

June 17, 2016

BY FIRST CLASS MAIL AND EMAIL

Dr. Greg Schmidt
Mayor, Village of Croton-on-Hudson
Stanley H. Kellerhouse Municipal Building
1 Van Wyck Street
Croton-on-Hudson, NY 10520

**United States ex rel. Anti-Discrimination Center of Metro New York, Inc. v.
Westchester County, New York, No. 06 Civ. 2860 (DLC)**

Dear Mayor Schmidt:

I write to acknowledge the progress made by the Village of Croton-on-Hudson in providing meaningful opportunities for affordable housing and to advise the Village of the Monitor's evaluation of its status regarding liability under the *Berenson* standard for exclusionary zoning.

The Monitor issued the Report on Westchester County's Analysis of Municipal Zoning on July 31, 2013, applying the two-prong analysis of *Berenson v. Town of New Castle*, 38 N.Y.2d 102, 110 (1975), and incorporated that into a Final Report filed with the Court on September 13, 2013. The Final Report concluded that Croton had zoning ordinances that limited affordable housing or made the development of affordable housing practically infeasible. This finding was due to, among other things, the Village's restrictions on multifamily housing, lack of incentives and mandates for affordable housing, restrictions on alternate sources of affordable housing, and lack of progress in meeting regional need by building or approving the development of affordable housing since 2000.

On April 28, 2016, the Monitor released the Third Biennial Assessment of Westchester County's Compliance. That report concluded that Croton was one of seven municipalities that "continue to have zoning that could result in liability under either *Berenson* or *Huntington*," and recommended that "[i]n the absence of remediation, the Department of Justice is encouraged to give serious consideration to bringing legal action against one or more of these municipalities." Subsequent to the release of the Biennial Report, Croton officials requested the Monitor reconsider this

conclusion in light of recent changes the Village had implemented to increase socioeconomic, racial, and ethnic integration.

After consultation with the Monitor's housing expert, Bryan Kintish, and community liaison, who both met with Village officials on May 17, the Monitor is encouraged by the progress Croton has made in reforming its zoning code. Croton has, for example, liberalized the conditions under which accessory apartments are permitted, and expanded opportunities for mixed use development. Nevertheless, it appears that much remains to be done. As of now, the current zoning code appears to provide only limited opportunities for the development of affordable housing, and additional changes are needed. Specifically, the Village's zoning code remains restrictive towards multifamily housing and lacks mandates and, in most locations, incentives for affordable housing.

For these reasons, it is premature to remove Croton from the list of municipalities that "continue to have zoning that could result in liability under either *Berenson* or *Huntington*." However, I have communicated the Village's progress to the Department of Justice, and have recommended that it keeps these efforts in mind as it considers its litigation priorities.

cc: Kevin J. Plunkett, Deputy County Executive
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