UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FAIR HOUSING IN HUNTINGTON COMMITTEE, HUNTINGTON BRANCH, NAACP, ATHENA HAWKINS, LYNDA JOHN, IAN JOHN, JASMINE CURTIS, SHAVONDA BELTON and SERENA CAMARDI,	:	11 CV 1298 (LDW) (AKT)
Plaintiffs,	:	ELECTRONICALLY FILED
v.	:	
TOWN OF HUNTINGTON, NEW YORK, TOWN BOARD OF THE TOWN OF HUNTINGTON, and TOWN OF HUNTINGTON PLANNING BOARD,	:	
Defendants.	:	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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Plaintiffs Fair Housing in Huntington Committee, Huntington Branch, NAACP, Athena Hawkins, Lynda John, Ian John, Jasmine Curtis, Shavonda Belton and Serena Camardi (collectively, "Plaintiffs") respectfully submit this memorandum of law in support of their motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. As demonstrated below, there is simply no issue to be tried in this case. Defendants have conceded that the one-bedroom restriction placed on the affordable housing development at issue is designed to exclude families with children from the development, a *prima facie* violation of the fair housing laws, and there is no evidence in the record that would justify such a restriction.

PRELIMINARY STATEMENT

This is an action against defendants Town of Huntington, New York, Town Board of the Town of Huntington, and Town of Huntington Planning Board (collectively, the "Town" or "Defendants") for violations of the fair housing laws. The action specifically challenges the exclusion of families with children and minorities from the development known as Sanctuary at Ruland Road ("Ruland Road").

Consistent with the long-standing need in Huntington for affordable family housing, in July 1999, SBJ Associates, LLC (together with the Benjamin Development Company, Inc. and Ruland Road LLC, the "Developer") submitted to the Town a change of zone application in order to permit the construction of 92 two-bedroom and 30 three-bedroom affordable rental units at the Ruland Road site. Such units were supposed to mitigate the lack of affordable family housing at a related development known as the Greens at Half Hollow (the "Greens"), where the Developer planned to construct (and has since constructed) 1,300 age-restricted housing units and 75 non-age restricted, four- and five-bedroom luxury homes.

The two- and three-bedroom plan for Ruland Road was never acted upon by the Town. Instead, approximately one year later, the Town directed the Developer to withdraw the two- and three-bedroom plan and replace it with a plan for all one-bedroom units, in exchange for obtaining the necessary approvals for the Greens and Ruland Road. In response, the Developer withdrew its plan to construct family housing at Ruland Road and, on September 11, 2000, filed an application to change the zoning of the Ruland Road site to permit the construction of all one-bedroom units. The very next day, the Town passed a resolution amending its zoning laws to allow for the development of the Greens and, two months later, passed a resolution amending its zoning laws to permit the development of all one-bedroom units at Ruland Road.

The Developer subsequently submitted a site plan for Ruland Road consisting of all one-bedroom units and, on March 10, 2010, after many years of inaction, the all one-bedroom site plan was approved by the Planning Board. As Plaintiffs' expert, Dr. John Logan, has opined, the all one-bedroom plan approved by the Planning Board would be expected to include just 12 households with children (10%), as opposed to 51 households with children (42%) under the original two- and three-bedroom plan.

As set forth below, the Town's imposition of a one-bedroom limitation at Ruland Road constitutes a clear and unequivocal violation of the familial status provisions of Section 804(a) of the Fair Housing Act ("FHA"), 42 U.S.C. § 3604(a). A violation of the FHA can be established by demonstrating that a challenged action is either intentionally discriminatory or that it has a disparate impact on a protected group – here, families with children.[1] Plaintiffs are entitled to summary judgment under either standard.

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[1] Although Plaintiffs have asserted Fair Housing Act claims based on both familial status and racial discrimination, the instant summary judgment motion is based solely on Plaintiffs' familial status claims. Summary judgment in favor of Plaintiffs on these claims alone would

First, there is direct evidence of intentional discrimination by Defendants against families with children. Defendants have *admitted* to limiting the Ruland Road development to one-bedroom units as a result of purported school overcrowding concerns and the number of children that a multi-bedroom plan would generate. In doing so, Defendants admit to discrimination against families with children, a *prima facie* violation of the FHA. (*See infra.* pp. 13-14.)

Second, Defendants cannot demonstrate, as they must, that their limiting Ruland Road to one-bedroom units serves a legitimate governmental interest. Significantly, although Defendants have alleged that the one-bedroom limitation is somehow justified as a result of purported school overcrowding concerns, they have failed to produce *any* evidence – empirical or otherwise – demonstrating that the schools are actually overcrowded or that two- and three-bedroom apartments would exacerbate any purported school overcrowding. Indeed, despite suggestions to do so by the Town's own Planning Board, Defendants failed to conduct *any* studies of the potential impact on the local schools of either the original two- and three-bedroom plan or the one-bedroom plan.

Further, the record evidence demonstrates that purported school overcrowding concerns of the school district have not been consistently expressed. For example, although the school district opposed multi-bedroom affordable housing at the Greens and Ruland Road because of the purported fear of adding too many children to school enrollment, it had no such concerns regarding the contemporaneous construction of 75 units of four- and five-bedroom luxury housing as part of the same overall project, a discrepancy that was noted by the Town's own Planning Department. Accordingly, Plaintiffs are entitled to summary judgment on their claim of intentional discrimination based on familial status. (*See infra.* pp. 14-17.)

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obviate the need for a trial. Should this case proceed to trial, Plaintiffs intend to prosecute both their familial status and racial discrimination claims.

Summary judgment is likewise appropriate under a disparate impact analysis. As an initial matter, there is no dispute that restricting Ruland Road to all one-bedroom units has a disparate impact on families with children – Defendants' own expert has admitted as much. Accordingly, "the burden shifts to the defendant to prove that 'its actions furthered, in theory and in practice, a legitimate, bona fide governmental interest and that no alternative would serve the interest with less discriminatory effect.'" *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1182 (E.D.N.Y. 1993) (Wexler, J.) (citation omitted). As discussed above, and set forth in greater detail below, Defendants cannot demonstrate a legitimate, bona fide governmental interest in limiting Ruland Road to all one-bedroom units. Moreover, Defendants have failed to produce any evidence in this matter indicating that they explored alternatives that would serve their purported interest with less discriminatory effect. (*See infra.* pp. 17-19.)

Finally, as this Court held in a case in which it granted summary judgment for plaintiffs on their FHA claims, when conducting a disparate impact analysis, two factors "weigh heavily" in a plaintiff's favor: "(1) evidence of discriminatory intent on the part of the defendant; and (2) evidence that the plaintiff is seeking only to require a municipal defendant to eliminate an obstacle to housing rather than suing to compel it to build." *Oxford House, Inc.*, 819 F. Supp. at 1183 (citations omitted). Both factors are present here. As discussed, there is direct evidence of discriminatory intent in the form of Defendants' admission that the one-bedroom limitation was put into place in order to deter families with children from living at Ruland Road. In addition, Plaintiffs are seeking to require the Town to "eliminate an obstacle to housing rather than suing to compel it to build." *Id.* Accordingly, like the plaintiffs in *Oxford House*, Plaintiffs respectfully submit that they are entitled to summary judgment on their FHA claims under a disparate impact analysis. (*See infra.* pp. 19-20.)

PROCEDURAL HISTORY

On May 8, 2002, certain of the plaintiffs in this instant matter filed a complaint against the Town challenging the exclusion of minorities and families with children from the Greens. *Fair Hous. in Huntington Comm. v. Town of Huntington*, 02-cv-2787 (E.D.N.Y.) (Hurley, J.) In 2004, plaintiffs amended the complaint to include claims challenging the exclusion of minorities and families with children from Ruland Road.

After several years of litigation, on July 8, 2010, the court granted in part and denied in part the Town's then-pending motion to dismiss, holding that the plaintiffs' Ruland Road claims were barred by the two-year statute of limitations. The court held, *inter alia*, that the "continuing violation doctrine" was inapplicable because the underlying complaint did not "identif[y] a single unlawful practice with regard to their [Ruland Road] claims that continued into the limitations period." *Fair Hous. in Huntington Comm. Inc. v. Town of Huntington*, No. 02-CV-2787 (DRH)(WDW), 2010 WL 2730757, at *7 (E.D.N.Y. July 8, 2010).

On August 11, 2010, the plaintiffs moved for leave to amend the complaint to add allegations of unlawful practices continuing through at least March 2010 – *i.e.*, the day the Planning Board approved an all one-bedroom site plan for Ruland Road. On November 18, 2010, the court issued a decision in which it held that the Ruland Road claims would indeed be timely if the proposed amendments were made. The court, however, did not permit the plaintiffs to amend their complaint, instead holding that the Ruland Road claims could be pursued "in a separate action." *Fair Hous. in Huntington Comm. v. Town of Huntington*, No. 02-CV-2787 (DRH)(WDW), 2010 WL 4791787, at *9 (E.D.N.Y. Nov. 18, 2010). Accordingly, in conformance with the court's direction, on March 17, 2011, Plaintiffs filed the complaint in the

instant action, once again challenging the exclusion of minorities and families with children from the Ruland Road development.

STATEMENT OF FACTS

A. The Parties

1. Plaintiffs

Plaintiff, the NAACP Huntington Branch ("Huntington Branch") is a membership-based, non-profit association that is affiliated and charted by the National Association for the Advancement of Colored People, Inc. ("NAACP"). The Huntington Branch was established with the objective of ensuring the political, housing, educational, social and economic equality of minority groups.

Plaintiff Fair Housing in Huntington Committee, Inc. ("FHHC"), is a local non-profit organization consisting of concerned residents of Huntington and the surrounding areas. FHHC's goals include the elimination of unlawful discriminatory housing practices and housing segregation that cause injury to its members, to all persons who seek to rent or buy housing units in Huntington, and to all persons who reside in Huntington.

Plaintiff Athena Hawkins is an African-American woman who resides in Huntington Station, New York, with her two children. Plaintiffs Ian John and Lynda John are an African-American married couple and reside in Huntington, New York. Plaintiff Jasmine Curtis is an African-American mother of four children. Plaintiff Shavonda Belton is an African-American woman who resides with her husband and her son. Plaintiff Serena Camardi is a white mother of twin boys.

2. Defendants

Defendant Town of Huntington, New York, is a municipal corporation organized under the laws of the State of New York. Defendant Town Board of the Town of Huntington is an

elected governing body in the Town of Huntington from which the Town offices responsible for all development in Huntington derive their authority. Defendant Planning Board of the Town of Huntington is a quasi-independent board whose members are appointed by the Huntington Town Board.

B. The Town's Longstanding Need for Affordable Family Housing

The need for affordable family housing in Huntington is longstanding. The Town's 1993 Comprehensive Plan Update states that "[h]igher-density development [such as Ruland Road] can only be justified in those instances where a public benefit is realized, particularly in the provision of housing more affordable to a greater variety of individuals and *households*." (Hacker Decl. Ex. 1 at 4-21 (emphasis added).)[2] Likewise, in its 2000 Consolidated Plan, the Town specifically recognized that the need for affordable family housing exceeded the need for all other types of housing. (Hacker Decl. Ex. 2 at 45.) This need has not abated. The Town's Consolidated Plan for 2010-2014 explicitly states that increasing affordable housing options for families is a "housing priority" for the Town and that "[l]arge families . . . are experiencing the most difficulty with suitable and affordable housing." (Hacker Decl. Ex. 3 at 27, 33.)

C. Acquisition by the Developer of the Ruland Road and Greens Sites

On or about November 20, 1998, the Developer executed an agreement to purchase approximately eight acres of land near Ruland Road in Melville. (Hacker Decl. Ex. 4.) Thereafter, in October 1999, the Developer purchased a 382-acre site in Huntington that became known as the Greens at Half Hollow in order to construct 1,300 age-restricted senior citizen housing units and 75 non-age restricted, four- and five-bedroom luxury homes. (Hacker Decl. Ex. 5.)

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[2] Citations to the "Hacker Decl. Ex. __" are to documents attached as exhibits to the Declaration of Gary J. Hacker, dated August 7, 2012, submitted herewith.

In order to offset the planned construction of age-restricted and luxury housing at the Greens, the Town required that the Developer also build non-age restricted, affordable family housing – *i.e.*, housing suitable for families with children. (Hacker Decl. Ex. 6 (J. Libert) at 39:23-41:1 ("[U]ltimately it was determined that we would build family low income housing or family affordable housing on that site, and as an offset to the impacts of all of the luxury housing restricted at the Greens.").) It was eventually agreed that such housing would be built at the Ruland Road site. (*See id.*) To that end, on July 27, 1999, the Developer submitted to the Town a development proposal calling for the construction of 92 two-bedroom and 30 three-bedroom rental units at Ruland Road. (Hacker Decl. Ex. 10.)

D. The Town Directs the Developer to Withdraw its Plan for Family Housing at Ruland Road

In June 2000, at the Town's direction, the Developer withdrew its July 1999 application to construct two- and three-bedroom rental units at the Ruland Road site and indicated that it planned to submit a revised plan calling for the construction of all one-bedroom units. (Hacker Decl. Ex. 11.) According to the Developer, approval of both the Greens and Ruland Road applications by the Town was specifically conditioned on the change from a two- and three-bedroom plan for Ruland Road to an all one-bedroom plan. (Hacker Decl. Ex. 12 at TOH001554 (the developer "agreed to limit the apartment to one-bedroom units" as "a means for gaining the necessary approvals"); Ex. 13 (K. Mohr) at 127:18-128:2.)

On September 11, 2000, the Developer filed an application to change the zoning of the Ruland Road site in order to permit the construction of 122 one-bedroom, affordable rental units. (Hacker Decl. Ex. 16.) As the Town itself expressly noted, "[t]he Plan was revised to limit the project to one-bedroom units because of concern by the Half Hollow Hills School District regarding the potential number of school children prospectively generated by the project."

(Hacker Decl. Ex. 9 at TOH001649; *see also* Hacker Decl. Ex. 18 (M. Cuthbertson) at 6:1-12; Ex. 6 (J. Libert) at 74:12-75:2; Ex. 13 (K. Mohr) at 113:9-114:2.)

Although the Half Hollow Hills School District opposed affordable, multi-bedroom housing at the Ruland Road site because of purported school overcrowding concerns, it never expressed any concerns regarding the number of school age children that would be generated from the 75 units of four- and five-bedroom luxury housing built at the Greens. This discrepancy was noted by the Town's own Planning Department. (Hacker Decl. Ex. 19 at TOH001273.)

E. The Planning Board and Planning Department Question the Propriety of an All One-Bedroom Plan for Ruland Road

In an August 4, 2000 memorandum to the Town Board, the Planning Board specifically questioned the propriety of an all one-bedroom plan for Ruland Road. (Hacker Decl. Ex. 14.) The Planning Board asked, among other things, how it can "be assured that the affordable housing at Ruland Road will ever be built;" how one-bedroom units at Ruland Road will "address the need for affordable housing for families;" and whether "any studies [have been] done on the need for affordable housing for families in Town." (*Id.* at TOH000625.) In addition, the Planning Board stated that there should be an analysis conducted of the "impact or lack of impact on the schools" from other recently-built housing developments in the Melville area. (*Id.*) Such concerns, however, were *never addressed* by the Town Board, and no studies addressing the impact of either a multi-bedroom plan or one-bedroom plan for Ruland Road were ever conducted.

By contrast, in connection with the 75 luxury four- and five-bedroom homes to be built at the Greens, an analysis of the number of children projected to live in those homes was conducted.

(Hacker Decl. Ex. 15 at TOH006297-6302.) Significantly, the school district determined that the impact of the 75 luxury homes did not warrant any objection. (*See id.* at TOH006302.)

F. The Town Re-Zones the Greens and Ruland Road Properties

On September 12, 2000, the Town amended its zoning laws to allow the construction of 75 non-age restricted four- and five-bedroom luxury homes and 1,300 senior citizen age-restricted housing units at the Greens site. ("Resolution No. 2000-684"). (Hacker Decl. Ex. 20.) And, on November 21, 2000, the Town passed Resolution No. 2000-850, which amended its zoning laws to permit the development of "122 one-bedroom affordable housing units" at Ruland Road. (Hacker Decl. Ex. 21.)[3]

G. The Town Re-Iterates Its Position that Ruland Road Be Limited to All One-Bedroom Units

According to the Developer, in accordance with the Town's "preference" for all one-bedroom units at Ruland Road, in or about 2002, it submitted a site plan application calling for the construction of 120 one-bedroom units at the site. (Hacker Decl. Ex. 22 ¶¶ 16-18.) Thereafter, on July 16, 2003, the Planning Board held a public hearing on the Ruland Road site plan application. (Hacker Decl. Ex. 23.) However, no formal vote ever occurred. Instead, more than four years after the hearing, on February 15, 2008, the Developer submitted a revised site plan, this time calling for the construction of 94 one-bedroom units and 28 two-bedroom units. (Hacker Decl. Ex. 24.)

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[3] In order to ensure that the affordable units at Ruland Road actually got built, Resolution No. 2000-684 mandated that "no building permit shall be issued for 200 of the market value condominium units at The Greens Project until such time as building permits are issued for all of the units at the Sanctuary Project at Ruland Road." (Hacker Decl. Ex. 20 at TOH000571.) Nevertheless, in direct violation of Resolution 2000-684, the Town granted building permits for all of the market value condominium units at the Greens prior to any building permits being issued for affordable housing units at Ruland Road. (Hacker Decl. Ex. 8 (F. Petrone) at 101:16-102:8.)

The Developer subsequently met with representatives of the Town, including the Town Supervisor, Frank Petrone, regarding the Ruland Road development. (Hacker Decl. Ex. 25 (R. Mohr) at 158:2-162:6.) At that meeting, the Town made clear that the "[Ruland Road] application would not move forward unless it was all one bedrooms." (*Id.* at 161:15-22.) As a result, in October 2008, at the Town's "insist[ence]," the Developer changed the plans back to include only one-bedroom units. (Hacker Decl. Ex. 26 ¶¶ 4-5.)

H. The Planning Board Approves a Site Plan For Ruland Road Consisting of All One-Bedroom Units

More then a year later, on or about January 14, 2010, the Developer filed with the Town revised site plans for Ruland Road, which called for the construction of 122 one-bedroom units at the site. (Hacker Decl. Ex. 27.) On March 10, 2010, the Planning Board voted 5-1 to approve the all one-bedroom site plan. (Hacker Decl. Ex. 28.) An amended resolution was approved on June 1, 2011. (Hacker Decl. Ex. 29.) The June 1, 2011 resolution explicitly states that the "project is conditioned upon all subject plans being revised to depict no greater than one hundred seventeen (117) *one-bedroom units*." (*Id.* at 3 (emphasis added).)

ARGUMENT

I. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also, e.g., Atl. Cas. Ins. Co. v. W. Park Assocs., Inc.*, 585 F. Supp. 2d 323, 325 (E.D.N.Y. 2008) (Wexler, J.). In order to defeat summary judgment, the non-moving party "'must do more than simply show that there is some metaphysical doubt as to the material facts . . . . [T]he non-moving party must come forward with specific facts showing that there is a *genuine issue for trial.*'" *Human Res. Research & Mgmt. Grp., Inc. v. Cnty of Suffolk*, 687 F. Supp. 2d 237, 247

(E.D.N.Y. 2010) (citations omitted). Accordingly, "the nonmoving party may not rest upon mere conclusory allegations or denials but must set forth 'concrete particulars' showing that a trial is needed." *Id.*; *see also Allianz Ins. Co. v. Lerner*, 296 F. Supp. 2d 417, 421 (E.D.N.Y. 2003) (Wexler, J.) (holding "[t]he party resisting summary judgment must not only show a disputed issue of fact, but it must also be a material fact in light of substantive law" and "[o]nly disputed facts that 'might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment'") (citation omitted), *aff'd*, 416 F.3d 109 (2d Cir. 2005). As explained below, there are no disputed material issues of fact to be tried in this case.

II. SUMMARY JUDGMENT IS APPROPRIATE ON PLAINTIFFS' FAMILIAL STATUS CLAIMS

In 1968, Congress enacted the FHA to "provide . . . for fair housing throughout the United States." 42 U.S.C. § 3601. The statute makes it unlawful to "[t]o refuse to sell or rent . . . or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(a).[4] The Second Circuit has held that the phrase "otherwise make unavailable" "reach[es] a wide variety of discriminatory housing practices, including discriminatory zoning restrictions." *Le Blanc-Sternberg v. Fletcher*, 67 F.3d 412, 424 (2d Cir. 1995) (citation omitted); *see also Huntington Branch, N.A.A.C.P. v. Town of Huntington*, 844 F.2d 926, 938-41 (2d Cir. 1988) (*Huntington I*) (holding that "[Huntington] violated [the FHA] by refusing to amend the zoning ordinance to permit private developers to build multi-family dwellings outside the urban renewal area").

An FHA violation may be established either by proof of intentional discrimination *or* by proof of disparate impact on members of a protected group. *See Le Blanc-Sternberg,* 67 F.3d at

[4] In 1988, the FHA was amended to include, *inter alia*, familial status as a protected class. *See Fair Hous. Council of Orange Cnty., Inc. v. Ayres*, 855 F. Supp. 315, 316-17 (C.D. Cal. 1994).

425; *Huntington I*, 844 F. 2d at 934-35; *Fair Hous. in Huntington Comm., Inc. v. Town of Huntington*, 316 F.3d 357, 366 (2d Cir. 2003). In the present matter, the undisputed evidence unequivocally demonstrates that the Town's actions with regard to Ruland Road discriminated on the basis of familial status in violation of Section 804(a) of the FHA, 42 U.S.C. 3604(a), under both the discriminatory intent and discriminatory impact standards.

A. Summary Judgment Is Appropriate Under a Discriminatory Intent Analysis

1. There Is Direct Evidence that the Town Engaged In Intentional Discrimination

Plaintiffs may establish that a defendant acted with discriminatory intent through either direct or circumstantial evidence, or both. "Direct evidence is that which can be interpreted as an acknowledgment of the defendant's discriminatory intent," *Kormoczy v. United States Dep't of Hous. & Urban Dev.*, 53 F.3d 821, 824 (7th Cir. 1995), and has been the basis of findings of intentional discrimination in several FHA familial status discrimination cases. *See e.g., Massaro v. Mainlands Section 1 & 2 Civic Ass'n*, 3 F.3d 1472, 1476 n.6 (11th Cir. 1993); *Reeves v. Rose*, 108 F. Supp. 2d 720, 727 n.9 (E.D. Mich. 2000). When discriminatory intent is shown through direct evidence, there is no need to apply the burden shifting analysis articulated by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).[5] *See Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1985) ("[T]he *McDonnell Douglas* test is inapplicable where the plaintiff presents direct evidence of discrimination.").

Here, there is undisputed, direct evidence of familial status discrimination. As set forth above, in order to gain the necessary approvals for both the Greens and Ruland Road projects,

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[5] Under the *McDonnell Douglas* burden shifting analysis, once a plaintiff has established a *prima facie* case of discrimination, the burden shifts to the defendant to assert a legitimate, nondiscriminatory rationale for the challenged decision. *See McDonnell Douglas Corp.*, 411 U.S. at 802-03. If the defendant makes such a showing, the burden shifts back to the plaintiff to demonstrate that discrimination was the real reason for the defendant's action. *See id.*

the Town required the Developer to withdraw its original two- and three-bedroom plan and replace it with a one-bedroom plan. (Hacker Decl. Ex. 12 at TOH001554; Ex. 13 (K. Mohr) at 127:18-128:2.) Since 2000, the Town has continually reiterated its position that Ruland Road must be limited to all one-bedroom units (*see, e.g.*, Hacker Decl. Ex. 25 (R. Mohr) at 158:2-162:6) and, in March 2010, the Planning Board approved an all one-bedroom plan (*see id.* Ex. 28).

As the Town has expressly admitted, the Ruland Road project was limited to one-bedroom units in direct response to concerns expressed by the local school district regarding the number of prospective school children a multi-bedroom project would generate. (*See* Dkt. 9 at 9; Dkt. 10 at ¶ 11; *see also* Hacker Decl. Ex. 9 at TOH001649 ("The applicant's previous application for development of the subject property proposed 122 two and three bedroom units" but "was revised to limit the project to one-bedroom units because of concern by the Half Hollow Hills School District regarding the potential number of school children prospectively generated by the project.").)[6] In doing so, Defendants admit to intending to limit the number of families with children at Ruland Road – *i.e.*, direct evidence of familial status discrimination.

2. Defendants Cannot Demonstrate that the Purported School Overcrowding Concerns Justified Their Discrimination Against Families with Children

As an initial matter, it must be emphasized that the fact that a motive underlying a discriminatory action is purportedly benign does not alter the intentionally discriminatory character of the action. As the Supreme Court held in *Int'l Union, UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 199 (1991), an employment discrimination case: "Whether an employment practice involves disparate treatment through explicit facial discrimination does not depend on

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[6] *See also, e.g.*, Hacker Decl. Ex. 18 (M. Cuthbertson) at 6:1-12; Ex. 6 (J. Libert) at 74:12-75:2; Ex. 13 (K. Mohr) at 113:9-114:2.

why the employer discriminates but rather on the explicit terms of the discrimination." *Id.* This principle is equally applicable in the Fair Housing Act context. *See, e.g., Larkin v. Michigan Dep't of Social Servs.*, 89 F.3d 285, 290 (6th Cir. 1996) ("Following *Johnson Controls*, all of the courts which have considered this issue under the FHAA have concluded the defendant's benign motive does not prevent the statute from being discriminatory on its face."); *see also, e.g., Le Blanc-Sternberg*, 67 F.3d at 425 ("If the motive is discriminatory, it is of no moment that the complained-of conduct would be permissible if taken for nondiscriminatory reasons.").

Accordingly, once an FHA prohibited classification is shown to play a direct role in what a defendant claims is an action taken for benign reasons, the defendant must demonstrate that its use of the prohibited classification serves a legitimate governmental interest. *See Larkin*, 89 F.3d at 290 ("Because the statutes at issue are facially discriminatory, the burden shifts to the defendant to justify the challenged statutes."); *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1504-05 (10th Cir. 1995) (holding that, in the context of intentional discrimination under the FHA, it is appropriate to consider whether there is a legitimate governmental interest which justifies the discrimination); *see also, e.g., United States v. Starrett City Assocs.*, 840 F.2d 1096, 1101-02 (2d Cir. 1988) (holding that societal discrimination is not a sufficient justification for benign racial quotas adopted by defendants to promote stable housing integration that "work against innocent people"). Here, the undisputed record evidence demonstrates that Defendants' purported benign justification for the one-bedroom limitation is anything but "legitimate."

Defendants attempt to justify their decision to limit families with children at Ruland Road by pointing to alleged school overcrowding concerns. Yet, on the undisputed facts in this case, they fall far short of demonstrating that this is a legitimate governmental interest. First, Defendants have failed to produce *any* evidence demonstrating that (i) the schools were

overcrowded either in 2000, when the Town required the Developer to withdraw the multi-bedroom plan for Ruland Road and replace it with an all one-bedroom plan or, in 2010, when the Planning Board formally put into place the one-bedroom requirement; or (ii) two- and three-bedroom units at Ruland Road would exacerbate any alleged school overcrowding. Indeed, despite a recommendation to do so by the Town's own Planning Department (Hacker Decl. Ex. 14), Defendants never even conducted a study to determine what effect, if any, the Ruland Road project would have on the local schools.[7] For these reasons alone, Defendants' attempt to justify their discriminatory conduct as a result of purported school over-crowding concerns must be rejected. *See, e.g., Smith v. Town of Clarkton*, 682 F.2d 1055, 1063 (4th Cir. 1982) (rejecting proffered justifications of increased taxes and increased burden on public schools where there was "no evidence to support the objections advanced"); *Keith v. Volpe*, 858 F.2d 467, 484 (9th Cir. 1988) (rejecting proffered concern of increased traffic where city "presented no studies or other evidence," and rejecting proffered concern of excessive housing density where city presented "no evidence on the issue").

Moreover, Defendants' purported concern about school overcrowding is directly undermined by the record evidence. As discussed above, the related Greens development included 75 units of non-age restricted, four- and five-bedroom luxury housing. While the local school district opposed the construction of multi-bedroom housing at Ruland Road, it had no objection to the construction of 75 units of luxury housing at the Greens, a discrepancy noted by

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[7] The fact that the Town disregarded its own Planning Department's advice is further evidence of discriminatory intent. *See, e.g., Sunrise Dev., Inc. v. Town of Huntington*, 62 F. Supp. 2d 762, 775, 779 (E.D.N.Y. 1999) (inference of discriminatory animus against disabled was raised, and motion for preliminary injunction granted, where Huntington "disregarded its own [Citizen's Advisory Committee's] recommendations for future development"); *Dews v. Town of Sunnyvale*, 109 F. Supp. 2d 526, 572 (N.D. Tex. 2000) (holding that specific sequence of events factor pointed to discriminatory intent "with regard to Sunnyvale's history of ignoring the recommendations of its planners").

the Town's own Planning Department. (*See* Hacker Decl. Ex. 19 at TOH001273.)[8] The Town's objection to multi-bedroom housing at Ruland Road, while at the same time acquiescing to the construction of 75 units of four- and five-bedroom luxury housing as part of the same overall project is further proof of Defendants' discriminatory intent. *See, e.g.*, *Keith*, 858 F.2d at 484 ("[Hawthorne] also attempts to justify its denial of the . . . project's application on the grounds of preventing school overcrowding. However, Hawthorne approved at least one other development in the area even though such development concededly would have an impact on the schools.").

Accordingly, the undisputed factual record in this case demonstrates that Defendants have not and, indeed, cannot meet their burden of establishing a legitimate governmental interest for the discriminatory one-bedroom restriction on the Ruland Road project. Thus, Plaintiffs' motion for summary judgment on their claim of intentional discrimination on the basis of familial status should be granted.

B. Summary Judgment is Likewise Appropriate Under a Disparate Impact Analysis

Summary judgment for Plaintiffs on their FHA claims is also appropriate under a disparate impact analysis. "To establish a *prima facie* case under the disparate impact analysis, a plaintiff must prove that the challenged practice 'actually or predictably' results in discrimination." *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1182 (E.D.N.Y. 1993) (Wexler, J.) (quoting *Huntington I*, 844 F.2d at 933) (citation omitted). Once a plaintiff has demonstrated a disparate impact, "the burden shifts to the defendant to prove that 'its actions furthered, in theory and in practice, a legitimate, bona fide governmental interest and that no

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[8] In fact, although the school district opposed the construction of multi-bedroom units at Ruland Road without conducting any study of the development's potential impact on the schools, it carefully studied the impact on the schools of the 75 units of luxury housing at the Greens and concluded that the impact did not warrant any objection. (Hacker Decl. Ex. 15 at TOH006297-6302.)

alternative would serve the interest with less discriminatory effect.'" *Oxford House, Inc.*, 819 F. Supp. at 1182 (citing *Huntington I*, 844 F.2d at 936).

"In the end, the court must balance the plaintiff's showing of discriminatory impact against the defendant's justifications for its conduct." *Oxford House, Inc.*, 819 F. Supp. at 1183 (citing *Huntington I*, 844 F.2d at 936). And, as this Court has held, "[w]hen conducting this balance, two factors weigh heavily in the plaintiffs' favor: (1) evidence of discriminatory intent on the part of the defendant; and (2) evidence that the plaintiff is seeking only to require a municipal defendant to eliminate an obstacle to housing rather than suing to compel it to build." *Id.*

1. The One-Bedroom Limitation Will Have a Disparate Impact on Families with Children

Here, there is no dispute that the move from a two- and three-bedroom plan at Ruland Road to an all one-bedroom plan will have a significant disparate impact on families with children. As Plaintiffs' expert, Dr. John Logan, has opined, under the original two- and three-bedroom plan, the project would be expected to include 51 households with children (42%), while, under the current all one-bedroom plan, the project would be expected to include only 12 households with children (10%). (Hacker Decl. Ex. 30 (Logan Report) at 2.) Defendants' own expert, Dr. Shelley Lapkoff, *agrees with Dr. Logan* that the current plan limiting the Ruland Road development to all one-bedroom units, when compared to a multi-bedroom plan, will have a disparate impact on families with children. (Hacker Decl. Ex. 31 (S. Lapkoff) at 140:16-21 ("Q. So even under your analysis comparing a two- and three- bedroom plan with a one-bedroom plan, there is a disparate impact on families with children? A. Yes.").)

2. Defendants Have Not Proffered Any Legitimate Governmental Interest for an All One-Bedroom Plan, Let Alone that There Were No Less Discriminatory Alternatives

Because the one-bedroom limitation will unquestionably have a disparate impact on families with children, "the burden shifts to [Defendants] to prove that [their] actions furthered a legitimate governmental interest and that there were no less discriminatory alternatives." *Oxford House, Inc.*, 819 F. Supp. at 1183 (citing *Huntington I*, 844 F.2d at 936).

As discussed in detail above, Defendants' purported justification for the one-bedroom limitation – that the number of children must be limited due to school overcrowding concerns – has no evidentiary support. (*See supra.* pp. 14-17.) *See, e.g., Oxford House, Inc.*, 819 F. Supp. at 1183-84 (rejecting proffered justification for evicting residents of group home where there was no evidentiary support for that justification). Furthermore, there is no evidence in the record that Defendants ever explored less discriminatory alternatives to the one bedroom requirement. Accordingly, like the defendant in *Oxford House*, Defendants here cannot justify the one-bedroom limitation "as being in furtherance of [their] asserted governmental interest." *Id.*

3. Even if the One-Bedroom Limitation Advanced a Legitimate Governmental Interest (and It Does Not), Plaintiffs' Showing Of Discriminatory Effect Far Outweighs Any Alleged Justification For the Limitation

As this Court has held, "[a]though the plaintiff is not required to prove discriminatory intent in order to show discriminatory effect, in balancing disparate impact against a [purported] governmental interest, evidence of such intent weighs heavily in the plaintiff's favor." *Oxford House, Inc.*, 819 F. Supp. at 1184 (citing *Huntington I*, 844 F.2d at 936). Furthermore, "where the plaintiff [is] not suing to require the municipal defendant to build housing, but rather to remove an obstacle to housing, the defendant needs to establish a more substantial justification for its conduct." *Id.* at 1185.

Here, as set forth in detail above, there is undisputed direct evidence of discriminatory intent on the part of Defendants. (*See supra.* pp. 13-14.) Moreover, like the plaintiffs in *Oxford House*, Plaintiffs in the present matter are seeking to remove an obstacle to housing (*i.e.*, the requirement that any housing built at Ruland Road be limited to one-bedroom units), and are not seeking to require Defendants to build housing. "Accordingly, because there is no genuine issue of material fact as to whether the Town's conduct actually or predictably has a discriminatory effect," and "the showing of discriminatory effect far outweighs [Defendants'] justifications for [their] predisposition," Plaintiffs are entitled to summary judgment on their FHA claims. *Oxford House, Inc.*, 819 F. Supp. at 1185.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for summary judgment and enter judgment in favor of Plaintiffs on their Fair Housing Act claims based on familial status discrimination.

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Respectfully submitted,

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