

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ACORN (THE NEW YORK ASSOCIATION OF :
COMMUNITY ORGANIZATIONS FOR REFORM :
NOW), NEW YORK ACORN HOUSING COMPANY, :
INC., VIC DEVITA, VERNON GHULLKIE, NATALIE :
GUERRIDO, LISBETT HUNTER AND FRANCINE :
MCCRAY, :

Plaintiffs,

v.

COUNTY OF NASSAU, INCORPORATED VILLAGE :
OF GARDEN CITY, AND GARDEN CITY BOARD OF :
TRUSTEES, :

Defendants.

Case No. 05-CV-2301 (LDW)
(WW)

**AMENDED COMPLAINT
FOR DECLARATORY
JUDGMENT AND
INJUNCTIVE RELIEF**

JURY TRIAL REQUESTED

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Plaintiffs, the New York Association of Community Organizations for Reform
Now, New York ACORN Housing Company, Inc., Vic DeVita, Vernon Ghullkie, Natalie
Guerrido, Lisbett Hunter, and Francine McCray, by and through their undersigned attorneys, as
and for their Complaint allege as follows:

I. NATURE OF ACTION

1. By this housing discrimination action, plaintiffs seek redress for ongoing
exclusionary housing practices by defendants Nassau County (the “County”), the incorporated
Village of Garden City (“the Village”), the Garden City Board of Trustees (the “Board of
Trustees”) and others acting with, or on behalf of, the defendants Village and County
(collectively, “Defendants”). This action challenges defendant County’s ongoing discriminatory
acts and long-standing pattern and practice of preventing African-American, other Black and
Hispanic persons from residing in predominantly white communities of Nassau County and,

specifically, the recent and imminent acts of the Defendants that effectively prevent affordable multi-family housing opportunities from being developed on a 25-acre parcel of County-owned property in Garden City, thereby perpetuating not only the exclusion of minorities from the overwhelmingly white enclave of Garden City, but also the pattern of racial and ethnic housing segregation in Nassau County generally, which is already one of the most segregated counties in the entire United States. By these and other illegal and discriminatory acts, the defendants have violated plaintiffs' rights under the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.*; the Civil Rights Act of 1866, 42 U.S.C. §§ 1981, 1982 and 1983; the Equal Protection clause of the Fourteenth Amendment to the United States Constitution; the "affirmatively furthering" obligations of the Fair Housing Act, 42 U.S.C. § 3608; and the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*

II. JURISDICTION AND VENUE

2. Jurisdiction is conferred on this Court by 42 U.S.C. § 3613 and by 28 U.S.C. §§ 1343 and 2201.

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), (c). Defendants all reside in this judicial district; the events or omissions giving rise to the claims herein occurred in this district; and the property at issue is situated in this judicial district.

III. PARTIES

4. Plaintiff Vic DeVita is a white man who resides in Garden City, New York and desires to live in a more integrated community than currently exists in Garden City. His residence is located less than two miles from the site that defendants, by their illegal action, are preventing from becoming a racially and ethnically integrated housing development.

5. Plaintiff Vernon Ghullkie is an African-American man who resides in Hempstead, New York. Mr. Ghullkie has been seeking an affordable residence in a racially integrated and diverse area in Nassau County in general, including Garden City, for approximately two years. Mr. Ghullkie has been unable to find suitable affordable housing outside of Hempstead, a low-income, predominantly minority community. He desires to live in Garden City because it is a safer community with more accessible public transportation than Hempstead.

6. Plaintiff Lisbett Hunter is a Black woman of Panamanian descent who has lived in various parts of Nassau County, including the low-income, predominantly minority communities of Freeport and Long Beach, for the past nine years. Ms. Hunter is currently in a temporary living arrangement and has been seeking a stable, affordable residence in a racially integrated and diverse area in Nassau County for the past several months. Ms. Hunter desires to live in Garden City because it is a safe community with easy access to public transportation, which Ms. Hunter sometimes uses for travel to and from her job in Manhasset, New York.

7. Plaintiff Francine McCray is an African-American woman who has been seeking an affordable residence in a racially integrated and diverse area in Nassau County, including Garden City, since February. Ms. McCray is currently living with her sister and niece in Hempstead, a low-income, predominantly minority community. Ms. McCray has lived in Nassau County all of her life and is very familiar with Garden City. She desires to live in Garden City because it is a safe community in close proximity to public transportation, which she sometimes uses to commute to her job in Woodbury, New York.

8. Plaintiff Natalie Guerrido is an African-American woman who resides in Roosevelt, New York with three of her children. Ms. Guerrido has been seeking affordable housing in a racially integrated and diverse area in Nassau County in general, including Garden

City, since approximately 2001. Ms. Guerrido has been unable to find any suitable affordable housing outside of Roosevelt, a low-income, predominantly minority community. She desires to live in Garden City because of its proximity to several modes of public transportation and employment opportunities, as well as to better schools and parks for her children. (Mr. DeVita, Mr. Ghullkie, Ms. Guerrido, Ms. Hunter, and Ms. McCray are collectively referred to as the “Individual Plaintiffs”.)

9. Plaintiff New York Association of Community Organizations for Reform Now (“New York ACORN”) is a local chapter of a nationwide nonprofit corporate entity called Association of Community Organizations for Reform Now organized and existing under the laws of the State of Arkansas. New York ACORN asserts the claims herein on behalf of its members.

10. New York ACORN includes a Long Island chapter with a membership of approximately 2,000 families organized in Hempstead, Roosevelt, Uniondale and throughout Nassau and Suffolk Counties. Through its Long Island Chapter, New York ACORN endeavors to organize tenants, to advocate against discriminatory local and state government decisions, and to promote better housing conditions, more affordable housing, and racially integrated housing opportunities, for all residents of Long Island.

11. New York ACORN has served as an advocate, working to eliminate unlawful racially discriminatory housing practices and housing segregation that affect every person who lives in or seeks to live in Nassau County. New York ACORN’s mission is to improve the quality of life for low and moderate-income communities that are predominantly populated by minorities. The members of New York ACORN have been deprived of the opportunity to live in an integrated community by the housing segregation and racially discriminatory housing practices that are pervasive throughout Nassau County. Such housing segregation and racially

discriminatory housing practices further frustrate efforts of New York ACORN members to find affordable housing in communities other than those that are already predominately populated by minorities.

12. Plaintiff New York ACORN Housing Company, Inc. (“NYAHC”) is an experienced not-for-profit community-based developer of affordable housing. NYAHC is incorporated in New York and was formed to develop, own, and manage affordable housing for families with low and moderate incomes.

13. NYAHC’s professional staff is experienced in all aspects of the development, financing, management, marketing, and maintenance of affordable housing. NYAHC has developed and now manages approximately 700 affordable housing units, and has developed projects totaling over \$80 million in the New York metropolitan area. NYAHC is currently constructing approximately 200 additional affordable housing units. For these newer units, NYAHC has either purchased and is renovating the buildings for tenant occupancy, is developing housing with a private co-developer, or has been awarded buildings for rehabilitation. NYAHC also has several other affordable housing projects in the pre-development stage with funding partners.

14. NYAHC has been actively seeking multi-family housing development opportunities in Nassau County over the past few years. NYAHC seeks to build mixed-income, multi-family affordable housing in Garden City.

15. Defendant County of Nassau (the “County” or “County Government”) is a municipal corporation organized under the laws of the State of New York, having its principal offices located at 1 West Street, Mineola, New York, 11501. All references to defendant County include any individual or entity acting on behalf of, or under the authority derived from, the

County, including, but not limited to, the Nassau County Planning Commission (“County Planning Commission”), and the Nassau County Office of Real Estate Planning and Development (the “County REP&D”).

16. Defendant Incorporated Village of Garden City, New York (the “Village”) is a municipal corporation organized under the laws of the State of New York, having its principal offices located at 351 Stewart Avenue, Garden City, New York, 11530. All references to the Village include any individual or entity acting on behalf of, or under the authority derived from, the Village.

17. Defendant Garden City Board of Trustees (the “Board of Trustees”) (together with the Village, the “Garden City Defendants”) is an elected governing body in Garden City, having its principal offices located at 351 Stewart Avenue, Garden City, New York, 11530, from which the Garden City offices responsible for all development in Garden City derive their authority. All references to the Board of Trustees include any individual or entity acting on behalf of, or under authority derived from, the Board of Trustees.

IV. FACTUAL BACKGROUND

Nassau County’s Historic Pattern and Policy of Housing Segregation

18. Housing in Nassau County is highly segregated by race and ethnicity, making Nassau County one of the most racially segregated counties in all of the United States.

19. Approximately 80% of the residents of Nassau County are white and approximately 17% of the residents of Nassau County are African-American, other Black, or Hispanic (hereinafter, “minority”).

20. Approximately 84% of white Nassau County residents live in non-integrated, virtually all white communities, whereas approximately 64% of the minority residents of Nassau County live in communities that contain predominantly minority residents.

21. The foregoing custom, pattern, practice and usage of racially and ethnically segregated housing that exists in Nassau County has been caused, perpetuated and reinforced by the custom, pattern and practice of discriminatory actions, policies and practices of defendant County for many decades.

22. Minorities residing in Nassau County have a disproportionate need for affordable multi-family housing that is not restricted to elderly persons (that is to say, “non-age restricted” housing). The County Government is fully aware that such non-age restricted affordable housing is disproportionately needed by – and used by – minorities. However, it is, and for many years has been, an express policy and practice of the County Government, as it recently expressed in its 2000-2004 Nassau County Consolidated Plan, to develop and promote the development of non-age restricted affordable housing only in predominantly minority and low-income areas of Nassau County and to exclude such affordable housing from areas that are predominantly populated by white people.

23. The County Government has also adopted a policy of supporting, encouraging, facilitating, and acquiescing in the efforts by local zoning authorities in the towns and villages located within Nassau County to enact exclusionary zoning laws and ordinances that often, *inter alia*, prevent the development of non-age restricted affordable multi-family housing, and it has done so with the purpose, intent or foreseeable effect of perpetuating racial and ethnic housing segregation throughout Nassau County and creating identifiable enclaves of nearly all-white

residential communities, such as Garden City. This express policy amounts to racial steering by the County Government.

24. The County Government's own housing policies and practices also cause, perpetuate, and reinforce housing segregation on the basis of race, color and national origin. With full knowledge and awareness that the minorities in Nassau County have a disproportionate need for affordable housing in Nassau County, the County Government maintains, and for many years has persisted in maintaining, an express and deliberate policy and practice of causing and steering such affordable housing to be constructed only in a small number of lower income and predominantly minority communities such as Roosevelt, Inwood, Hempstead Village, New Cassel and Freeport, and it has done so with the purpose, intent or foreseeable effect of perpetuating racial and ethnic housing segregation throughout Nassau County.

25. As a direct and foreseeable consequence of the aforementioned deliberate policy and practice, nearly all of the government subsidized, non-age restricted affordable housing developments in Nassau County are situated in predominantly minority census blocks.

26. The County Government has received and continues to receive federal subsidized housing funds from the Community Development Block Grant ("CDBG") program and HOME program. The County Government's customs, patterns and practices with respect to its use of these funds cause, perpetuate and reinforce racial and ethnic housing segregation and constitute overt racial steering. The CDBG and HOME programs require, among other things, the County Government "affirmatively to further" fair housing. Specifically, the County Government must use the funds in a manner that promotes racial integration rather than perpetuating racial and ethnic segregation, must collect and consider data documenting, and must evaluate the impact of its CDBG and HOME expenditures on racial and ethnic housing segregation.

27. In derogation of its affirmative obligations, the County Government maintains, and for many years has maintained, a policy and practice of directing HOME funds to local governments and non-profit entities to acquire sites for the development of non-age restricted affordable housing only in low and moderate income communities with a disproportionately minority population, but not in predominantly white communities and segregated white enclaves like Garden City. The County Government has done so with the purpose, intent or foreseeable effect of perpetuating racial and ethnic housing segregation throughout Nassau County.

28. In derogation of its affirmative obligations, the County Government has not used its CDBG funds in a manner that promotes racial integration, but instead the County Government maintains, and for many years has maintained, an express and deliberate discriminatory policy of using CDBG funds to support the development of non-age restricted affordable housing disproportionately in areas of Nassau County that it knows or should know are already predominated by minority residents and it has done so with the purpose, intent, or foreseeable effect of perpetuating racial and ethnic housing segregation throughout Nassau County.

29. In derogation of its affirmative obligations, the County Government has persistently and knowingly failed and refused to develop an “Analysis of Impediments to Fair Housing” to analyze fair housing needs and residential segregation, which is a basic prerequisite to fulfill its “affirmative obligation” to promote fair housing.

30. In derogation of its affirmative obligations, the County Government has persistently and knowingly failed and refused to track or document the effect of its CDBG and HOME expenditures on perpetuating segregation, so as to conceal and obscure the manifestly segregative effect of its CDBG and HOME programs on housing throughout Nassau County.

31. In furtherance of its policy and practice of perpetuating and reinforcing segregated housing patterns in Nassau County, the County Government maintains, and for many years has maintained, an express and deliberate policy and practice of fostering the development of subsidized senior housing only or disproportionately on sites that are located in predominantly white areas of Nassau County, even though it knows that a disproportionate percentage of the residents of such housing are and will be white persons. As a direct and foreseeable consequence of the aforementioned policies and practices of the County Government, most of the subsidized senior developments are located in census blocks where the vast majority of the population is white.

32. The defendant County's policies and practices with respect to its use and development of County-owned real estate further cause, perpetuate and reinforce the racially and ethnically segregated housing patterns that persist in Nassau County. The County Government maintains, and for many years has persisted in maintaining, a policy and practice of disallowing County-owned properties located in predominantly white communities of Nassau County to be sold to housing developers who it knows or believes will build affordable and integrated multi-family housing opportunities (and/or has reached agreements as to redevelopment plans to prevent such development). By contrast, the County Government maintains a policy and practice of affirmatively promoting the sale of County-owned property in predominantly minority communities to developers of affordable multi-family housing, and it has done so with the purpose, intent or foreseeable effect of perpetuating racial and ethnic housing segregation throughout Nassau County.

33. More than thirty-years ago in January 1974, the U.S. District Court in *Acevedo et al. v. Nassau County et al.*, expressly found that opposition to affordable and integrated housing in Nassau County is racially motivated:

By far, however, the most objectionable form of housing has been low-income family housing. It is clear from all the evidence that community opposition to this form of housing has been racially motivated. In Nassau County low-income family housing is predominantly occupied by Blacks. Proposals for the construction of this form of housing have incurred immediate and vehement opposition. As can be expected such heated opposition has not been ignored by the elected officials of Nassau. There is evidence of more than one housing proposal being dropped because of vehement community opposition.

Acevedo et al. v. Nassau County et al., 369 F. Supp. 1384, 1389 (E.D.N.Y. 1974).

34. Notwithstanding, and with actual or constructive knowledge of, a judicial finding of this Court that community opposition to affordable multi-family housing is racially motivated, the County Government maintains, and for more than 30 years has maintained, the policy and practice of acquiescing in and impliedly consenting to neighborhood and community opposition to the development of affordable multi-family housing and other housing that provides integrated housing opportunities disproportionately needed by minorities or to proposed local laws or ordinances that would foster or permit such housing developments, and it has done so with the purpose, intent and foreseeable effect of perpetuating racial and ethnic housing segregation throughout Nassau County.

Garden City's History of Housing Segregation

35. Defendant Village has cooperated with, facilitated and affirmatively acquiesced in the County Government's segregative policies and practices, including those that target the placement of non-age restricted affordable multi-family housing only in predominantly minority

communities of Nassau County but not in predominantly white communities or in white residential enclaves like Garden City.

36. Garden City is, and has been for decades, a highly segregated, nearly all-white residential enclave, located near the center of Nassau County.

37. The population of Garden City is approximately 95% white, with a total of only 23 African-American households (constituting approximately 1% of the Garden City population).

38. The Village of Hempstead, which directly borders Garden City on the South, has a population of which approximately 84% are minority. Uniondale, which is located Southeast of Garden City, has a population of which approximately 79% are minority. The Village of Westbury, which is located Northwest of Garden City, has a population of which approximately 43% minority.

39. Defendant Village has continuously acted to reject and obstruct the creation of any affordable and integrated multi-family housing opportunities by engaging in exclusionary zoning practices, and it has done so with the purpose, intent or foreseeable effect of excluding minorities from residing within the borders of Garden City and thereby perpetuating racial and ethnic housing segregation in Garden City itself and throughout Nassau County, generally.

40. In or about April 1989, developers of a 18-acre parcel previously owned by Doubleday & Co., Inc. located at 501 Franklin Avenue in Garden City ("Doubleday Site") proposed a plan to redevelop the Doubleday Site that would have included 51 units of affordable housing under then-current zoning ("Proposed Doubleday Site Development"). Faced with objections from Garden City residents, defendant Village rejected the Proposed Doubleday Site

Development and adopted a plan that eliminated the possibility of an affordable housing development on the Doubleday Site.

41. Despite its opposition to the construction of affordable multi-family housing that would be likely to attract a significant proportion of minority residents, defendant Village has not blocked the development of other multi-family housing and apartment buildings that by their design are likely to be inhabited by predominantly white residents. For example, the Wyndham, completed in 1989, is a two-building, 9-story complex consisting of 316 luxury condominiums and rental apartments on 12 acres of land. The size and density of the Wyndham is significantly greater than the affordable, multi-family housing which faced staunch opposition in the present case. *See, infra*, ¶¶ 53-59. By its past actions, defendant Village has encouraged and permitted the building of luxury multi-family housing, like the Wyndham, in Garden City that it knew or should have known would be inhabited by only or virtually only white residents.

42. Upon information and belief, with actual or constructive knowledge that government-subsidized, multi-family unit housing is likely to attract a significant proportion of minority residents and provide an opportunity for racially integrated housing for residents of Garden City and the surrounding communities, the defendant Village has not permitted the construction of even a single instance of such housing within the boundaries of Garden City.

43. Consistent with and in furtherance of its policy of maintaining Garden City as, for all intents and purposes, an entirely white residential enclave within Nassau County, officials of defendant Village have engaged in open and notorious conduct to exclude minority persons from Garden City, its public parks, public streets and public schools. Examples of such conduct include (1) in 1970, defendant Village denied, after receiving objections from Garden City residents, an application by the Unitarian Universalist Church to operate a daily day care center

in Garden City to serve 35 children, most of whom would be African-American and from low-income households in neighboring towns; (2) as was recently found by the New York State Attorney General's Office, defendant Village discriminatorily excludes minorities from using its public parks by regularly asking non-white non-residents to leave the parks and permitting white non-residents to use its parks; and (3) numerous African-Americans have reported incidents of being harassed by Village police while walking, jogging, driving and shopping in Garden City.

The Social Services Site: An Opportunity for Affordable Racially Integrated and Diverse Housing

44. In or about May 2002, the County Government began drafting a Real Estate Consolidation Plan ("Consolidation Plan"). The purpose of the Consolidation Plan was to inventory the approximately 2500 County-owned properties, to consolidate County Government operations, and to sell certain County-owned properties that would no longer be necessary for County Government operations.

45. Among the subjects of the Consolidation Plan was certain property located in Garden City known as the "Mineola Complex", which houses a courthouse, certain administration buildings, and parking facilities. Within the Mineola Complex is a parcel of approximately 25 acres of land located at 101 County Seat Drive, Garden City, known as the "Social Services Site".

46. The 25-acre Social Services Site consists chiefly of 21.44 acres located on the eastern side of County Seat Drive on which a social services building and a parking lot are situated, and an additional 3.03 acres located on the Western side of County Seat drive on which the Old Laboratory Building and County Garage are situated.

47. Throughout its preparation of the Consolidation Plan, defendant County consulted with defendant Garden City Board of Trustees to discuss the plans for the Mineola Complex and specifically for the Social Services Site.

48. The County Government issued its Consolidation Plan in December 2003 which called for, *inter alia*, the relocation of all the governmental operations then performed at the Social Services Site, and consolidating such operations with those performed at the County's facility in neighboring Uniondale. The Consolidation Plan further called for the sale of the Social Services Site to a private developer.

49. The defendant County requested the defendant Village's cooperation in rezoning the Mineola Complex, including the Social Services Site. At the time, the Social Services Site was zoned "P," that is to say, for public use. The County Government sought to rezone the Social Services Site to allow for non-governmental uses, which would facilitate the sale of the Social Services Site to a private developer. Throughout their planning of the rezoning and redevelopment of the Social Services Site, the County Government and the Garden City Defendants cooperated, facilitated, and coordinated their efforts.

50. The defendant County knew or reasonably should have known that the Social Services Site presented a uniquely attractive opportunity to address the County's need for affordable integrated housing opportunities, since it was centrally-located, publicly-owned, well-served by public transportation, situated nearby to uses compatible with affordable multi-family housing, including retail establishments and employment opportunities, and lacked barriers that the County has frequently identified as impediments to the development of affordable multi-family housing, such as land availability and willing developers.

The Original Proposed Plan and Its Significant Housing Opportunities for Minorities

51. In response to the County Government's request, the Board of Trustees appointed a "P Zone Committee" to address issues relating to the Mineola Complex and hired planning consultants, the firm of Buckhurst Fish & Jacquemart Inc. ("BFJ"), to assist the Garden City Defendants in drafting rezoning proposals in response to the County Government's plan to sell and redevelop the Social Services Site.

52. During 2003, Garden City's P Zone Committee and BFJ held public workshops to discuss the development of the Social Services Site.

53. During 2003 BFJ and the P Zone Committee also met with representatives of the County Defendants to discuss issues related to the County's proposed real estate consolidation, including among other things, the Village's future zoning of the Mineola Complex and the Social Services Site.

54. In its final proposal, BFJ recommended that a new zoning designation of "CO-5b" be used for the Social Services Site ("Proposed Zoning"). Under the Proposed Zoning, the CO-5b zoning would use existing residential multi-family zoning controls (commonly referred to as "R-M" zoning) and would allow single-family homes, townhomes and multi-family apartments.

55. Under the Proposed Zoning, and consistent with the existing R-M zoning, a multi-family dwelling would be subject, *inter alia*, to the following limitations: a maximum building height of 35 feet or two and a half stories; a restriction that the dwelling cover no more than 25% of the plot; a minimum of 25% of the plot must be open space; and the maximum number of multi-family housing units equal to one unit per 3000 square feet, or 14.5 units per acre. The

Proposed Zoning therefore allowed for a maximum of 355 affordable multi-family units to be constructed on the 25-acre Social Services Site.

56. In its proposal, and in accordance with the Proposed Zoning, BFJ contemplated the construction of a 311-unit multi-family housing development on the Social Services Site (“Proposed Plan”), with each unit of sufficiently small size (approximately 1000 square feet per unit) and of sufficiently dense lot size as a whole so as to make it economically feasible for a developer of affordable multi-family housing to develop such housing.

57. The Proposed Plan as developed by BFJ expressly stated that the Proposed Zoning permitted the development of housing that fit well with existing uses around the Social Services Site, which sits in a transitional area between single-family houses, retail/commercial areas, public/governmental offices and multi-story parking garages.

58. Under the Proposed Plan, a developer could have constructed 311 affordable apartments and, therefore, could have created a substantial number of racially integrated housing opportunities disproportionately needed by minorities in Nassau County. The Proposed Plan represented a meaningful step forward towards attenuating the persistent racial and ethnic housing segregation that existed in Garden City, its surrounding communities and Nassau County.

Neighborhood Opposition to the Possibility of Integrated Housing

59. On January 8 and February 5, 2004, the Garden City Defendants held hearings on the Proposed Zoning of the Mineola Complex and the Social Services Site.

60. During those public hearings, Garden City residents vociferously objected to the construction of affordable multi-family housing on the Social Services Site, and sought repeated

assurances from Garden City Defendants and County officials present that no such affordable multi-family housing would be built on the Social Services Site. Upon information and belief, the public opposition was racially motivated.

61. In accordance with its long-standing policy and practice, the defendant County acquiesced in neighborhood and community opposition to the development of affordable housing on the Social Services Site and cooperated with, facilitated, and affirmatively supported in the Village's segregative zoning policies and practices by assuring Garden City residents, during the public hearings and at other times, that the County would not take any action antagonistic to Garden City's wishes and by agreeing to act in concert with the Garden City Defendants to reject the Proposed Plan and to permit only luxury housing to be built on the Social Services Site.

62. In direct response to the aforementioned neighborhood and community opposition, the County Government, by its County Executive the Honorable Thomas R. Suozzi, acting consistent with and in furtherance of the County's long-standing policy and practice of acquiescing to neighborhood and community opposition of white residents to any housing developments likely to encourage or facilitate racially and ethnically integrated and diverse housing and acting, further, with conscious knowledge and awareness that affordable multi-family housing was actually needed in Nassau County and, in particular, those areas of Nassau County near to and around Garden City, gave express assurances that only luxury housing – that is to say, housing that defendant County knew or should have known was likely to attract predominantly white residents – would be allowed to be developed on the Social Services Site and gave as the reason therefore that given “the character of Garden City,” only such housing “would be appropriate.”

63. In June 2004, the defendant Village – with the express and deliberate support, encouragement, acquiescence and consent of the defendant County – rejected the Proposed Plan and Proposed Zoning, which had been recommended by its own planning consultants, and subsequently adopted an entirely new zoning classification for the Social Services Site, designated “R-T”, which had not previously existed under the Village’s proposed zoning ordinance (“Special Zoning”).

64. The new Special Zoning adopted by the Village was unique to, and expressly limited to the Social Services Site. The Special Zoning imposed more severe restrictions on the construction of affordable multi-family housing than had theretofore existed under the “R-M” designation for residential multi-family zoning. Most importantly, the new Special Zoning imposed stringent and unique limitations on multi-family housing unlike those found elsewhere in the Village’s zoning regulations and, by design or foreseeable effect, prohibited the development of and integrated housing on the Social Services Site.

65. The discriminatory Special Zoning permits multi-family dwellings only by special permission and only on a tiny sliver of the Social Services Site – namely, the 3.03 acre plot on which the Old Laboratory Building and County Garage were situated – constituting less than 15% of the Social Services Site’s 25-acre area. The discriminatory Special Zoning permits at the very most construction of only about 36 affordable multi-family housing units, as compared to the 311 units of affordable, multi-family housing that had been permitted under the Proposed Plan and Proposed Zoning.

66. Even if special permission were to be obtained, the exclusionary Special Zoning adopted by the Village for the Social Services Site decreases the maximum number of multi-family units permitted on the 3.03 acre sliver of the Social Services Site, thereby making it

economically unfeasible for any affordable racially integrated housing units to be developed on the Social Services Site.

67. Under the exclusionary Special Zoning, even if special permission were obtained the maximum number of multi-family units permitted on the 3.03 acre sliver is only one unit per 4000 square feet, as compared to the Proposed Zoning and existing R-M zoning, which permitted one unit per 3000 feet.

68. The discriminatory Special Zoning requires that single family homes and townhouses on the Social Services Site must be constructed of such a significant lot size and minimum square footage that the only economically feasible development on the Social Services Site will be of luxury single-family homes and townhouses, which are housing units likely to attract and to be inhabited by predominantly white residents.

69. The Proposed Zoning was rejected and the Special Zoning was adopted by the Garden City Defendants with the purpose, intent or foreseeable effect of preventing and excluding minorities from moving into the Village and the housing units to be constructed on the Social Services Site and into Garden City generally.

70. The reason asserted by defendants for rejecting the Proposed Zoning and adopting the Special Zoning was a concern with increased traffic and an increased burden on the school system from additional children that the Proposed Plan would cause.

71. The purported concern with increased traffic and an increased burden on the school system from additional children that the Proposed Plan would cause was not the real reason that the defendants rejected Proposed Zoning and adopted the Special Zoning.

72. Garden City's Defendants' own consultants projected that, assuming up to 355 apartments on the site, the impact on traffic would be negligible, or about a 5% increase in traffic during the evening and morning rush hour, given current traffic for the existing uses. Further, assuming 355 apartments at an average of 1000 square feet each, BFJ projected only an additional 89 school children, for which the Garden City school district had sufficient capacity.

73. The real reason for and foreseeable effect of the Garden City Defendants' decision to reject the Proposed Zoning and the Proposed Plan and to adopt the exclusionary Special Zoning was to prevent and curtail the availability of affordable, racially integrated housing in Garden City and to assure that the only housing allowed to be developed on the Social Services Site would be housing likely to be inhabited by only or virtually only white residents.

Nassau County's Promotion of and Consent To the Discriminatory and Exclusionary Special Zoning That Excludes Housing Opportunities for Minorities

74. With knowledge of the Village's discriminatory conduct in adopting the exclusionary Special Zoning, the County Government failed and refused to – and indeed supported and acquiesced in – those provisions and conditions of the Special Zoning that eliminated the opportunity for affordable, racially integrated housing on the Social Services Site. In May 2004, the County Government affirmatively informed the Village of its objections to certain other provisions and conditions of the Special Zoning. However, the County Government supported and acquiesced in Garden City Defendants' decision to block affordable and integrated housing opportunities on the Social Service Site.

75. The defendant County failed and refused to object to – and indeed acquiesced in and supported – certain provisions and conditions of Special Zoning that prevented or curtailed the availability of integrated housing – namely those limiting the permitted density of the

housing units and the availability of multi-family housing – notwithstanding its belief that such provisions and conditions of the Special Zoning reduced the potential revenue from its sale of the Social Services Site and negatively affected the County Government’s overall Consolidation Plan.

76. In or about July 2004, after the discriminatory Special Zoning was adopted, the County Government issued a Request for Proposals (“RFP”) for the Social Services Site that set forth an asking price for the Social Services Site of \$30 million.

77. Developers of affordable housing, including plaintiff NYAHC, were unable to respond to the RFP with a proposal that complied with the Special Zoning because the discriminatory Special Zoning made it economically infeasible to develop affordable housing given its limitations on permitted density. Immediately after Plaintiff NYAHC received the July 2004 RFP, NYAHC and a chapter of New York ACORN met with the County Government to present an alternative proposal for leasing the Social Services Site that would enable the County to meet its financial objectives while still providing affordable multi-family housing in Garden City. Promptly after that meeting, NYAHC sent financial information with respect to the proposal to County Government. During an August, 2004 meeting, County Government requested more information about the proposal, particularly with respect to the proposed lease payments. NYAHC promptly provided the requested information.

78. Under NYAHC’s proposal, it would lease the Site from the County and develop multi-family housing containing both affordable and market-rate units. The rents for the affordable units would be below market and based on the tenant’s income and family size as compared to the Nassau County area median income (“AMI”). For example, rent on a two-bedroom apartment would be priced at \$591 for families earning 30-40% of AMI, \$760 for

families earning 41-50% of AMI, \$928 for families earning 51-60% of AMI, \$1,182 for families earning 61-80% of AMI, \$1,519 for families earning 81-100% of AMI, \$1,857 for families earning 101-120% of AMI, and \$2,195 for families earning 121-140% of AMI. The market-rate rent on a two-bedroom unit in the proposed development would be \$2,500. NYAHC planned to fund the proposed development through tax-exempt bonds, the low income housing tax credit, and other subsidies, such as federal HOME funds, each of which is commonly used in the industry and has been previously used by NYAHC.

79. NYAHC developed this proposal in consultation with architects and other developers. NYAHC's employees expended significant hours preparing the development proposal. Nonetheless, the County Government never responded to Plaintiff NYAHC's proposal.

80. After it submitted its proposal to County Government, NYAHC drafted an alternative development plan including multiple scenarios that would comply with the Proposed Zoning and under which NYAHC would purchase the Social Services Site from the County for no less than its \$30 million asking price. These alternative development plans provide for the construction of a multi-family housing development containing approximately 300 units, some of which would be affordable units for families with low and moderate incomes and others which would be market-rate units. Under this alternative plan, the affordable housing units would include one, two, and three bedroom rental apartments with an average size of 1000 square feet and average rents substantially similar to those contained in NYAHC's original proposal to the County Government. Some of these affordable housing units would be available for families receiving Section 8 housing assistance. NYAHC intended to fund this alternative plan through tax-exempt bonds, the low income housing tax credit, and other subsidies, such as federal

HOME funds, each of which is commonly used in the industry and has been previously used by NYAHC. NYAHC again expended numerous hours preparing this alternative proposal.

81. Upon information and belief, other affordable housing developers in Nassau County are also interested in building multi-family affordable housing on the Social Services Site, but did not respond to the RFP because of the restrictive Special Zoning.

82. Upon information and belief, the defendant County has selected developer Myron Nelkin to develop the Social Services Site and to construct only luxury single family dwellings and townhouses likely to attract only or virtually only white residents, and unlikely to provide racially integrated housing opportunities.

83. The County Government and Mr. Nelkin do not propose to develop on the Social Services Site any affordable and integrated housing units in Garden City.

84. The development of the Social Services Site as currently contemplated by the County Government perpetuates and reinforces racial and ethnic housing segregation in Garden City and Nassau County.

85. Unless enjoined by this Court, the sale by the County of the Social Services Site will perpetuate and reinforce racial and ethnic housing segregation in Garden City and Nassau County.

Injury To Plaintiffs As Resulting from Defendants' Wrongful Conduct

86. Due to the pervasive pattern of racial and ethnic segregation in housing in the residential communities surrounding Garden City and throughout Nassau County, plaintiffs Ghullkie, Guerrido, Hunter and McCray have been unable to find any suitable affordable housing outside of predominantly minority communities.

87. Plaintiffs Ghullkie, Guerrido, Hunter, and McCray, desire to live in affordable housing in Garden City and likely have sufficient financial resources to afford an apartment in, and would seek to move into, affordable multi-family housing built on the Social Services Site were it not for defendants' discriminatory conduct and practices. For instance, Plaintiffs Ghullkie, Guerrido, Hunter, and McCray desire to, are eligible to, and could afford to live in the affordable units available under the NYAHC proposals.

88. By virtue of the defendants' discriminatory policies and actions, plaintiffs Ghullkie, Guerrido, Hunter, and McCray are being and, unless the relief herein requested is granted, will be, deprived of racially integrated housing opportunities outside predominantly minority communities of Nassau County and excluded from residing in predominantly white communities of Nassau County such as Garden City.

89. As a result thereof, plaintiffs Ghullkie, Guerrido, Hunter, and McCray do not have access to basic public services that they desire and which are available in Garden City, but not available in predominately minority communities of Nassau County, such as adequate law enforcement and public schools, available public parks, convenient public transportation, and more expansive shopping areas such as those located near the Social Services Site in Garden City.

90. By virtue of defendants' discriminatory policies and actions, plaintiffs Ghullkie, Guerrido, Hunter, and McCray are being and, unless the relief herein requested is granted, will be deprived of the ability to live in a racially integrated residential community, including the many benefits of interracial associations that would come with living in a racially integrated portion of Garden City and will be forced to experience the social stigma that results from living in highly segregated Nassau County.

91. As a white resident of Garden City, plaintiff DeVita desires to live in an integrated residential community, and by virtue of defendants' discriminatory practices is being and, unless the relief herein requested is granted, will be, deprived of that opportunity of living in a more integrated community than currently exists in Garden City, and of the benefits that result from living in a racially integrated community, including the many benefits of interracial associations that would come with living in a racially integrated portion of Garden City.

92. Due to the defendants' ongoing discriminatory conduct and practices that perpetuate and reinforce housing segregation generally and limit availability of affordable integrated housing developments to predominantly minority communities in particular, New York ACORN's members are being and, unless the relief herein requested is granted, will be, deprived of the opportunity to find suitable affordable housing located outside areas of minority concentration in the County.

93. Due to the defendants' ongoing discriminatory conduct and practices, New York ACORN members are being and, unless the relief herein requested is granted, will be deprived of the opportunity to live in racially integrated communities and the associated benefits of interracial associations that come with such housing opportunities.

94. Due to the defendants' ongoing discriminatory conduct and practices, New York ACORN members do not have and, unless the relief herein requested is granted, will be deprived of access to basic public services in Garden City such as adequate law enforcement and public schools, available public parks, convenient public transportation, educational facilities and more expansive shopping areas located near the Social Services Site in Garden City.

95. Due to the defendants' ongoing discriminatory conduct and practices that perpetuate and reinforce housing segregation generally and limit availability of affordable

integrated housing developments to predominantly minority communities in particular, plaintiff NYAHC has been, and unless the relief requested herein is granted, will be deprived of its right to develop and make available affordable housing for low and moderate income families outside of areas of minority concentration in the County.

FIRST CAUSE OF ACTION
(Violation of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*)

96. Plaintiffs repeat and reallege paragraphs 1 through 95 as if fully set forth herein.

97. Defendants' discriminatory practices, motivated by malice and/or callous disregard for the rights of Plaintiffs, deprive plaintiffs of their right of equal access to housing, otherwise make housing unavailable, deprive plaintiff NYAHC of its right to make housing available and perpetuate segregation on the basis of basis of race, color, and national origin in violation of the Fair Housing Act, 42 U.S.C. §§ 3604(a), both by intent and impact.

SECOND CAUSE OF ACTION
(Violation of the Civil Rights Act of 1866, 42 U.S.C. § 1981)

98. Plaintiffs repeat and reallege paragraphs 1 through 97 as if fully set forth herein.

99. Defendants' discriminatory practices, motivated by malice and/or callous disregard for the rights of plaintiffs, deprive plaintiffs of their right to make and enforce contracts to purchase, lease, or otherwise hold or convey property, on the basis of basis of race, color, and national origin (and thus deprive them of the same such rights as are enjoyed by white persons) in violation of the Civil Rights Act of 1866, 42 U.S.C. §1981.

THIRD CAUSE OF ACTION
(Violation of the Civil Rights Act of 1866, 42 U.S.C. § 1982)

100. Plaintiffs repeat and reallege paragraphs 1 through 99 as if fully set forth herein.

101. Defendants' discriminatory practices, motivated by malice and/or callous disregard for the rights of plaintiffs, deprive plaintiffs of their right to purchase, lease, or otherwise hold or convey property on the basis of basis of race, color, and national origin (and thus deprive them of the same such rights as are enjoyed by white persons) in violation of the Civil Rights Act of 1866, 42 U.S.C. §1982.

**FOURTH CAUSE OF ACTION
(Violation of the Civil Rights Act of 1871, 42 U.S.C. § 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States)**

102. Plaintiffs repeat and reallege paragraphs 1 through 101 as if fully set forth herein.

103. Defendants' discriminatory customs, patterns, practices, and usages in contravention of the Individual Plaintiffs' and NYAHC's constitutional and federal statutory rights motivated by malice and/or callous disregard for their rights, deprive the Individual Plaintiffs of their right of equal access to housing and deprive NYAHC of its right to make housing available under color of law in violation of the Federal Civil Rights Act of 1871, 42 U.S.C. §1983, and their rights under the Equal Protection Clause of the United States Constitution with regard to housing.

**FIFTH CAUSE OF ACTION
(Violation of the "Affirmatively Furthering" Obligations Under the Fair Housing Act, 42 U.S.C. § 3608)**

104. Individual Plaintiffs and New York ACORN repeat and reallege paragraphs 1 through 103 as if fully set forth herein.

105. In connection with their use of federal funds related to housing, including funds from the federal CDBG and HOME programs, the defendant County used the funds received in a discriminatory manner which promotes residential segregation and otherwise failed to meet the "affirmatively to further" obligations of the Fair Housing Act.

SIXTH CAUSE OF ACTION
(Violation of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*)

106. Individual Plaintiffs and New York ACORN repeat and reallege paragraphs 1 through 105 as if fully set forth herein.

107. The County Government's discriminatory practices with regard to the administration of federal programs, including the federal CDBG and HOME programs, motivated by malice and/or callous disregard for the rights of the Individual Plaintiffs and New York ACORN, violate the Civil Rights Act of 1964, 42 U.S.C. §2000d *et seq.*

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully demand that this Court enter a judgment:

a) Declaring that defendants' acts, practices, and policies complained of herein violated and violate plaintiffs' rights as secured by Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.*; the Civil Rights Act of 1866, 42 U.S.C. § 1981; the Civil Rights Act of 1866, 42 U.S.C. § 1982; the Civil Rights Act of 1871, 42 U.S.C. § 1983; the Equal Protection clause of the Fourteenth Amendment to the U.S. Constitution; and the "affirmatively furthering" obligations of the Fair Housing Act, 42 U.S.C. § 3608, and the Civil Rights Act of 1964, 42 U.S.C. §2000d *et seq.*;

b) Enjoining defendants, their agents, employees, successors, assigns, and those acting in active concert, combination or participation with them, from engaging in any policies or practices that deprive plaintiffs of their rights secured by any and all of the statutes cited in sub-paragraph (a), above, including among other things:

(i) Enjoining the Nassau County Defendants from proceeding with any sale of the Social Services Site, or continuing with any plans for redevelopment of the site, under the discriminatory Special Zoning;

(ii) Enjoining the Garden City Defendants from enforcing or attempting to enforce in any way the discriminatory or exclusionary provisions of the Special Zoning;

(iii) Ordering the Garden City Defendants to approve zoning ordinances for the Social Services Site that are substantially the same as the Proposed Zoning or that otherwise permit affordable housing;

(iv) Ordering the Nassau County Defendants to issue a Request for Proposals consistent with the Proposed Zoning and Proposed Plan or consistent with zoning which otherwise permits affordable housing including provisions that will require the development of affordable and integrated housing units at the Social Services Site;

(v) Enjoining the Nassau County Defendants from selling the Social Services Site to any person or developer that will not agree or commit to building affordable and integrated housing units at the Social Services Site to the maximum extent permitted under the Proposed Zoning;

(vi) Ordering all defendants to take all actions necessary to assure the redevelopment of the Social Services Site so as to maximize the availability of affordable and integrated housing at the site, including taking such

steps as the Court deems necessary and appropriate to support and/or subsidize such redevelopment;

(vii) Enjoining the Garden City Defendants from granting, and ordering the Garden City Defendants to withdraw, any permits, letters of approval, or other consents allowing steps toward redevelopment of the Social Services Site to continue;

(viii) Enjoining all Defendants and their agents, employees, successors and assigns, from engaging in any other discriminatory acts that perpetuate or contribute to segregation in the Garden City and Nassau County; and

(ix) Ordering all Defendants to take and/or fund affirmative steps, supervised by this Court, to overcome the effects of past discriminatory practices, including the funding of remedial activities necessary to overcome the perpetuation of segregation in Nassau County and Garden City;

c) Awarding such other relief as this Court deems reasonable, necessary and just; and

d) Awarding Plaintiffs their costs and attorneys' fees in this action.

* * *

Dated: New York, New York
November 30, 2005

By: s/ Paul B. Sweeney
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