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July 24, 2009

Governor David A. Paterson
Executive Chamber
State of New York
Albany NY 12224

Re: Westchester County workforce housing incentive program: Senate S.4946 and Assembly A. 3173

Dear Governor Paterson,

It was a pleasure to hear you speak at the NYCOM 100th Annual Meeting in Saratoga Springs a few weeks ago. Thank you for taking time to visit with us mayors.

I am writing to express some deep concerns over well-intentioned, but poorly constructed legislation that seems likely to reach your desk. Senate bill S.4946 and Assembly bill A.3173 propose revisions to the General Municipal Law in order to create the Westchester County workforce housing incentive program.

As a Westchester mayor, I am fully sympathetic with the goal of expanding workforce housing within our county. In fact, on August 1, 2009 in Croton-on-Hudson, we will hold a drawing to determine who will move into 11 beautiful new units of income-restricted rental housing for our Symphony Knoll project. The Village played a catalyst role in this new housing by acquiring the land, creating the subdivisions and easements that allowed the development to proceed. We worked very closely with the County and our local Croton Housing Network on affordable housing, so we have considerable experience in this topic.

The Village's chief concerns with this bill are enumerated below. We believe the flaws in the bill are fatal to the goals of the bill. We are also disturbed that this bill for Westchester failed to correct the flaws in the 2008 Long Island Workforce Housing Act on which it was modeled.

There has been very little consultation or communication with Westchester's local governments about this law. The legislation appears to abridge home rule authority for local governments. In the record in Croton on affordable housing will show that we have already worked very hard to achieve such set-asides.

Second, the bill, if enacted, will almost surely produce an unequal dispersion of affordable housing in towns with widely varying land values. The net effect will be that higher density, lower value areas become the location for any new workforce housing, opposite to the intent of the bill. Where it is more lucrative for developers to relocate affordable units of "consistent design" to land having a lower value, while receiving the density bonus in the high end area, they will do so.

The legislative findings in the bill A.3173 state in part, "This act shall provide that when five or more residential units or mixed-use development with five or more residential units are seeking

approval to be built, Westchester county's local governments in exchange for a density bonus on site shall require that as a condition of approval for such site plans and subdivisions the provision of affordable workforce housing in an amount equal to at least ten percent of the housing units be set aside.” (A3173 page 1 markup lines 13-17)

This clause penalizes smaller developments. If a development of 5 units anywhere in Westchester is proposed, under this law the minimum set aside for workforce units will be 1 (or 20%) of the 5. That is double the effect of the 10% set aside required for larger developments (10 units or more), where 10 units would also require just 1 set aside unit. This double impact on smaller developments is troubling for two reasons: (1) the vast majority of development proposals that villages like ours see are small in scale (well under 10 units of housing), and (2) such a perceived burden may lead developers to avoid proposing any development of small-scale multi-unit housing.

The legislative findings continue by stating, “In the alternative, where a local government determines that the provision of suitable affordable workforce housing may not be provided on site,...” (A3173 page 1 markup lines 18-19)

By what standards is a local government to determine whether “suitable affordable workforce housing may not be provided on site” here? This standard is so vague that it may be nearly unenforceable by the state, county, or municipality.

The legislative finding continues as follows, “that in lieu of said requirement, in exchange for a density bonus, either a payment may be made of a reasonable sum to be determined by the local government for the purpose of affordable workforce housing, which sum shall constitute a trust fund for that purpose, or other land and affordable workforce housing units constructed thereon may be provided off-site.” (A3173 page 1 markup lines 20-24).

This trust fund concept sounds great in intention, but is fraught with potential problems and lack of specificity. The Town of Southampton has already commented about its concerns on a similar legislation adopted in 2008 as the Long Island Workforce Housing Act. (See the attached August 2008 letter to you from Southampton Supervisor Kobot.) In effect, this clause allows a developer to buy out of the housing mandate without any requirement that the funds will be expended for workforce housing in a meaningful time frame.

Almost every sentence of the bill creates more ambiguities than solutions in amending the general municipal law. We will highlight a few of the most significant trouble spots below.

The bill’s definition section is problematic. The bill amends general municipal law by adding a new Article 16-B, which creates the Westchester County workforce housing incentive program. Within that new Article, § 669-h, “Definitions,” defines “Density Bonus” as “a density increase of at least ten percent, unless a lesser percentage is elected by the applicant over the otherwise maximum allowable residential density or floor area ratio...” (A3173 page 2 markup line 21-22).

Independent of this bill, our village is examining whether to double the allowable floor area ratio as of right for mixed-use development from 0.4 to 0.8 FAR for a set of commercially zoned parcels. We have just launched the SEQRA process to study these zoning additions. This bill would push the FAR to 0.88, should we adopt the local zoning changes. How do we know that a 0.88 FAR that would result from this bill will not exceed the carrying capacity of the parcels (for parking, set back, open space, etc)?

The definition of “Density Bonus” goes on to state: “All density calculations resulting in fractional units shall be rounded up to the next whole number.” (A3173 page 2 markup lines 25-26). This “all fractional units shall be rounded up” has the effect of penalizing the smaller-scale developments that are so critical to the county's villages. For example, under this rule an 11

unit develop proposal will need to set aside 2 workforce units. A new development of 20 units, nearly twice as large as the 11 unit proposal, will also only need to provide 2 workforce units. A likely result will be the creation of the smallest number of workforce units possible in most cases. An even more likely result will be developers proposing fewer units to stay below the bar that triggers the “plus one” workforce set aside. Both conditions punish the County’s many smaller municipalities.

In §699-i-I-b, the bill seeks to create some flexibility for the local government by stating “b. upon the local government making a finding that the set aside of at least ten percent of such units for affordable workforce housing would have a specific adverse impact upon health, safety or the environment for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact,…” (A3173 page 2 markup line 40-44).

We wonder if this condition for opting out is one that will hold up well under litigation. The burden on the local government to prove the potential of a specific adverse impact on health, safety or environment may be very high. It means proving something that might happen, based on something that is not yet built. This requires as stated later in the bill the local government produce “a written finding, based upon substantial evidence.” Choosing to produce a finding is likely to cost a village like ours tens of thousands of dollars in consultancy and legal fees. We view this “out” as worse than useless. We view it as an open invitation for legal suits. Defending a finding that is challenged in court will cost yet more. This burden of proof and the ramifications thereof are prohibitive for our small government.

In § 699-i-3, the bill lays some administrative and implementation rules. To wit, “3. Within one year of the effective date of this article, the local government shall adopt an ordinance or local law that specifies how the local government shall implement this article, including provisions specifying how density bonuses will be provided. The local government shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of density bonuses on specific sites.” (A3173 page 3 markup line 19-25).

While we like our village attorney, and want to keep him busy, we are not too excited about spending money drafting new local laws that, for the reasons above, seem open invitation to problematic suits. Is the Department of State going to supply model code for these provisions? Croton-on-Hudson already has well thought out procedures and policies. This new rule makes me nervous about how we may be committed to further waivers or modifications for zoning.

In addition to the above concerns over specific language in the bill, we have at least two more general concerns we feel compelled to raise.

The bill imposes yet another unfunded mandate at the worst possible time. In addition to the burdens it may impose on infrastructure and community facilities, it is going to force municipalities to fund a level of administration required to approve and monitor the affordable workforce housing that it imposes. With the mandate to require affordable housing, the municipality will have to be involved in reviewing the financial data of prospective applicants, and in the ongoing monitoring of the units to be sure they continue to be occupied by people who fit the financial criteria. This work takes a considerable amount of staff expertise, time and enforcement capacity. Most Westchester municipalities—including Croton—do not have the staff to do this inhouse. We will be forced to engage and pay third party organizations for application review and monitoring services.

The bill has a facial unfairness about it by failing to give credit to municipalities—like Croton—that have already built dozens of affordable housing units in recent years. Without some credit for prior work, the rules for Croton will be the same as for municipalities who have built no such units. One size does not fit all.

The singling out of Westchester County is problematic as well. Mandating affordable workforce housing on a piecemeal, rather than statewide, basis will actually deter the provision of affordable housing overall. For example, a municipality in the next county currently working on providing affordable housing might well put the brakes on now. It may be more cost-effective to wait until the State mandate arrives rather than get no credit for affordable housing efforts completed just before the law arrives.

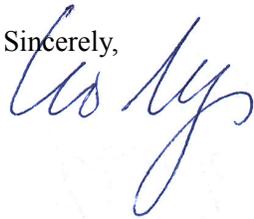
The Westchester Workforce Housing law has been clearly modeled on the Long Island Workforce Housing Act you signed in 2008. The difference between the bills seems to be that The Westchester version wisely removes the Long Island version's stipulation that a trust fund payment go to a particular housing non-profit organization. But, beyond that, none of the other flaws in the Long Island version—as pointed out by Southampton Supervisor Kabot and others a year ago—were corrected in the Westchester version.

We believe that workforce housing is best served by passing a bill that does not create so many landmines for local governments. To create the housing we all agree is needed a statewide program that allows calibration for local municipal conditions would be far more effective.

In sum, I urge your office to consider the above comments and to remand A.3173 and S.4946 back to the State Assembly and Senate for reconsideration and further vetting with local governments prior to enactment into law.

Thank you for your attention to these issues.

Sincerely,



Leo A. W. Wiegman

Mayor, Village of Croton-on-Hudson

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Cc:

Village Board of Trustees

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Village Attorney James Staudt

Assemblywoman Sandra Galef

Senator Vincent Leibell

Westchester County Executive Andrew Spano

Westchester County Legislator William Burton

Westchester Municipal Officials Association

Supervisor Linda Kabot, Town of Southampton

Enclosures: August 6, 2008 letter from Southampton Supervisor Kabot to Governor Paterson regarding Long Island Workforce Housing Act.



LINDA A. KABOT
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August 5, 2008

Honorable David A. Paterson
Governor, State of New York
Executive Chamber, State Capitol
Albany, NY 12224

Re: Long Island Workforce Housing Act – A.09881A and S.6823A

Dear Governor Paterson:

Recently, the Town of Southampton was advised that A.09881A and S.6823A were adopted by the State Legislature and now are awaiting your consideration for veto or signing into law, with an effective date of January 1, 2009. I understand that if the Governor neither signs nor vetoes the bill, the law goes into effect nonetheless.

The Town of Southampton strongly supports the intent of the Long Island Workforce Housing Act to facilitate additional affordable housing opportunities for the region's workforce. However, together with the Town Board, I have serious concerns that need to be brought to your attention with regard to implementation at the local level and unintended consequences due to the present wording of this state legislation.

First, there has been very little communication with the Town, or Villages within the Town, or other local governments, about this law. This legislation did not consider home rule authority for local governments – many of which have more stringent requirements, particularly for below-market rate set-aside units in multi-family projects and mixed use developments.

Second, I am concerned with the lack of flexibility afforded to local municipalities in integrating other not-for-profits into the overall scheme for affordable housing. Although the Town has an excellent relationship with the Long Island Housing Partnership, it may have preferred, in a particular case, to transfer trust funds as set forth in the Act to other not-for-profit housing organizations, such as the Southampton Town Housing Authority, Habitat for Humanity of Suffolk, Habitat for Humanity of Peconic, or Community Development Corporation of Long Island. This Act deprives the local municipality of such discretion at the end of the three year period.

Third, the Act will almost certainly result in an unequal dispersion of affordable housing given disproportionate land values within the Town. This problem arises where it is more lucrative for

developers to relocate affordable units of “consistent design” to land having a lower value, while receiving the density bonus in the high end area. Areas with higher population density will continue to absorb developments with higher densities, thus running counter to the stated intent of the legislation. By giving the applicant complete discretion as to which option to exercise, the Town loses control over appropriate placement of Affordable Workforce Housing, while most developers will opt for the “cash-in-lieu” payment of only \$200,000.

Let us consider the proposed density bonus mandate and the situation of a high end area such as Bridgehampton or unincorporated Sagaponack. The Town must provide a 10% bonus under the Long Island Workforce Housing Act, if enacted into law by the State of New York, for all developments containing 5 dwelling units or more. For a 10 lot subdivision, the developer gets one more dwelling unit to build and sell for market rate. In exchange for this density bonus, the developer can fulfill the affordable housing obligation by opting-out with “cash-in-lieu” in the amount of \$194,200 paid to the Affordable Housing Trust Fund (e.g. Nassau-Suffolk Median Household Income for family of four \$97,100 x 2 per statute, or value of lot, whichever is less). Obviously, the developer will sell the lot at fair market value of say a cool \$1 million, with a windfall of approximately \$800,000, after fulfilling the Long Island Workforce Housing Act mandated payment to the Town of under \$200,000. The Town will then expend the funds anywhere in the Town to facilitate affordable housing, and not necessarily in Bridgehampton or unincorporated Sagaponack. In my view, the legislation should have provided a requirement for the municipality to prioritize development or facilitation of workforce housing in the general vicinity of area where the contribution was exacted from the developer, for example, on the basis of zip code or same school district.

Therefore, I urge your office to consider the above comments and remand A.09881A and S.6823A back to the State Legislature for reconsideration and further vetting with local governments prior to enactment into law.

Sincerely,

Linda A. Kabot
Supervisor
Town of Southampton

cc: Town Board
Town Attorney
Land Management
East End Mayors and Supervisors
Assemblyman Fred Thiele
Senator Ken LaValle