

Fair Housing in Huntington Committee
Fair Housing Complaint against the Town of Huntington, New York

HOUSING DISCRIMINATION COMPLAINT

CASE NUMBER: (Title VIII)
(Section 109)
(Title VI)

1. Complainant

Fair Housing in Huntington Committee (hereinafter "FHHC")
Post Office Box 20221
Huntington Station, New York 11747

Representing Fair Housing in Huntington Committee:

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Other Aggrieved Persons

Residents of the Town of Huntington who have been subjected to discriminatory practices and policies by the Town of Huntington on the basis of race, color, national origin, or familial status.

2. The following is alleged to have occurred or is about to occur:

Denial of housing or making housing unavailable.
Failure to affirmatively further fair housing

3. The alleged violation occurred because of:

Race, color, national origin, and familial status.

4. Address and location of the property in question (or if no property is involved, the city and state where the discrimination occurred):

Throughout the Town of Huntington, Suffolk County, New York.

5. Respondents

Town of Huntington, New York, c/o Frank P. Petrone, Town Supervisor
100 Main Street
Huntington, NY 11743

6. The following is a statement of the facts regarding the alleged violation:

Pursuant to 42 U.S.C. §3610 of the Fair Housing Act (“FHA”), the FHHC allege that the Town of Huntington has failed to enforce its civil rights obligations associated with the use of federal housing and community development funds and that the Town of Huntington has: 1) made housing unavailable or otherwise denied housing in violation of 42 U.S.C. § 3604; 2) violated Title VI of the Civil Rights Act of 1964 and regulations promulgated pursuant to that authority; and 3) violated the Housing and Community Development Act of 1974, as amended, 42 U.S.C. § 5304.

In addition, with respect to the claim pursuant to 42 U.S.C. § 5305, the Town of Huntington has failed in its obligation to affirmatively further fair housing (“AFFH”) as required by 42 U.S.C. § 5304(b)(2), 42 U.S.C. § 12705(b)(15), and related federal statutes and regulations.

FHHC is a local nonprofit 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. FHHC has been injured because the Town's discriminatory housing practices harm minority families and families with children, deprive its members of the opportunity to live in an integrated community, and require the FHHC to expend its resources seeking redress for the Defendants' illegal conduct.

Through the acts and omissions detailed herein, and those to be discovered during the course of HUD's investigation, the Town has engaged in differential treatment of the ultimate beneficiaries of federal housing and community development funds—including those provided to the Town under the Community Development Block Grant (“CDBG”)—on the basis of race, color, national origin, and familial status. Furthermore, the Town has adopted rules and policies that have the effect of discriminating on the basis of race, color, national origin, and familial status and that have perpetuated segregation on the basis of race, color, and national origin.

Although many of the specific instances contained in this complaint have occurred more than one year before this filing, Complainant alleges that each instance is part of Huntington's ongoing pattern and practice of housing discrimination and disregard for its civil rights obligations and certifications, that at least one violation occurred within the last year, and that HUD has jurisdiction to consider these instances as a "continuing violation," as articulated in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982).

The Town of Huntington has failed to meet its obligation to affirmatively further fair housing ("AFFH") as required by 42 U.S.C. § 5304(b)(2), 42 U.S.C. § 12705(b)(15), and related federal statutes and regulations. HUD has both the authority and obligation to enforce compliance with the FHA and related regulations and statutes, including 42 U.S.C. § 3608(e)(5), Executive Order 12892, Jan. 17, 1994, § 2-202, and Executive Order 11063, Nov. 20, 1962, § 102. The Housing and Community Development Act of 1974, 42 U.S.C. § 5301 *et. seq.*, states that the Secretary has the authority to grant funds to jurisdictions "only if 'those jurisdictions make certain submissions and certifications.'" 42 U.S.C. § 5304(b)(2); 24 C.F.R. §§ 91.325(a)(1), 570.601(a)(2).

The receipt of CDBG funds is expressly conditioned on the jurisdiction's certification that it will affirmatively further fair housing, and the Secretary cannot obligate funds to a grantee where that grantee has failed to make or comply with a certification material to its eligibility. "The AFFH certification [is] not a mere boilerplate formality, but rather [is] a substantive requirement, rooted in the history and purpose of the fair housing laws and regulations, requiring the [jurisdiction] to conduct an AI, take appropriate actions in response, and to document its analysis and actions." *United States of America ex rel. Anti-Discrimination Ctr. of Metro New York, Inc., v. Westchester County*, 668 F. Supp. 2d 548, 569 (S.D.N.Y. 2009).

Request for Relief: The Town recently drafted its 2011 Annual Action Plan (April 1, 2011-March 31, 2012) seeking release by HUD of just under \$1 million of CDBG funding. There have been several letters objecting to the Plan's failure to address the continuing shortage of affordable housing for families, including one submitted by FHHC on January 7, 2011.¹

Complainants assert that the Town has not made a certification that it will affirmatively further fair housing that is satisfactory to the Secretary. See 24 C.F.R § 570.304(a) (2010). As discussed in detail below, the Town continues, to the present, a long history of (1) making housing unavailable on the basis of race and familial status in violation of Section 804(a) of the Fair Housing Act; and (2) failing to adequately analyze impediments to fair housing choice and to take appropriate steps to overcome any such impediments as required by the duty under Section 808(e) of the Fair Housing Act to affirmatively further fair housing and 24 C.F.R. 91.325, 24 C.F.R. 570.601. Accordingly, we request that HUD disapprove the Town's 2011-12 Action Plan and hold up further federal housing funds until the Town has complied with these obligations.

Huntington Has Not Met Its Duty To Affirmatively Further Fair Housing

¹ Objections to this failure include a January 10, 2011 letter from the Long Island Housing Services (the organization which assisted in drafting of the Town's 2010 AI discussed below), and a January 4, 2011 letter from the Huntington Township Housing Coalition.

Recipients of the federal housing funds are required to certify to HUD that, *inter alia*, “the grant will be conducted and administered in conformity with the Civil Rights Act of 1964 and the Fair Housing Act, and the grantee will affirmatively further fair housing.” 42 U.S.C. § 5304(b)(2). The Town of Huntington has fallen far short in meeting these requirements. This failure is demonstrated by (1) the Town’s long history of housing discrimination in violation of the Fair Housing Act, which has continued to the present; (2) the Town’s history of ignoring the duty to affirmatively further fair housing; and (3) the inadequacy of the certification made with respect to the Town’s existing Consolidated Plan and its Action Plan for 2011-2012.

1. Huntington’s Long History of Discrimination

As documented in *Huntington Branch, NAACP v. Huntington*, 844 F.2d 926, 942 (2d Cir. 1988), a case brought in 1981 by Housing Help, Inc. (HHI), housing discrimination in Huntington stretches back at least fifty years. The following summarizes this history:

- In or about 1960, the Town adopted a discriminatory zoning ordinance that prohibited private construction of multi-family housing outside a small urban renewal zone in the Huntington Station neighborhood, which was 52% minority and where several predominantly black developments were built, thus contributing to residential segregation in the Town.
- Even though this ordinance permitted the Town’s Housing Authority to build outside the minority urban renewal area, doing so required Town approval. On several occasions between 1960 and 1978, the Authority requested such permission but these requests were denied by the Town.
- Data from the 1980 Census demonstrates that Huntington was residentially segregated in 1980. The total population was approximately 200,000, 95% of who were white and only 3.35% of who were black. The black population was concentrated in Huntington Station and South Greenlawn. Specifically, 70% of Huntington’s black population resided in Huntington Station and South Greenlawn, 43% in four census tracts in Huntington Station and 27% in two census tracts in the South Greenlawn area. Outside those two neighborhoods, the Town’s population was overwhelmingly white. Of the 48 census tracts in the Town in 1980, 30 contained black populations of less than 1%.
- At that time, HHI sought approval of zoning that would permit construction of an affordable housing development known as Matinecock Court at a site located in a Huntington neighborhood that was 98% white. It was expected that a significant percentage of the tenants at Matinecock Court would be minority, thus promoting residential desegregation. As it had on other occasions in the past, the Town rejected this application, continuing its history of refusing to permit projects outside the majority-minority urban renewal area and thus reinforcing and perpetuating housing segregation.

- The Court of Appeals concluded that the Town violated the Fair Housing Act by refusing to rezone the Matinecock Court site. With respect to relief, the Court of Appeals took the rare step of ordering site-specific relief by requiring that the land be rezoned because the Town's previous behavior "clearly demonstrates a pattern of stalling efforts to build low-income housing." *Huntington Branch, NAACP v. Huntington*, 844 F.2d 926, 942 (2d Cir. 1988).²
- In 1991, the district court entered a final judgment mandating that the Town and its officials "shall in all ways possible expedite the processing" of any filings related to the construction of Matinecock Court. *Huntington Branch, NAACP v. Huntington*, 762 F. Supp. 528, 529 (E.D.N.Y. 1991). However, despite these orders, Huntington's recalcitrance continued. At about the same time in 1991, HUD sent a "letter of warning" to the Town regarding its stalling efforts in building these much-needed units of public housing, noting that the Town still had not provided an acceptable site outside the impacted areas for any of the public housing units it had included in its 1982-1985 Housing Assistance Plan. HUD informed the Town that its CDBG funds could be cut off if the units were not commenced by September 15, 1991.
- In 1994, the Town Supervisor attended an HHI board meeting to press for equity housing to be built at Matinecock Court instead of rental housing. When HHI subsequently requested community development funds from the Town, the request was denied as the Town continued to push for equity housing in lieu of rental housing. HHI then applied to the New York Division of Housing and Community Renewal ("DHCR") for development funds for the Matinecock Court project, but was told that approval would be slow due to the lack of support from local officials.
- In 1996, HHI made a second request for funding from DHCR and attached a letter of agreement signed by local officials. But the Huntington Town Board subsequently passed a resolution withdrawing its support. After the Town withdrew its support, DHCR rejected HHI's application due to the lack of local cooperation and support. Indeed, in the Town's 1996 Consolidated Plan, it specifically denied support for the project and did not include it in the plan, even though it was the only affordable proposed housing in the Town for families.
- As a result of these actions obstructing the building of Matinecock Court, HHI subsequently instigated a new lawsuit against the Town of Huntington and DHCR in 1997—*Housing Help Inc. v. Town of Huntington, et al.*, 97-CV-3430 (E.D.N.Y.)(*Huntington II*)—claiming that the funding was denied for discriminatory reasons. In 2000, the parties reached a settlement that would allow

² The record in this case demonstrates other actions that stymied the development of affordable housing. In 1981-82 the Town withdrew support for a 150-unit subsidized housing project when HUD would not permit it to limit minority occupancy. And, in 1985, in response to HUD pressure to provide affordable housing, the Town approved a Housing Authority project for 50 units, which HUD immediately granted. But as of 1996, this housing still was not built.

HHI to build a development at the Matinecock Court site, albeit one that would consist of 50% rental units and 50% equity housing units that would each require an individual mortgage. It was not until 2006 that final approval was forthcoming from the Town and, even today, Matinecock Court is still not built more than 30 years after HHI proposed the project and 22 years since the Court of Appeals held that the Town's zoning practices obstructed construction of affordable housing that would promote residential segregation.

- While the 1988 Second Circuit decision required the Town to rezone the site of Matinecock Court in an effort to halt the Town's longstanding policy of excluding low-income and minority families from white areas of the Town, new actions have been taken since 2000, continuing this policy up to the present. The Town's 1996 Five Year Consolidated Plan demonstrated a continuing, severe need for affordable housing, especially for families.³ Yet, development of such housing has been obstructed by the Town since then. In 2000, the Town approved a development known as the Greens at Half Hollow ("the Greens"), a mammoth 1,375-unit project for seniors, not one of which would be both affordable and available to families.
- When the Town approved the rezoning of the Greens in 2000, the resolution required the developer to contribute \$2.5 million to an affordable Housing Trust Fund to provide down payment assistance for first-time home buyers. However, it wasn't until 2010, ten years after the Housing Trust Fund was established, and six years after the funds were received, that first-time home buyers were provided with down payment assistance from the fund.
- The developer of the Greens also proposed a multi-family affordable housing development at a site known as Ruland Road. The original plan for Ruland Road, submitted to the Town in 1999 proposed a development comprised of 122 two- and three-bedroom affordable housing units. The Town never acted on this proposal and, instead, a year later, privately directed the developer to withdraw the two- and three-bedroom plan and to replace it with a plan for all one-bedroom units. The developer then withdrew its plan to construct affordable multi-bedroom housing and, on September 11, 2000, submitted a new application calling for the construction of all one-bedroom units. The very next day, the Town Board passed a resolution amending its zoning laws to allow for the development of the Greens site. Such approval was made contingent upon the developer's submission of the all one-bedroom plan for Ruland Road. Approximately two months after approval of the Greens proposal, on November 21, 2000, the Town amended its zoning laws to permit the development of 122 one-bedroom affordable housing units.

³ The Plan indicated a need for almost 3,800 units for low- and very low-income households, only 26% of which were needed for seniors and 74% of which were for families and others.

- The site plan for the Ruland Road development was not considered by the Town until 2003, but was not acted on at that time. Five years later, in 2008, the developer submitted a revised plan to the Town that proposed 94 one-bedroom units and 28 two-bedroom units for the Ruland Road site. As it had in 2000, the Town required the developer to limit the project to one-bedroom affordable units. In March 2010, the Town approved the site plan for this project.
- The actions with regard to Ruland Road have been the subject of a fair housing case initiated by FHHC and the NAACP, Huntington Branch in 2002 challenging construction of the Greens and amended in 2004 and 2010 to allege that the actions concerning Ruland Road violated the Fair Housing Act. *Fair Housing in Huntington Comm. Inc., Huntington Branch, NAACP v. Town of Huntington, N.Y.*, (E.D.N.Y.) CV 02 2787. The amended complaints alleged that by requiring that the developer limit the Ruland Road development to one-bedroom affordable units even though the initial proposal was for two- and three-bedroom affordable units, the Town had made housing unavailable on the basis of race, national origin, and familial status in violation of Section 804(a) of the Fair Housing Act.
- On July 8, 2010, the district court dismissed the case on statute of limitations grounds. Plaintiffs filed a motion to amend the 2004 complaint, adding the actions taken by the Town in 2008 and 2010. The district court denied that motion on November 18, 2010, resulting in the dismissal of the case. However, the court found that the claims arising out of the 2010 Town approval were not time-barred and explicitly indicated plaintiffs could file a separate action.

2. Huntington's Long History of Non-Compliance with the Duty to Affirmatively Further Fair Housing

To meet the duty to affirmatively further fair housing, HUD regulations require that a recipient of federal housing assistance must (1) conduct an analysis to identify impediments to fair housing choice within the jurisdiction ("AI"), (2) take appropriate actions to overcome the effects of any impediments identified through that analysis, and (3) maintain records reflecting the analysis and actions in this regard. See 24 CFR § 91.325, 24 CFR § 570.601.

Consistent with its long history of discrimination, Huntington also has a long history of noncompliance with this requirement. As summarized below, the Town's failure to act affirmatively to further fair housing stretches back to the 1970s and is especially reflected in a 1997 HUD finding that Huntington had failed to affirmatively further fair housing.

- Findings of fact set forth in the district court's 1987 decision in *Huntington Branch, NAACP v. Huntington*, 668 F. Supp. 762, 769-70 (E.D.N.Y. 1987), note at least five occasions from 1978-1984 where HUD expressed concerns about the Town's failures to provide adequate affordable housing. The 1984 letter summarized these concerns, stating that "[t]he past performance of the Town in the provision of newly created assisted rental housing for families has been a major concern of the Department for several years" and that the concern resulted in the delay of HUD's approval of Huntington's HAP until the

plan provided for at least 75 family public housing units *in non-minority impacted areas* of Huntington. *Id.* at 70 (emphasis added).

- By 1997, Huntington had developed an AI. The inadequacy of this AI was made plain in an August 6, 1997 letter to the Town from HUD. HUD wrote that the Department had found Huntington's AI "deficient and in need of further revision" because (1) it principally examined impediments that are economic in nature at the expense of discussing housing discrimination, which is the "subject matter of an AI;" and (2) it did not adequately address issues like the failure of accessory apartments to provide opportunity for families with children to obtain rental housing. The HUD letter pointedly stated that Huntington's next AI "must focus" on problems that impeded ensuring housing choice for all, *in particular "the lack of multifamily housing for low and moderate income persons outside of the racially-impacted urban renewal area and the lack of homeownership opportunities outside the racially-impacted urban renewal area at price affordable for low and moderate income persons."* (emphasis added). In addition, HUD identified several other specific problems that Huntington needed to address, including the need for a more detailed analysis of the racial composition of census tracts and the need for more information on intake procedures for fair housing complaints.
- Two months later, on November 26, 1997, HUD reported to the Town the results of a separate compliance review of Huntington's Community Development Agency that HUD conducted to determine whether Huntington was meeting its civil rights responsibilities. Little had changed since August. In this letter, HUD concluded that "*based on your action over time, the Town of Huntington appears not to affirmatively further fair housing as indicated by your signed certification.*" (emphasis added). With respect to the AI, HUD stated that it (1) "did not focus on problems that impede fair housing choice" and (2) "did not address the problem of *the lack of multi-family housing [and the lack of affordable homeownership opportunities] for low and moderate income persons outside the racially impacted urban renewal area.*" (emphasis added).
- In 1998 and 1999, HUD sent additional letters to the Town reiterating its concerns regarding the Town's non-compliance with fair housing and civil rights laws. The August 9, 1998 letter expressed specific concerns with the "Town's actions to meet its annual certification to affirmatively further fair housing" and further noted that "the Town has yet to adequately address the lack of affordable housing outside the racially impacted parts of the Town." In addition, in 2001, HUD referred the matter to the Department of Justice with its final investigative report. In 2004, the Department of Justice determined that no further action would be taken at that time.
- The Town drafted a new AI in 2000. But this AI had the same shortcomings that HUD had found in 1997 with respect to the 1996 AI. An organization known as ERASE Racism issued a report concerning fair housing on Long Island in 2005 and concluded that the Town's 2000 AI was deficient, stating that it "seems to continue to impede the progression of integration, rather than encourage it," and in this context, "it is not

surprising that the Huntington AI lacks a strategic action plan to further fair housing.”⁴ The specific deficiencies noted in the report include:

- While the AI briefly mentions litigation against the Town initiated by Housing Help Inc., it fails to mention that the Town was found guilty of violating the FHA for race discrimination based on exclusionary zoning.
- There is no discussion of the concerns and deficiencies set forth in HUD’s 1997-99 letters, nor any indication that the Town was addressing these concerns. As the report states: “The Town’s lethargic attitude to taking action to correct impediments to fair housing based on race discrimination was so overt that a review by HUD in 1997 found it necessary to authorize sanctions and/or corrective action against the Town. In 1998 HUD again stated it had ‘significant concerns’ regarding fair housing in Huntington and, finally, in 1999 HUD notified the Town that it had referred a fair housing complaint to the Department of Justice based on the Town’s lack of willingness to correct its discriminatory affordable housing policies.”
- The AI “fails to seriously analyze impediments to fair housing. It presents a lightweight analysis at best.” There is no enumerated list of impediments to fair housing. It only notes that “the primary fair housing problem facing the Town is the need for more affordable housing units,” but there is no mention of race or racial discrimination as an impediment. This is an especially remarkable omission in light of the history of discrimination in Huntington and the HUD findings in 1997.
- “[T]here is no plan of action with strategic steps to removing impediments to fair housing. The report lacks any initiative by the Town to take responsibility for resolving housing discrimination or promoting integration.”
- In addition, although not mentioned in the ERASE Racism report, the 2000 AI summary of demographic information is completely devoid of any meaningful analysis of the degree of segregation in the Town. At one point in examining the location of the population, it discusses the dispersal of low-income population rather than racial groups. At another point, it misleadingly claims that areas of racial and ethnic concentration are located throughout the Town, specifying four specific areas, but ignoring the vast number of census tracts that are virtually all white. Such an analysis is an especially egregious shortcoming in light of (1) the findings by the Second Circuit in 1988 concerning the severe isolation and segregation of the black population in a few census tracts in Huntington Station and South Greenlawn and the high number of virtually all-white census tracts; and (2) the deficiency HUD identified in the Town’s 1996 AI concerning the need for a more detailed analysis of the racial composition of census tracts.

3. The Town’s 2010 AI Does Not Comply with Federal Law

⁴ ERASE Racism is a non-profit organization whose mission is to undo institutional racism—the structures, policies, and behaviors that create segregation and inequality in every aspect of daily living. The 2005 report is entitled *Long Island Fair Housing: A State Of Inequity*. Discussion of the Huntington June 2000 AI is at pp. 37-38.

After 2000, we are not aware of any other AIs prepared by the Town until 2010.⁵ As discussed below, like the 2000 AI, the 2010 AI falls far short of meeting the requirements for AIs set forth in HUD's *Fair Housing Guide* and in the *Westchester* case and continues to ignore the 1997 HUD finding that the Town had failed to "affirmatively further fair housing as indicated by your signed certification." Put simply, the Town continues to openly disregard its affirmative obligations to identify and analyze all existing impediments to fair housing choice experienced by the people of Huntington, most notably those related to race, national origin, and familial status. Furthermore, as was the case in the *Westchester* case, "because the [Town] never did the required analysis of race-based impediments, it never created a contemporaneous record of how its management of the HUD-acquired funds or any other 'appropriate' steps it could take would overcome the effects of those impediments." 668 F. Supp. 2d at 565.

A. The 2010 AI Fails to Adequately Examine Racial Segregation

HUD's *Fair Housing Planning Guide* at 2-28 indicates that an AI should initially include a housing profile describing "the degree of segregation and restricted housing by race, ethnicity, disability status, and families with children; [and] how segregation and restricted housing supply occurred." While Huntington's 2010 AI has a section devoted to demographic information, its analysis of the degree of segregation, as was the case in 2000, is faulty and misleading.

Instead of examining the demographics by census tract data, the AI describes the demographics by hamlet, despite its express acknowledgement that "[d]ata may be skewed because the U.S. Census does not strictly define local hamlet boundaries." Huntington concludes that there are no racially impacted areas within its jurisdiction. This conclusion flies in the face of the Court of Appeals finding in 1988 that Huntington was residentially segregated. Furthermore, a review of census tract information in the 2000 census and the 2005-2009 American Community Survey report indicates that the high degree of residential segregation found by the court in 1988 has not changed. The 2000 Census reveals several census tracts in central Huntington that are more than 50% minority, while the majority of census tracts in the northern parts of Huntington are less than 5% minority. Minority populations are still primarily concentrated in Huntington Station and South Greenlawn—39% of the total black population live in four census tracts in Huntington Station and 30.3% live in three census tracts in the South Greenlawn area. The same four tracts in Huntington Station contain 47.3% of Huntington's Hispanic population. Of the 40 remaining census tracts in Huntington, 31 tracts contain black populations of less than 2% and 36 tracts contained Hispanic populations of less than 5%. Similarly, according to the 2005-2009 American Community Survey, Blacks now comprise 3.9% of the population and Hispanics 8.3%. Minority populations continue to be concentrated in Huntington Station and South Greenlawn: 37.7% of the black population lives in four census tracts in Huntington Station and 23.5% live in three census tracts in South Greenlawn. The same four tracts in Huntington Station contained 45.8% of Huntington's Hispanic

⁵ It should be noted that the Town's AIs are not readily available. Moreover, unlike many jurisdictions, the Town has not included its AI in its five-year Consolidated Plans. We did examine a document produced by ICF Consulting Co. in August 2004 that is entitled "An Analysis of Impediments to Fair Housing Choice for Nassau and Suffolk Counties and the Towns of Babylon, Huntington and Islip." According to this document, it was intended "to assist the grantees to evaluate and update Fair Housing issues presented in individual Analysis of Impediments." However, there is no indication that Huntington thereafter prepared its own AI with the assistance of this report and the FHHC official has been told there was no AI prepared by Huntington in this period.

population. Of the remaining 40 census tracts in Huntington, 28 tracts contain black populations of less than 2% and 33 tracts contain Hispanic populations of less than 6%.⁶

How Segregation Occurred: In its 2010 AI, even though the Town's demographic analysis erroneously concludes there are no racially impacted areas in the Town, it nevertheless then broadly discusses some of the historical causes of segregation on Long Island, but misleadingly limits the discussion to pre-1968 governmental actions, such as the creation of the discriminatory Federal Housing Administration mortgage guarantee program in 1934. Especially egregious is the omission of any discussion of Huntington's long history of zoning discrimination discussed in the 1988 Second Circuit decision. This omission not only fails a primary purpose of an AI -- to "become fully aware of the existence, nature, extent and causes of all fair housing problems" (*HUD Fair Housing Guide*, p. 2-8) -- but also again ignores HUD's August 1997 finding that there was a need for a more detailed analysis of the racial composition of census tracts in the AI.

In the *Westchester* case, the court concluded that the county "put forth no evidence, despite the AFFH obligation to maintain records of its AI, that it conducted an analysis of race as it pertains to impediments to fair housing choice, and likewise no evidence that after conducting any such analysis, the analysis led it to conclude that race-based discrimination or segregation was not an impediment to housing choice and relieved it of the duty to take action to overcome the effects that any such discrimination or segregation posed to fair housing choice." 668 F. Supp. 2d at 564. The same is true of Huntington, but its failure goes beyond that of Westchester because it disingenuously and erroneously concludes that the Town is not residentially segregated.

B. The 2010 AI Fails to Clearly and Adequately Identify Impediments to Fair Housing Choice: The 2010 AI lacks coherent organization and fails to specifically list impediments to fair housing choice. First, it is unclear where in the AI Huntington is identifying impediments. Inserted in the AI is a lengthy report prepared by Long Island Housing Services ("LIHS"), which sets forth a list of "needs to address impediments to fair housing choice," but the Town never clearly identifies the impediments that it designates as needing to be addressed. Then, at the end of the AI, there is a section entitled "Identification of impediments to fair housing choice," which briefly discusses eight "concerns." Rather than specifically identifying impediments to fair housing, this section appears to be an "assessment of current public and private fair housing programs and activities." Some of the items listed as "concerns," such as a discussion of predatory lending practices or of the high cost of housing in Huntington, could be construed as impediments but are not clearly identified as such.

⁶ Furthermore, demographic analysis done by the consultant in 2004 noted that Long Island (Nassau-Suffolk MSA) ranks as the third most segregated suburban metropolitan area and the most segregated suburb; and that 70% of the entire black population on Long Island is segregated into 25 of the 290 hamlets. Similar findings are discussed in the ERASE Racism reports of 2005 and 2009. However, Huntington never refers to such analyses and studies even though HUD's *Fair Housing Planning Guide* states that in preparing an AI, a recipient of federal funding "should carefully consider the conclusions and recommendations of other housing studies." pp. 2-18-2-19.

Other “concerns” listed also cannot be construed as identifying impediments, but rather defend current practices that are alleged to be discriminatory. For example, the AI continues to defend its accessory apartment ordinance, which had been identified as an impediment to fair housing for families with children by HUD thirteen years earlier in its August 1997 findings. The AI states that the Town “disagrees” with any such conclusion and, instead of examining how the policy may inhibit fair housing choices as found by HUD, defends the policy and then inexplicably states that “the most plausible way of reducing racial discrimination is education,” even though the Town has been arguing that the accessory apartment ordinance is not discriminatory.⁷ The AI also discusses NIMBYism but concludes that the Town has “confronted and overcome so-called NIMBYism through pro-active public outreach” even though it has never identified NIMBYism or community opposition as an impediment, nor has it explained how it has overcome this problem.⁸

C. The 2010 AI Fails to Identify Specific Actions That Will Be Taken to Address Impediments: After identifying impediments to fair housing choice, HUD regulations require recipients of federal housing assistance to “take appropriate actions to overcome the effects of any impediments identified through the analysis” of impediments. 24 C.F.R. § 570.601(a)(2); 24 C.F.R. § 91.425(a)(1)(i). The *Fair Housing Planning Guide* makes it clear that these actions should be in response to identified impediments and that the AI should set out clear, articulated actions that are measurable and include timelines for the actions to take place. See § 2.10, pp. 2-22-2-23.

Here, as was the case in the *Westchester* case, because the Town “never did the required analysis of race-based impediments, it never created a contemporaneous record of how its management of the HUD-acquired funds or any other ‘appropriate’ steps it could take would overcome the effects of those impediments.” 668 F. Supp. 2d at 565.⁹ Moreover, to the extent that the AI might be read to identify actions taken to address unidentified impediments, they are inadequate. First, the report of Long Island Housing Services inserted in the AI includes several pages of “needs” for which actions should be taken. But the Town does not commit to any of the suggested actions, leaving it unclear whether these needs should be considered impediments or actions that will address impediments, or whether the Town intends to actually undertake any actions.¹⁰ Second, at the end of the AI, there is a discussion of “concerns,” and in this discussion

⁷ The 2000 AI similarly ignores the HUD finding concerning the accessory apartment ordinance and instead asserts that the ordinance promotes fair housing because it creates more affordable units and because it urges homeowners that if they list with a licensed realtor they will “insure that the apartment will be rented without regard to the race, color, national origin, religion or disability of the prospective tenant.” Such a statement only three years after HUD had identified the ordinance as an impediment to fair housing demonstrates its deficiency, which continues in the 2010 AI.

⁸ This treatment of NIMBYism is similar to that in *Westchester*, where the court stated: “Nor does this reference [to NIMBYism] reflect an analysis of how race-based local opposition might be an impediment to fair, and not just affordable, housing. Without a targeted analysis of race as a potential impediment to fair housing, the County was unprepared to grapple with the second component of its AFFH duty to take appropriate action to overcome the effects of any racial discrimination or segregation it might identify as an impediment.” 668 F. Supp. 2d 562.

⁹ We note that this was the same basis for HUD’s finding Westchester County’s most recent AI “incomplete and unacceptable” in its December 21, 2010 letter to Westchester.

¹⁰ It also appears that the Town’s 2010 AI strikes one of the perceived impediments suggested by the LIHS. In the LIHS suggestions concerning the “Need to Promote Choice Related to Economic Status / Source of Income,” they

there is mention of some actions that could address the “concerns.” But, every action described in this section is an action that the Town purports to have already undertaken and will continue to take and does not contain any new actions that were developed for this AI. Furthermore, all actions are stated in vague terms and lack any measurable goals, timelines, or other benchmarks by which Huntington can measure its progress and include no indications of whom is responsible for taking action, as required by HUD’s *Guide*, §§ 2.10-2.12.

D. In its AIs, the Town Confuses Fair Housing and Affordable Housing: Like Westchester, Huntington conflates its obligation to AFFH with its affordable housing activities. As noted above, in 2000, the Town’s AI concluded that “the primary fair housing problem facing the Town is the need for more affordable housing units.” Similarly, the 2010 AI concludes by noting that “the cost of housing, taxes is the greatest impediment to fair housing choice [and] therefore, the principle fair housing priority in Town of Huntington is the need for more affordable housing units.” As the *Westchester* court stated, “a determination that affordable housing is the greatest impediment does not absolve [the jurisdiction] from its requirement to analyze race-based impediments to fair housing.” *Westchester*, 668 F. Supp. 2d at 562.

4. The Town Has Violated the Fair Housing Act in the Past and Continues Discriminatory Practices in the Present

Huntington’s noncompliance with the duty to affirmatively further fair housing goes beyond the significant deficiencies in its AI. As is apparent from the discussion above concerning the Town’s long and continuing history of discrimination, *supra* at pp. 4-8, the Town has not only failed to promote badly needed non-age restricted affordable housing, but also has committed a continuing violation of Section 804(a) of the Fair Housing Act by creating obstacles to the development of such housing outside racially impacted areas and for families with children.

This is evident when one examines the Town’s five-year 2010-14 Consolidated Plan. The plan again emphasizes the significant affordable housing needs of families with children, stating at p. 33 that “large . . . families are experiencing the most difficulty with suitable and affordable housing.” Furthermore, the Plan indicates that families with children constitute 83% of the waiting lists for public housing and Section 8 housing. One of the three housing priority needs in the Consolidated Plan is to increase affordable housing for families and seniors. (p. 27).

Yet, the Town’s actions are not consistent with meeting this priority. The Town has clearly taken meaningful steps to meet the needs of seniors -- at least four developments (Paumanock, the Knolls, Duncan Elder Village, and the Greens) have been built with units that meet these needs. But the same cannot be said for affordable housing for families with children. Indeed, the restriction of the Ruland Road site to one-bedroom units even though the developer originally proposed two- and three-bedroom units creates a discriminatory obstacle to such housing.

list the following impediment: *Need to promote development of affordable rental and purchase housing and relax zoning standards that exclude such possibilities.* This does not appear in the copy of the Town’s June 2010 AI that we have.

Moreover, the Consolidated Plan's continued emphasis on the accessory apartment ordinance as an action to address the lack of affordable housing for families is contradicted by the August 1997 HUD letter that found that accessory apartments, which were touted by the Town as the primary source of rental housing, "do not provide opportunities to families with children to provide rental housing in the community." Furthermore, the Town continues to gloss over the fact that the Fair Housing Act does not cover discrimination by homeowners renting units in their homes and provides no evidence that this ordinance has in fact promoted residential desegregation in any way. In short, the accessory apartment ordinance does not meet the Town's duty to affirmatively further fair housing because there is no evidence that it reduces discrimination against families with children or minorities in any way or promotes residential desegregation.

Similarly, neither the 2010 and 2011 Action Plans includes any specific project to increase the supply of such housing. Indeed, the 2011 Action Plan's discussion concerning "removal of barriers to affordable housing" is of events in the past. However, the Town's past actions belie this. One of the projects it touts—Matinecock Court—was the subject of litigation for two decades and did not receive approval of the Town until more than 25 years after first proposed. Another—the mammoth Greens project—includes only 100 affordable units for seniors in a 1,325 unit project, but no affordable housing for children. And, despite numerous letters from community organizations urging zoning for Ruland Road that will permit two and more bedroom units, the Town ignores any mention of the Ruland Road development in its Action Plan and continues to restrict that development to one-bedroom units only.

Conclusion

For the reasons set out above, the Town of Huntington cannot currently make an AFFH certification that is "satisfactory to the Secretary," as required by 24 C.F.R § 570.304(a). Huntington has been on notice from HUD that its AI did not properly address "problems that impede ensuring equal housing choice" since 1997 when HUD issued a "monitoring finding," and determined that Huntington was not sufficiently acting to affirmatively further fair housing. Despite this notice, the AIs adopted since then, in 2000 and 2010, still fail to identify, much less address, race and familial status-related impediments to fair housing. Indeed, zoning practices of the Town continue to violate the FHA and obstruct fair housing choice.

We request that HUD deem the Town's certifications that it is affirmatively furthering fair housing insufficient to support obligation of CDBG funds and withhold further CDBG funding until an appropriate certification in accordance with applicable federal laws and regulations is approved by HUD. Complainant also seeks all other relief that may be available pursuant to the Fair Housing Act, including reasonable attorneys' fees and costs.

7. The most recent date on which the alleged discrimination occurred:

Ongoing as of the date on which this Complaint was submitted.

8. Types of Federal Funds identified:

Community Development Block Grant

9. The acts alleged in this complaint, if proven, may constitute a violation of the following:

Sections 804(a) and 808 of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

Title VI of the Civil Rights Act of 1964.

Section 109 of Title I of the Housing and Community Development Act of 1974.

Please sign and date this form:

I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.

Robert W. Gales
For Fair Housing in Huntington Committee

March 1, 2011
(Date)

NOTE: HUD WILL FURNISH A COPY OF THIS COMPLAINT TO THE PERSON OR ORGANIZATION AGAINST WHOM IT IS FILED.