

**INITIAL COMMENTS OF THE WESTCHESTER COUNTY DEPARTMENT OF PLANNING
ON
MONITOR'S HUNTINGTON ANALYSIS OF WESTCHESTER COUNTY
MUNICIPAL ZONING, SEPTEMBER 8, 2014**

September 24, 2014

Between February 2012 and July 2013, Westchester County prepared eight versions of analyses of zoning regulations in place in Westchester. These analyses consist of thousands of pages of data, mapping and text – all available online at <http://homes.westchestergov.com/housing-settlement/zoning-analysis>.

The County found no evidence of exclusionary zoning in any of Westchester's 853 zoning districts. It should also be noted that the final six zoning analyses prepared by the County were completed after extensive "technical assistance" sessions with the U.S. Department of Housing and Urban Development, whose representatives at the time provided advice on the scope of the analysis.

The Westchester County Department of Planning has reviewed the Monitor's Huntington report of September 8 and has identified significant problems with the approach to the analysis and the selective and inconsistent use of data resulting in faulty conclusions. Specifically, the Monitor's assertion that "there is prima facie evidence ... six municipalities have zoning codes that are presumptively exclusionary under the Huntington standard" is not supported by an objective application of available and meaningful data.

It also seems highly counterproductive, and certainly beyond the scope of any statistical analysis, for the Monitor's report to arbitrarily label some communities as "less desirable areas."

OVERALL COMMENTS ON ANALYSIS

1. No presentation of methodology:

The Monitor's report does not include a presentation of the methodology applied in the analysis of zoning although the existence of such a methodology is cited in the report -

From Pages 3 and 4 of Monitor's report:

"Together, the Monitor and Housing Consultants collected, reviewed, and analyzed data provided by the County pursuant to methodology approved by the Chairman of the BOL and HUD. Zoning regulations for each municipality have also been reviewed and analyzed pursuant to the methodology."

Exhibit 11 of the Monitor's report purports to contain the referenced "approved" methodology, but a reading of the document shows it to present only a series of tasks or steps to be undertaken – without any discussion of how the various factors are to be considered, weighed and rated in drawing conclusions on the 31 municipal zoning regulations in place.

The Monitor's report cites a second source for reviewing the methodology of the analysis -

From Page 16 of the Monitor's report:

"A more fulsome description of the Housing Consultants' methodology is contained in their report".

However, the Housing Consultants make it very clear that the Housing Consultants' report does not contain any analysis of zoning -

From Page 1 of the Housing Consultants' report:

"The report is neither speculative nor judgmental in nature. It is purely factual, presenting snapshots of the county and its municipalities at times corresponding with the availability of Census Bureau data."

2. No consideration of the history of zoning:

The Monitor's report fails to provide a historical context for zoning regulations in Westchester County. The opening paragraph of Chapter 2 of the County's First Zoning Analysis (February 29, 2012) states:

The first zoning ordinance regulating the use of land in Westchester County was adopted by the City of White Plains in 1920, four years after the first zoning code in the United States was adopted by New York City in 1916. By 1926, when the United States Supreme Court issued its decision in *Village of Euclid v. Ambler Realty Co.* finding that zoning was not an unreasonable extension of the village's police power, 17 municipalities in Westchester County had already adopted zoning ordinances. All but three municipalities had zoning in place by 1944. See Figure 1: 1944 Planning and Zoning Statistics for Westchester County.

This is important to understand, as for example, the Village of Larchmont adopted zoning in 1921 and the basic districts established then have changed little since. In other words, the zoning was in place before there was much, if any, minority population. The zoning follows a traditional zoning pattern of the more dense zoning near the downtown where there are services and public transportation, and as the distance from downtown increases, the density decreases. The geographic areas cited by the Monitor as evidencing clustering in Larchmont, Harrison and North Castle are historic downtowns. The area of Rye Brook cited is the area closest to Port Chester, which is the historic downtown for the relatively new village of Rye Brook.

Further, the location of multi-family districts is often criticized in the Monitor's report -

From Page 25 of Monitor's report:

"the districts were located in a less desirable area—often bordering highways, large roadways, or train tracks—and relatively far from residential areas zoned for single-family housing."

The analysis simply lacks perspective of historic development patterns with zoning often mapped on top of existing development that organically grew around transportation infrastructure (e.g. hamlets and village centers around train stations and crossroads). In fact, proximity to transportation infrastructure is a site selection criterion for housing built under the Housing Settlement. Further, being near highways, roads and trains means access to jobs. Criticizing this seems contradictory.

3. Questionable use of the standard "housing types most often used by minority residents":

The Monitor's report makes extensive reference to restrictions on the types of housing developments "most often used by minority residents." These types of housing are described as multi-family housing. However, the evidence shows repeatedly that housing choice and racial demographics are not driven by zoning in general or multifamily zoning in particular.

For example, in the Village of Bronxville 60.5% of the total housing stock consists of multi-family units (the second highest percentage of the 31 eligible municipalities). However, the minority household population of Bronxville is 4.6% of the village's total household population, the lowest percentage of all 43 municipalities in Westchester County. Obviously, the provision of additional multi-family housing through zoning amendments would not in itself result in the construction of affordable multi-family housing. The same conclusion can be drawn for the other 30 eligible municipalities. The only affordable multi-family housing being constructed in these communities is housing that is subsidized with public funds (which the County is doing with great success) or the result of local requirements for the inclusion of affordable units in market-rate developments.

4. Pratt's use of data for "occupied structure":

When the Pratt report addresses "units in structure" to identify the percentage of multi-family units in a municipality, its reporting is based on "occupied units" as identified the American Community Survey 2007-2011. However, "occupied" units undercounts the universe of existing housing units, distorting the reported characteristics of a community. (See Tables 25 and 27.) No rationale is offered to why this approach, which is subject to large margins of error, was chosen.

The County has instead consistently used ACS table B25024, "Units in Structure," to depict this data, as it includes all housing units. The numbers of occupied housing units by units-in-structure in Pratt's Table 25 appear to have been *derived* by adding the owner- and renter-occupied figures in B25032, "Tenure by Units in Structure." This results in different numbers which, given the large margins of error on this data in many municipalities, may support erroneous conclusions. For example, the number of housing units in owner-occupied 2-unit structures identified in Lewisboro was 28 with a margin of error of +/- 31, while the number of housing units in renter-occupied 2-unit structures was 35 with a margin of error of +/- 33. As a result, any conclusions based on this data are highly questionable.

5. Pratt's improper definition of multi-family units:

The Pratt report includes "1-unit attached" units under the category of "one unit" (single-family). This is inconsistent with common land use definitions; "1-unit attached" housing units are considered to be "multi-family units" as they are units in a single structure that has multiple housing units. Strikingly, this deliberate approach that reduces the total universe of multi-family units contradicts the fact that HUD and the Monitor consider "limitations on townhouse development" as one of six "restrictive practices."

This redefinition by Pratt results in an undercount of multi-family housing units, in some cases dramatically. For example, when townhouses are counted, Rye Brook's multi-family housing stock increases by 16.1 percentage points, from 13.1% to 29.2%, or to about one-third of the village's total

housing. When townhouses are correctly calculated, any claim that the six municipalities cited in the Monitor's report don't have enough multi-family housing within their borders falls apart. Here are the numbers:

Municipality	Total Units	Actual % Multi-Family	Monitor % Multi-Family	% Difference Between Actual and Monitor
Larchmont	2,145	29.7%	27.0%	2.7%
Rye Brook	3,631	29.2%	13.1%	16.1%
Pelham Manor	1,843	25.9%	21.1%	4.8%
Harrison	9,020	24.5%	21.4%	3.1%
Lewisboro	4,737	15.1%	4.2%	10.9%
North Castle	3,884	10.7%	4.8%	5.9%

By comparison, four municipalities that passed the monitor's test have lower percentages of multi-family housing units than North Castle at 10.7%. Even by the monitor's statistics (excluding townhouses) the monitor passes three municipalities with lower percentages of multi-family housing than Lewisboro at 4.2%. Any fair application of the data would clear the six municipalities cited by the monitor.

6. Westchester's dissimilarities to Huntington:

On page 18, the Monitor's report states, "*Huntington is a Long Island town that, at the time the case was decided, was 98% white.*" As per the 2010 Census, none of the 43 municipalities in Westchester were 98% white. In fact, the highest percentages of white population were 90.4% and 90.1% in two municipalities; only 14 other municipalities had a white population percentage of over 80%.

Further, the Monitor's report cites, as standards used in the Monitor's analysis, minority population percentage figures from the Huntington case that are based on census tract geography and not on zoning districts -

From Page 19 of Monitor's report:

"43% of Huntington's Black population lived in four census tracts, and 27% of the town's Black population resided in two other census tracts. The rest of Huntington was predominantly white—in Huntington's 48 census tracts, there were 30 census tracts where the Black population was less than 1%."

From Page 88 of Monitor's report:

"While Blacks comprised 3.35% of the Town's population, 70% of the total Black population lived in six census tracts, and 30 census tracts contained Black populations of less than 1%."

Census tracts are generally much larger geographic areas than mapped zoning districts. While the report states that the Town of Huntington had 48 census tracts, the six municipalities cited by the Monitor have the following number of census tracts:

- Harrison – 7
- Larchmont – 1

Lewisboro – 3
North Castle – 3
Pelham Manor – 1
Rye Brook – 2.

It is simply an improper use of statistical data to apply standards used for one level of geography in the Huntington case (census tracts) to individual zoning districts in Westchester where in some cases entire municipalities are just one census tract.

7. **“Fully built-out”**:

Some municipalities are criticized for the multi-family district(s) being “fully built-out.” This is not appropriate criticism when communities are seen in a full framework. For example, Pelham Manor is an older suburb bordering the Bronx in southern Westchester and is largely built-out on the whole. The village has issued an average of one residential building permit per year (8 in total between 2007 and 2013, according to the US Census), reflecting a “mature” suburb with little opportunity for new “greenfield” development. Lewisboro, although a much less dense community, has a different limitation on future growth as the town is located in the heart of New York City’s water supply watershed, where strict environmental restrictions are in place to protect the drinking water of 8 million residents in New York City. Within this context, Lewisboro engaged in a comprehensive planning process to identify areas within its three hamlets that are suitable for higher density multi-family development and are able to support water and sewage infrastructure. These areas were then zoned appropriately for such development and approved developments were built. The planned land use was directly based on available and feasible infrastructure while observing state and federal environmental safeguards.

8. **Zoning relationship to rental or owner status units**:

The Monitor’s report interchanges the terms multi-family, rental and subsidized housing in many places. The three concepts are separate -

From Page 35 of Monitor’s report:

“On account of Ardsley’s zoning code, over 16% of Ardsley’s occupied housing units were in multifamily or two-family housing, and over 18% of its occupied housing units were renter-occupied.”

Further, zoning does not control housing tenure with regard to owner- or renter-occupancy.

9. **Concentration of minority population**:

Each of the 31 municipal analyses in the Monitor’s report begins with a common paragraph titled “a. Perpetuation of Racial and Ethnic Clustering.” There is an expectation that this paragraph in each municipal analysis will follow the same format to evaluate “clustering” in each municipality. This is clearly not the case. The attached table provides columns for five data figures that are apparently used in the analysis to draw conclusions:

- number of zoning districts permitting multi-family housing as-of-right without special permit
- percentage of population living in such districts that is minority
- percentage of total municipal population that is minority
- percentage of total municipal minority population living in such districts

- percentage of total municipal population living in such districts.

Setting aside our objections that this is even a proper approach to the analysis, the table shows by the indication "not provided" that the data figures are simply not provided in many of municipal analyses, demonstrating that the same data sets have not been applied consistently across the board. And yet conclusions are drawn without explanation.

As one result, the analysis exaggerates the concentration of minority populations when it cites the percentage of Black and Hispanic (household) population in districts that allow 2-family and/or multi-family housing by not citing what percentage of the total household population in the municipality resides in those districts, even though that appears to be part of the analysis -

From Page 6 of Monitor's report:

"59.7% of Harrison's minority household population resided in a single zoning district, which was zoned for as-of-right two-family housing development."

In fact, this district (B) is also the most populous in Harrison overall. The black and Hispanic household population in the B district is 1,672, which is only 18.9% of the total household population in the district (8,838).

The text is also written to state conditions that are not statistically meaningful -

From Page 33 of Monitor's report:

"Ardsley's minority household population is not clustered in the R-4 District, which, as of 2010, was the only district that permitted multifamily housing development as-of-right. Minorities constituted 6.3% of the household population of that district in 2010, which is in line with Ardsley's minority household population percentage of 8.8%."

In fact, the minority population of the R-4 district as reported in the Pratt report's Ardsley Table 9 is one person and the total R-4 district population is 16.

10. **Household income:**

When presenting the median household incomes and rates of homeownership for the Black and Hispanic population, the Pratt report cites countywide figures, so as to include the "non-eligible" municipalities under the Housing Settlement. This seems misguided as the 31 "eligible" municipalities by definition exclude municipalities with the majorities of the county's Black and Hispanic population.

11. **Unsupported and arbitrary statements:**

The Monitor's report includes statements that are not based on data presented. Six examples follow -

From Page 34 of Monitor's report:

"Ardsley's zoning ordinance provides opportunities for additional affordable, rental, and multifamily housing development and does not, by itself, disparately impact minorities who use those housing types. Ardsley's current zoning code allows multifamily housing as-of-right in two out of nine zoning districts: the R-4 and R-4A Workforce overlay districts. Although those districts cover less than 1% of

Ardsey's land area, they are largely undeveloped, and can produce additional multifamily housing units."

This particular analysis and conclusion highlights another example of inconsistency in the Monitor's report. In fact, the percentage of percentage of Ardsey's land area where multi-family housing is permitted is 0.7% which is 5.7 acres (Housing Consultant Report September 2013). Other municipalities are faulted in the Monitor's report for having similar or higher percentages of land where multi-family housing is permitted and have much greater acreage where multi-family development is permitted. For example, Lewisboro is described as being at fault for restricting "as-of-right multifamily housing development to 0.8% of its total land area" (Monitor's report page 6). However, in the case of Lewisboro, 0.8% of land area is 142 acres.

From Page 43 of Monitor's report:

"As a result of Bronxville's commitment to the development of multifamily and rental housing, over 50% of Bronxville's occupied housing units were in multifamily or two-unit housing, and over 20% of Bronxville's occupied housing units were renter-occupied."

It is a stretch to attribute this current situation to Bronxville's "commitment to the development of multifamily and rental housing" given the age of the village's housing stock. Bronxville has not issued a residential building permit since 2002 and 68% of its housing units were built before 1940 (2012 ACS). Large numbers of rental buildings were converted to cooperatives in the 1980s. (See: <http://www.nytimes.com/1984/01/29/realestate/if-you-re-thinking-of-living-in-bronxville.html>). In fact, Bronxville is an example of how multi-family zoning is not predictive of racial patterns since the village is largely white and largely zoned for multi-family housing.

From Page 57 of Monitor's report:

"B District occupies 4.3% of Harrison's total land area, and thus does not cover a large area relative to Harrison as a whole. Second, B District is located in less desirable areas of Harrison: the western corner of Harrison, adjacent to the border with White Plains and the Cross Westchester Expressway (Interstate 287), and the southern corner of Harrison, adjacent to the border with Rye, the New England Thruway (Interstate 95), and Metro-North Railroad."

From Page 25 of Monitor's report:

"B District is mapped over a small area and is relatively distant from districts zoned for single-family residential use."

In fact, 4.3% of Harrison's land area is 489 acres and the "less desirable areas" are the town centers of West Harrison (Silver Lake) and the neighborhoods around downtown Harrison and the Metro-North New Haven Line train station. The B district provides a transition between these downtown centers and less dense, predominantly single-family home areas; the B district actually directly borders the R1 single-family district in locations. It is offensive for the Monitor to make arbitrary value judgments that certain areas are "less desirable." It should also be pointed out that the B district is in fact largely made up of residential neighborhoods with many single family homes.

From Page 68 of Monitor's report:

"Density restrictions and bulk requirements applicable in that district [R-MF] restrict the likelihood that multifamily units will actually be developed there."

This declarative statement is not supported by the facts. Over 700 multifamily units have been built in the R-MF districts in accordance with the requirements that are referenced.

From Page 69 of Monitor's report:

"Lewisboro's zoning code currently has no mandates or incentives for affordable housing."

The Lewisboro Zoning Code includes the following incentive for construction of affordable housing units in multi-family zoning districts: "The Planning Board may authorize an increase in permitted density by not more than 40% if the applicant constructs at least 1/3 of the additional density units as middle-income dwelling units." Over 40 affordable units (affordable in perpetuity) have been built under this affordable housing incentive provision. This provision has been in place since 1979.

Monitor September 8, 2014 Zoning Report - Data Cited in Text Under "a. Perpetuation of Racial and Ethnic Clustering"

Municipality	Number of Zoning Districts Permitting Multi-Family (MF)	% of Population Living in MF Zones that is Minority	% of Total Municipal Population that is Minority	% of Municipal Minority Population Living in MF Zones	% of Total Municipal Population Living in MF Zones
7(a) municipalities					
Ardsey	1	6.3	8.8	Not Provided	Not Provided
Bedford	11	12.9	14.0	93.1	97.6
Briarcliff Manor	3	6.5	6.1	5.7	Not Provided
Bronxville	5	6.1	4.6	48.9	36.1
Bucha	Not Provided	23.8	19.1	10.3	Not Provided
Eastchester	Not Provided	12.3	Not Provided	37.8	24.1
Harrison	3 - B zone	59.7 one zone	38.1 one zone	Not Provided	Not Provided
Hastings-on-Hudson	Not Provided	19.0	11.4	30.2	18.1
Irvington	1	8.0	7.1	14.3	12.6
Larchmont	3	23.4	7.7	50.4	16.7
Lewisboro	1	7.7	5.7	6.9	5.2
Mamaroneck Town	4	17.3	8.6	19.7	9.7
Mount Pleasant	Not Provided	8.1	7.4	13.0	Not Provided
New Castle	Not Provided	11.3	5.5	10.6	Not Provided
North Castle	Not Provided - 2F zone	34.5 one zone	9.2	30.8 one zone	8.2 one zone
North Salem	4	3 people	Not Provided	Not Provided	54 people
Pelham Manor	1	16.2	Not Provided	14.4	Not Provided
Pleasantville	Not Provided	15.2	12.1	16.5	Not Provided
Pound Ridge	3	Not Provided	293 people	Not Provided	27 people
Rye City	Not Provided	13.8	Not Provided	24.1	13.4
Rye Brook	Not Provided - R2F zone	41.3 one zone	12.7	50.8 one zone	15.6 one zone
Scarsdale	Not Provided	7.5	Not Provided	2.5	Not Provided
Somers	2	3.7	5.7	13.0	Not Provided
Yorktown	2	13.4	12.2	7.9	Not Provided
7(b) municipalities					
Cortlandt	1	27.3	Not Provided	1.3	Not Provided
Croton-on-Hudson	2	17.1	14.4	6.5	Not Provided
Dobbs Ferry	Not Provided	16.7	14.4	41.9	35.9
Ossining Town	2	12.4	17.0	13.6	Not Provided
Pelham	4	36.9	Not Provided	22.1	13.0
7(c) municipalities					
Tarrytown	8	40.7	Not Provided	50.0	33.8
Tuckahoe	2	35.3	Not Provided	44.2	28.8

Source: Monitor's Report September 8, 2014. Chart prepared by Westchester County Department of Planning 9-23-2014.