 stories or 50 ft. Density bonuses of up to 10% may be awarded in 1 district if in the Town Board's judgment particular social, cultural, environmental, physical or economic needs of the community are to be served or substantial benefits are to be derived.</p> | <p><b>[Score: 2]</b></p> <p>The only Town-wide affordability mandate applies to senior housing. At least 15% of housing units must be affordable in 1 MF district.</p>                                                                                                  | <p><b>[Score: 3]</b></p> <p>Preference to Somers residents, municipal employees, volunteer firemen, policemen, school district employees, and former Town residents are provided for affordable units. 2-family dwellings are prohibited in the Town. The minimum site size is 500 acres in 1 district. The MF districts require a minimum lot area of 10 acres, 1 of these districts allows a max. of 3 density units per acre, the other allows 2 density units per acre. In 2 districts, residential units are limited to a max. of 2 bedrooms.</p> | <b>Yes</b><br>for incentives                                 | <b>Yes</b>                     | <b>Yes</b>                         | <b>No</b>                                           | <b>2</b>                  | <b>1</b>                  | <b>3</b>                   | <b>2</b>                          |
| <b>Tarrytown</b> | <p><b>[Score: 1]</b></p> <p>Density bonuses of up to 50% and waivers of land and building requirements may be awarded to developments that create more than the required number of affordable housing units. In 2 special waterfront</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <p><b>[Score: 1]</b></p> <p>In any residential development of 10 units or more, at least 10% of all units must be affordable. In residential developments of 8 or 9 units, at least 1 affordable unit must be created. In residential developments of 5 to 7 units,</p> | <p><b>[Score: 3]</b></p> <p>Accessory apartments are prohibited. 1 MF district is for mixed-use only with max. 55% of floor area for residential use.</p>                                                                                                                                                                                                                                                                                                                                                                                              | <b>No</b>                                                    | <b>No</b>                      | <b>No</b>                          | <b>No</b>                                           | <b>1</b>                  | <b>1</b>                  | <b>1</b>                   | <b>1</b>                          |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                      | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                          |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|              | Incentives                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Mandates                                                                                                                                                                                                                                                                                                                                                                                                                             | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                          | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
|              | districts, dimensional bonuses, including larger permitted frontage, coverage, width, setback and height measurements, as well as relaxed landscaping requirements, may be awarded to a developer that provides affordable housing.                                                                                                                                                                                                                                                        | payments in lieu of affordable units must be made.                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                            |                                                              |                                |                                    |                                                     |                           |                           |                            |                                   |
| Tuckahoe     | <b>[Score: 2]</b><br>For workforce housing, for which current residents and employees are given preferences, density bonuses are provided and the Planning Board may waive restrictions at its discretion. The workforce housing ordinance allows between 5 and 15% of the total number of units to be affordable, subject to the Planning Boards approval. The Village Board of Trustees may increase the number of workforce units to 20% of the units where such flexibility is needed. | <b>[Score: 3]</b><br>None                                                                                                                                                                                                                                                                                                                                                                                                            | <b>[Score: 3]</b><br>Accessory apartments are prohibited. MF development as-of-right only in 2 districts. In 1 district, MF must be apartments w min of 7 units or townhouses w max of 7 units and must be on lots of at least 12,000 sq.ft.                                                                                               | No                                                           | No                             | Yes                                | Yes                                                 | 1                         | 2                         | 3                          | 2                                 |
| Yorktown     | <b>[Score: 3]</b><br>None                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>[Score: 1]</b><br>At least 10% of the units in any new residential subdivision of land in any single-family zoning district shall be established as fair and affordable housing units. At least 10% of the units of any new multifamily residential development of 30 units or less in any multifamily residential zoning district shall be established as affordable units, and at least 15% of the units of any new multifamily | <b>[Score: 2]</b><br>Accessory housing units are not permitted as-of-right. 2-family housing is restricted to conversion of existing properties. 1 MF district is for senior housing. 1 MF SP district is for either senior housing or conversion of existing homes constructed prior to 1930 and restricts the min. lot size to 15 acres. | Yes<br>accessory units                                       | Yes<br>but only 1 district     | No                                 | No                                                  | 1                         | 1                         | 2                          | 1                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality | Model Ordinance <sup>2</sup> |                                                                                                                                         | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup> |                                                                          |                                   |                                       |                                                              | Prong<br>1<br>Rank <sup>4</sup> | Prong<br>2<br>Rank <sup>5</sup> | Rebuttal<br>Rank <sup>6</sup> | <i>Berenson</i><br>Test<br>Result <sup>7</sup> |
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|              | Incentives                   | Mandates                                                                                                                                | Example/Other Restrictive<br>Provisions <sup>8</sup>                              | Discretion<br>Overly<br>Vested in<br>Municipal<br>Officials <sup>9</sup> | Age<br>Restrictions <sup>10</sup> | Resident<br>Preferences <sup>11</sup> | Reach<br>Limited to<br>One or Few<br>Districts <sup>12</sup> |                                 |                                 |                               |                                                |
|              |                              | residential development of 31 units<br>or more in any multifamily<br>residential zoning district shall be<br>established as affordable. |                                                                                   |                                                                          |                                   |                                       |                                                              |                                 |                                 |                               |                                                |

Chart of Zoning Data for *Berenson* Test Prong 1<sup>1</sup>

| Municipality | Comprehensive Plan <sup>2</sup> |                              |                                                          |                                                 | Housing Types <sup>3</sup>                                                                                      |                                                                                                                                   |                        |                                                                       | Land Use: Quantity of Presently Available/Developed Housing <sup>4</sup> |                          |                 |                           |                            |                           | Ability to Meet Future Need <sup>5</sup> |                       |                    | Prong<br>1<br>Rank <sup>6</sup> |
|--------------|---------------------------------|------------------------------|----------------------------------------------------------|-------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|------------------------|-----------------------------------------------------------------------|--------------------------------------------------------------------------|--------------------------|-----------------|---------------------------|----------------------------|---------------------------|------------------------------------------|-----------------------|--------------------|---------------------------------|
|              | Has a<br>Comp.<br>Plan          | Whether<br>Adopted<br>& Year | Recognizes<br>Affordable<br>Housing<br>Need <sup>7</sup> | Addresses<br>Affordable<br>Housing <sup>8</sup> | Multi-<br>Family                                                                                                | Two<br>Family                                                                                                                     | Accessory<br>Apartment | Mixed<br>Use                                                          | Residential Use                                                          |                          | Multifamily Use |                           | Two or Three Family<br>Use |                           | Undeveloped Land<br>Zoned Multifamily    |                       | Potential<br>Units |                                 |
|              |                                 |                              |                                                          |                                                 |                                                                                                                 |                                                                                                                                   |                        |                                                                       | Acres                                                                    | % of<br>Total<br>Acreage | Acres           | % of Resi-<br>dential Use | Acres                      | % of Resi-<br>dential Use | Acres                                    | % of Multi-<br>family |                    |                                 |
| Ardsley      | Yes                             | Yes<br>1964                  | No                                                       | No                                              | As-of-<br>Right<br>1 dis-<br>trict; 1<br>overlay<br>district<br>SP<br>1 district<br>Clus-<br>ters<br>1 district | As-of-<br>Right<br>None,<br>but if<br>qualifies<br>as af-<br>fordable<br>then per-<br>mitted in<br>single-<br>family<br>districts | None                   | As-of-<br>Right<br>1 com-<br>com-<br>mercial<br>district <sup>9</sup> | 413.35                                                                   | 49.55%                   | 4.23            | 1%                        | 6.01                       | 1.5%                      | 2.7                                      | 0.3%                  | 19                 | 2                               |

<sup>1</sup> Under this prong, the municipality must “provide[] a properly balanced and well-ordered plan for the community.” *Berenson v. Town of New Castle*, 38 N.Y.2d 102, 110 (1975).

<sup>2</sup> The plan need not be written, but if it is, it may be considered by the court. *See Asian Ams. for Equality v. Koch*, 72 N.Y.2d 121, 131 (1988).

<sup>3</sup> The adequacy of municipal plans is examined by: (1) identifying the types of housing in each municipality; (2) specifying both quantity and quality of the available housing; (3) determining whether the housing meets the current local need for affordable housing; and (4) determining whether and what type of new construction is necessary to fulfill future needs in each municipality. *See Berenson*, 38 N.Y.2d at 110. SP = Special permit.

<sup>4</sup> *Id.* *See also Cont'l Bldg. Co. v. Town of N. Salem*, 211 A.D.2d 88, 92-93 (N.Y. App. Div. 3d Dep't 1995). The source of this data does not account for residential uses within mixed-use developments. Ex. J, Table 2 Residential Land Use Acreage by Municipality, *Land Use in Westchester*, at 17, 2010. The analysis of this prong also requires that the court analyze the quality of the available housing, however, the data collected thus far does not provide a means of doing so.

<sup>5</sup> *Berenson*, 38 N.Y.2d at 110. These columns refer to points (e) and (h) in the data sheets found in each municipal-specific report. *See* Ex. E, Methodology II-D(1) Table August 2012 (submitted Sep. 6, 2012); *id.* at Methodology II-C and II-D Map August 2012 (submitted Sep. 6, 2012). There is a lack of data to confirm that each municipality individually has a need for affordable housing development.

<sup>6</sup> Category 1 = Not exclusionary because the municipality provides a well-ordered plan for its community. Category 2 = Not exclusionary, but warrants improvement. Category 3 = Exclusionary because the municipality does not provide a well-ordered plan for its community.

<sup>7</sup> This column gives credit to those municipal plans that explicitly state that there is a need for affordable housing within the municipality or regionally.

<sup>8</sup> This column acknowledges municipal plans that address affordable housing, whether by way of mention that such housing should be considered or by more specific means amounting to detailed recommendations of how to develop affordable housing within the municipality.

<sup>9</sup> The County Planning Department's February 29, 2012, analysis of zoning in the County's municipalities is silent on the issue of mixed-use development in Ardsley, but a review of the Village's zoning ordinance reveals that upper floor residential use is permitted in the B-1 district. *Compare* Ex. F, Village of Ardsley Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012), with VILLAGE OF ARDSLEY CODE § 200-65.B(8).

Chart of Zoning Data for *Berenson Test Prong 1*

| Municipality        | Comprehensive Plan <sup>2</sup> |                              |                                                          |                                                 | Housing Types <sup>3</sup>                                                                                                                                                                                  |                                                                                                                                                                                                               |                        |                                                          | Land Use: Quantity of Presently Available/Developed Housing <sup>4</sup> |                          |                 |                           |                            |                           | Ability to Meet Future Need <sup>5</sup> |                       |                    | Prong<br>1<br>Rank <sup>6</sup> |
|---------------------|---------------------------------|------------------------------|----------------------------------------------------------|-------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|----------------------------------------------------------|--------------------------------------------------------------------------|--------------------------|-----------------|---------------------------|----------------------------|---------------------------|------------------------------------------|-----------------------|--------------------|---------------------------------|
|                     | Has a<br>Comp.<br>Plan          | Whether<br>Adopted<br>& Year | Recognizes<br>Affordable<br>Housing<br>Need <sup>7</sup> | Addresses<br>Affordable<br>Housing <sup>8</sup> | Multi-<br>Family                                                                                                                                                                                            | Two<br>Family                                                                                                                                                                                                 | Accessory<br>Apartment | Mixed<br>Use                                             | Residential Use                                                          |                          | Multifamily Use |                           | Two or Three Family<br>Use |                           | Undeveloped Land<br>Zoned Multifamily    |                       | Potential<br>Units |                                 |
|                     |                                 |                              |                                                          |                                                 |                                                                                                                                                                                                             |                                                                                                                                                                                                               |                        |                                                          | Acres                                                                    | % of<br>Total<br>Acreage | Acres           | % of Resi-<br>dential Use | Acres                      | % of Resi-<br>dential Use | Acres                                    | % of Multi-<br>family |                    |                                 |
| Bedford             | Yes                             | Yes<br>2002                  | Yes                                                      | Yes                                             | As-of-<br>Right<br>12<br>districts<br>SP<br>1 district<br>and<br>else-<br>where<br>by con-<br>version<br>in resi-<br>dences<br>existing<br>prior to<br>Sep.1,<br>1985,<br>on lots<br><<br>20,000<br>sq. ft. | As-of-<br>Right<br>12 dis-<br>tricts<br>SP<br>1 district<br>and<br>else-<br>where<br>by con-<br>version<br>in resi-<br>dences<br>existing<br>prior to<br>Sep.1,<br>1985,<br>on lots<br><<br>20,000<br>sq. ft. | SP<br>9 districts      | As-of-<br>Right<br>3 dis-<br>tricts                      | 13966.<br>46                                                             | 54.92%                   | 68.43           | 0.5%                      | 108.4<br>1                 | 0.8%                      | 2.7                                      | 0.01%                 | 45                 | 2                               |
| Briarcliff<br>Manor | Yes                             | Yes<br>2007                  | Yes                                                      | Yes                                             | As-of-<br>Right<br>2 dis-<br>tricts; 1<br>com-<br>mercial<br>district<br>SP<br>all resi-<br>dential<br>districts                                                                                            | SP<br>all resi-<br>dential<br>districts                                                                                                                                                                       | None                   | As-of-<br>Right<br>1 com-<br>com-<br>mercial<br>district | 1937.1<br>6                                                              | 50.62%                   | 88.05           | 4.6%                      | 4.98                       | 0.3%                      | 0.2                                      | 0.01%                 | 0                  | 2                               |

Chart of Zoning Data for *Berenson Test Prong 1*

| Municipality | Comprehensive Plan <sup>2</sup> |                        |                                                 |                                           | Housing Types <sup>3</sup>                                                                  |                              |                                                                                               |                                                                       | Land Use: Quantity of Presently Available/Developed Housing <sup>4</sup> |                    |                 |                      |                         |                      | Ability to Meet Future Need <sup>5</sup> |                   |                 | Prong 1 Rank <sup>6</sup> |
|--------------|---------------------------------|------------------------|-------------------------------------------------|-------------------------------------------|---------------------------------------------------------------------------------------------|------------------------------|-----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|--------------------------------------------------------------------------|--------------------|-----------------|----------------------|-------------------------|----------------------|------------------------------------------|-------------------|-----------------|---------------------------|
|              | Has a Comp. Plan                | Whether Adopted & Year | Recognizes Affordable Housing Need <sup>7</sup> | Addresses Affordable Housing <sup>8</sup> | Multi-Family                                                                                | Two Family                   | Accessory Apartment                                                                           | Mixed Use                                                             | Residential Use                                                          |                    | Multifamily Use |                      | Two or Three Family Use |                      | Undeveloped Land Zoned Multifamily       |                   | Potential Units |                           |
|              |                                 |                        |                                                 |                                           |                                                                                             |                              |                                                                                               |                                                                       | Acres                                                                    | % of Total Acreage | Acres           | % of Residential Use | Acres                   | % of Residential Use | Acres                                    | % of Multi-family |                 |                           |
| Bronxville   | Yes                             | Yes 2009               | No                                              | No but 2002 plan did                      | As-of-Right<br>3 districts; 1 commercial district                                           | None                         | None although existing accessory apartments are grandfathered, permitted non-conforming uses. | As-of-Right<br>all retail districts                                   | 387.37                                                                   | 62%                | 33.67           | 8.7%                 | 2.14                    | 0.5%                 | 0                                        | 0%                | 0               | 2                         |
| Buchanan     | Yes                             | Yes 2005               | No                                              | Yes                                       | As-of-Right<br>2 commercial districts<br>SP<br>2 commercial districts                       | SP<br>2 commercial districts | SP<br>in residential and commercial districts                                                 | As-of-Right<br>2 commercial districts<br>SP<br>2 commercial districts | 225.29                                                                   | 24.17%             | 3.18            | 1.4%                 | 24.32                   | 10.8%                | 3.6                                      | 0.4%              | 7               | 2                         |
| Cortlandt    | Yes                             | Yes 2004               | No                                              | Yes                                       | As-of-Right<br>1 district, 2 special districts<br>SP<br>1 district<br>Cluster<br>1 district | None                         | SP<br>9 districts                                                                             | As-of-Right<br>1 district                                             | 8064.3<br>1                                                              | 36.41%             | 412.3<br>5      | 5.1%                 | 243.9                   | 3%                   | 15.7                                     | 0.1%              | 60              | 1                         |

Chart of Zoning Data for *Berenson Test Prong 1*

| Municipality           | Comprehensive Plan <sup>2</sup> |                              |                                                          |                                                 | Housing Types <sup>3</sup>                                                                        |                                                            |                                                     |                                                                                               | Land Use: Quantity of Presently Available/Developed Housing <sup>4</sup> |                          |                 |                           |                            |                           | Ability to Meet Future Need <sup>5</sup> |                       |                    | Prong<br>1<br>Rank <sup>6</sup> |
|------------------------|---------------------------------|------------------------------|----------------------------------------------------------|-------------------------------------------------|---------------------------------------------------------------------------------------------------|------------------------------------------------------------|-----------------------------------------------------|-----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|--------------------------|-----------------|---------------------------|----------------------------|---------------------------|------------------------------------------|-----------------------|--------------------|---------------------------------|
|                        | Has a<br>Comp.<br>Plan          | Whether<br>Adopted<br>& Year | Recognizes<br>Affordable<br>Housing<br>Need <sup>7</sup> | Addresses<br>Affordable<br>Housing <sup>8</sup> | Multi-<br>Family                                                                                  | Two<br>Family                                              | Accessory<br>Apartment                              | Mixed<br>Use                                                                                  | Residential Use                                                          |                          | Multifamily Use |                           | Two or Three Family<br>Use |                           | Undeveloped Land<br>Zoned Multifamily    |                       | Potential<br>Units |                                 |
|                        |                                 |                              |                                                          |                                                 |                                                                                                   |                                                            |                                                     |                                                                                               | Acres                                                                    | % of<br>Total<br>Acreage | Acres           | % of Resi-<br>dential Use | Acres                      | % of Resi-<br>dential Use | Acres                                    | % of Multi-<br>family |                    |                                 |
| Croton-on-<br>Hudson   | Yes                             | Yes<br>2003                  | No                                                       | Yes                                             | As-of-<br>Right<br>2 dis-<br>tricts; 1<br>overlay<br>district<br>SP<br>1 over-<br>lay<br>district | As-of-<br>Right<br>4 dis-<br>tricts                        | SP<br>all but 1<br>residential<br>district          | As-of-<br>Right<br>1 over-<br>lay<br>district<br>SP<br>2 com-<br>com-<br>mercial<br>districts | 1097.5<br>3                                                              | 36.13%                   | 51.88           | 4.7%                      | 37.95                      | 3.5%                      | 0                                        | 0%                    | 0                  | 2                               |
| Dobbs Ferry            | Yes                             | Yes<br>2010                  | No                                                       | Yes                                             | As-of-<br>Right<br>13<br>districts                                                                | As-of-<br>Right<br>11<br>districts<br>SP<br>2<br>districts | None                                                | As-of-<br>Right<br>6<br>districts                                                             | 596.44                                                                   | 38.57%                   | 83.27           | 14%                       | 38.62                      | 6.5%                      | 7.2                                      | 0.46%                 | 273                | 1                               |
| Eastchester            | Yes                             | Yes<br>1997                  | Yes                                                      | Yes                                             | As-of-<br>Right<br>9 dis-<br>tricts<br>SP<br>1 district                                           | As-of-<br>Right<br>10<br>districts                         | None                                                | As-of-<br>Right<br>3<br>districts                                                             | 927.31                                                                   | 42.51%                   | 79.13           | 8.5%                      | 38.15                      | 4.1%                      | 1.6                                      | 0.1%                  | 84                 | 1                               |
| Harrison               | Yes                             | No<br>2012                   | Yes                                                      | Yes                                             | As-of-<br>Right<br>3<br>districts<br>SP<br>1 district                                             | As-of-<br>Right<br>3 dis-<br>tricts                        | None                                                | As-of-<br>Right<br>1 dis-<br>trict<br>SP<br>4 dis-<br>tricts                                  | 4283.7<br>2                                                              | 38.43%                   | 32.32           | 0.8%                      | 203.9<br>1                 | 4.8%                      | 0.9                                      | 0.01%                 | 45                 | 2                               |
| Hastings-on-<br>Hudson | Yes                             | Yes<br>2011                  | Yes                                                      | Yes                                             | As-of-<br>Right<br>6<br>districts<br>SP<br>2<br>districts                                         | As-of-<br>Right<br>6<br>districts                          | As-of-<br>Right<br>11 districts<br>SP<br>1 district | As-of-<br>Right<br>in all<br>retail<br>districts                                              | 504.39                                                                   | 39.91%                   | 34.71           | 6.9%                      | 35.13                      | 7%                        | 6.4                                      | 0.5%                  | 71                 | 1                               |

Chart of Zoning Data for *Berenson Test Prong 1*

| Municipality | Comprehensive Plan <sup>2</sup> |                          |                                                 |                                                                          | Housing Types <sup>3</sup>                                            |                                                                       |                                                                                                            |                                                | Land Use: Quantity of Presently Available/Developed Housing <sup>4</sup> |                    |                 |                      |                         |                      | Ability to Meet Future Need <sup>5</sup> |                   |                 | Prong 1 Rank <sup>6</sup> |
|--------------|---------------------------------|--------------------------|-------------------------------------------------|--------------------------------------------------------------------------|-----------------------------------------------------------------------|-----------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|------------------------------------------------|--------------------------------------------------------------------------|--------------------|-----------------|----------------------|-------------------------|----------------------|------------------------------------------|-------------------|-----------------|---------------------------|
|              | Has a Comp. Plan                | Whether Adopted & Year   | Recognizes Affordable Housing Need <sup>7</sup> | Addresses Affordable Housing <sup>8</sup>                                | Multi-Family                                                          | Two Family                                                            | Accessory Apartment                                                                                        | Mixed Use                                      | Residential Use                                                          |                    | Multifamily Use |                      | Two or Three Family Use |                      | Undeveloped Land Zoned Multifamily       |                   | Potential Units |                           |
|              |                                 |                          |                                                 |                                                                          |                                                                       |                                                                       |                                                                                                            |                                                | Acres                                                                    | % of Total Acreage | Acres           | % of Residential Use | Acres                   | % of Residential Use | Acres                                    | % of Multi-family |                 |                           |
| Irvington    | Yes                             | Yes 2003                 | No                                              | Yes                                                                      | As-of-Right<br>1 district<br>SP<br>1 district                         | As-of-Right<br>2 districts<br>SP<br>1 district                        | As-of-Right<br>all single-family districts                                                                 | As-of-Right<br>2 districts                     | 831.67                                                                   | 45.93%             | 121.8<br>2      | 14.6%                | 22.51                   | 2.77%                | 0.3                                      | 0.01%             | 0               | 2                         |
| Larchmont    | Yes                             | Yes 1966 and update 1987 | N/A                                             | N/A                                                                      | As-of-Right<br>1 district; 2 commercial districts<br>SP<br>1 district | As-of-Right<br>1 district; 2 commercial districts<br>SP<br>1 district | None                                                                                                       | As-of-Right<br>2 commercial districts          | 393.09                                                                   | 57.22%             | 4.05            | 1.03%                | 3.18                    | 0.81%                | 1.9                                      | 0.3%              | 53              | 2                         |
| Lewisboro    | Yes                             | Yes 1985                 | No                                              | Yes but states multifamily housing for regional need is “not imperative” | As-of-Right<br>1 district                                             | As-of-Right<br>2 districts                                            | SP apartment on single family lots min. ½ acre; accessory residence dwellings on lots of at least 20 acres | As-of-Right<br>2 commercial districts          | 9590.1<br>1                                                              | 51.39%             | 24.42           | 0.25%                | 37.44                   | 0.4%                 | 4.5                                      | 0.02%             | 18              | 3                         |
| Mamaroneck   | Yes                             | N/A                      | N/A                                             | N/A                                                                      | As-of-Right<br>4 districts<br>SP<br>1 district                        | As-of-Right<br>1 district                                             | Only buildings or trailers for domestic employee in single-family districts                                | As-of-Right<br>2 districts<br>SP<br>1 district | 1074.1<br>5                                                              | 47.32%             | 28.69           | 2.7%                 | 16.43                   | 1.5%                 | 0                                        | 0%                | 0               | 3                         |

Chart of Zoning Data for *Berenson Test Prong 1*

| Municipality   | Comprehensive Plan <sup>2</sup> |                              |                                                          |                                                 | Housing Types <sup>3</sup>                                                                            |                                                                                            |                                                     |                                                       | Land Use: Quantity of Presently Available/Developed Housing <sup>4</sup> |                          |                 |                           |                            |                           | Ability to Meet Future Need <sup>5</sup> |                       |                    | Prong<br>1<br>Rank <sup>6</sup> |
|----------------|---------------------------------|------------------------------|----------------------------------------------------------|-------------------------------------------------|-------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------|--------------------------------------------------------------------------|--------------------------|-----------------|---------------------------|----------------------------|---------------------------|------------------------------------------|-----------------------|--------------------|---------------------------------|
|                | Has a<br>Comp.<br>Plan          | Whether<br>Adopted<br>& Year | Recognizes<br>Affordable<br>Housing<br>Need <sup>7</sup> | Addresses<br>Affordable<br>Housing <sup>8</sup> | Multi-<br>Family                                                                                      | Two<br>Family                                                                              | Accessory<br>Apartment                              | Mixed<br>Use                                          | Residential Use                                                          |                          | Multifamily Use |                           | Two or Three Family<br>Use |                           | Undeveloped Land<br>Zoned Multifamily    |                       | Potential<br>Units |                                 |
|                |                                 |                              |                                                          |                                                 |                                                                                                       |                                                                                            |                                                     |                                                       | Acres                                                                    | % of<br>Total<br>Acreage | Acres           | % of Resi-<br>dential Use | Acres                      | % of Resi-<br>dential Use | Acres                                    | % of Multi-<br>family |                    |                                 |
| Mount Pleasant | Yes                             | Yes<br>1970                  | No                                                       | Yes                                             | As-of-<br>Right<br>10<br>districts<br>SP<br>3<br>districts                                            | As-of-<br>Right<br>11<br>districts                                                         | SP<br>28<br>districts                               | As-of-<br>Right<br>14<br>dis-<br>tricts <sup>10</sup> | 4647.4<br>5                                                              | 30.19%                   | 55.29           | 1.2%                      | 70.46                      | 1.5%                      | 5.2                                      | 0.03%                 | 5                  | 2                               |
| New Castle     | Yes                             | Yes<br>1989                  | No                                                       | Yes                                             | As-of-<br>Right<br>5<br>districts;<br>1<br>floating<br>district <sup>11</sup><br>SP<br>9<br>districts | As-of-<br>Right<br>all<br>single-<br>family<br>districts<br>but only<br>if af-<br>fordable | SP<br>8 districts                                   | As-of-<br>Right<br>9<br>districts                     | 8306.1<br>2                                                              | 55.38%                   | 302.1<br>3      | 3.6%                      | 139.8<br>9                 | 1.7%                      | 5                                        | 0.03%                 | 32                 | 1                               |
| North Castle   | Yes                             | Yes<br>1996                  | No                                                       | Yes                                             | As-of-<br>Right<br>8<br>districts                                                                     | As-of-<br>Right<br>1 district                                                              | As-of-<br>Right<br>4 districts<br>SP<br>8 districts | As-of-<br>Right<br>6<br>districts                     | 7125.5<br>6                                                              | 42.47%                   | 3.06            | 0.04%                     | 79.43                      | 1.1%                      | 6.3                                      | 0.04%                 | 82                 | 2                               |

<sup>10</sup> Based on the data submitted by the County, it is unclear exactly how many districts permit mixed-use development as-of-right. We have given Mount Pleasant credit for the largest number of districts. Ex. F, Town of Mount Pleasant Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012).

<sup>11</sup> There is some confusion about which zoning districts were identified by the County Planning Department as allowing multifamily housing as-of-right. In its Feb. 29, 2012, analysis of the zoning ordinances of Westchester municipalities, it identifies only the MFR-C, MFR-M and MFPD districts as allowing the use "as of right," but it identifies the B-D, B-R, B-RP and I-G districts as allowing multifamily housing upon site plan review rather than as a special use., and the Planning Department has identified potential multifamily housing development sites in the B-D and B-R districts. Ex. F, Town of New Castle Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012; Ex. E, Methodology II-D(2) Table August 2012 (submitted Sep. 6, 2012). The acreage figure that the Planning Department has provided for districts allowing multifamily housing as-of-right does not appear, however, to include the I-G district, and a review of the zoning ordinance clearly indicates that residential use is allowed in the I-G district only by special permit. Schedule of regulations for business and industrial districts, TOWN OF NEW CASTLE CODE § 60 Attachment 4 (July 1, 2012).

Chart of Zoning Data for *Berenson Test Prong 1*

| Municipality  | Comprehensive Plan <sup>2</sup> |                        |                                                 |                                           | Housing Types <sup>3</sup>                              |                                                         |                                           |                                           | Land Use: Quantity of Presently Available/Developed Housing <sup>4</sup> |                    |                 |                      |                         |                      | Ability to Meet Future Need <sup>5</sup> |                   |                 | Prong 1 Rank <sup>6</sup> |
|---------------|---------------------------------|------------------------|-------------------------------------------------|-------------------------------------------|---------------------------------------------------------|---------------------------------------------------------|-------------------------------------------|-------------------------------------------|--------------------------------------------------------------------------|--------------------|-----------------|----------------------|-------------------------|----------------------|------------------------------------------|-------------------|-----------------|---------------------------|
|               | Has a Comp. Plan                | Whether Adopted & Year | Recognizes Affordable Housing Need <sup>7</sup> | Addresses Affordable Housing <sup>8</sup> | Multi-Family                                            | Two Family                                              | Accessory Apartment                       | Mixed Use                                 | Residential Use                                                          |                    | Multifamily Use |                      | Two or Three Family Use |                      | Undeveloped Land Zoned Multifamily       |                   | Potential Units |                           |
|               |                                 |                        |                                                 |                                           |                                                         |                                                         |                                           |                                           | Acres                                                                    | % of Total Acreage | Acres           | % of Residential Use | Acres                   | % of Residential Use | Acres                                    | % of Multi-family |                 |                           |
| North Salem   | Yes                             | Yes 2011               | Yes                                             | Yes                                       | As-of-Right 5 districts <sup>12</sup><br>SP 5 districts | As-of-Right 3 districts <sup>13</sup><br>SP 4 districts | As-of-Right 1 district<br>SP 10 districts | None <sup>14</sup>                        | 5642.07                                                                  | 37.96%             | 7.88            | 0.14%                | 46.53                   | 0.82%                | 77.3                                     | 0.5%              | 307             | 1                         |
| Ossining      | Yes                             | Yes 2002               | Yes                                             | Yes                                       | SP 3 districts                                          | SP 5 districts                                          | SP 8 districts                            | SP 1 district                             | 989.14                                                                   | 50.87%             | 158.03          | 16%                  | 28.96                   | 2.9%                 | 0                                        | 0%                | 0               | 2                         |
| Pelham        | Yes                             | Yes 2008               | Yes                                             | Yes                                       | As-of-Right 4 districts                                 | As-of-Right 8 districts                                 | None                                      | As-of-Right 3 districts                   | 285.72                                                                   | 53.85%             | 4.73            | 1.7%                 | 34.93                   | 12.2%                | 1.1                                      | 0.2%              | 54              | 2                         |
| Pelham Manor  | N/A                             | N/A                    | N/A                                             | N/A                                       | As-of-Right 1 district                                  | As-of-Right 1 district                                  | None                                      | None                                      | 455.11                                                                   | 52.66%             | 10.31           | 2.3%                 | 1.89                    | 0.4%                 | 0                                        | 0%                | 0               | 3                         |
| Pleasantville | Yes                             | Yes 1996               | No                                              | Yes in 2007 addendum                      | As-of-Right 3 districts<br>SP 3 districts               | As-of-Right 7 districts<br>SP 3 districts               | SP 6 districts                            | As-of-Right 2 districts<br>SP 3 districts | 551.68                                                                   | 48.07%             | 42.78           | 7.8%                 | 39.12                   | 7%                   | 0.8                                      | 0.1%              | 10              | 1                         |

<sup>12</sup> In Figure 7 of the County's Eighth Zoning Submission regarding North Salem, the County lists additional districts as permitting multifamily housing as-of-right: the NB, PO and RO districts, all of which are listed as not permitting multifamily housing in the County's February submission. Compare Ex. I, Town of North Salem, at 19-22, Eighth Zoning Submission, dated July 23, 2013, with Ex. F, Town of North Salem Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012). A review of the Town's zoning code reveals that residential uses are not permitted in the NB and RO districts and that only single-family detached dwellings are permitted in the PO district. Table of General Use Requirements, TOWN OF NORTH SALEM CODE § 250 Attachment 9, Nov. 1, 2011; Table of General Use Requirements, TOWN OF NORTH SALEM CODE § 250 Attachment 11, Nov. 1, 2011; Table of General Use Requirements, TOWN OF NORTH SALEM CODE § 250 Attachment 12, Nov. 1, 2011.

<sup>13</sup> In a letter dated April 18, 2013, Supervisor Warren J. Lucas stated that, contrary to the County Planning Department's February 29, 2012 analysis of zoning districts in the County's municipalities, two-family dwellings are also allowed as-of-right in R-MF/4 and R-MF/6. Ex. H.

<sup>14</sup> In a letter dated April 18, 2013, Supervisor Warren J. Lucas stated that, contrary to the County Planning Department's February 29, 2012, analysis of zoning districts in the County's municipalities, mixed-use development is allowed in the GB, PO, RO, NB, PD and PD-CCRC districts, but this is not supported by a reading of the zoning ordinance. Ex. H.

Chart of Zoning Data for *Berenson Test Prong 1*

| Municipality | Comprehensive Plan <sup>2</sup> |                        |                                                 |                                           | Housing Types <sup>3</sup>                                                                      |                                                |                             |                                       | Land Use: Quantity of Presently Available/Developed Housing <sup>4</sup> |                    |                 |                      |                         |                      | Ability to Meet Future Need <sup>5</sup> |                   |                 | Prong 1 Rank <sup>6</sup> |
|--------------|---------------------------------|------------------------|-------------------------------------------------|-------------------------------------------|-------------------------------------------------------------------------------------------------|------------------------------------------------|-----------------------------|---------------------------------------|--------------------------------------------------------------------------|--------------------|-----------------|----------------------|-------------------------|----------------------|------------------------------------------|-------------------|-----------------|---------------------------|
|              | Has a Comp. Plan                | Whether Adopted & Year | Recognizes Affordable Housing Need <sup>7</sup> | Addresses Affordable Housing <sup>8</sup> | Multi-Family                                                                                    | Two Family                                     | Accessory Apartment         | Mixed Use                             | Residential Use                                                          |                    | Multifamily Use |                      | Two or Three Family Use |                      | Undeveloped Land Zoned Multifamily       |                   | Potential Units |                           |
|              |                                 |                        |                                                 |                                           |                                                                                                 |                                                |                             |                                       | Acres                                                                    | % of Total Acreage | Acres           | % of Residential Use | Acres                   | % of Residential Use | Acres                                    | % of Multi-family |                 |                           |
| Pound Ridge  | Yes                             | Yes 2010               | No                                              | Yes                                       | As-of-Right<br>3 commercial districts<br>SP<br>4 districts                                      | None                                           | As-of-Right<br>2 districts  | As-of-Right<br>3 commercial districts | 6930.97                                                                  | 46.92%             | 0               | 0%                   | 0                       | 0%                   | 3.6                                      | 0.02%             | 23              | 2                         |
| Rye          | Yes                             | Yes 1985               | No                                              | Yes                                       | As-of-Right<br>9 districts<br>SP<br>2 districts                                                 | As-of-Right<br>10 districts                    | As-of-Right<br>15 districts | As-of-Right<br>4 districts            | 1809.44                                                                  | 48.43%             | 137.5           | 7.6%                 | 38.22                   | 2.1%                 | 1.6                                      | 0.04%             | 38              | 1                         |
| Rye Brook    | No                              | Has Vision Plan 2000   | No                                              | Yes                                       | As-of-Right<br>4 districts;<br>2 floating districts<br>SP<br>1 district;<br>1 floating district | As-of-Right<br>5 districts<br>SP<br>1 district | None                        | SP<br>1 floating district             | 841.27                                                                   | 19.66%             | 10.88           | 1.3%                 | 39.68                   | 4.7%                 | 1.2                                      | 0.1%              | 38              | 2                         |

Chart of Zoning Data for *Berenson Test Prong 1*

| Municipality | Comprehensive Plan <sup>2</sup> |                        |                                                 |                                           | Housing Types <sup>3</sup>                                           |                                             |                          |                                             | Land Use: Quantity of Presently Available/Developed Housing <sup>4</sup> |                      |                 |                      |                         |                      | Ability to Meet Future Need <sup>5</sup> |                   |                 | Prong 1 Rank <sup>6</sup> |
|--------------|---------------------------------|------------------------|-------------------------------------------------|-------------------------------------------|----------------------------------------------------------------------|---------------------------------------------|--------------------------|---------------------------------------------|--------------------------------------------------------------------------|----------------------|-----------------|----------------------|-------------------------|----------------------|------------------------------------------|-------------------|-----------------|---------------------------|
|              | Has a Comp. Plan                | Whether Adopted & Year | Recognizes Affordable Housing Need <sup>7</sup> | Addresses Affordable Housing <sup>8</sup> | Multi-Family                                                         | Two Family                                  | Accessory Apartment      | Mixed Use                                   | Residential Use                                                          |                      | Multifamily Use |                      | Two or Three Family Use |                      | Undeveloped Land Zoned Multifamily       |                   | Potential Units |                           |
|              |                                 |                        |                                                 |                                           |                                                                      |                                             |                          |                                             | Acres                                                                    | % of Total Acreage   | Acres           | % of Residential Use | Acres                   | % of Residential Use | Acres                                    | % of Multi-family |                 |                           |
| Scarsdale    | Yes                             | Yes 1994               | No                                              | Yes and in 2010 update                    | As-of-Right <sup>7</sup> districts <sup>15</sup>                     | As-of-Right up to 5 districts <sup>16</sup> | None <sup>17</sup>       | As-of-Right up to 8 districts <sup>18</sup> | 2377.82                                                                  | 55.58% <sup>19</sup> | 6.08            | 0.26%                | 0                       | 0%                   | 0 <sup>20</sup>                          | 0%                | 0               | 2                         |
| Somers       | Yes                             | No 2005                | No                                              | Yes                                       | As-of-Right 1 district, 3 floating districts; 3 commercial districts | None                                        | As-of-Right 10 districts | As-of-Right 4 districts                     | 8274.39                                                                  | 40.2%                | 75.91           | 0.9%                 | 91.81                   | 1.1%                 | 73.9                                     | 0.4%              | 260             | 2                         |

<sup>15</sup> In its February 2012 analysis, the County Planning Department stated that multifamily housing is allowed as-of-right in only three zoning districts: Res C, PUD-1 and PUD-8. Ex. F, Town/Village of Scarsdale Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012). This appeared to be an uncharacteristically narrow reading of the zoning ordinance. For other municipalities, if a business district allows “residences” (without further elaboration) as a principal use, even if confined to the upper floors of a mixed-use development, the County Planning Department indicates that they permit multifamily housing as-of-right. The Scarsdale zoning ordinance states that “residences” are among the permitted uses in the VCO-2.0 district. See VILLAGE OF SCARSDALE CODE § 310-12.B(4)(b)(1). It also states that residences are permitted upper floor uses in the Business A, VCR-2.0 and VCR-1.0 districts. The County’s most recent zoning submission corrects the prior omission of the Business A, VCR-2.0 and VCR-1.0 districts but not the omission of the VCO-2.0 district. Ex. I, Town/Village of Scarsdale Zoning Analysis, at Figure 7, Eighth Zoning Submission, dated July 23, 2013. The July 2013 submission also states incorrectly that the VCR-8 district also allows multifamily housing as-of-right. *Id.* A review of the zoning code reveals that the VCR-8 district does not permit residential uses. VILLAGE OF SCARSDALE CODE § 310-12.B(3)(b). All analyses of the acreage zoned for multifamily residential development, the number of available sites in those districts and the potential number of housing units that could be developed on those sites were based on the County’s earlier conclusion that only three districts permit multifamily housing as-of-right.

<sup>16</sup> In its February 2012 submission, the County Planning Department identified three zoning districts that allow for two-family housing development as-of-right (Res C, PUD 1 and PUD8-1.4). Ex. F, Town/Village of Scarsdale Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012). The July 2013 submission also identifies the VCR-2.0 and VCR-1.0 districts as allowing two-family housing as-of-right; however, two of those districts allow residences only above the ground floor in a mixed-use development, and thus exclude what is generally thought of as two-family homes. Ex. I, Town/Village of Scarsdale Zoning Analysis, at Figure 7, Eighth Zoning Submission, dated July 23, 2013; VILLAGE OF SCARSDALE CODE §§ 310-12.B(1)(b)(2), 12.B(2)(b)(2).

<sup>17</sup> In its February 2012 analysis, the County Planning Department erroneously stated that accessory apartments are allowed as-of-right in five nonresidential zoning districts, but it has corrected this error in its July 2013 analysis. Compare Ex. F, Town/Village of Scarsdale Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012), with Ex. I, Town/Village of Scarsdale Zoning Analysis, at Figure 7, Eighth Zoning Submission, dated July 23, 2013.

<sup>18</sup> In its analysis, the County Planning Department identifies 8 districts as permitting mixed-use development as-of-right, which includes the VCO-0.8 district. Ex. F, Town/Village of Scarsdale Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012). However, the zoning ordinance does not mention residential use of any kind as a permitted use in the VCO-0.8 district. VILLAGE OF SCARSDALE CODE § 310-12.B(5)(b).

<sup>19</sup> The data provided by the County indicates that 106.92% of the land in Scarsdale is residential. Ex. J, Table 2 Residential Land Use Acreage by Municipality, *Land Use in Westchester*, at 17, 2010. Due to this unclear figure, and for the purposes of this analysis, this percentage figure was changed to 55.58% after dividing the total acreage of Scarsdale (point a on the data sheet) by the number of acres currently subject to residential use. *Id.*; Ex. E, Methodology III-C-2 Table August 2012 (submitted Sep. 6, 2012).

<sup>20</sup> The analysis has been performed only on the areas zoned Res C, PUD-1 and PUD8-1.4, the districts identified by the County as allowing multifamily housing as-of-right in Ex. F, Town/Village of Scarsdale Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012).

Chart of Zoning Data for *Berenson Test Prong 1*

| Municipality | Comprehensive Plan <sup>2</sup> |                              |                                                          |                                                 | Housing Types <sup>3</sup>                                                |                                                           |                                                        |                                   | Land Use: Quantity of Presently Available/Developed Housing <sup>4</sup> |                          |                 |                           |                            |                           | Ability to Meet Future Need <sup>5</sup> |                       |                    | Prong<br>1<br>Rank <sup>6</sup> |
|--------------|---------------------------------|------------------------------|----------------------------------------------------------|-------------------------------------------------|---------------------------------------------------------------------------|-----------------------------------------------------------|--------------------------------------------------------|-----------------------------------|--------------------------------------------------------------------------|--------------------------|-----------------|---------------------------|----------------------------|---------------------------|------------------------------------------|-----------------------|--------------------|---------------------------------|
|              | Has a<br>Comp.<br>Plan          | Whether<br>Adopted<br>& Year | Recognizes<br>Affordable<br>Housing<br>Need <sup>7</sup> | Addresses<br>Affordable<br>Housing <sup>8</sup> | Multi-<br>Family                                                          | Two<br>Family                                             | Accessory<br>Apartment                                 | Mixed<br>Use                      | Residential Use                                                          |                          | Multifamily Use |                           | Two or Three Family<br>Use |                           | Undeveloped Land<br>Zoned Multifamily    |                       | Potential<br>Units |                                 |
|              |                                 |                              |                                                          |                                                 |                                                                           |                                                           |                                                        |                                   | Acres                                                                    | % of<br>Total<br>Acreage | Acres           | % of Resi-<br>dential Use | Acres                      | % of Resi-<br>dential Use | Acres                                    | % of Multi-<br>family |                    |                                 |
| Tarrytown    | Yes                             | Yes<br>2007                  | No                                                       | Yes                                             | As-of-<br>Right<br>8<br>districts                                         | As-of-<br>Right<br>10<br>districts                        | None                                                   | As-of-<br>Right<br>3<br>districts | 679.30                                                                   | 34.45%                   | 216.8<br>6      | 32%                       | 39.99                      | 6%                        | 2.3                                      | 0.1%                  | 50                 | 1                               |
| Tuckahoe     | Yes                             | Yes<br>2008                  | No                                                       | Yes                                             | As-of-<br>Right<br>2 dis-<br>tricts <sup>21</sup>                         | As-of-<br>Right<br>2<br>districts                         | None                                                   | As-of-<br>Right<br>5<br>districts | 169.27                                                                   | 44.25%                   | 29.51           | 17.4%                     | 32.93                      | 19.5%                     | 0.7                                      | 0.2%                  | 17                 | 1                               |
| Yorktown     | Yes                             | Yes<br>2010                  | No                                                       | Yes                                             | As-of-<br>Right<br>3 dis-<br>tricts <sup>22</sup><br>SP<br>9<br>districts | As-of-<br>Right<br>3<br>districts<br>SP<br>8<br>districts | SP<br>in all<br>residential<br>districts <sup>23</sup> | As-of-<br>Right<br>1<br>district  | 9317.9<br>9                                                              | 37%                      | 617.0<br>1      | 6.6%                      | 57.91                      | 0.6%                      | 40                                       | 0.2%                  | 479                | 1                               |

<sup>21</sup> The data provided by the County only credits the AP-3 district as permitting multifamily housing as-of-right. Ex. F, Village of Tuckahoe Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012). However, under the Village code and consistent with the Village's response letter, the B/R district should also be included. VILLAGE OF TUCKAHOE CODE § 4-5.1; Ex. H, Village of Tuckahoe Response Letter from John D. Cavallaro, Village of Tuckahoe Attorney, at 3, dated May 16, 2013.

<sup>22</sup> The table provided by the County identifies R-3, R-3A and RSP-3 as districts permitting multifamily housing as-of-right. Ex. F, Town of Yorktown Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012). Yet, the County's Methodology II-C and II-D tables and maps provide information about sites and acreage in RSP-1 rather than RSP-3, indicating that the descriptions of the two districts may have been inadvertently reversed in the review and analysis table. Compare Ex. F, Town of Yorktown Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012), with Ex. E, Town of Yorktown Methodology II-C and II-D Map August 2012 (submitted Sep. 6, 2012). Based on the zoning code, it does indeed appear that RSP-1, rather than RSP-3, permits multifamily as-of-right. TOWN OF YORKTOWN CODE §§ 300-124.C, 300-160.

<sup>23</sup> Although the data submitted by the County credits 9 zoning districts as permitting accessory apartments as-of-right, the County also provides an explanatory note stating that these accessory dwelling units are limited to one dwelling unit for the owner, operator or janitor of the establishment, and the zoning ordinance does indeed contain this restriction.. Compare Ex. F, Town of Yorktown Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012), with TOWN OF YORKTOWN CODE §§ 300-21.C(7)(b)(1), 300-21.C(8)(c)(4), 300-21.C(9)(c)(6), 300-21.C(10)(c)(1), 300-21.C(11)(c)(6), 300-21.C(12)(c)(1), 300-21.A(13)(c)(1), 300-21(15)(c)(5).

Chart of Zoning Data for *Berenson Test Prong 2*<sup>1</sup>

| Municipality | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                             | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|--------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|-------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|              | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                 | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
| Ardsley      | 100                                 | 19                                    | 19%                    | 12                | 19                                                                         | 38                                 | 38%                                          | Yes                                                                             | 1 MF district is an overlay district. MF SP only allowed in | 834                                                              | 5.7                                               | 2.7                                             | 0.3%                                 | Insufficient                  | 2                         |

<sup>1</sup> Under this prong, municipalities must consider, weigh and balance both local and regional housing needs, due to the ripple effects zoning may have on areas outside a municipality's boundaries. *Berenson v. Town of New Castle*, 38 N.Y.2d 102, 110 (1975) ("There must be a balancing of the local desire to maintain the *status quo* within the community and the greater public interest that regional needs be met."); *Triglia v. Town of Cortlandt*, No. 17976/96, 1998 WL 35394393, at \*4 (N.Y. Sup. Ct. Westchester Cnty. Jan. 6, 1998).

<sup>2</sup> A party challenging a municipal zoning ordinance must first demonstrate that there is an identifiable regional need for affordable housing. See, e.g., *Land Master Montg I, LLC v. Town of Montgomery*, 821 N.Y.S.2d 432, 439 (N.Y. Sup. Orange Cnty. 2006); *Triglia*, No. 17976/96, 1998 WL 35394393, at \*4. Westchester County has not submitted evidence of regional need. The only available assessment is a study that was commissioned by the County in 2005. The study was conducted by the Center for Urban Policy Research of Rutgers University (CUPR), which estimated that Westchester municipalities must collectively build 10,768 new affordable housing units by 2015 to meet the County's growing regional need for affordable housing. See *Westchester County Affordable Housing Needs Assessment*, Rutgers University Center for Urban Policy Research, at 67 (2004) (available at [http://homes.westchestergov.com/images/stories/pdfs/HOUSING\\_RutgersReport033004.pdf](http://homes.westchestergov.com/images/stories/pdfs/HOUSING_RutgersReport033004.pdf)) (last accessed July 31, 2013). The Westchester Housing Opportunity Commission ("HOC"), a body commissioned by the County, has issued recommendations that allocate a share of the regional affordable housing needs to each municipality. See HOC, *Affordable Housing Allocation Plan 2000-2015* (2005) (available at [http://homes.westchestergov.com/images/stories/pdfs/HOUSING\\_HOCAllocation05.pdf](http://homes.westchestergov.com/images/stories/pdfs/HOUSING_HOCAllocation05.pdf)) (last accessed July 31, 2013). This allocation plan has been cited by the County in many of its AI submissions, the County relies on it in distributing funds from the County's Legacy Program, and it is the only needs assessment that has been prepared to date. See, e.g., Ex. D, Westchester County, Analysis of Impediments to Fair Housing Choice (updated April 2013), p. 59-60. See also Ex. 10, Letter from James E. Johnson to Robert P. Astorino, dated June 12, 2013. Accordingly, this analysis goes forward with the best, indeed, only available relevant evidence.

<sup>3</sup> Once the regional need is established, the next step in the analysis requires addressing the question whether, on its face, the zoning ordinance fails to allow for "the construction of sufficient housing to meet the [municipality's] share of the region's housing needs." *Blitz v. Town of New Castle*, 94 A.D.2d 92, 99 (N.Y. App. Div. 2d Dep't 1983).

<sup>4</sup> Municipal zoning ordinances that fail to provide a provision for multifamily housing as-of-right or significantly reduce or limit such housing are facially exclusionary. *Id.* at 94; *Land Master Montg I, LLC*, 821 N.Y.S.2d at 439; *Triglia*, No. 17976/96, 1998 WL 35394393, at \*6.

<sup>5</sup> Municipalities commonly facilitate this by identifying, through zoning, areas of a municipality where multifamily housing may be built as-of-right. See *Cont'l Bldg. Co. v. Town of N. Salem*, 211 A.D.2d 88, 93 (N.Y. App. Div. 3d Dep't 1995). ("[M]ultifamily housing, given the nature of its construction and function as a whole, is one of the most affordable types of housing."). These columns refer to points (a), (b) and (c) on the data sheets included in each municipality's report.

<sup>6</sup> Since a zoning ordinance merely determines "what *may* or *may not be built*" as opposed to deciding "what will actually be built, in the absence of government subsidies," the question is not simply whether the zoning ordinance provides for the legal possibility of multifamily housing. *Blitz*, 94 A.D.2d at 99 (emphasis in original). Rather, the analysis must address the question of whether it is both "*physically and economically feasible*" that affordable housing could be built under the present zoning regime. See *id.*; *Cont'l Bldg. Co.*, 211 A.D.2d at 94 (citation and quotation omitted). This column indicates whether the market conditions within the municipality are such that condo sale prices are sufficient, meaning above the county-wide average of \$375,000, or insufficient, meaning below that average. Municipalities that have insufficient market conditions will likely need a subsidy to aid in new development of affordable housing.

<sup>7</sup> Category 1 = Not exclusionary because the municipality has considered and has the potential to satisfy regional need. Category 2 = Not exclusionary, but warrants improvement. Category 3 = Exclusionary because the municipality has not considered and does not have the potential to satisfy its fair share of regional need.

<sup>8</sup> Despite being given multiple opportunities to respond to a survey conducted by the County Planning Department, some municipalities have not reported the construction or approval of any affordable housing units since 2000. Ex. C, Table, Status of Allocation per Affordable Housing Allocation Plan 2000-2012 – As of November 20, 2012 (submitted Nov. 20, 2012). For the purposes of this analysis, these municipalities are assumed to have built or approved zero units and can be identified by an entry of "0\*".

<sup>9</sup> This column provides a ranking of the municipalities based on the percentage of affordable units that have been reported as built or approved since 2000. The lowest rank is 24, as more than one municipality has built or approved zero units since 2000. Ex. C, Table, Status of Allocation per Affordable Housing Allocation Plan 2000-2012 – As of November 20, 2012 (submitted Nov. 20, 2012).

<sup>10</sup> This column provides data from point b on the data sheets of the Housing Consultant Reports: Total acreage in zoning districts where multifamily housing is permitted as-of-right.

Chart of Zoning Data for Berenson Test Prong 2

| Municipality     | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                                                                                                                                                                                                                                                                      | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|------------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|                  | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                                                                                                                                                                                                                                                          | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
|                  |                                     |                                       |                        |                   |                                                                            |                                    |                                              |                                                                                 | connection with conversion of former school (not available anymore); Cluster district only allows apartment development of only 6 units attached, semidetached or clustered with assisted living facilities. No more than 25% of the units may contain more than 3 bedrooms in the cluster district. |                                                                  |                                                   |                                                 |                                      |                               |                           |
| Bedford          | 396                                 | 95                                    | 24%                    | 10                | 45                                                                         | 140                                | 35.4%                                        | Yes                                                                             | 1 district requires min. lot size of 2 acres. For MF by SP, can develop in 1 district or elsewhere by conversion in residences existing prior to Sep.1, 1985, on lots of less than 20,000 sq. ft.                                                                                                    | 25,444                                                           | 221                                               | 2.7                                             | 0.01%                                | Insufficient                  | 2                         |
| Briarcliff Manor | 141                                 | 49 <sup>11</sup>                      | 34.8%                  | 9                 | 0                                                                          | 49                                 | 34.8%                                        | Yes                                                                             | 1 MF district is commercial and only allows mixed-use development, where residential use must not exceed 80% of the gross floor area, and no ground floor dwelling units shall front any public right-of-way. 1 MF district is intended                                                              | 3808                                                             | 48.7                                              | 0.2                                             | 0.01%                                | Sufficient                    | 2                         |

<sup>11</sup> A developer is seeking approvals for a proposed affordable housing development that would contain 14 affordable units. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013).

Chart of Zoning Data for *Berenson Test Prong 2*

| Municipality | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|--------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|              | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
|              |                                     |                                       |                        |                   |                                                                            |                                    |                                              |                                                                                 | for elderly communities. SP only allowed for conversion of an existing house on a parcel of 10 or more acres.                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                  |                                                   |                                                 |                                      |                               |                           |
| Bronxville   | 101                                 | 0*                                    | 0%                     | 24                | 0                                                                          | 0                                  | 0%                                           | Yes                                                                             | None                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 622                                                              | 79.5                                              | 0                                               | 0                                    | Sufficient                    | 2                         |
| Buchanan     | 56                                  | 0* <sup>12</sup>                      | 0%                     | 24                | 7                                                                          | 7                                  | 12.5%                                        | Yes                                                                             | MF as-of-right is only in 2 commercial districts and is limited to mixed-use development; the residential use must be in the back of or above a commercial establishment w a max. of 4 dwellings per acre. SP may be granted in 2 commercial districts for multifamily dwellings without commercial use but the districts require parcels of land not less than 40,000 sq.ft., each dwelling unit contains a min. of 750 sq.ft., the max. density is 5 dwelling units per 40,000 sq.ft., and the parcel must adjoin a residentially zoned district. | 932                                                              | 42.3                                              | 3.6                                             | 0.4%                                 | Insufficient                  | 2                         |

<sup>12</sup> The County has reported that there is currently a proposal to rehabilitate one three-bedroom affordable housing unit, pursuant to the County's obligations under the Settlement. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013).

Chart of Zoning Data for Berenson Test Prong 2

| Municipality     | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                                                                                                                                                                                                                                                                                                                  | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|------------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|                  | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                                                                                                                                                                                                                                                                                                      | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
| Cortlandt        | 403                                 | 201                                   | 49.9%                  | 3                 | 60                                                                         | 261                                | 64.8%                                        | Yes                                                                             | MF district restricted to 3- and 4- family dwelling w max. of 2 bedrooms per unit; 1 special district is not mapped; 1 special district is limited to senior housing. Some of the multifamily housing is only allowed at very low densities, less than 3 units per acre in 1 case, and up to 10 bedrooms per acre in another case.               | 22147                                                            | 171.9                                             | 15.7                                            | 0.1%                                 | Insufficient                  | 2                         |
| Croton-on-Hudson | 115                                 | 17                                    | 14.8%                  | 14                | 0                                                                          | 17                                 | 14.8%                                        | Yes                                                                             | 1 MF district is an overlay district intended to simplify the development of large tracts of 10 or more contiguous acres and permits as-of-right multifamily housing consistent with the underlying districts. SP district is also an overlay district dependent on underlying districts permitted uses, unless in 1 of 3 residential districts. | 3034                                                             | 58.5                                              | 0                                               | 0%                                   | Sufficient                    | 3                         |
| Dobbs Ferry      | 105                                 | 0* <sup>13</sup>                      | 0%                     | 24                | 273                                                                        | 273                                | 260%                                         | Yes                                                                             | All but 1 MF district requires min. lot size per unit ranging from low of 800 sq.ft. to a high of                                                                                                                                                                                                                                                | 1580                                                             | 263.8                                             | 7.2                                             | 0.46%                                | Sufficient                    | 2                         |

<sup>13</sup> A developer is seeking approvals for a 202-unit mixed-income development at Rivertowns Square that would contain 10 affordable housing units. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013).

Chart of Zoning Data for Berenson Test Prong 2

| Municipality       | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                                                                                                                                                                                                                                                                              | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|--------------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|                    | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                                                                                                                                                                                                                                                                  | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
|                    |                                     |                                       |                        |                   |                                                                            |                                    |                                              |                                                                                 | 6,000 sq.ft., and min. lot area of 5,000 sq.ft.                                                                                                                                                                                                                                                              |                                                                  |                                                   |                                                 |                                      |                               |                           |
| Eastchester        | 104                                 | 2 <sup>14</sup>                       | 1.9%                   | 22                | 84                                                                         | 86                                 | 82.7%                                        | Yes                                                                             | SP district is limited to senior housing with max. 2 occupants in efficiency and 1 bedroom units and 3 occupants in 2 bedroom units and has preferences for Eastchester residents and relatives. The max. density for senior housing is 1 unit per 700 sq.ft., which yields approximately 60 units per acre. | 2184                                                             | 224.6                                             | 1.6                                             | 0.1%                                 | Insufficient                  | 2                         |
| Harrison           | 756                                 | 0*                                    | 0%                     | 24                | 45                                                                         | 45                                 | 6%                                           | Yes                                                                             | None                                                                                                                                                                                                                                                                                                         | 11147                                                            | 32.9                                              | 0.9                                             | 0.01%                                | Sufficient                    | 3                         |
| Hastings-on-Hudson | 97                                  | 21 <sup>15</sup>                      | 21.6%                  | 11                | 71                                                                         | 92                                 | 94.8%                                        | Yes                                                                             | 1 of the 6 MF districts allows only 3-family homes as-of-right but more with SP                                                                                                                                                                                                                              | 1264                                                             | 84.9                                              | 6.4                                             | 0.5%                                 | Sufficient                    | 1                         |
| Irvington          | 156                                 | 4                                     | 2.6%                   | 21                | 0                                                                          | 4                                  | 2.6%                                         | Yes                                                                             | None                                                                                                                                                                                                                                                                                                         | 1809                                                             | 56.4                                              | 0.3                                             | 0.01%                                | Sufficient                    | 2                         |

<sup>14</sup> Despite being given multiple opportunities to respond to a survey conducted by the County Planning Department, Eastchester has not reported the construction or approval of any affordable housing units since 2000. Ex. C, Table, Status of Allocation per Affordable Housing Allocation Plan 2000-2012 – As of November 20, 2012 (submitted Nov. 20, 2012). However, based on a recent submission by the County, Eastchester has approved 2 affordable units. Ex. N, Funding Advisory to Monitor, No. 19, (submitted June 27, 2013).

<sup>15</sup> Developers are seeking approvals for two proposed affordable housing projects that would contain a combined total of 14 affordable units. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013). Additionally, the County has reported that there is currently a proposal to rehabilitate one three-family home and convert it to three condominium affordable housing units, pursuant to the County's obligations under the Settlement. *Id.*

Chart of Zoning Data for Berenson Test Prong 2

| Municipality | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                                                                                                                                                                                                                                                 | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|--------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|              | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                                                                                                                                                                                                                                     | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
| Larchmont    | 105                                 | 51 <sup>16</sup>                      | 48.6%                  | 5                 | 53                                                                         | 104                                | 99%                                          | Yes                                                                             | 2 MF districts are commercial allowing mixed-use development only. MF buildings cannot be larger than 20 unit or taller than 2.5 stories. SP district is for townhouse developments restricted to cites of 6 or more acres, w no more than 2 bedrooms per townhouse dwelling.   | 687                                                              | 66.3                                              | 1.9                                             | 0.3%                                 | Sufficient                    | 2                         |
| Lewisboro    | 239                                 | 0*                                    | 0%                     | 24                | 18                                                                         | 18                                 | 7.5%                                         | Yes                                                                             | Only MF district requires min. lot size for developments served by public water and sewer infrastructure of 15,000 sq.ft. If a development will not be served by public water and sewer, the min. lot size is 15 acres. The max. permitted density is 2 density units per acre. | 18648                                                            | 142.7                                             | 4.5                                             | 0.02%                                | Insufficient                  | 3                         |
| Mamaroneck   | 125                                 | 10                                    | 8%                     | 16                | 0                                                                          | 10                                 | 8%                                           | Yes                                                                             | 1 MF district limits MF development to 1 3 bedroom unit for every 25 dwelling units, and has a min. lot size of 80,000 sq.ft. 1 MF district may have no more than an average of                                                                                                 | 2315                                                             | 39.7                                              | 0                                               | 0%                                   | Sufficient                    | 3                         |

<sup>16</sup> A 149-unit development on Byron Place that would contain 10 affordable housing units also appears to be under construction. See Ex. O, *Westchester County 2013 2Q Report*, at App'x I-1, 2Q 2013 AFFH Sites Progress List (submitted July 19, 2013).

Chart of Zoning Data for Berenson Test Prong 2

| Municipality   | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|----------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|                | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
|                |                                     |                                       |                        |                   |                                                                            |                                    |                                              |                                                                                 | 2 bedrooms per unit, and no unit may have more than 3 bedrooms. SP district is for new, large mixed-use developments.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                  |                                                   |                                                 |                                      |                               |                           |
| Mount Pleasant | 975                                 | 0*                                    | 0%                     | 24                | 5                                                                          | 5                                  | 0.5%                                         | Yes                                                                             | 1 MF district is commercial, is not mapped and requires min. site size of 100 acres; 1 MF district converted a school to dwelling units for seniors over 62 or families under 29 provided the development averages 750 sq.ft. The units were set aside for residents or parents or children of residents on the basis of economic and social need – criteria set by Town Board. 6 transitional districts restrict to average of 2 bedrooms with no more than 3 and no less than 1 bedroom. The 3 MF SP districts only allows multifamily housing if it is part of a conversion of an existing building. | 15392                                                            | 1014.8                                            | 5.2                                             | 0.03%                                | Sufficient                    | 2                         |

Chart of Zoning Data for Berenson Test Prong 2

| Municipality | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                                                                                                                                                                                                                                                                                                                                  | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|--------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|              | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                                                                                                                                                                                                                                                                                                                      | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
| New Castle   | 255                                 | 3 <sup>17</sup>                       | 1.2%                   | 23                | 32                                                                         | 35                                 | 13.7%                                        | Yes                                                                             | 1 MF district is an unmapped floating district. Min. lot area for MF developments ranges from 1 to 5 acres, though they may be reduced for affordable units.                                                                                                                                                                                                     | 14999                                                            | 303.6                                             | 5                                               | 0.03%                                | Sufficient                    | 2                         |
| North Castle | 712                                 | 46                                    | 6.5%                   | 18                | 82                                                                         | 128                                | 18%                                          | Yes                                                                             | 5 MF districts allow stand-alone multiple housing developments. In 3 MF districts, the multifamily developments must be apartments on the second floor as part of a mixed-use development. 1 district the max. density is restricted to 1 density unit per 25,000 sq.ft. of net lot area; 1 district requires a max. density of 1 density unit per 14,000 sq.ft. | 16763                                                            | 312.4                                             | 6.3                                             | 0.04%                                | Insufficient                  | 2                         |
| North Salem  | 152                                 | 74 <sup>18</sup>                      | 48.7%                  | 4                 | 307                                                                        | 381                                | 250.7%                                       | Yes                                                                             | MF developments must be on lots of at least 5 acres. In 2 MF districts, the max. density is 4 units per acre or 6                                                                                                                                                                                                                                                | 14864                                                            | 142.7                                             | 77.3                                            | 0.5%                                 | Insufficient                  | 1                         |

<sup>17</sup> A developer is seeking approvals as part of the pending Chappaqua Crossing development, which will include 20 affordable units. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013). Another developer is seeking approvals for a proposed 28-unit affordable housing development on Hunts Place. *Id.*

<sup>18</sup> A developer is currently seeking approvals to build 102 units of affordable housing on a site on Route 22. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013). Another developer is seeking approvals to build 2 affordable units on a different site on Route 22. See Ex. O, *Westchester County 2013 2Q Report*, at App'x I-1, 2Q 2013 AFFH Sites Progress List (submitted July, 19, 2013).

Chart of Zoning Data for Berenson Test Prong 2

| Municipality  | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                                                                                                                                                                                                                                                                                     | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|---------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|               | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                                                                                                                                                                                                                                                                         | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
|               |                                     |                                       |                        |                   |                                                                            |                                    |                                              |                                                                                 | multifamily units per acre. 1 of the MF districts is for senior housing with assisted living only; 1 of the MF districts is limited to lots of 160,000 sq. ft., but is reduced to 5,000 sq.ft. for affordable units.                                                                                                |                                                                  |                                                   |                                                 |                                      |                               |                           |
| Ossining      | 113                                 | 5                                     | 4.4%                   | 19                | 0                                                                          | 5                                  | 4.4%                                         | No                                                                              | Only allow for MF housing by SP and must be in lots of at least 40,000 sq.ft.                                                                                                                                                                                                                                       | 1945                                                             | 0                                                 | 0                                               | 0%                                   | Insufficient                  | 3                         |
| Pelham        | 74                                  | 3                                     | 4.1%                   | 20                | 54                                                                         | 57                                 | 77%                                          | Yes                                                                             | 3 MF districts are commercial districts.                                                                                                                                                                                                                                                                            | 531                                                              | 32.8                                              | 1.1                                             | 0.2%                                 | Sufficient                    | 2                         |
| Pelham Manor  | 101                                 | 0*                                    | 0%                     | 24                | 0                                                                          | 0                                  | 0%                                           | Yes                                                                             | Only 1 district of 10. No MF by SP.                                                                                                                                                                                                                                                                                 | 871                                                              | 24.4                                              | 0                                               | 0%                                   | Insufficient                  | 3                         |
| Pleasantville | 129                                 | 56 <sup>19</sup>                      | 43.4%                  | 7                 | 10                                                                         | 66                                 | 51.2%                                        | Yes                                                                             | SP districts are limited to 2 bedrooms per dwelling unit.                                                                                                                                                                                                                                                           | 1148                                                             | 114.2                                             | 1                                               | 0.1%                                 | Insufficient                  | 2                         |
| Pound Ridge   | 184                                 | 12                                    | 6.5%                   | 17                | 23                                                                         | 35                                 | 19%                                          | Yes                                                                             | MF development as-of-right only allowed in commercial districts as mixed-use developments limited to 2,500 sq.ft. max. coverage per building and max. height of 2 or 3 stories. SP districts are restricted to senior housing or residential care facilities w min. lot sizes ranging from 1 to 3 acres, precluding | 14771                                                            | 43.8                                              | 3.6                                             | 0.02%                                | Insufficient                  | 3                         |

<sup>19</sup> Developers are seeking approvals to construct another nine affordable housing units (seven within a 70-unit mixed-income multifamily housing development on Washington Avenue, plus a proposed two-family home). See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013).

Chart of Zoning Data for Berenson Test Prong 2

| Municipality | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                                                                                                                                                                                                                                                                  | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|--------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|              | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                                                                                                                                                                                                                                                      | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
|              |                                     |                                       |                        |                   |                                                                            |                                    |                                              |                                                                                 | development of small multifamily developments. Senior housing may not contain more than 50 dwelling units.                                                                                                                                                                                       |                                                                  |                                                   |                                                 |                                      |                               |                           |
| Rye          | 167                                 | 27                                    | 16.2%                  | 13                | 38                                                                         | 65                                 | 38.9%                                        | Yes                                                                             | 1 district is for senior and handicapped housing only. 1 district is restricted to 2 historic properties and cannot contain more than 9 multifamily dwelling units. MF buildings may contain no more than 6 dwelling units per floor and cannot exceed 120 feet in maximum horizontal dimension. | 3738                                                             | 201.2                                             | 1.6                                             | 0.04%                                | Sufficient                    | 2                         |
| Rye Brook    | 171                                 | 64 <sup>20</sup>                      | 37.4%                  | 8                 | 38                                                                         | 102                                | 59.6%                                        | Yes                                                                             | 1 MF district limits MF to existing parcels of 15 to 20 acres. 2 MF districts are floating districts. 1 SP district is for MF senior housing.                                                                                                                                                    | 2224                                                             | 344.2                                             | 1.2                                             | 0.1%                                 | Insufficient                  | 2                         |
| Scarsdale    | 160                                 | 0 <sup>*21</sup>                      | 0%                     | 24                | 0                                                                          | 0                                  | 0%                                           | Yes                                                                             | None                                                                                                                                                                                                                                                                                             | 4278                                                             | 15.6 <sup>22</sup>                                | 0 <sup>23</sup>                                 | 0%                                   | Sufficient                    | 2                         |

<sup>20</sup> A developer is seeking approvals for 13 units of affordable housing at a site on North Ridge Street. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013).

<sup>21</sup> Developers are currently seeking approvals to construct five affordable housing units in Scarsdale: four affordable SROs as part of a 138-unit development on Saxon Woods Road and one affordable unit as part of an 11-unit development on Weaver Street. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013).

<sup>22</sup> The Methodology III-C-2 Table included only three districts as permitting multifamily housing as-of-right, which are mapped over 15.6 acres, or 0.4% of Scarsdale's land area. See Ex. E. The County's July 2013 zoning analysis adds four additional districts. Ex. I, Town/Village of Scarsdale Zoning Analysis, at Figure 7, Eighth Zoning Submission, dated July 23, 2013. The estimates of acreage by zoning district in the Racial Composition Table indicate that the Business A, VCR-2.0, VCR-1.0 and VCO-2.0 districts contain another 6.7 acres, bringing the total to 22.5 acres, or 0.5% of the Village's land area. Ex. K, Racial Composition Table, Village of Scarsdale – 2000 & 2010 Census Data (submitted Aug. 15, 2012).

<sup>23</sup> The analysis has been performed only on the areas zoned Res C, PUD-1 and PUD8-1.4, the districts identified by the County as allowing multifamily housing as-of-right in Ex. F, Town/Village of Scarsdale Table, *Review and Analysis of Municipal Zoning Ordinances in Westchester County* (submitted Feb. 29, 2012).

Chart of Zoning Data for Berenson Test Prong 2

| Municipality | Share of Regional Need <sup>2</sup> |                                       |                        |                   | Ability to Meet Regional Need through Multifamily Development <sup>3</sup> |                                    |                                              | Zoning Provision Permitting Multifamily Housing (As-of-Right & SP) <sup>4</sup> |                                                                                                                                                                                                       | Zoning and Mapping: Multifamily Housing As-of-Right <sup>5</sup> |                                                   |                                                 |                                      | Market Condition <sup>6</sup> | Prong 2 Rank <sup>7</sup> |
|--------------|-------------------------------------|---------------------------------------|------------------------|-------------------|----------------------------------------------------------------------------|------------------------------------|----------------------------------------------|---------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|--------------------------------------|-------------------------------|---------------------------|
|              | Allocation of Units                 | Number Built or Approved <sup>8</sup> | % of Built or Approved | Rank <sup>9</sup> | Number of Potential Units                                                  | Total Built Approved and Potential | % of Benchmark Built, Approved and Potential | Provided                                                                        | Limitations                                                                                                                                                                                           | Total Acres                                                      | Acres Zoned Multifamily As-of-Right <sup>10</sup> | Undeveloped Acres Zoned Multifamily As-of-Right | % of Multifamily Acreage Undeveloped |                               |                           |
| Somers       | 224                                 | 149 <sup>24</sup>                     | 66.5%                  | 1                 | 260                                                                        | 409                                | 182.6%                                       | Yes                                                                             | 1 MF district requires 500 acre min. site size; 2 MF districts min. lot of 10 acres; 1 MF has max. 3 density units per acre; 1 MF has max. 2 density units per acres; 2 districts limit to 2 bedrooms | 20583                                                            | 1,499                                             | 73.9                                            | 0.4%                                 | Insufficient                  | 1                         |
| Tarrytown    | 111                                 | 66                                    | 59.5%                  | 2                 | 50                                                                         | 116                                | 104.5%                                       | Yes                                                                             | 1 MF district is for mixed-use only with max. 55% of floor area for residential use.                                                                                                                  | 1972                                                             | 363.8                                             | 2.3                                             | 0.1%                                 | Sufficient                    | 1                         |
| Tuckahoe     | 56                                  | 6                                     | 10.7%                  | 15                | 17                                                                         | 23                                 | 41.1%                                        | Yes                                                                             | MF development as-of-right only in 2 districts. In 1 district, MF must be apartments w min of 7 units or townhouses w max of 7 units and must be on lots of at least 12,000 sq.ft.                    | 383                                                              | 42                                                | 0.7                                             | 0.2%                                 | Sufficient                    | 2                         |
| Yorktown     | 378                                 | 169                                   | 44.7%                  | 6                 | 479                                                                        | 648                                | 171.4%                                       | Yes                                                                             | 1 MF district is for senior housing; 1 SP district is for either senior housing or conversion of existing homes constructed prior to 1930 and restricts the min. lot size to 15 acres.                | 25186                                                            | 386.5                                             | 40                                              | 0.2%                                 | Insufficient                  | 1                         |

<sup>24</sup> A developer is seeking approvals for 72 units of affordable housing on Route 6, which would be known as the Green at Somers. See Ex. G, *Westchester County 2013 1Q Report*, at App'x I-1, 1Q 2013 AFFH Sites Progress List (submitted May 10, 2013). After the Monitor sent the Town of Somers a supplemental information request on September 6, 2013 regarding the status of this proposed development, see Ex. T, Letter from James E. Johnson to the Town of Somers Supervisor Mary Beth Murphy, dated Sep. 6, 2013, the Town responded that it has not adopted an amendment to its zoning code that would be required for this development to move forward. Ex. U, Letter from Town of Somers Supervisor to James E. Johnson, at 2, dated Sep. 10, 2013. In its letter, the Town did note, however, that a developer has applied to build a 60 unit development in the Somers Hamlet on Route 100 and 202, in which "the Town Board will require a percentage of the units [to] be affordable." *Id.* Another developer has applied to build 45 town homes near Mahopac Avenue and Route 6, which would include "eight affordable town homes with an additional affordable apartment attached for a total of 16 affordable units." *Id.*

Chart of Municipal Rebuttal Factors under *Berenson* Test<sup>1</sup>

| Municipality   | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                               | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                  |                                                              |                                   |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|-----------------------------------|------------------------------------|-----------------------------------------------------|---------------------------|---------------------------|----------------------------|-----------------------------------|
|                | Incentives                                                                                                                                                                                                                                                                                                                                                                                      | Mandates                                                                                                                                                                                                                                                                                                                                                                                                                                      | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                  | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup>    | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
| <b>Ardsley</b> | <b>[Score: 1]</b><br>The otherwise applicable min. lot area requirement for a single-family home is reduced by 25% for an affordable housing unit. Although 2-family homes are not otherwise permitted in single-family zoning districts, an affordable 2-family home may be located on a lot that meets the otherwise applicable min. lot area requirement for a single-family home. In the MF | <b>[Score: 1]</b><br>In all districts, all residential developments of 10 or more units must have at least 10% of the units be affordable. In residential developments of 5 to 9 units, at least 1 unit must be affordable. The MF overlay district mandates that 20% of units must be workforce housing for emergency service, public service, and quality of life occupations workers, and another 20% of units must be affordable housing. | <b>[Score: 3]</b><br>Accessory apartments are not allowed in any district. Preferences for Ardsley residents etc. in workforce housing developments. 1 MF district is an overlay district. MF SP only allowed in connection with conversion of former school (not available anymore); Cluster district only allows apartment development of only 6 | <b>No</b>                                                    | <b>Yes</b><br>but only 1 district | <b>Yes</b><br>workforce housing    | <b>No</b>                                           | <b>2</b>                  | <b>2</b>                  | <b>2</b>                   | <b>2</b>                          |

<sup>1</sup> If a municipality's zoning ordinance is exclusionary under either or both prongs of the *Berenson* test, there must be a showing that the zoning practices are, in actuality, not exclusionary. *Robert E. Kurzius, Inc. v. Incorporated Vil. of Upper Brookville*, 51 N.Y.2d 338, 345 (N.Y. 1980); *Allen v. Town of N. Hempstead*, 103 A.D.2d 144, 147 (N.Y. App. Div. 2d Dep't 1984).

<sup>2</sup> Score of 1 = The zoning ordinance has provisions that are equal to or better than the model ordinance. See Ex. B, Westchester County Implementation Plan, Appendix D-1(i): Model Ordinance Provisions. Score of 2 = The zoning ordinance has provisions that are similar to the model ordinance, but the provisions are not as inclusive. Score of 3 = The zoning ordinance does not provide the relevant provisions.

<sup>3</sup> Although incentives such as density bonuses or provisions allowing accessory apartments or multifamily housing development may suggest that a zoning ordinance is not exclusionary, these provisions must not be "intrinsically narrow in scope [such that they] do very little to genuinely address the established need for multifamily housing." *Cont'l Bldg. Co. v. Town of N. Salem*, 211 A.D.2d 88, 94 (N.Y. App. Div. 3d Dep't 1995); *Land Master Montg I, LLC v. Town of Montgomery*, 821 N.Y.S.2d 432, 440 (N.Y. Sup. Ct. Orange Cnty. 2006) (citation omitted).

<sup>4</sup> Category 1 = Not exclusionary because the municipality provides a well-ordered plan for its community. Category 2 = Not exclusionary, but warrants improvement. Category 3 = Exclusionary because the municipality does not provide a well-ordered plan for its community.

<sup>5</sup> Category 1 = Not exclusionary because the municipality has considered and has the potential to satisfy regional need. Category 2 = Not exclusionary, but warrants improvement. Category 3 = Exclusionary because the municipality has not considered and does not have the potential to satisfy its fair share of regional need.

<sup>6</sup> Category 1 = Rebuttal successful because the zoning ordinance provides a wide array of affordable housing opportunities sufficient to meet local and regional need. Category 2 = Rebuttal may be sufficient, but the zoning ordinance warrants improvement. Category 3 = Rebuttal unsuccessful because the zoning ordinance, though it may have provisions addressing affordable housing opportunities, is too narrow in scope to provide genuine opportunities sufficient to meet local and regional need.

<sup>7</sup> Category 1 = Municipalities whose zoning ordinances meet prong one and prong two of the *Berenson* analysis and are therefore not exclusionary. Category 2 = Municipalities whose zoning ordinances do not necessarily meet either prong of the *Berenson* analysis, but certain other factors provide a rebuttal to the presumption that their ordinances are exclusionary. Category 3 = Municipalities whose zoning ordinances fail either prong one or two of the *Berenson* analysis and where there are insufficient factors to provide for a viable rebuttal against a finding of exclusionary zoning.

<sup>8</sup> This column examines other ordinance provisions such as prohibitions on accessory uses and special permit restrictions. If the municipality receives a score of 1, the provisions are some of the least restrictive practices. A score of 3 means the municipality has some of the most restrictive practices.

<sup>9</sup> Zoning ordinances that provide a wide array of affordable housing opportunities via special permits "create[] the illusion of affordable housing availability," but vest a large amount of discretion in municipal officials and are therefore insufficient. *Land Master Montg I, LLC*, 821 N.Y.S.2d at 440.

<sup>10</sup> *Cont'l Bldg. Co.*, 211 A.D.2d at 94.

<sup>11</sup> *Allen*, 103 A.D.2d at 148; *Triglia v. Town of Cortlandt*, No. 17976/96, 1998 WL 35394393, at \*6 (N.Y. Sup. Ct. Westchester Cnty. Jan. 6, 1998).

<sup>12</sup> *Cont'l Bldg. Co.*, 211 A.D.2d at 94.

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                   | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|--------------------------------|------------------------------------|-----------------------------------------------------|---------------------------|---------------------------|----------------------------|-----------------------------------|
|              | Incentives                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Mandates                                                                                                                                                                                                                                                                          | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
|              | overlay district, the Village may waive fees or provide assistance in obtaining additional local, state or federal funds for a multifamily development that includes 20% or more of workforce and/or affordable housing units.                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                   | units attached, semidetached or clustered with assisted living facilities. No more than 25% of the units may contain more than 3 bedrooms in the cluster district.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                              |                                |                                    |                                                     |                           |                           |                            |                                   |
| Bedford      | <p><b>[Score: 1]</b></p> <p>In a development where at least 20% of residential units are affordable, the Planning Board may waive or reduce fees, provide local assistance or actively assist in procuring federal, state or other agency support for affordable housing. In these affordable or mixed-income developments, the Town allows a reduction of dimensional requirements of not more than 25%, and shared parking to reduce infrastructure costs.</p> | <p><b>[Score: 1]</b></p> <p>At least 20% of any multifamily development in any multifamily residential zoning district must be affordable units. In all residential developments of 5 or more units in single-family districts, at least 10% of all units must be affordable.</p> | <p><b>[Score: 2]</b></p> <p>Accessory units are not allowed as-of-right. By special permit they may only be in existing homes, not in accessory buildings. The accessory apartment shall contain at least 400 sq.ft. but not more than 800 sq.ft. of gross floor area and shall not exceed 25% of the total floor area of the principal residence structure. There can be no more than 1 accessory apartment per lot and no more than 5 residents per lot. 1 MF district requires min. lot size of 2 acres. For MF by SP, can develop in 1 district or elsewhere only by conversion in residences existing prior to Sep.1, 1985, on lots of less than 20,000 sq. ft.</p> | No                                                           | No                             | No                                 | No                                                  | 2                         | 2                         | 1                          | 2                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality     | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                           | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                        |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|                  | Incentives                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Mandates                  | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                        | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
| Briarcliff Manor | <b>[Score: 2]</b><br>1 district provides a 50% increase in the usually applicable max. dwelling-units-per-acre density if at least 50% of the units are moderate income dwelling units, but has preference given to employees of the Village or the school district, residents of the Village, members of the fire department, former residents who still own residential property in the Village, other persons employed in the Village, relatives of Village residents and other Westchester residents | <b>[Score: 3]</b><br>None | <b>[Score: 2]</b><br>1 MF district is commercial and only allows mixed-use development, where residential use must not exceed 80% of the gross floor area, and no ground floor dwelling units shall front any public right-of-way. 1 MF district is intended for elderly communities. SP for MF and 2-family homes are only allowed for conversion of an existing house on a parcel of 10 or more acres. | Yes                                                          | Yes                            | Yes                                | Yes                                                 | 2                         | 2                         | 3                          | 2                                 |
| Bronxville       | <b>[Score: 3]</b><br>None                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <b>[Score: 3]</b><br>None | <b>[Score: 3]</b><br>No specific reference to affordable housing in the zoning code. New accessory apartments are not listed as a permitted use as-of-right or by SP in any district, contrary to what is indicated in the County's Municipal Zoning Analysis Appendix Table, although existing accessory apartments are grandfathered, permitted non-conforming uses.                                   | No                                                           | No                             | No                                 | No                                                  | 2                         | 2                         | 3                          | 2                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality | Model Ordinance <sup>2</sup> |                    | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
|--------------|------------------------------|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|--------------------------------|------------------------------------|-----------------------------------------------------|---------------------------|---------------------------|----------------------------|-----------------------------------|
|              | Incentives                   | Mandates           | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
| Buchanan     | [Score: 3]<br>None           | [Score: 3]<br>None | <b>[Score: 2]</b><br>Accessory apartments limited to only 1 bedroom units, between 300 and 600 sq.ft. in size and not to exceed 33% of the gross area of the building. MF as-of-right is only in 2 commercial districts and is limited to mixed-use development; the residential use must be in the back of or above a commercial establishment w a max. of 4 dwellings per acre. SP may be granted in 2 commercial districts for multifamily or 2-family dwellings without commercial use but the districts require parcels of land not less than 40,000 sq.ft., each dwelling unit contains a min. of 750 sq.ft., the max. density is 5 dwelling units per 40,000 sq.ft., and the parcel must adjoin a residentially zoned district. | No                                                           | No                             | No                                 | Yes                                                 | 2                         | 2                         | 3                          | 2                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality     | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                               | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|                  | Incentives                                                                                                                                                                                                                                                                                                                    | Mandates                                                                                                                                                                                                                                                                                                      | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
| Cortlandt        | <b>[Score: 2]</b><br>In 1 special district, if higher than 10% of affordable housing is provided, density may be increased by 66% (from 3 units / 6 bedrooms per acre to 5 units / 10 bedrooms per acre). In RRSP district, the new housing may be developed at a density of up to 20% greater than the existing development. | <b>[Score: 2]</b><br>In 1 special district, at least 10% of the final unit count must be affordable. All senior housing units in 1 special district must meet the Westchester County definition of affordability. In a RRSP development, all new units above the existing number of units must be affordable. | <b>[Score: 2]</b><br>Accessory units require SP approval. Although accessory units are permitted by special permit in 9 zoning districts (representing all but one multifamily district), in some districts a 1-bedroom / 2-occupant restriction forestalls the ability of families of three or more persons to be potential residents. The only MF district is restricted to 3- and 4-family dwelling w max. of 2 bedrooms per unit; 1 special MF district is not mapped; 1 special MF district is limited to senior housing. Some of the multifamily housing is only allowed at very low densities, less than 3 units per acre in one case, and up to 10 bedrooms per acre in another case. | Yes                                                          | Yes<br>But only 1 district     | No                                 | Yes                                                 | 1                         | 2                         | 3                          | 2                                 |
| Croton-on-Hudson | <b>[Score: 2]</b><br>1 district permits an increase in density of 5% of the number of market-rate units if the additional units are affordable; 1 overlay district permits a 10% increase in density over the underlying residential districts requirements.                                                                  | <b>[Score: 3]<br/>None</b>                                                                                                                                                                                                                                                                                    | <b>[Score: 2]</b><br>Accessory apartments may only be in existing buildings and the owner or lessee must be at least 55 years old. Only 1 accessory apartment is allowed per unit and it must be at least 400 sq.ft. but not greater than the lesser of 750 sq.ft. or 1/3 of the habitable floor area                                                                                                                                                                                                                                                                                                                                                                                         | No                                                           | Yes<br>accessory units         | No                                 | Yes<br>incentives                                   | 2                         | 3                         | 3                          | 3                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality | Model Ordinance <sup>2</sup> |                                                                                                                                                                                 | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                     |                                                              |                                |                                    | Prong 1 Rank <sup>4</sup>                           | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|              | Incentives                   | Mandates                                                                                                                                                                        | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                     | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                            |                                   |
|              |                              |                                                                                                                                                                                 | of the dwelling. 1 MF district is an overlay district intended to simplify the development of large tracts of 10 or more contiguous acres and permits as-of-right multifamily housing consistent with the underlying districts. SP district is also an overlay district dependent on underlying districts permitted uses, unless in 1 of 3 residential districts.     |                                                              |                                |                                    |                                                     |                           |                            |                                   |
| Dobbs Ferry  | [Score: 3]<br>None           | [Score: 1]<br>At least 10% of all residential developments of more than 10 units must be affordable. Offers alternative to meet requirement either off-site or through payment. | [Score: 3]<br>Village Code explicitly states that accessory dwelling units are illegal in the Village. All but 1 MF district requires min. lot size per unit ranging from low of 800 sq.ft. to a high of 6,000 sq.ft., and min. lot area of 5,000 sq.ft.                                                                                                              | No                                                           | No                             | No                                 | No                                                  | 1                         | 2                          | 2                                 |
| Eastchester  | [Score: 3]<br>None           | [Score: 2]<br>15% of units must be affordable in the SP district limited to senior housing                                                                                      | [Score: 3]<br>Accessory dwelling units are not permitted. In 1 mixed-use district, the commercial use may not take up more than 50% of the total floor area, and may only be located on the ground floor. SP district is limited to senior housing with max. 2 occupants in efficiency and 1 bedroom units and 3 occupants in 2 bedroom units and has preferences for | No                                                           | Yes<br>but only 1 district     | Yes<br>but only 1 district         | Yes<br>mandate only for 1 district                  | 1                         | 2                          | 3                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality       | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                               | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                          |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|                    | Incentives                                                                                                                                                                                                                                                                                                                                                                                                                     | Mandates                                                                                                                                                                                                                                      | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                          | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
|                    |                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                               | Eastchester residents and relatives. The max. density for senior housing is 1 unit per 700 sq.ft., which yields approximately 60 units per acre.                                                                                                                                                                                                                                                                           |                                                              |                                |                                    |                                                     |                           |                           |                            |                                   |
| Harrison           | [Score: 3]<br>None                                                                                                                                                                                                                                                                                                                                                                                                             | [Score: 3]<br>None                                                                                                                                                                                                                            | [Score: 3]<br>Accessory apartments are prohibited.                                                                                                                                                                                                                                                                                                                                                                         | N/A                                                          | N/A                            | N/A                                | N/A                                                 | 2                         | 3                         | 3                          | 3                                 |
| Hastings-on-Hudson | [Score: 1]<br>If a single-family home is to be an affordable housing unit, the minimum lot size is reduced by 25%. Planning Board may increase density requirements by 10% if, for every market rate unit in excess of the usually applicable max., one affordable housing unit is also provided.                                                                                                                              | [Score: 1]<br>At least 10% of any development of eight or more units must be affordable and at least 5% more must be either affordable or workforce. Alternative of meeting mandate either off-site or by contributing to housing trust fund. | [Score: 1]<br>Accessory units are permitted in existing buildings. Only affordable accessory housing units are permitted in newly constructed single-family homes and are limited to one bedroom, while other accessory units can include up to two bedrooms.                                                                                                                                                              | No                                                           | No                             | No                                 | No                                                  | 1                         | 1                         | 1                          | 1                                 |
| Irvington          | [Score: 2]<br>Each single-family affordable housing unit may be located on a lot meeting 75% of the otherwise applicable min. lot area. Each affordable 2-family home may be located on a lot meeting the min. lot area applicable to a single-family home. For SP below-market-rate units developed in 1 district, Village increases the allowable number of housing units and issues a waiver of site capacity requirements. | [Score: 1]<br>Any development of more than 10 units must include 10% affordable units, and any development of 5 to 9 units must include at least 1 affordable unit.                                                                           | [Score: 2]<br>Accessory units are permitted as-of-right in single-family zoning districts, but only on lots of at least 60,000 sq.ft., and occupancy is restricted to the son or daughter of the primary building residents. The zoning code has a special permit for below-market-rate units developed in 1 district, but these units are limited to Village employees, fire/EMS volunteers and resident senior citizens. | No                                                           | No                             | Yes<br>but only 1 district         | No                                                  | 2                         | 2                         | 2                          | 2                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality | Model Ordinance <sup>2</sup>                                                                                                                                    |                    | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|--------------------------------|------------------------------------|-----------------------------------------------------|---------------------------|---------------------------|----------------------------|-----------------------------------|
|              | Incentives                                                                                                                                                      | Mandates           | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
| Larchmont    | [Score: 3]<br>None                                                                                                                                              | [Score: 3]<br>None | [Score: 3]<br>Accessory housing is not listed as a permitted use. No single-family house can be smaller than 1,000 sq.ft. outside of the multifamily districts, and 1,400 sq.ft. in most of the Village, which forestalls cottage-style housing. 2 MF and two-family districts are commercial allowing mixed-use development only. MF buildings cannot be larger than 20 unit or taller than 2.5 stories. SP district is for townhouse developments restricted to cites of 6 or more acres, w no more than 2 bedrooms per townhouse dwelling. | N/A                                                          | N/A                            | N/A                                | N/A                                                 | 2                         | 2                         | 3                          | 2                                 |
| Lewisboro    | [Score: 2]<br>In only MF district, density may be increased by up to 40% if the applicant builds at least 1/3 of the additional density as middle-income units. | [Score: 3]<br>None | [Score: 2]<br>Accessory apartments cannot contain more than two bedrooms or four occupants and must be on lots of at least ½ acre. Accessory dwelling residences are allowed by SP on lots of at least 20 acres. The only MF district requires min. lot size for developments served by public water and sewer infrastructure of 15,000 sq.ft. If a development will not be served by public water and sewer, the min. lot size is 15 acres. The max. permitted density is 2                                                                  | No                                                           | No                             | No                                 | Yes                                                 | 3                         | 3                         | 3                          | 3                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality   | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                         | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                                                                        |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|--------------------------------|------------------------------------|-----------------------------------------------------|---------------------------|---------------------------|----------------------------|-----------------------------------|
|                | Incentives                                                                                                                                                                                                                                                                                                                                                                            | Mandates                                                                                                                                                                                                                                                                                                                                                                                                                                | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                                                                        | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
|                |                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                         | density units per acre.                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                              |                                |                                    |                                                     |                           |                           |                            |                                   |
| Mamaroneck     | [Score: 3]<br>None                                                                                                                                                                                                                                                                                                                                                                    | [Score: 2]<br>1 district requires that one of every 17 dwelling units must be workforce housing occupied permanently by individuals or families whose household incomes do not exceed 80 percent of the Westchester County area median income.                                                                                                                                                                                          | [Score: 3]<br>Accessory apartments are prohibited, with the exception of accessory buildings or trailers for domestic employees in single-family zoning districts. 1 MF district limits MF development to 1 3 bedroom unit for every 25 dwelling units, and has a min. lot size of 80,000 sq.ft. 1 MF district may have no more than an average of 2 bedrooms per unit, and no unit may have more than 3 bedrooms. SP district is for new, large mixed-use developments. | No                                                           | No                             | No                                 | Yes                                                 | 3                         | 3                         | 3                          | 3                                 |
| Mount Pleasant | [Score: 2]<br>5 MF districts permit a density bonus of up to 1/3 beyond the basic permitted density if the applicant provides affordable housing. There is no guidance regarding whether all or some percentage of the units must be affordable for the development to qualify for the bonus, nor are there any provisions regarding the location or quality of the affordable units. | [Score: 2]<br>Except for the maximum costs established for certain units in a single specified project, the residential conversion of a former school (units in the building may be set aside for seniors or those under 29 years of age who are either Town residents or their parents or children and that any such units must be sold at specified below-market prices), the Town has established no mandate for affordable housing. | [Score: 3]<br>Accessory apartments are permitted only by special permit, in existing buildings at least 10 yrs. old, and with a maximum of 600 sq. ft. Transitional districts restrict the number of bedrooms per unit in a development to an average of 2, with no more than 3 and no less than 1 bedroom. 1 MF district is commercial, is not mapped and requires min. site size of 100 acres; 1 MF district converted a                                               | No                                                           | Yes<br>but only 1 development  | Yes<br>but only 1 development      | Yes<br>but only mandate                             | 2                         | 2                         | 2                          | 2                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                  | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|--------------------------------|------------------------------------|-----------------------------------------------------|---------------------------|---------------------------|----------------------------|-----------------------------------|
|              | Incentives                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Mandates                                                                                                                                                                                                                                                                                                                                                                                                                         | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
|              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                  | school to dwelling units for seniors over 62 or families under 29 provided the development averages 750 sq.ft. The units were set aside for residents or parents or children of residents on the basis of economic and social need – criteria set by Town Board. 6 transitional districts restrict to average of 2 bedrooms with no more than 3 and no less than 1 bedroom. The 3 MF SP districts only allows multifamily housing if it is part of a conversion of an existing building.                       |                                                              |                                |                                    |                                                     |                           |                           |                            |                                   |
| New Castle   | <b>[Score: 1]</b><br>For affordable single-family homes, the usually applicable min. lot size is reduced by 25%. In a single-family home district, a 2-family home including an affordable unit may occupy a lot meeting the specified min. lot size for a single-family home. At the discretion of the Planning Board, density bonuses of up to 100% beyond the basic permitted density may be awarded in 1 district in exchange for the development of special features or facilities, including affordable units. Density bonuses may be considered in 1 district, but the ordinance is silent about the | <b>[Score: 1]</b><br>In 3 MF districts, within any multifamily development of 10 or more units, at least 10% must be affordable, and within any multifamily development of 5 to 9 units, at least 1 unit must be affordable. Within subdivisions of 10 or more building lots, affordable units must occupy at least 10% of the lots. Within subdivisions of 8 or 9 building lots, an affordable unit must occupy at least 1 lot. | <b>[Score: 1]</b><br>The zonig code has a provision for workforce housing, which does not allow for multifamily developments, but is restricted to mixed-use developments. The regulations regarding workforce housing units specify that no workforce units may be built within a tenth of a mile of 5 other workforce units and that such units have a max. unit size of 2 bedrooms. 1 MF district is an unmapped floating district. Min. lot area for MF developments ranges from 1 to 5 acres, though they | No                                                           | No                             | No                                 | No                                                  | 1                         | 2                         | 1                          | 2                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                           | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                                                                                        |                                                              |                                     |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|              | Incentives                                                                                                                                                                                                                                                                                                                                                                                                     | Mandates                                                                                                                                                                                                                                                                                                                                                  | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                        | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup>      | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
|              | purposes for which they may be awarded. Also has a workforce housing provision in 3 districts by SP.                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                           | may be reduced for affordable units.                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                              |                                     |                                    |                                                     |                           |                           |                            |                                   |
| North Castle | <b>[Score: 2]</b><br>The maximum density in 1 district may be increased by up to 45% if more than 40% of the increase is built as middle-income units. In 1 district, the permitted density may be increased by not more than 40% if the applicant constructs at least 20% of the increase as middle-income dwelling units.                                                                                    | <b>[Score: 2]</b><br>At least 15% of permitted floor area ratio in 1 district must be set aside for middle-income units for seniors. At least 35% of units in a single structure in 1 district must be set aside for middle-income units. At least 20% of units in a single structure in 1 commercial district must be set aside for middle-income units. | <b>[Score: 1]</b><br>Accessory units are permitted in 4 districts up to 1 unit as-of-right, but need SP for more units. 5 MF districts allow stand-alone multiple housing developments. In 3 MF districts, the multifamily developments must be apartments on the second floor as part of a mixed-use development. 1 district the max. density is restricted to 1 density unit per 25,000 sq.ft. of net lot area; 1 district requires a max. density of 1 density unit per 14,000 sq.ft. | No                                                           | Yes<br>but only 1 district          | No                                 | Yes                                                 | 2                         | 2                         | 2                          | 2                                 |
| North Salem  | <b>[Score: 1]</b><br>6 districts provide density bonuses of 25% for developments that provide more than the min. required number of affordable units, or, in subdivisions of less than 10 lots, a reasonable number. Bonuses of 20% may be awarded in 2 other districts. In 1 district, the min. required lot area for multifamily housing is reduced from 160,000 sq.ft. to 5,000 sq.ft for affordable units. | <b>[Score: 1]</b><br>At least 10% of all units in subdivisions of 10 or more units must be affordable. The requirement is increased to 20% in 4 of the MF districts.                                                                                                                                                                                      | <b>[Score: 2]</b><br>MF developments must be on lots of at least 5 acres. In 2 MF districts, the max. density is 4 units per acre or 6 multifamily units per acre. 1 of the MF districts is for senior housing with assisted living only; 1 of the MF districts is limited to lots of 160,000 sq. ft., but is reduced to 5,000 sq.ft. for affordable units. Mixed-use development is not permitted as-of-right in any zoning district.                                                   | No                                                           | Yes<br>but only 1 of 5 MF districts | No                                 | No                                                  | 1                         | 1                         | 1                          | 1                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality | Model Ordinance <sup>2</sup>                                                                                                                                                      |                                                                                                                                                                                                                 | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                                                                                             |                                                              |                                |                                    | Prong 1 Rank <sup>4</sup>                           | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|              | Incentives                                                                                                                                                                        | Mandates                                                                                                                                                                                                        | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                             | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                            |                                   |
| Ossining     | <b>[Score: 2]</b><br>Density bonuses are awarded in residential districts and 1 commercial district, so long as 1/2 of the density awarded is made up of below-market rate units. | <b>[Score: 1]</b><br>Within all residential developments of 10 or more units, 10% must be below-market-rate units, and residential developments of 5 to 9 units must contain at least 1 below-market-rate unit. | <b>[Score: 3]</b><br>MF housing development, two-family homes and mixed-use development are not permitted as-of-right. Accessory apartments are permitted by SP but with restrictions. Mixed-use development allowed by SP must be on a lot of at least 20,000 sq.ft. w min. housing unit size of 850 sq.ft. for a studio, efficiency or 1 bedroom unit, 1,150 sq.ft. for a 2 bedroom unit, and 1,450 sq.ft. for a 3 bedroom unit. MF housing by SP must be in lots of at least 40,000 sq.ft. | Yes                                                          | No                             | No                                 | Yes                                                 | 2                         | 3                          | 3                                 |
| Pelham       | <b>[Score: 3]</b><br>None                                                                                                                                                         | <b>[Score: 3]</b><br>None                                                                                                                                                                                       | <b>[Score: 3]</b><br>Accessory apartments are prohibited. 3 MF districts are commercial districts.                                                                                                                                                                                                                                                                                                                                                                                            | N/A                                                          | N/A                            | N/A                                | N/A                                                 | 2                         | 2                          | 3                                 |
| Pelham Manor | <b>[Score: 3]</b><br>None                                                                                                                                                         | <b>[Score: 3]</b><br>None                                                                                                                                                                                       | <b>[Score: 3]</b><br>Accessory apartments and mixed-use development is prohibited. No single multifamily unit may be used to accommodate more than one family or household for each 3,000 square feet of lot area within the district, which translates into a max. density of 14 units per acre. On the min. lot size of 7,000 sq. ft., only a 2-family home could be built.                                                                                                                 | No                                                           | No                             | No                                 | Yes                                                 | 3                         | 3                          | 3                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality  | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                               | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|               | Incentives                                                                                                                                                                                                                                                                                                                                                                                                                   | Mandates                                                                                                                                                                      | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
| Pleasantville | <b>[Score: 2]</b><br>For affordable occupied by a household that does not earn more than 50% of the Westchester County median income, have at least 1 occupant over the age of 62, and have a rent that does not exceed 30% of the annual gross household income, off-street parking requirements are waived for dwelling units that contain no more than 2 bedrooms, are rental units, and are designated affordable units. | <b>[Score: 1]</b><br>10% of any development of 10 or more units must be affordable units. 5% of assisted living facility units in 1 district must be set aside as affordable. | <b>[Score: 2]</b><br>A max. of 50 accessory apartments may be issued as of date the provision of the code was adopted, not including pre-existing ones. MF SP districts are limited to 2 bedrooms per dwelling unit.                                                                                                                                                                                                                                                                                                                                    | No                                                           | Yes                            | No                                 | Yes incentives                                      | 1                         | 2                         | 2                          | 2                                 |
| Pound Ridge   | <b>[Score: 1]</b><br>For affordable housing units, the minimum lot size for a single-family home is reduced by 25%. The Planning Board, at its discretion, may waive up to 50% of the otherwise applicable recreation fee for an affordable housing unit.                                                                                                                                                                    | <b>[Score: 1]</b><br>Within all residential developments of 10 or more dwellings, at least 10% of the units must be affordable.                                               | <b>[Score: 3]</b><br>Accessory units may not contain more than 2 bedrooms. 2 Family homes are not permitted in the town. MF development as-of-right only allowed in commercial districts as mixed-use developments limited to 2,500 sq.ft. max. coverage per building and max. height of 2 or 3 stories. SP districts are restricted to senior housing or residential care facilities w min. lot sizes ranging from 1 to 3 acres, precluding development of small multifamily developments. Senior housing may not contain more than 50 dwelling units. | Yes                                                          | Yes                            | No                                 | Yes                                                 | 2                         | 3                         | 3                          | 3                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality | Model Ordinance <sup>2</sup>                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                              | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                     |                                                              |                                   |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|              | Incentives                                                                                                                             | Mandates                                                                                                                                                                                                                                                                                                                                                                                                                     | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                     | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup>    | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
| Rye          | [Score: 3]<br>None                                                                                                                     | [Score: 3]<br>None                                                                                                                                                                                                                                                                                                                                                                                                           | [Score: 2]<br>Accessory units may only be granted by special permit. 1 district is for senior and handicapped housing only. 1 district is restricted to 2 historic properties and cannot contain more than 9 multifamily dwelling units. MF buildings may contain no more than 6 dwelling units per floor and cannot exceed 120 feet in maximum horizontal dimension. | Yes<br>for<br>accessory<br>apartment<br>s                    | Yes<br>but only for<br>1 district | No                                 | No                                                  | 1                         | 2                         | 3                          | 2                                 |
| Rye Brook    | [Score: 2]<br>Only in 2 floating zones that allow for the Board to waive or modify dimensional or bulk requirements at its discretion. | [Score: 1]<br>In all residential districts, at least 1 of each 10 units built in addition to the first 10 must be affordable. At least 25% of units of senior housing developments must be affordable, though senior housing needs a special permit and only either immediately adjacent to or south of Westchester Avenue. At least 50% of developments of 2 or more units in the FAH floating district must be affordable. | [Score: 3]<br>Accessory apartments and mixed-use development are prohibited throughout the Village, except that mixed-use developments are permitted in the FAH floating district. 1 MF district limits MF to existing parcels of 15 to 20 acres. 2 MF districts are floating districts. 1 SP district is for MF senior housing                                       | No                                                           | Yes<br>but only 1<br>district     | No                                 | No                                                  | 2                         | 2                         | 2                          | 2                                 |
| Scarsdale    | [Score:3]<br>None                                                                                                                      | [Score: 1]<br>All residential developments of 10 or more units must contain at least 10% affordable units. In a development of from 5 to 9 units,                                                                                                                                                                                                                                                                            | [Score: 3]<br>Accessory housing units are not permitted.                                                                                                                                                                                                                                                                                                              | No                                                           | No                                | No                                 | No                                                  | 2                         | 2                         | 2                          | 2                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality     | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                         | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|                  | Incentives                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Mandates                                                                                                                                                                                                                                                                | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
|                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | at least 1 unit must be affordable.                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                              |                                |                                    |                                                     |                           |                           |                            |                                   |
| <b>Somers</b>    | <p><b>[Score: 2]</b></p> <p>1 district allows a base number of density units to be increased by up to 50% if the development includes more than the required affordable component. One additional market-rate unit may be developed for each affordable unit in excess of the required 15%, but not to exceed 20%. In 1 district, if at least 50% of units in a development are affordable, the Town Board may permit a floor area ratio increase up to 50%, a reduction in the number of required parking spaces, and/or an increase in building height to 3 stories or 50 ft. Density bonuses of up to 10% may be awarded in 1 district if in the Town Board's judgment particular social, cultural, environmental, physical or economic needs of the community are to be served or substantial benefits are to be derived.</p> | <p><b>[Score: 2]</b></p> <p>The only Town-wide affordability mandate applies to senior housing. At least 15% of housing units must be affordable in 1 MF district.</p>                                                                                                  | <p><b>[Score: 3]</b></p> <p>Preference to Somers residents, municipal employees, volunteer firemen, policemen, school district employees, and former Town residents are provided for affordable units. 2-family dwellings are prohibited in the Town. The minimum site size is 500 acres in 1 district. The MF districts require a minimum lot area of 10 acres, 1 of these districts allows a max. of 3 density units per acre, the other allows 2 density units per acre. In 2 districts, residential units are limited to a max. of 2 bedrooms.</p> | <b>Yes</b><br>for incentives                                 | <b>Yes</b>                     | <b>Yes</b>                         | <b>No</b>                                           | <b>2</b>                  | <b>1</b>                  | <b>3</b>                   | <b>2</b>                          |
| <b>Tarrytown</b> | <p><b>[Score: 1]</b></p> <p>Density bonuses of up to 50% and waivers of land and building requirements may be awarded to developments that create more than the required number of affordable housing units. In 2 special waterfront</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <p><b>[Score: 1]</b></p> <p>In any residential development of 10 units or more, at least 10% of all units must be affordable. In residential developments of 8 or 9 units, at least 1 affordable unit must be created. In residential developments of 5 to 7 units,</p> | <p><b>[Score: 3]</b></p> <p>Accessory apartments are prohibited. 1 MF district is for mixed-use only with max. 55% of floor area for residential use.</p>                                                                                                                                                                                                                                                                                                                                                                                              | <b>No</b>                                                    | <b>No</b>                      | <b>No</b>                          | <b>No</b>                                           | <b>1</b>                  | <b>1</b>                  | <b>1</b>                   | <b>1</b>                          |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality | Model Ordinance <sup>2</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                      | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup>                                                                                                                                                                                                                                                          |                                                              |                                |                                    |                                                     | Prong 1 Rank <sup>4</sup> | Prong 2 Rank <sup>5</sup> | Rebuttal Rank <sup>6</sup> | Berenson Test Result <sup>7</sup> |
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|              | Incentives                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Mandates                                                                                                                                                                                                                                                                                                                                                                                                                             | Example/Other Restrictive Provisions <sup>8</sup>                                                                                                                                                                                                                                                                                          | Discretion Overly Vested in Municipal Officials <sup>9</sup> | Age Restrictions <sup>10</sup> | Resident Preferences <sup>11</sup> | Reach Limited to One or Few Districts <sup>12</sup> |                           |                           |                            |                                   |
|              | districts, dimensional bonuses, including larger permitted frontage, coverage, width, setback and height measurements, as well as relaxed landscaping requirements, may be awarded to a developer that provides affordable housing.                                                                                                                                                                                                                                                        | payments in lieu of affordable units must be made.                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                            |                                                              |                                |                                    |                                                     |                           |                           |                            |                                   |
| Tuckahoe     | <b>[Score: 2]</b><br>For workforce housing, for which current residents and employees are given preferences, density bonuses are provided and the Planning Board may waive restrictions at its discretion. The workforce housing ordinance allows between 5 and 15% of the total number of units to be affordable, subject to the Planning Boards approval. The Village Board of Trustees may increase the number of workforce units to 20% of the units where such flexibility is needed. | <b>[Score: 3]</b><br>None                                                                                                                                                                                                                                                                                                                                                                                                            | <b>[Score: 3]</b><br>Accessory apartments are prohibited. MF development as-of-right only in 2 districts. In 1 district, MF must be apartments w min of 7 units or townhouses w max of 7 units and must be on lots of at least 12,000 sq.ft.                                                                                               | No                                                           | No                             | Yes                                | Yes                                                 | 1                         | 2                         | 3                          | 2                                 |
| Yorktown     | <b>[Score: 3]</b><br>None                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>[Score: 1]</b><br>At least 10% of the units in any new residential subdivision of land in any single-family zoning district shall be established as fair and affordable housing units. At least 10% of the units of any new multifamily residential development of 30 units or less in any multifamily residential zoning district shall be established as affordable units, and at least 15% of the units of any new multifamily | <b>[Score: 2]</b><br>Accessory housing units are not permitted as-of-right. 2-family housing is restricted to conversion of existing properties. 1 MF district is for senior housing. 1 MF SP district is for either senior housing or conversion of existing homes constructed prior to 1930 and restricts the min. lot size to 15 acres. | Yes<br>accessory units                                       | Yes<br>but only 1 district     | No                                 | No                                                  | 1                         | 1                         | 2                          | 1                                 |

Chart of Municipal Rebuttal Factors under *Berenson* Test

| Municipality | Model Ordinance <sup>2</sup> |                                                                                                                                         | Restrictions Narrowing Scope of Affordable Housing Zoning Provisions <sup>3</sup> |                                                                          |                                   |                                       |                                                              | Prong<br>1<br>Rank <sup>4</sup> | Prong<br>2<br>Rank <sup>5</sup> | Rebuttal<br>Rank <sup>6</sup> | <i>Berenson</i><br>Test<br>Result <sup>7</sup> |
|--------------|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|--------------------------------------------------------------------------|-----------------------------------|---------------------------------------|--------------------------------------------------------------|---------------------------------|---------------------------------|-------------------------------|------------------------------------------------|
|              | Incentives                   | Mandates                                                                                                                                | Example/Other Restrictive<br>Provisions <sup>8</sup>                              | Discretion<br>Overly<br>Vested in<br>Municipal<br>Officials <sup>9</sup> | Age<br>Restrictions <sup>10</sup> | Resident<br>Preferences <sup>11</sup> | Reach<br>Limited to<br>One or Few<br>Districts <sup>12</sup> |                                 |                                 |                               |                                                |
|              |                              | residential development of 31 units<br>or more in any multifamily<br>residential zoning district shall be<br>established as affordable. |                                                                                   |                                                                          |                                   |                                       |                                                              |                                 |                                 |                               |                                                |

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

★ APR 10 2014 ★

LONG ISLAND OFFICE

UNITED STATES OF AMERICA,

**COMPLAINT**

Plaintiff,

**CV 14 2317**  
**SPATT, J.**  
**WALL, M.**

-against-

Civil Action No.  
CV-14-\_\_\_\_\_

THE TOWN OF OYSTER BAY,  
TOWN SUPERVISOR JOHN VENDITTO  
in his official capacity, and LONG ISLAND HOUSING  
PARTNERSHIP, INC.,

(\_\_\_\_\_, J.)  
(\_\_\_\_\_, M.J.)

Defendants.

-----X

Plaintiff, the United States of America, by its attorney, LORETTA E. LYNCH,  
United States Attorney for the Eastern District of New York, Michael J. Goldberger and Thomas  
A. McFarland, Assistant U.S. Attorneys, Of Counsel, for its complaint herein, states:

**INTRODUCTION**

1. The United States of America brings this action pursuant to the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.* (the Act). As set forth below, defendants, including the Town of Oyster Bay (the Town), have engaged, and continue to engage in, a pattern or practice of discriminating against African-Americans in violation of the Act, through the use of two housing programs, called "Next Generation" and "Golden Age." The programs, which were designed to encourage construction of below market rate housing for first time homebuyers and senior citizens, give preference to Town residents and relatives of Town residents. Both programs remain in effect and units constructed under them remain subject to the residency preferences described below. The Town is predominantly white, and very few African-American residents are eligible for these housing programs. Indeed, few, if any of the units

developed under these programs have been purchased by African-Americans. Accordingly, these preferences illegally discriminate against African-Americans, who constitute a much larger percentage of the eligible population in surrounding areas.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action pursuant to section 814(a) of the Act, 42 U.S.C. § 3614(a), and pursuant to 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) and (c). The defendant Town is located in this district, and upon information and belief, the individual defendant, John Venditto, sued in his official capacity, resides in this district. Defendant Long Island Housing Partnership, Inc. has its primary place of business in this district.

4. The Attorney General is authorized by section 814(a) of the Act, 42 U.S.C. § 3614(a) to commence this civil action to enforce the provisions of the Act.

### **FACTUAL ALLEGATIONS**

#### **A. Defendants**

5. The Town of Oyster Bay, a locality in Nassau County, New York, consists of sixteen unincorporated communities and eleven incorporated villages. The Town includes the Town Council, which is responsible for approving new housing developments under both the Next Generation and Golden Age programs and making revisions to the Town's zoning code. The Town also includes its various agencies, which are responsible for administration of governmental programs, including the Department of Community and Youth Services, which administers the Golden Age program.

6. Defendant John Venditto is the Town Supervisor and Chief Executive

Officer of the Town of Oyster Bay. He was first elected Town Supervisor in 1997. Prior to that date, he served as Town Attorney. As Town Attorney, Mr. Venditto was responsible for drafting the legislation which created the Golden Age program. As Town Supervisor, he has been responsible for designing the Next Generation program and passing the legislation creating that program. He has overseen implementation of the Next Generation and Golden Age programs since 1997.

7. Defendant Long Island Housing Partnership (LIHP) is a not-for-profit organization which, according to its annual statement, seeks to "provide increased housing opportunities, throughout Long Island, for those unable to afford decent and safe homes. . . through development, homebuyer education and technical assistance programs and through leadership and public advocacy."

8. According to the 2010 Census, the Town has a population of 293,215. Whites constitute 85% and African-Americans, 2.3% of the population.

9. The population of nearby areas is considerably more diverse. The 2010 Census reports that the population of Nassau County is 1,339,532; whites constitute 73% of the population; African-Americans, 11.1%. The five boroughs of the City of New York have a total population of 8,175,133, 44% of which is white and 25.5% African-American.

B. The Next Generation Program

10. On November 9, 2004, the Town of Oyster Bay Town Council passed Resolution No. 778-2004, enacting Local Law No. 16-2004, the Next Generation program. The resolution amended the Town zoning code to offer developers incentives to build housing affordable to first-time homebuyers with incomes between 80% and 120% of median Town

income. In exchange for building affordable Next Generation housing, developers would be permitted to build up to 12 units per acre, more than ordinarily permitted.

11. As administered, the program gives first priority to Town residents and children of Town residents. The Town's purpose in creating the residency preference was to benefit young families who have ties to the Town, to the exclusion of individuals without such ties.

12. At the time of passage of the Next Generation Program, Town Supervisor Venditto stated that the goal of the Next Generation program was "to keep *our children* here, keep the generations flowing in the Town." He added that "[b]y providing *our young people* with an opportunity to achieve the personal and financial stability that accompanies homeownership, we are helping ensure that our Town remains the best place to live and raise a family for present and future generations." Other representatives and residents of the Town have made similar statements.

13. The Town hired LIHP to administer and implement the program, including designing and applying a methodology for applying residential preferences in the process of awarding housing under the program. LIHP solicited potential buyers of Next Generation houses through outreach and mailings. It also reviewed applications for eligibility, offered loan counseling to prospective buyers, designated units for purchase to households chosen to purchase units through a lottery it administered, and maintained the waiting lists for the units.

14. Two Next Generation Housing developments have been built in the Town to date, the Seasons at Plainview and the Seasons at Massapequa.

15. The Plainview development consists of approximately 134 units, including 28 Next Generation condominiums. The Town Council approved it on June 13, 2006. In October 2006, LIHP mailed approximately 6,000 applications for Next Generation housing to households on its mailing list. The applications listed six requirements for eligibility in the Next Generation program, including that applicants be a resident or a child of a resident of the Town of Oyster Bay.

16. LIHP received approximately 2,000 applications for the 28 Next Generation residences at the Seasons at Plainview. Two hundred sixty-nine applicants met the program's eligibility requirements. Two hundred forty of the eligible applicants were residents of the Town, or the children of residents of the Town, and therefore were given a residency preference; the other 29 eligible applicants were non-residents of the Town.

17. LIHP held a lottery for the Next Generation homes at the Seasons at Plainview on January 10, 2007. All of the 240 applicants with residential preference were ranked ahead of the 29 non-resident applicants.

18. Houses were offered to applicants in rank order. All 28 units at the Seasons at Plainview were awarded to Town residents.

19. The Seasons at Massapequa includes 30 Next Generation townhouses. It was approved by the Town Council in October 2007. LIHP determined that one hundred and forty-seven applicants were eligible for the Next Generation homes. LIHP held a lottery on January 30, 2008 to select the buyers for those homes. One hundred twenty-eight applicants received residency preferences and were ranked ahead of the 29 non-resident applicants.

20. During the relevant time period, African-American representation among

the pool of potential Next Generation homebuyers was substantially lower in the Town of Oyster Bay than in surrounding areas. African-Americans constituted less than 1% of families living in the Town of Oyster Bay who were income eligible and otherwise qualified to purchase housing under the Next Generation program. Conversely, whites made up as much as 90% of the pool of eligible families. The eligible population of Nassau County and Suffolk County residents was approximately 10% African-American and between 70% and 75% white. The eligible population in the New York City metropolitan area was approximately 20.5% African-American and approximately 48% white.

21. Of the winners of the lottery for Next Generation housing at the Seasons at Plainview, 88% were white and none were African-American. At the Seasons at Massapequa, at least 28 of 30 of the Next Generation homes were awarded to white families through the lottery; none of the units were awarded to African-Americans.

C. Golden Age Housing

22. In or about June 1993, the Town created the Golden Age housing program, to encourage development of below-market rate housing for senior citizens. As with the Next Generation program, developers who build Golden Age housing receive zoning variances which allow them to build housing more densely than under current zoning restrictions, in exchange for lower sale prices. At all times since its inception, the Golden Age program has had some form of residency preference.

23. The Golden Age program currently has four categories of residency preference that must be satisfied before non-resident applicants are offered housing developed under the program: (a) residence in the school district; (b) residence in the Town; (c) child

resides in the school district; (d) child resides in the Town.

24. Since the program was adopted, more than 1,400 units of affordable senior housing units have been approved in the Town.

25. African-American representation among the pool of potential Golden Age homebuyers was significantly lower in the Town of Oyster Bay than in surrounding areas. Depending upon the metric used and the time that the Golden Age development was constructed, African-Americans constituted between zero percent and no more than four tenths of one percent of families living in the Town of Oyster Bay who were income eligible and otherwise qualified to purchase housing under the Golden Age program. Conversely, whites made up as much as 99% of the pool of eligible families in the Town. The eligible population of Nassau County and Suffolk County residents was between 3% and 10% African-American and approximately 86% white. The eligible population in the New York City metropolitan area was between approximately 10% and 20% African-American and between approximately 49% and 85% white.

26. Virtually all of the housing units developed under the Golden Age program have been purchased by whites who obtained their units pursuant to the preferences; only a handful, at most, have been purchased by African-Americans.

#### CLAIM FOR RELIEF

27. The Act prohibits discrimination in housing based upon, among other things, race and national origin. Specifically, section 804 of the Act, 42 U.S.C. § 3604, provides that it shall be unlawful:

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, *or otherwise make*

*unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.*

and

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(emphasis added).

28. The Town of Oyster Bay's Next Generation and Golden Age programs violate the Fair Housing Act because they deny African-Americans the opportunity to purchase homes developed under the programs and because they impose different terms, conditions, or privileges upon African-Americans seeking to purchase homes in those programs.

29. As a result of the foregoing, the United States is entitled to injunctive relief against defendants:

a. declaring that the discriminatory pattern or practices of the defendants set forth above violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 et seq. ;

b. enjoining the defendants and their agents and employees from unlawfully discriminating on the basis of race and/or color in the sale or rental of a dwelling,

c. remedying the effects of defendants' discriminatory conduct, including, but not limited to, damages on behalf of each and every aggrieved party, pursuant to 42 U.S.C. § 3614(d)(1)(B), and

d. ordering, in order to vindicate the public interest, pursuant to 42 U.S.C. § 3614(d)(1)(C), that the United States is entitled to civil penalties against each defendant in an amount not to exceed \$55,000.

WHEREFORE, Plaintiff United States of America requests that the Court enter

judgment:

A. Declaring that the discriminatory pattern or practices of the defendants as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 et seq.;

B. Enjoining the defendants and their agents and employees from unlawfully discriminating on the basis of race and/or color in the sale or rental of a dwelling, pursuant to 42 U.S.C. § 3614(d)(1)(A);

C. Ordering defendants to take such affirmative steps as may be necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of their unlawful practices including, but not limited to, paying damages on behalf of each and every aggrieved party, pursuant to 42 U.S.C. §3614(d)(1)(B); and

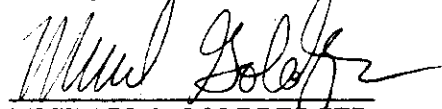
D. Imposing civil penalties on the defendants for their discriminatory behavior in order to vindicate the public interest, pursuant to 42 U.S.C. § 3614(d)(1)(C); and

E. Granting such other and further relief that is just and proper.

Dated: Brooklyn, New York  
April 10, 2014

LORETTA E. LYNCH  
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271 Cadman Plaza East  
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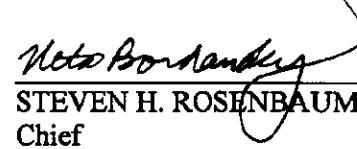
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