

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
and ) 80 CIV 6761 (LBS)  
)  
YONKERS BRANCH, NAACP, et al., )  
)  
Plaintiff-Intervenors, )  
v. )  
CITY OF YONKERS, et al., )  
)  
Defendants )

**STATEMENT AND REPORT OF COURT MONITOR<sup>1</sup> REGARDING  
PERFORMANCE UNDER CERTAIN HOUSING REMEDY ORDERS  
AND SETTLEMENT AGREEMENT**

It has been an honor to serve as Housing Special Master (“HSM) and then Court Monitor for several of the Housing Remedy Orders in the action United States et al. v. City of Yonkers, et al., since 1994. The case was filed in 1981 and evolved over almost three decades when a final settlement agreement was presented by the Parties and accepted by the Court on May 1, 2007 (the “Settlement Agreement”).

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<sup>1</sup> Marilyn Melkonian was appointed Housing Special Master by the Court on October 22, 1993 and became Court Monitor in 1996. This statement and report is submitted as of March 17, 2011.

While the process of remedy and reconciliation was slow, at times difficult and contentious for those involved, the case reached its conclusion with solid achievements and important lessons for furthering fair housing under the law. The case created significant fair housing opportunities in the City of Yonkers and ended the practice of racial segregation and discrimination caused by unlawful public actions. Over the course of the enforcement of the Court's remedy, the City began to assume responsibility for, and then implemented, what was ultimately an effective program that set an example and created integrated rental and homeownership opportunities throughout the City for members of the plaintiff class. The housing programs currently in place, as a result of the Housing Remedy Order and subsequent implementing orders and now preserved by the Settlement Agreement, will provide integrated and affordable housing in Yonkers for years to come. In addition, the impact of the Court's decision has been felt beyond this case, and it has been cited in nearly three hundred subsequent court decisions, journal articles, and appellate briefs.

Yonkers was the first federal case to address the interrelated issues of housing and school segregation simultaneously. It is among the first housing discrimination cases to apply Title VIII<sup>2</sup>

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<sup>2</sup> See, e.g., *Otero v. N.Y. City Hous. Auth.*, 484 F.2d 1122 (2d Cir.1973). "Congress' desire in providing fair housing throughout the United States was to stem the spread of urban ghettos and to promote open, integrated housing," and that, accordingly, "[a]n authority may not ... select sites for projects which will be occupied by non-whites only in areas already heavily concentrated with a high proportion of non-whites". *Id.* at 1134, 1133. See also *Shannon v. Dept. of Hous. & Urban Dev.*, 436 F.2d 809 (3d Cir. 1970) (involving a challenge to HUD's approval of a rent-subsidy contract for a new building in an urban renewal area of Philadelphia). The thrust of the complaint was that the location of a rent-subsidy project in that area would have the effect of increasing the already high concentration of low-income black residents there, and that HUD had not properly considered the effect of such a subsidy guarantee on the racial concentration in Philadelphia as a whole or in that neighborhood in particular. *Id.* at 811-12. The Court of Appeals agreed that HUD had not considered those effects, and it vacated the district court's denial of relief, stating that "[i]ncrease or maintenance of racial concentration is prima facie ... at variance with" the policy underlying the Fair Housing Act. *Id.* at 821.

and the earliest case to come to a remedy phase and order specific solutions in order to create integration housing opportunities in a city.<sup>3</sup>

Furthermore, Yonkers received its place in civil rights history not just for the Court's decision, but the City's stiff initial resistance to the remedies.<sup>4</sup> By the late 1980's commentators began calling the region "Mississippi on the Hudson."<sup>5</sup> Various parts of the case were continually appealed throughout its decades of litigation, adding to the drama and the combative relationship between the parties.

The Second Circuit, in upholding the trial court's liability decision and remedy order, found that the "exhaustive and well documented opinion" gave "ample evidence" of discrimination in both the housing and school systems of Yonkers.<sup>6</sup> It also found that any contention by the City that its housing policies were not motivated by discrimination would be "frivolous."<sup>7</sup> As a result, the City faced judicial orders that affected its municipal services, its public servants, and even the legislation it could pass or amend.<sup>8</sup>

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<sup>3</sup> See Diane Houk, Fair Housing Justice Center, *Increasing Access to Low-Poverty Areas by Creating Mixed-Income Housing*, 85-95 (June 2007) (covering seventeen similar cases that followed Yonkers in blocking public housing placements in high-minority neighborhoods).

<sup>4</sup> For example, city councilors made national news headlines by insisting that they would rather be jailed than implement the housing remedy. See *Brick by Brick: A Civil Rights Story* (Kavanagh Productions 2009).

<sup>5</sup> Jacqueline B. Mondros & Neil McGuffin, *Yonkers: A New Tale of Two Cities*, in *Case Studies in Social Work Practice*, 161-63 (Craig Winston LeCroy ed., 1992); see also Sara Rimer, *As Blacks in Yonkers See It, Time to Say 'You're Wrong'*, N.Y. Times, Aug. 11, 1988, at A1; James Feron, *Democrats Chided on Blacks at Fund-Raiser*, N.Y. Times, May 10, 1981, sec. 11, at 1.

<sup>6</sup> *United States v. Yonkers Bd. of Educ.*, 837 F.2d 1181, 1185 (2d Cir. 1987).

<sup>7</sup> *Id.* at 1222.

<sup>8</sup> See, e.g., *Settlement Agreement*, at 11 (Record at 2094).

This report is focused on the work involved in creating the additional affordable housing units, as defined below, which was the focus of the case in the 1990's and through the 2007 Settlement Agreement. The report is structured as a review of the past, a statement of where things are, and some comments on the future. It is not the definitive record of all the work involved in this case, or of the findings by the Court, nor is it meant to summarize or retell the full story of the case. The record for this case fills nearly fifty case files in the Federal District Courthouse in New York.

Instead, this report presents the basic facts of the case with an overview of the court rulings and the City's various compliance efforts. I hope this provides the Court and interested parties helpful information on the efforts undertaken over thirty years to create fair housing opportunities in Yonkers, with an emphasis on the implementation of the Court's remedies, and that it is a useful contribution to more definitive research and analysis on this case and its impact on the City of Yonkers and the fair housing laws of the United States.

A brief chronology of the case appears as Exhibit 5.

The report has three parts. The first provides a brief history of housing segregation in Yonkers, the basis of the lawsuit, and a synopsis of the litigation, focusing on those aspects of the remedy directly related to the provision of affordable housing opportunities. The second part describes the tools used by the Court and the City of Yonkers to provide class members with desegregated housing opportunities. This section summarizes the results of each program, and describes why some programs were more successful than others and the constraints that affected each of them. The third part documents the terms of the Settlement Agreement and how the settlement provisions will allow for the continued provision of affordable integrative housing

opportunities for the next ten to twenty years. This last section also provides some reflections on the impact of the Court-mandated programs and how well they served the class members.

### **Part I: The History of the Litigation**

#### *A. The Background of Housing Development and Segregation in Yonkers*

Beginning in the mid-19<sup>th</sup> century, a thriving industrial center developed in Southwest Yonkers along the Hudson River and later along the rail lines that passed through the area.<sup>9</sup> The area's growth was accompanied by the construction of poor quality housing built to serve European immigrants working in local factories.<sup>10</sup> Migration to Yonkers at the time was influenced by slum clearance in nearby towns such as White Plains.<sup>11</sup> The construction of new commuter rail lines and highways opened up undeveloped land in Northwest and East Yonkers.<sup>12</sup> As Northwest and East Yonkers developed, the Southwest declined. Factories closed over time, and housing deteriorated without being replaced or renovated.<sup>13</sup>

The City of Yonkers (the "City") used programs provided under the National Housing Act of 1937 as well as earlier and subsequent state and federal legislation to build public and assisted housing and invest in urban renewal.<sup>14</sup> From 1949 to 1982, the City built thirty-six subsidized housing developments, of which thirty-four were located in Southwest Yonkers. The

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<sup>9</sup> United States v. Yonkers Bd. of Educ., 624 F. Supp. 1276, 1290 (S.D.N.Y. 1985).

<sup>10</sup> Peter H. Schuck, *Judging Remedies: Judicial Approaches to Housing Segregation*, 37 Harv. C.R.-C.L. L. Rev. 289, 325 (2002).

<sup>11</sup> *Id.* at 326.

<sup>12</sup> *Id.*

<sup>13</sup> *Yonkers*, 624 F. Supp. at 1290.

<sup>14</sup> *Id.*

result was an extreme concentration of public and assisted housing in Southwest Yonkers, with 6,644 of 6,800 units, 97.7% of all of Yonkers's subsidized housing, located there by 1985.<sup>15</sup>

The 1980 census also showed extreme racial concentration of Yonkers neighborhoods. Minorities comprised 18.8% of the Yonkers population, with 80.7% of minorities living in Southwest Yonkers, an area that held only 37.5% of the City's population.<sup>16</sup> Only two of the thirty-two census tracts outside of Southwest Yonkers had minority populations greater than 6%.<sup>17</sup>

*B. The City of Yonkers, Local Politics, and the Pattern and Practice of Segregated Housing*

The pattern and practice of segregation in Yonkers was driven by the structure of its political system. Yonkers was comprised of twelve wards, each with such a strong identity that it was compared to a "confederation" of smaller cities, rather than a single city.<sup>18</sup> Each neighborhood generally had a civic association, which monitored subsidized housing proposals. Members came out en masse to oppose any proposed public or subsidized development in their

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 1291.

<sup>17</sup> *Id.*

<sup>18</sup> Lisa Belkin, *Show Me a Hero: A Tale of Murder, Suicide, Race, and Redemption* (Little, Brown, and Co. 1999). Until 1987 each ward had one council member, who represented his ward. In 1987 the system was changed to six council members (plus the Mayor) in six election districts, each covering two wards. Please note that Belkin's book, while it conveys a dramatized version of the events surrounding the *Yonkers* case and is not relied upon here for legal analysis, is referred to several times for background facts.

own neighborhood.<sup>19</sup> The City Council controlled the placement of the housing,<sup>20</sup> and there were never enough votes to locate a development in a resistant neighborhood.

This pattern began in the late 1930's with Cottage Place Gardens, the City's second public housing development. In that instance, "the City resolved to build a public housing project 'for Negroes' and set about finding a suitable site on which to do so."<sup>21</sup> The pattern continued with four sites proposed for federally assisted housing in 1950.<sup>22</sup> The first three faced opposition immediately by resident associations arguing that the developments should be put in a "present slum area" or protesting vehemently that decline in property values would cause their "financial ruin."<sup>23</sup> All three sites failed to attain the necessary approvals to go forward. The other project considered in 1950 was in the minority area of Southwest Yonkers. It encountered no political opposition, and was approved.<sup>24</sup>

This pattern continued, with some variations, for the next thirty-two years. The City took nine years to approve enough sites to absorb the urban renewal funds it applied for in 1949

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<sup>19</sup> It was the near-perfect success rate that neighborhoods had of keeping the Council from placing housing in their neighborhoods that ultimately caught the attention of the U.S. Department of Justice. At that time, many major cities had segregated neighborhoods, but Yonkers was unique in never approving even a token subsidized housing project for families in white Eastern Yonkers. *See Yonkers*, 624 F. Supp. 1276.

<sup>20</sup> The Municipal Housing Authority (MHA) of Yonkers was the city agency authorized to construct, own and operate public housing developments. MHA board members were appointed by the City Manager, who was appointed by the City Council. MHA projects in turn had to be approved by a majority vote of both the City's Planning Board (whose members were appointed by the Mayor) and the City Council itself, or by a three-quarters vote of the City Council. *Id.* at 1294-96.

<sup>21</sup> *Id.* at 1312.

<sup>22</sup> Racial terms were generally not used in debates over subsequent housing.

<sup>23</sup> *Id.* at 1296.

<sup>24</sup> This site, on Palisade Avenue, was also doubled in size from its original plans to 450 units to accommodate more of the housing allocations, adding to the existing minority concentration in the neighborhood. *Id.* at 1297.

because of continual neighborhood resistance and City acquiescence.<sup>25</sup> Opposition to development in white neighborhoods was articulated in coded discussions of the “character of the community”<sup>26</sup>, “the element which [the projects] attract”, the “class of people now there”,<sup>27</sup> and “the overflow from Puerto Rico or Harlem.”<sup>28</sup> In 1964 the Yonkers Urban Renewal Agency (YURA) was formed and developed another list of twelve sites for family housing; all were disapproved by the Planning Board and the City Council, except for four in Southwest Yonkers.<sup>29</sup>

By 1966 racial segregation in Yonkers was beginning to attract attention and discussion. The U.S. Department of Housing and Urban Development (“HUD”), relying on advice that the proposal would cause “potential concentration of minority groups,” rejected or withheld approval from two more proposed sites and unsuccessfully recommended scattered site housing for the first time in Yonkers.<sup>30</sup> In 1970 and 1971 seventeen new sites were also selected on the basis of political feasibility, and all were located in Southwest Yonkers.<sup>31</sup> By spring of 1972, HUD

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<sup>25</sup> *Id.* at 1295.

<sup>26</sup> *Id.* at 1301.

<sup>27</sup> *Id.* at 1297.

<sup>28</sup> *Id.* at 1311.

<sup>29</sup> When a Planning Board disapproval was *not* accompanied by community opposition, the Council was willing to override them. *Id.* at 1308. The City’s Planning Department also made recommendations for developments in white neighborhoods and for projects with less than 250 units, both of which were disregarded. *Id.* at 1310.

<sup>30</sup> When HUD refused to approve even more subsidized developments in Southwest Yonkers due to concerns about relocation and segregation, the proposals ground to a halt. *Id.* at 1306. At this point there were public discussions of Yonkers not being “ready” for economic and racial integration. *Id.* at 1310. At trial, a number of City officials admitted that race was a factor in housing placement. *See, e.g., id.* at 1311, 1315 (providing testimony from Mayor Del Bello, who stated that “race was definitely a consideration in many of the demonstrations and visible opposition we had.”).

<sup>31</sup> *Id.* at 1313. Many of these developments were funded by New York State’s newly formed Urban Development Corporation, which initially pushed for scattered site housing but eventually backed down and funded the projects. *Id.* at 1318-19.

threatened to cut off *all* of the City's urban renewal funds unless at least one scattered site was approved.<sup>32</sup> This pressure forced through one publicly assisted housing development in a white neighborhood, but it was the last family housing to be built for ten years, and it was so politically unpopular that the council member for the ward decided not to run for reelection.<sup>33</sup>

The final result of the pattern of neighborhood resistance and housing placement was that the City had, over decades, constructed nearly seven thousand publicly assisted housing units, all confined to the highly concentrated minority area of Southwest Yonkers.<sup>34</sup> (Later City housing efforts changed their focus to rehabilitation of existing buildings and Section 8 (rental assistance) programs under the Housing and Community Development Act of 1974.<sup>35</sup>) By developing nearly all subsidized housing in Southwest Yonkers, the area became racially segregated. The City continued to advocate for additional subsidized housing in Southwest Yonkers even though there were properties, vacant and available for development, in other parts of the City.<sup>36</sup>

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<sup>32</sup> *Id.* at 1326.

<sup>33</sup> *Id.* at 1327.

<sup>34</sup> It is also worth noting two exceptions to this pattern of all subsidized housing being rejected by white neighborhoods and ending up in minority-populated Southwest Yonkers. First, a Runyon Heights site proposed in 1956 was in a neighborhood of black homeowners in East Yonkers. Community opposition defeated the site, but the debates included a discussion of race more straightforward than other neighborhoods were willing to have (that the project was a "Negro project"). *Id.* at 1299. The other exceptions were the subsidized projects that *were* erected in white neighborhoods; these were either middle income ("Mitchell-Lama projects") or senior housing. *See id.* at 1299, 1311, 1301, 1315, 1354. Senior housing prompted some resistance, but such housing was the only low income housing constructed in white neighborhoods from 1949 to 1982, and the only assisted housing built at all from 1958 to 1963. *See id.* at 1302.

<sup>35</sup> *Id.* at 1342.

<sup>36</sup> *See id.* at 1304, 1310, 1317, 1335 (finding that many of the housing projects in Southwest Yonkers required variances to allow for inadequate parking facilities, exemption from height-restrictions, and zoning rules against residential housing, which together caused traffic problems, overcrowded schools, and general congestion).

### C. *The Corresponding Segregation in the Yonkers School System*

As a result of the City's housing decisions, public schools in Yonkers were also highly segregated by the 1980's. Only two of more than thirty schools had enrollments that reflected the racial composition of the overall system, and almost all the rest were overwhelmingly white or overwhelmingly minority.<sup>37</sup> Suggestions for school reorganizations that would have moved toward integration were met with community hostility and resistance from white neighborhoods.<sup>38</sup> Since the *Brown v. Board of Education* decision banning intentional segregation in schools in 1954,<sup>39</sup> courts were faced with racially divided educational systems with complex underlying causes. The Yonkers case was unique in joining education and housing claims in one action and instituting remedies to address both.<sup>40</sup> While not discussed in any depth in this report, the Court's liability finding resulted in a student reassignment plan, proposed by the Yonkers Board of Education, which relied primarily on creating a diverse array of magnet schools and programs at each grade organizational level to be implemented to reduce school segregation.<sup>41</sup> The school reforms were addressed somewhat more quickly than the housing

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<sup>37</sup> *Id.* at 1384.

<sup>38</sup> *See United States v. Yonkers Bd. of Educ.*, 837 F.2d 1181, 1207 (2d Cir. 1987).

<sup>39</sup> 347 U.S. 483 (1954).

<sup>40</sup> *Yonkers*, 624 F. Supp. at 1377 (citing *Higgins v. Bd. of Educ. of Grand Rapids*, 508 F.2d 779, 789 (6th Cir.1974); *Deal v. Cincinnati Bd. of Educ.*, 369 F.2d 55, 60 n.4 (6th Cir.1966), *cert. denied*, 389 U.S. 847 (1967); *Brody-Jones v. Macchiarola*, 503 F. Supp. 1185, 1236-37 n. 27 (E.D.N.Y. 1979); *Bronson v. Bd. of Educ. of the City Sch. Dist. of Cincinnati*, 578 F. Supp. 1091, 1104 (S.D. Ohio 1984).

<sup>41</sup> Dr. Joseph M. Pastore, the Court Monitor for the school desegregation side of this case, has reported to the Court on the methods and successes of those efforts. The education reforms also spawned additional litigation, especially dealing with the State's responsibility to contribute to the desegregation costs. The schools continued to struggle over the following years with under-funded budgets and underperformance. *See* Elsa Brenner, *Rethinking School Busing In Yonkers*, N.Y. Times, Feb. 4, 1996, at 13WC; *see also* Xavier de Souza Briggs, *Entrenched Poverty, Social Mixing, and the "Geography of Opportunity": Lessons for Policy and Unanswered Questions*, 13 Geo J. on Poverty L. & Pol'y 403 (2006). White flight was more evident in the schools than in housing, since many parents

reforms; they had the full cooperation of the education authorities, and the disorder that some had feared did not occur.<sup>42</sup>

*D. The Lawsuit: United States v. Yonkers Board of Education*

In 1980, the evidence of extreme racial segregation in Yonkers's housing and education systems led the U.S. Department of Justice ("DOJ") to commence a suit under Title VIII of the Civil Rights Act of 1968, against the Yonkers Community Development Agency<sup>43</sup> and the City of Yonkers. The DOJ also acted on behalf of the federal Department of Education, notifying the Yonkers Board of Education in early 1980 that it was violating Titles IV and VI of the Civil Rights Act. In December 1980 DOJ brought suit against the Board of Education and the City.<sup>44</sup> The complaint alleged that the City had intentionally concentrated low-income publicly assisted housing in the highly minority area of the City and that the determinative relationship between housing and education in turn established liability for intentional school segregation.<sup>45</sup> The National Association for the Advancement of Colored People, Yonkers Branch ("NAACP")

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stayed in their neighborhoods but moved their children to private school. *See* Claudia Rowe, *Lessons Learned by Those Who Stayed*, N.Y. Times, Feb. 17, 2002, at 14WC .

<sup>42</sup> *See* Brick by Brick, *supra* note 4.

<sup>43</sup> The Yonkers Community Development Agency was originally organized as YURA in 1964, a semiautonomous agency with the power to plan, undertake, and effectuate urban renewal projects, subject to the approval of the City Council, and it remained in operation until 1971. YURA was governed by a five-member board, which consisted of the City Manager, the Mayor, the Corporation Counsel, the City Comptroller, and the City Planning Director. In 1971, YURA was renamed the Community Development Agency (CDA), and its governing board was expanded to include two City residents appointed by the Mayor with the advice and consent of the City Council. *United States v. Yonkers Bd. of Educ.*, 624 F. Supp. 1276, 1301 (S.D.N.Y. 1985).

<sup>44</sup> *Id.* at 1288.

<sup>45</sup> To give one example of the interplay between the issues, one Council member testified that nearly all of the East Yonkers councilmen had indicated that their constituents objected to subsidized low-income housing partly because "[i]n order to keep the schools nice, you know, you'd have to keep out the minorities." *United States v. Yonkers Bd. of Educ.*, 837 F.2d 1181, 1208 (2d Cir. 1987).

joined DOJ as a plaintiff in 1981, naming HUD as a codefendant, and HUD remained involved in the case until settling its portion of the case with the NAACP in 1984.<sup>46</sup>

The resulting case was the first to combine in a single action allegations of racial discrimination with respect to both schools and housing. During 1983 and 1984 the parties engaged in a ninety-two-day trial involving testimony from eighty-four witnesses, thirty-eight depositions, and thousands of exhibits. The liability decision rendered by United States District Judge Leonard B. Sand in 1985 comprised 277 pages of detailed application of federal law to the carefully established facts in Yonkers.

Title VIII of the Civil Rights Act of 1968, known as the Fair Housing Act, prohibits practices which “make unavailable or deny . . . a dwelling to any person because of race, color, religion, sex, or national origin.”<sup>47</sup> In evaluating whether the City had violated the Fair Housing Act, the Court examined evidence of discriminatory intent demonstrated by the *pattern and practice* of housing decisions by the City Council and its agencies over thirty years. In its analysis, the Court noted that intent is determined by evaluating the degree of discriminatory

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<sup>46</sup> The City claimed that HUD had sanctioned and approved the City’s actions with regard to its public housing and was therefore also at fault. Schuck, *supra* note 10, at 335. The City’s claims against HUD were dismissed on the grounds that they were barred by sovereign immunity, *United States v. Yonkers Bd. of Educ.*, 594 F. Supp. 466 (S.D.N.Y. 1984), and HUD settled its portion of the case with the NAACP in 1984. Under the HUD Settlement, HUD agreed to fund 200 units of family public housing to be located east of the Saw Mill River Parkway in Yonkers and to invite the Yonkers Municipal Housing Authority (“MHA”) to apply for 175 family project-based section 8 certificates under the Section 8 Existing Housing Program for use in the same area. *United States v. Yonkers Bd. of Educ.* 611 F. Supp. 730, 742-46 (S.D.N.Y. 1985). The City had committed previously to providing sites for 200 units of public housing as a condition for receiving its 1983 Community Development Block Grant funds. *United States v. Yonkers Bd. of Educ.*, 635 F. Supp. 1577 (S.D.N.Y. 1986) (publishing the complete Housing Remedy Order). It later recommitted to the 200 units in the Consent Decree, and the units were completed under Oscar Newman’s oversight in the early 1990’s. See discussion *infra* p.32 (pertaining to “scattered sites”).

<sup>47</sup> 42 U.S.C. § 3604(a).

effect, the historical background of the actions, the sequence of events leading up to them, departures from normal procedures, and the legislative history of the actions.<sup>48</sup>

On November 20, 1985 the Court ruled that “the extreme concentration of subsidized housing that exists in Southwest Yonkers today was the result of a pattern and practice of racial discrimination by City officials”<sup>49</sup> and that “the record clearly demonstrates that race has had a chronic and pervasive influence on decisions relating to the location of subsidized housing in Yonkers.”<sup>50</sup>

The City appealed both this determination and the subsequent Housing Remedy Order to the Second Circuit. In December 1987, the Court of Appeals affirmed the District Court’s decision and its remedy order “in all respects.”<sup>51</sup> In its opinion, the Court of Appeals stated, “Given even that fraction of the proof recited here as to the impact of the City’s decisions, the sequences of events, the procedural deviations, the convenient disregard of substantive standards, and the explicit and veiled statements of racial concerns, we regard as frivolous the City’s contention that the evidence is insufficient to support the District Court’s finding that the City made its subsidized housing decisions with a segregative purpose.”<sup>52</sup>

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<sup>48</sup> *United States v. Yonkers Bd. of Educ.*, 624 F. Supp. at 1293 (citing *Arlington Heights v. Metro. Hous. Corp.*, 429 U.S. 252, 265-66 (1977)); *Gautreaux v. Chi. Hous. Auth.*, 296 F. Supp. 907, 914 (N.D. Ill. 1969) (“[a] policy of racial segregation, in other words, is impermissible even as a secondary motive for action, and ‘cannot be justified by the good intentions with which other laudable goals are pursued.’” (citing *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954))). And while the case *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 558 F.2d 1283 (7th Cir.1977) (“*Arlington Heights II*”) established a related “effects” standard for proving violation of the Fair Housing Act, the Court noted that “in light of the strength of the evidence of intent in the case before us,” it was unnecessary to reach the question as to whether this case met that standard. *Yonkers*, 624 F. Supp. at 1293 n.12.

<sup>49</sup> *Id.* at 1373.

<sup>50</sup> *Id.* at 1376.

<sup>51</sup> *United States v. Yonkers Bd. of Educ.*, 837 F.2d 1181, 1184 (2d Cir. 1987), *cert. denied*, 486 U.S. 1055 (1988).

<sup>52</sup> *Yonkers*, 837 F.2d at 1222.

In 1988, the Supreme Court denied the City and School Board's petition for a writ of certiorari on the liability and remedy findings in all respects.<sup>53</sup>

When the Settlement Agreement for the housing matters of the case was accepted by the District Court in May 2007, it concluded more than twenty-five years of ongoing and complex litigation, remedy and relief efforts.<sup>54</sup>

### *E. The Post-Trial Orders and Agreements*

#### a. Housing Remedy Order: May 28, 1986

After the 1985 liability decision, the Court gave the City of Yonkers time to propose its own remedy. No action was taken by the City.<sup>55</sup> Judge Sand held a six-day hearing on a remedy before issuing the Housing Remedy Order ("HRO") on May 28, 1986.<sup>56</sup> The HRO was a comprehensive plan to address the City's housing issues and included provisions for both short-term and long-term resolutions. The HRO left many of the details of implementation up to the City, but it put five fundamental requirements in place.<sup>57</sup>

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<sup>53</sup> *City of Yonkers v. United States*, 108 S. Ct. 2821 (1988). The Supreme Court's denial of certiorari in 2001 ended any further legal challenge by the City to the Court's decisions. *City of Yonkers v. United States*, 122 S. Ct. 643 (2001).

<sup>54</sup> See Settlement Agreement at 11 (Record at 2094).

<sup>55</sup> Lena Williams, *Judge Sets Deadline for Yonkers to Submit Plan for Desegregation*, N.Y. Times, Dec. 19, 1985, at B6; Lena Williams, *Agreement Sought in Yonkers*, N.Y. Times, Dec. 29, 1985, at 11.

<sup>56</sup> *United States v. Yonkers Bd. of Educ.*, 635 F. Supp. 1577 (S.D.N.Y. 1986). See also Schuck, *supra* note 10, at 347.

<sup>50</sup> *Yonkers*, 635 F. Supp. 1577.

<sup>51</sup> See generally *id.*

First, the HRO permanently enjoined the City from confining public or subsidized housing only to Southwest Yonkers or otherwise promoting racial segregation anywhere in Yonkers. Second, it required that the City develop a plan to provide sites for the 200 public housing units required by an earlier agreement with HUD (the “Public Housing Units”) and set deadlines for the achievement of the provisions of the HUD settlement. The City was also required to develop a plan for additional subsidized housing outside Southwest Yonkers. These additional subsidized housing units (later made part of a credit system) were the main subject of the Master/Monitor’s work with the Court and of this Statement, and are referred to herein as the “Additional Affordable Units.” Third, the HRO mandated the establishment of a Fair Housing Office (“FHO”) to implement a fair housing program, and the establishment of an Affordable Housing Trust Fund to provide resources for the housing remedies. Fourth, it required the City Council to adopt a fair housing policy. Finally, the HRO established occupancy priorities for the housing created under its provisions to ensure that people who had been harmed by the City’s prior discriminatory actions would be served by the remedy. The City actively resisted implementation of the HRO.

A Consent Decree was agreed to by the parties and issued by the Court in January 1988, in which the City agreed to carry out a number of programs that would satisfy the HRO as well as provide the basis for eventual implementation of remedies in the case. The Consent Decree acknowledged the City’s commitment to building the 200 public housing units required under the HUD settlement, and after much effort, and with the assistance of the Outside Housing

Advisor, Oscar Newman, the public housing units began construction in 1990 and were completed in 1993.<sup>58</sup>

Under the Consent Decree, the City also agreed to provide 800 Additional Affordable Units to fulfill its obligations under the HRO. The Consent Decree established that these Additional Affordable Units would be part of mixed income housing developments that included market-rate housing and established tiers of affordability, ensuring that both low- and moderate-income families would benefit from the additional units. In addition, the City agreed to adopt legislation known as the Affordable Housing Ordinance (the “AHO”) that offered developers of multi-family housing a variety of incentives to include affordable units.

b. The Long Term Plan Order: June 13, 1988

The hope that implementation of the remedies would begin after the January 1988 Consent Decree was issued was short-lived. The City reneged and on April 12, 1988 the City told the Court that it would not complete negotiations with the NAACP and DOJ for a long-term plan.<sup>59</sup> The City also decided to pursue an appeal to the Supreme Court, which it had promised not to do under the Consent Decree. Contrary to its commitments in the Consent Decree, the City also failed to adopt the AHO, which would have conditioned construction of multi-family housing on the inclusion of at least 20% affordable units and granted developer incentives.<sup>60</sup>

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<sup>58</sup> Xavier de Souza Briggs, *In the Wake of Desegregation: Early Impacts of Scattered-Site Public Housing on Neighborhoods in Yonkers, New York*, APA Journal, Winter 1999, at 33. The final public housing units were located on seven sites, each of which had between fourteen to forty-eight units. The units were fully occupied by the mid 1990s. Schuck, *supra* note 10, at 359.

<sup>59</sup> *Id.* at 449.

<sup>60</sup> *Id.*

In order to address these breaches, the DOJ and the NAACP submitted a proposed Long Term Plan Order (“LTPO”) to the Court in May 1988. After a hearing and some revisions, Judge Sand approved the LTPO on June 13, 1988.<sup>61</sup>

The LTPO provided additional guidelines for the City’s compliance with the commitment it had made in the Consent Decree to provide 800 Additional Affordable Units (and therefore satisfy the requirements of the HRO). The LTPO set forth more detail for the City as to the requirements (such as percentage of affordability, income levels, and developer incentives) that were to be incorporated into the Affordable Housing Ordinance, requiring affordable units in all new development. The LTPO also contained greater detail as to where the Additional Affordable Units should be provided and prescribed the conditions for the rental, purchase and resale of those units. Furthermore, the LTPO created an implementation branch of the Fair Housing Office (created by the HRO) to oversee the administration of these requirements, which became the Fair Housing Implementation Office (“FHIO”).<sup>62</sup>

In addressing the issue of access to the Additional Affordable Units, the LTPO established a priority system for eligible participants. These priorities became a critical part of the implementation of the Court’s orders. The priority classifications were also used as part of the long-term implementation efforts, including the Settlement Agreement.

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<sup>61</sup> *Id.*

<sup>62</sup> Karen Hill was appointed to direct the Fair Housing Implementation Office. Schuck, *supra* note 10, at 363.

The system established by the LTPO included:

**Priority 1:** persons who had been residents of public or subsidized housing in the City of Yonkers between January 1, 1971 and the date at which assisted housing under the LTPO was made available. (Although not described in racial terms, most people who were served under the Priority 1 category were either African-American or Latino).<sup>63</sup>

**Priority 2:** residents of the City of Yonkers.

**Priority 3:** persons employed in the City of Yonkers.

Despite the Second Circuit's affirmation of the District Court's original rulings in 1987, the City continued to resist implementing the provisions of the HRO. Throughout the *United States v. Yonkers* trial, city government officials had either acknowledged that race was a motivating factor, relied on explanations with thin evidentiary support,<sup>64</sup> or failed to remember key meetings and decisions.<sup>65</sup>

The City's role in maintaining segregation came under even more scrutiny after the appellate decision was handed down, and the City refused to comply with the remedy order. In August 1988, after the city refused to adopt an Affordable Housing Ordinance as mandated by the Long Term Plan Order, Judge Sand imposed rapidly multiplying fines against individuals and the City and even threatened recalcitrant city officials with incarceration. Before long, the City

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<sup>63</sup> See Housing Action Council, March 2011.

<sup>64</sup> For example, the City claimed that locating so many projects in Southwest Yonkers was part of a plan to rejuvenate the area, although there was no evidence of any such plan. *United States v. Yonkers Bd. of Educ.*, 624 F. Supp. 1276, 1309, 1337 (S.D.N.Y. 1985).

<sup>65</sup> See *id.* at 1326 (Mayor O'Rourke); *id.* at 1324 (Planning Director Pistone); *id.* at 1343 (Mayor Martinelli and Alphons Yost, Administrator of the CDA).

was facing bankruptcy, other departments were suffering, and municipal services were severely affected, finally compelling the City to cooperate (to a limited extent) with its own Consent Decree.<sup>66</sup>

c. Supplemental Long Term Plan Order: October 5, 1993

While the City made some efforts in connection with the 200 Public Housing Units (that were finally completed in 1993), there continued to be considerable delays and problems in securing the City's cooperation in providing the Additional Affordable Units. While the LTPO had provided much detail as to how those units would be provided and all legal challenges had ended, with respect to the Additional Affordable Units, the City continued to resist implementing any of the provisions of the HRO, the Consent Decree or the LTPO, and little progress was made. Negotiations on how to achieve the goals of the Orders continued, and many plans were discussed but not implemented.<sup>67</sup>

Faced with the inadequacy of the LTPO, and also with the City claiming that changes in market conditions had affected the implementation of the Order, the parties agreed that modifications were necessary. On October 5, 1993 the Court entered a modified remedial order—the Supplemental Long Term Plan Order (“SLTPO”). The SLTPO provided that the City could utilize 250 existing housing units in meeting the Additional Affordable Unit requirement, which were to be secured within the next four years. The remaining 550 units were to be

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<sup>66</sup> The Supreme Court denied certiorari concerning sanctions against the City but later vacated the sanctions against individual City officials. *Spallone v. United States*, 493 U.S. 265, 278 (1990).

<sup>67</sup> In 1992 the City proposed an Alternative Housing Plan to indicate to the Court a move toward implementation of a remedy, but the number of units completed was very low. *Pretrial Brief of Plaintiff-Intervenor NAACP, United States v. City of Yonkers*, 833 F. Supp. 214 (S.D.N.Y. 1993) (80 Civ. 6761).

provided through new construction. The SLTPO also provided for the appointment of a Housing Special Master (“HSM”) to coordinate the implementation of the Orders.<sup>68</sup> The FHIO office would remain in effect and would work with the HSM in implementing the provisions of the SLTPO.

The SLTPO identified three new construction sites for a total of 174 units: Yonkers Avenue (ninety-eight units); Cross Street (twenty-eight units); and Hoover Road (forty-eight units). The SLTPO was very specific in terms of deadlines for development milestones, such as selection of developers, acquisition of sites, etc. The City was also required to identify additional new construction sites, as well as embark on the development of a small sites program. The SLTPO also authorized the HSM to engage a third party who would oversee the new construction development process.

The SLTPO had specific goals for the part of the program involving existing housing, stating a certain number of units required to be provided each year.<sup>69</sup> The program envisioned both rental and homeownership programs (though it did not articulate how each would be implemented), as well as the creation of an extensive housing counseling program implemented by the FHIO.

The SLTPO also modified the terms of the Affordable Housing Trust Fund and how that would be implemented (from the prior orders in the LTPO). The SLTPO specified that starting in FY 1994, 25% of the City of Yonkers’ Annual Community Development Block Grant funds were to be allocated to the Affordable Housing Trust Fund. The funds available in the Affordable

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<sup>68</sup> Schuck, *supra* note 10, at 280.

<sup>69</sup> The SLTPO required a program of 20 units in Year 1; 70 units in Year 2; 80 units in Years 3 and 4. SLTPO at 10.

Housing Trust Fund would be used for the New Construction Program, as well as the Existing Housing Program and housing counseling program, all of which were resources necessary to provide the Additional Affordable Units.

d. Second Supplemental Long Term Plan Order: November 6, 1996

Progress implementing the STLPO was slow. In November of 1996, the parties agreed to shift responsibility to the City for its implementation, and the Court entered the Second Supplemental Long Term Plan Order (“SSLTPO”).

This Order marked a significant shift in the implementation of the remedy, and there began, albeit slowly, some progress in implementing the Court-ordered remedies. The change reflected, in part, changes in the City’s political leadership under Mayor John Spencer (who took office in January, 1996), as well as broader local changes in attitudes towards the City’s housing obligations.

The SSLTPO’s most significant change was that it vested the primary obligation for implementation with the City (as opposed to the FHIO and the HSM). The order acknowledged that “[t]he City of Yonkers has committed itself to undertake implementation of the SLTPO and LTPO, as amended herein, in good faith and has asked in return that primary responsibility for the creation of affordable housing pursuant to these plans as modified be vested in the City....”<sup>70</sup> Under the SSLTPO, the City now carried responsibility for implementing the Court’s remedial order subject to oversight by the Court through its HSM and the Plaintiffs.<sup>71</sup>

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<sup>70</sup> SSLTPO, at 1.

<sup>71</sup> See Settlement Agreement at 6 (Record at 2094).

As part of its assumption of responsibility, the SSLTPO also required the City to create an “Affordable Housing Implementation Office” by January 1, 1997. This office, which became the Yonkers Affordable Housing Department (“YAHD”), would be responsible for the implementation of the Order as defined, including the oversight of new construction, as well as providing housing counseling services. The Mayor would appoint the director of the office, and that director would attend meetings held by the HSM (now Court Monitor). The City was also required to provide fair housing education and counseling services.

Under the SSLTPO, with the City assuming primary responsibility for carrying out the remedial order, the HSM’s role changed substantially, to focus on providing oversight, direction and review, rather than attempting to drive the creation of the Additional Affordable Units.<sup>72</sup> The FHIO was dissolved, and the administration of the Affordable Housing Trust was transferred to the City.

The SSLTPO also changed what was expected of the City in terms of housing production. First, the SSLTPO modified the obligation from an actual number of housing units to a credit system. The City would earn a Housing Opportunity Credit for creating a housing opportunity, but it could also earn a credit if the City demonstrated substantial effort in trying to provide an actual unit. Under the SSLTPO, if the City could show that it had identified an appropriate housing unit, had shown that unit six times to qualified class members, and for valid reasons no one selected that unit, then the City would be entitled to a Housing Opportunity Credit, even though no unit had in fact been provided to anyone.

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<sup>72</sup> As noted above, the SLTPO required 800 units total, and of that 550 were to be new construction. The Court then decreased the overall SLTPO requirements to 600 existing housing units plus the “new construction” described here. The final number of affordable units created through new construction was 72. *See* discussion *infra* Part II.

The SSLTPO also lowered the requirement relating to the absolute number of Housing Opportunity Credits required in connection with the Additional Affordable Units. In addition to the new construction described below, the City was now required to provide a total of 600 Additional Affordable Units (as opposed to the original 800), and the City was required to produce 100 units per year for a period of six years. If this goal were met, in addition to the City having fulfilled the new construction unit requirements, then the City would be “deemed to have achieved all of the requirements of the 1988 Consent Decree, LTPO, SLTPO and Part VI of the HRO.”<sup>73</sup> This target was less stringent than the 1988 Consent Decree’s benchmarks of having 200, 400, and 600 units of assisted housing completed by the first, second and third years of the program, with 800 units provided in all.<sup>74</sup>

In addition, the City was expected to complete its prior obligations with respect to the new construction units for three sites, for which the total unit count had been decreased from 174 units to 108 units: Hoover Road (twenty units); Cross Street (twenty-four units) and Yonkers Avenue (sixty-four units). The City was also required to find a new site (which eventually became the Grassy Sprain site) to create an additional thirty-four units of new construction, half of which would be required to be affordable. The total amount of new construction planned was now 142 units, substantially reduced from the 550 new construction units ordered in the SLTPO.<sup>75</sup>

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<sup>73</sup> SSLTPO, at 3.

<sup>74</sup> Consent Decree, at 8.

<sup>72</sup> SSLTPO, at 3.

The SSLTPO also included revised affordability targets for the new construction units as well as the Existing Housing units:

- 30% of the units would be affordable to families earning less than 50% of the Westchester Area Median Income (“AMI”);
- 45% of the units would be affordable to families earning between 50% and 80% of the AMI; and
- 25% would be affordable to families earning between 80% and 100% of the AMI.

In addition, the SSLTPO also specified that the location of all existing housing units had to further “the integrative purposes of the LTPO.” How that would be achieved was not specified, however, and that point would become a major challenge in implementation.

e. Interim Orders During 1996 through 1999

Over the next several years, as the new construction efforts were pursued (albeit slowly and with considerable difficulties), the City began to implement its Existing Housing Program.

A review of the program, after two years, indicated that most of the beneficiaries of the program had been Priority 2 families, and more importantly, a substantial number of the moves were not integrative.<sup>76</sup> This result prompted dispute over the intent of the orders, particularly the phrase “the integrative purposes of the LTPO.” During the summer of 1999, the City requested

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<sup>76</sup> In 1997 and 1998, ninety-six Priority 2 families were served, and twenty-one Priority 1 families served. Another four Priority 3 families were served. In total, in 1997 and 1998, there were eighty-one integrative moves and forty non-integrative moves. *See infra* Exhibit 1.

double credit for housing that served Priority 1 residents in order to incentivize their efforts; the NAACP and DOJ protested that this would reward the City for its own delays in integration.<sup>77</sup>

Judge Sand eventually set a target system whereby the City would be rewarded with a 50% bonus in credits when it reached its annual Priority 1 target (twenty) and be given double credit for each additional unit created. If the City fell short, it would also be penalized by double the shortfall number.<sup>78</sup> The City was also required to create an outreach program to refocus its efforts on reaching Priority 1 families.

In 2002, Mayor John Spencer engaged the Housing Action Council (“HAC”) to assume the management of the Yonkers Affordable Housing Department and its obligations under the Orders. HAC is a very respected non-profit advocate and provider of services for affordable housing throughout Westchester County. The resources and expertise brought to bear by HAC were a significant improvement and aided substantially in the implementation of the remedy. HAC continues to be under contract to the City to provide services for the implementation of the Settlement Agreement.

During this same time period, there were extended discussions involving the State of New York (the “State”) and its role in funding the housing remedy. Although originally not a party to the lawsuit, the New York State Urban Development Corporation (“UDC”), doing business as the Empire State Development Corporation (“ESDC”), had been found by the Court to have participated in the creation of segregated housing patterns within Yonkers through the

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<sup>77</sup> See Letters between Michael Sussman, Diane Houk, and Judge Sand (Record at 1870-77). The City also claimed credit for eighty-three credits for Year 2 (1998), of which plaintiffs disputed all but eleven. Judge Sand approved seventy-four. *Id.*

<sup>78</sup> Order from Judge Sand, Aug. 11, 1999 (Record at 1875).

sponsorship and construction of seven subsidized developments in the southwest quadrant of the City. After the 1985 decision on liability, the NAACP sued UDC as an additional defendant, and the Yonkers Board of Education cross-claimed to establish liability and obtain remedial relief from UDC and other State agencies.

On December 1, 1998, after extensive litigation in this Court and the Second Circuit, in order to end its involvement in the case, ESDC entered into an agreement in which it and other New York state agencies committed to provide resources to help implement the SSLTPO. These resources included funding for the new construction projects, as well as State of New York Mortgage Agency mortgage insurance and homebuyers assistance for the existing housing program. The State also provided financial and technical assistance to the new construction mandated by the Remedy Orders and became an active participant in the regular meetings, which took place under the auspices of the Housing Special Master (Court Monitor) to insure that the Remedy Orders were implemented.

f. Third Supplemental Long Term Plan Order: December 29, 1999

With disputes ongoing over the number of credits being achieved annually, the City was far behind on its achievement of program goals as required by the Court, with 121 credits as of the end of Year 2.<sup>79</sup> The primary concern related to the fact that only twenty-one of the families served to date qualified for the Priority 1 category.

The Court again stepped in, and Judge Sand entered the Third Supplemental Long Term Plan Order (the “Third SLTPO”). The Third SLTPO gave the City credit for the activities it had undertaken, but also refocused implementation on the racially integrative goals that were at the

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<sup>79</sup> See *infra* Exhibit 2.

heart of the original HRO. Under this directive, the City modified its programs to place primary emphasis on rental housing for Priority 1 families.

In the Third SLTPO, the Court set forth a more explicit goal that these housing opportunities must “further the racially integrative goals” that had been the essence of the prior housing remedy orders. The Third SLTPO specified that the City could obtain full credits and use Affordable Housing Trust Funds only when an integrative move was achieved.<sup>80</sup>

In addition, the Court put in place a strong incentive to encourage the City to use resources to serve Priority 1 families—those who had previously resided in Yonkers public or subsidized housing. If the City placed at least twenty Priority 1 families in any one year, the City would then receive a bonus in the number of credit points it could earn that year. (For example, if twenty-five Priority 1 families were served in a single year, then the City would receive twenty-five points for the actual moves, plus two credits for each family above the minimum served, so an additional ten points could be earned.) The City would also be “penalized” if it did not serve the minimum number of Priority 1 families in any one year, as its credit total would be reduced by the number of units in the shortfall.<sup>81</sup>

In the Third SLTPO, the Court also authorized the creation of a rental program. (This program is described in more detail below.) The City was expected to provide at least twenty units of rental housing per year. The Third SLTPO also modified slightly the new construction program approving a new unit count and income requirements for the Yonkers Avenue project.

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<sup>80</sup> Third SLTPO, at 5. The City could still receive half credits and use Affordable Housing Trust funds for moves to Southwest Yonkers as specified in Section 10 of the LTPO. *Id.*

<sup>81</sup> Third SLTPO, at 6. “If the PIP goal is not reached the number of credits will be diminished by the number of units in the shortfall (i.e. if the goal is 20 PIPs, but only 17 occur in a year, the City will receive 14 credits).” *Id.*

Although some progress was made after the issuance of the Third SLTPO<sup>82</sup>, effective efforts to achieve these goals did not happen until 2002, after the completion of appeals by both NAACP and the City of Yonkers. The NAACP considered the point system too generous, and the City opposed the provisions of the Order requiring race-consciousness in providing housing for Priority 2 or 3 families.<sup>83</sup> Only after the Second Circuit upheld Judge Sand's approach once again, including its race-conscious methodology in early 2001, and after the Supreme Court denied the City's petition for a writ of certiorari that December, did the City finally begin to focus on providing integrative housing opportunities.<sup>84</sup>

g. Fourth Supplemental Long Term Plan Order: July 2, 2003

The last and final modification of the SLTPO came on July 2, 2003 when the Court issued the Fourth Supplemental Long Term Plan Order.

Under the terms of this Order, the Court modified the Priority 1 minimum goals from twenty to thirty-five units, creating a higher hurdle for bonus credits, and modified the way the bonus was earned. In addition, the Court acknowledged that the City was trying to put into place a small sites new construction program, which the City had been considering as far back as the LTPO.

h. The Settlement Agreement: April 1, 2007

By 2006 the City was on its way to satisfying the remaining requirements under the various remedy orders, and the parties entered into final settlement negotiations to close the case.

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<sup>82</sup> By the end of 2001, the City had made 188 actual placements in the credit program (they had received 205 credits), of which fifty-four had been provided to Priority 1 families, and 133 were integrative. *See infra* Exhibits 1, 2.

<sup>83</sup> Schuck, *supra* note 10, at 364.

<sup>84</sup> *United States v. Sec'y of Hous. & Urban Dev.*, 239 F.3d 211 (2d Cir. 2001), *cert. denied*, 122 S. Ct. 643 (2001).

Although negotiations proceeded slowly at first, by the second half of 2006 the parties had ironed out the majority of points through an open and cooperative process. After a year-long negotiation process, the Settlement was agreed to by the parties on April 1, 2007 and presented to the Court on May 1, 2007.

Agreement acknowledged the successful completion of 200 units of scattered site public housing that were located outside of southwest Yonkers and the creation of hundreds of additional affordable housing opportunities under the Long Term Plan Order (discussed below and referred to here as the Additional Housing Opportunities). It also put into place a strict monitoring and reporting system to maintain affordable housing opportunities and assistance for years to come.

Judge Sand accepted the Settlement Agreement. On July 3, 2007 he signed an Order officially dismissing the case, after more than twenty-seven years of litigation.

## **Part II. Overview of Programs Implemented by the City Under the Housing Remedy Orders**

For more than twenty years, the Yonkers community struggled to come to terms with the Court ordered Housing Remedies and the issues of racial respect and reconciliation that were at their core. Though slow in coming, progress was made and integrative housing opportunities, which will be in place for many years, were created. The apprehension, anger, frustration, and distrust that led to the need for the HRO and the resistance against its implementation eroded. Although the resistance never entirely disappeared, especially with respect to new construction,<sup>85</sup>

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<sup>85</sup> The last of the four new construction sites were being completed in 2010. The Small Sites program, which also required that the City help to identify appropriate parcels, was not successful for a variety of reasons. According to

the City's efforts and focus on providing actual housing opportunities became just that—a program, rather than a political position. The practical side of the program was challenging, but it was much easier once the City adopted a position of compliance with the Orders. And by 2002, when all appeals had been litigated, the parties settled down to focus on the practical issues at hand: how to deal with the difficult market conditions; how to be sure Priority 1 families were reached; and how to create efficient, effective rental opportunities. Once solutions were developed, they allowed for the ultimate resolution of the case.

As noted above, the real shift in approach to implementation of remedies in this case came in the mid-1990s when the City and the parties stopped (for the most part) fighting about whether to implement the Orders and began to discuss how to do so. Even then, especially for the first five years, progress on creating the Additional Affordable Units was slow and often needlessly delayed, even after the completion of the 200 units of public housing that occurred prior to appointment of the Housing Special Master.

#### *A. The Development of Scattered Site Housing*

Scattered housing was first discussed in Yonkers in 1964, when the Yonkers Council of Churches, the NAACP, and other concerned citizens opposed the four sites proposed by the Yonkers Redevelopment Authority in favor of “scattering the housing throughout the city.”<sup>86</sup> In the following years, “scattered sites” were proposed for the placement of low-income housing in non low-income neighborhoods.

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the City, this was mostly attributed to lack of developer interest and high developer costs. Michael Sussman, the attorney for the NAACP has stated his view that developers understood City officials did not support the program, and therefore did not want to participate since it might affect their other potential development plans in the City.

<sup>86</sup> United States v. Yonkers Bd. of Educ., 624 F. Supp. 1276, 1304 (S.D.N.Y. 1985).

The implementation of the scattered sites concept for the 200 public housing units was a carefully crafted strategy led by Oscar Newman, a housing expert originally employed by the City but eventually designated by the Court as the Outside Housing Advisor.<sup>87</sup> These sites are discussed separately from the other units covered in this report because the City's obligation to build them predated the credit system implemented to handle the other assisted housing (the "Additional Affordable Units"), and because they were completed earlier and under different oversight than the programs discussed below. Newman's sophisticated implementation of scattered housing involved a range of techniques beyond simply finding locations in non-minority neighborhoods.

Although the City continued to fear the introduction of subsidized housing into white neighborhoods, Newman insisted that low density, low-income housing in middle income neighborhoods would promote the integration of the new residents into their neighborhoods.<sup>88</sup> Newman supported the creation of row houses instead of high-rises, so that each house had its own backyard and its own water and heating system. The city fought him "every step of the way," in his words, and succeeded in blocking many of the sites.<sup>89</sup> The seven sites that did result were an impressive accomplishment. Common spaces like lobbies, elevators and stair shafts were eliminated. The houses were designed to be connected and community-oriented, but separate enough to provide privacy and a sense of suburban well-being. Furthermore, Newman

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<sup>87</sup> Newman reported that while he thought he was selected based on his research on integration that would not destabilize a host middle-income community, he came to believe the City thought he would appeal to the court to modify its ruling and provide relief from compliance with the remedy. When he instead pushed the work through, the City stopped paying him and after three months the Court took over his supervision. Oscar Newman, Dept. of Hous. & Urban Dev., *Creating Defensible Space* 85 (Apr. 1996).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 87.

was successful in completing the units in six years, and because of certain building code requirements, the row houses were less costly to construct than the high-rises would have been.<sup>90</sup>

This type of housing was not what the plaintiffs originally envisioned, which meant that the developments faced hostility from both sides of the lawsuit. During construction there were accusations from the NAACP that Newman's view of a high-rise building being "destabilizing" to a middle class neighborhood was racist.<sup>91</sup> The host neighborhoods were also upset, and community meetings meant to facilitate the transition often devolved into shouting matches.<sup>92</sup> In 1991, a pipe bomb was detonated at one of the housing sites in the middle of the night; resident trainings and meetings were held in secret with police presence.<sup>93</sup> The trainings continued and leadership structures both within the new resident community and the existing neighborhoods were developed to promote a peaceful transition process for the new residents. As a result, the moves took place, new residents received flowers and fruit baskets, and in the following two-and-a-half years, the chief of police reported that there was "virtually no crime" in the scattered site units.<sup>94</sup>

With all the resistance and drama of the scattered site development, the developments attracted scholars and authors. In 1999 Xavier de Souza Briggs et al. published a study in the *Journal of the American Planning Association* evaluating the seven sites. In keeping with Newman's own evaluation, they found little to no evidence of "panic sales," white flight, or

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<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 93.

<sup>92</sup> *Id.* at 97-99.

<sup>93</sup> Belkin, *supra* note 18, at 1.

<sup>94</sup> *Id.* at 103.

drops in property value in the neighborhoods. This result was important not only in validating the remedy order and the developments, but in uncoupling the link between race and property values that was formerly considered a truism.<sup>95</sup> The authors also developed a multi-variable model of housing development that included financial investment, social-psychological investment by residents, sense of community, neighboring behaviors and activism, physical upkeep, quality and quantity of services, and political clout.<sup>96</sup> The research also supported Newman's original goal of "small is beautiful," finding that the more scattered the housing units, the more easily they are assimilated.

### B. *The Additional Affordable Units*

Aside from the 200 scattered site units developed under Oscar Newman's direction, the Court's remedy required 800 Additional Affordable Units by the City. Some progress in creating the Additional Affordable Units as required by the Court began after the City asked for and assumed responsibility for the programs in 1996 and created the Yonkers Affordable Housing Department ("YAHD").

Initially, the City contracted with HAC to facilitate the closings of transactions arranged by YAHD staff and assist in the complementation of the Remedy Orders. In 2002 HAC and its Director assumed all managerial responsibilities for YAHD's mission and was designated Manager by the City. HAC and its capable leadership deserve credit for their role in making integrated and affordable housing a reality. Only with their aid, expertise, and dedication were

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<sup>95</sup> For example, the 1964 edition of *Appraisal of Real Estate* stated that "the value levels in a residential neighborhood will be influenced more by racial characteristics of the people occupying or in prospect of occupying the areas than by any other factor." De Souza Briggs, *supra* note 58, at 29.

<sup>96</sup> *Id.* at 35, 32.

the objectives of the housing remedy orders achieved. Most importantly, HAC was able to implement the remedies with the strong support of the City of Yonkers, and the City's willingness to accept and permit implementation of HAC's recommendations.

HAC was able to bridge the objectives of the City of Yonkers and the plaintiffs, including both DOJ and the NAACP. HAC's primary goals were to focus the City's efforts on assisting Priority 1 families—former residents of the publicly assisted housing. Its role is most evident in the progress made in obtaining housing opportunity credits. Prior to its involvement, the City had secured 205 credits for Years 1 through 5, of which fifty-four were for Priority 1 families. The credit count for Priority 1 families following HAC's involvement increased substantially.<sup>97</sup>

Overall, in just five years HAC was responsible for earning 412.5 of the total 617.5 credits earned by the City of Yonkers over ten years of implementation, representing nearly 70% of the total credits. While this reflected the change in how credits were calculated (providing bonuses for serving more Priority 1 families), it also reflected HAC's expertise and commitment to serving Priority 1 families under the programs. HAC's role was further affirmed by the Settlement, which required that the City continue to use HAC's services for a minimum of three years. The City continues to use HAC's services as of today to administer and monitor the programs.

The City met the requirements in connection with the Additional Affordable Units with a number of different programs using a variety of methods and resources. The programs required

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<sup>97</sup> All forty-nine families in 2002 who were served were Priority 1 families. In 2003, forty-six of the total forty-eight families served were Priority 1. *See infra* Exhibit 1.

creativity and flexibility to adjust to changes in the marketplace as well as the needs of the class members.

Of the many programs (including rental and homeownership, new construction and existing housing) that were explored to provide integrative housing opportunities, three were the most successful: (1) the Existing Homeownership (Purchase Assistance) Program; (2) the Rental Program; and (3) the New Construction Program. Other programs including the Affordable Housing Ordinance and the Small Sites Program, which seemed to hold much promise early on, were not as successful. All of these programs were designed to create long-term fair and affordable housing opportunities for qualified families using the priority system as established in the LTPO.

In total, the City achieved 617.5 housing credits, and the total effort (including the new construction units which were not part of the credit count) yielded 628 placements in housing units, (not counting the 200 public housing settlement units).<sup>98</sup> The breakdown is as follows:

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<sup>98</sup> The credits were to include only certain kinds of placements (not new construction for example), and thus it is not accurate to compare all the housing units developed to the number of credits achieved. As noted elsewhere, the City achieved credits through various means which did not always reflect an actual housing unit provided.

**Actual Additional Affordable Housing Opportunities Provided  
By Program<sup>99</sup>**

	<b>Homeownership</b>	<b>Rental</b>	<b>Total</b>
Purchase Assistance Program	298	0 <sup>100</sup>	298
Rental Program	0	227	227
Affordable Housing Ordinance	16 <sup>101</sup>	12	28
New Construction	35	37	72
Small Sites	0	3	3
<b>Total</b>	<b>352</b>	<b>286</b>	<b>628</b>

Each of the programs utilized in connection with achieving the Housing Remedy Order (the Purchase Assistance Program, Rental Program, Affordable Housing Ordinance, New Construction and Small Sites) is described in more detail below, along with some analysis of the challenges faced by each. Units obtained through all of these programs contributed to meeting the goal of 600 housing credits.

1. Purchase Assistance Program

The Purchase Assistance Program provided 298 housing opportunities according to the Housing Action Council. Given that data were not collected in the early years of the program

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<sup>99</sup> Housing Action Council, March 2011.

<sup>100</sup> Housing Action Council, March, 2011. The total number of units in the Purchase Assistance Program is 298. Other information suggested that it might have been 336 units, of which 298 were homeownership. For purposes of this report, we put the number at 298 total, unless clarified at some later date. *Id.*

<sup>101</sup> These sixteen units are not yet completed.

with respect to race, the Housing Action Council was able to confirm data only for 159 of these purchasers. Of these, 42% were African-American, 30% were Latino, and the remaining 29% were other.<sup>102</sup>

Down-payment and closing-costs assistance was the key feature of the Purchase Assistance Program. The City provided sufficient financial assistance to qualified households to enable them to buy modestly priced housing, including single family homes, condominiums, cooperatives, and two-to-four family homes. Initially, the City provided up to \$20,000 to \$40,000 in assistance depending on the household's income category, i.e., \$40,000 for households with incomes less than 50% of the median income of Westchester County as determined by HUD and adjusted by household size; \$30,000 for households with incomes between 51% and 80%; and \$20,000 for households with incomes between 81% and 100% of median.

This level of assistance sufficed in the early years of the program (1997 to 2002); however, as the market price of housing skyrocketed in the region, it was necessary to increase the level of subsidy to \$70,000 per unit for all income levels. Even at that level, it was difficult to provide sufficient subsidy. In some cases, the City layered its subsidy on top of other down payment and closing cost assistance programs administered by local not-for-profit organizations. As the market prices of existing homes increased, the number of opportunities available to

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<sup>102</sup> Housing Action Council, March 2011. The Housing Action Council (HAC) can confirm that the homes purchased by African-Americans and Hispanics were integrative in that they were located in an eligible area (i.e. outside Southwest Yonkers) under the Orders. "Others" also purchased in these areas. HAC was unable to confirm whether the people who purchased moved from Southwest Yonkers to the area outside Southwest Yonkers. However, to the best of HAC's knowledge and experiences, 80-90% of the African Americans and Hispanics lived in the Southwest prior to their move. The percentage of "Others" that moved from Southwest to an eligible area was significantly lower.

participants decreased, even with the substantial increases in financial assistance to the prospective purchaser.

Applicants found to be “homeownership ready” searched for homes in Yonkers located north of Glenwood Avenue or east of the Saw Mill River Parkway in Yonkers. The demographics of this area as compared to Southwest Yonkers are as follows:<sup>103</sup>

	<b>Target Area for Homeownership</b>	<b>Southwest Yonkers</b>
Size (square miles)	15.7	2.7
Population	20,230	45,067
% Black or African American	15.47%	35.19%
% Hispanic or Latino	13.34%	41.80%
Number of Occupied Units per Square Mile	2,845	10,508
% of Homeownership	67.00%	18.60%

Most of the Priority 2 placements were made immediately following the SSLTPO in November 1996. The City shifted its approach after adoption of the Third SLTPO and began focusing on both serving more Priority 1 households and ensuring racially integrative moves.

In terms of affordability, the program was successful in serving a range of incomes—all affordable. Fifty-four had household incomes at or less than 50% of the median income of

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<sup>103</sup> Housing Action Council, March 2011.

Westchester County; 136 with incomes between 51% and 80%; and seventy-two with incomes between 81% and 100% of median income.<sup>104</sup>

### Strengths

Although the key element of the Purchase Assistance Program was the financial assistance it offered to bridge the difference between what a qualified household could afford and the market price of housing, several other features contributed to its success.

*1. Engaging Local Realtors as Buyer's Brokers.* Prior to the implementation of the program, the City advised real estate brokers of the upcoming program and offered them a business opportunity to participate as buyer's brokers. Qualified buyers were linked to buyer's brokers familiar with the program and the targeted neighborhoods.

*2. Using Housing Action Council as Interim Contract Vende/Purchaser.* Shortly after the City implemented its Purchase Assistance Program, the market-driven sale prices of homes began to rise dramatically.

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<sup>104</sup> There is a continuing reference in the material provided by the Housing Action Council for the purposes of this report (over the last six months) to 262 or 263 units. However, based on the most recent submission by HAC, the final number is 298.

**Westchester County, NY - Median Residential Sale Prices**

<b>Year</b>	<b>Single-Family Homes</b>	<b>Condominiums</b>	<b>Cooperatives</b>	<b>2-5 Family Homes</b>
2006	680,000	375,000	185,000	570,000
2005	675,000	375,000	172,000	570,000
2004	645,000	339,450	149,000	480,000
2003	564,000	305,000	126,250	425,500
2002	525,000	266,000	100,000	355,000
2001	449,900	220,500	80,000	295,000
2000	407,000	183,000	72,500	265,000
1999	345,000	162,000	66,000	235,000
1998	320,000	162,500	65,000	215,000
1997	300,000	162,000	60,000	200,000

*Source: Westchester County Board of Realtors*

This was a regional trend and was not driven by the City’s Program. As a result of this increase, class members found it difficult to compete for units, due to their comparatively small 3% down-payments, financing contingencies (primary mortgage loan and City’s financial assistance), and a frequent perception on the part of sellers that buyers’ participation in a subsidy program would unduly delay the closing.

To address this, the City provided a pool of funds to HAC to negotiate no contingency contracts, which were assignable to households qualified by the Yonkers Affordable Housing

Office. In some cases, HAC took title to the property and then resold it to a qualified household. With this approach, closings could take place within a month of accepted offers.

*3. Comprehensive Homebuying Counseling Program.* All interested applicants were required to participate in a homeownership counseling program designed and coordinated by the Yonkers Affordable Housing Office. To participate in the counseling program, applicants had to demonstrate their creditworthiness and savings for a down-payment. The six-hour course was offered regularly to ten to fifteen households at a time. Topics included: understanding the rewards and risks of homeownership; the role of real estate brokers, inspectors, attorneys, and insurance agents; financing the purchase of the home; and post-purchase issues. Participants were also guided through the policies and procedures of the Purchase Assistance Program. Homeowners who purchased with assistance were invited to these workshops to talk about their experiences and respond to questions. A slide show was prepared to give participants an idea of the variety of homeownership options that could be available to them. A manual was distributed that further educated the participants on all aspects of home buying and the program.

*4. Credit Counseling and Savings Clubs.* Many applicants expressed an interest in homeownership but were deterred by unsatisfactory credit and lack of savings for a down-payment. (The program required that the applicant provide 3% of the purchase price from his/her/their own funds.) The City offered one-on-one credit counseling and an opportunity to participate in a savings club whereby the Federal Home Loan Bank of New York would match an applicant's savings \$3 for every \$1 saved over a minimum ten-month period. The counselors assisted the applicants with developing Individual Homeownership Plans, which set forth goals and strategies to address credit issues and increase savings. These plans were monitored with the

counselor serving as coach. Counseled applicants moved to the Comprehensive Homebuying Counseling Program when they completed their plans.

5. *Affordable Mortgage Loan Products.* The Purchase Assistance Program was implemented at a time when mortgage money was available and the environment was filled with sub-prime and predatory lenders. To ensure that assisted households could handle the financial responsibilities of homeownership and that its investment would be preserved for the thirty-year affordability period, the City instituted relatively conservative underwriting guidelines. In addition to maintaining program guidelines that limited housing ratios and housing and debt ratios to approximately 30/38, the City utilized the services of the New York Mortgage Coalition, Inc. (“NYMC”) to deliver mortgages.<sup>105</sup>

NYMC is a consortium of lenders and community organizations in the New York Metropolitan Area dedicated to homeownership counseling and mortgage products with reasonable rates and terms. Its goal is to help more low and moderate income individuals and families become homeowners. Members are committed to an affirmative, affordable and responsible mortgage program for households who reside or wish to purchase a home in New York City, Long Island and Westchester. As background, Housing Action Council services Westchester County and the Bronx and serves on the NYMC Board of Directors. To assure

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<sup>105</sup> In determining whether a household qualified to receive purchase assistance, YAHD analyzed the amount of the prospective purchaser’s household income that would be applied to covering housing costs given the price of the home and the down payment assistance available. Housing costs included principal, interest, real estate taxes, homeowner’s insurance, private mortgage insurance (if applicable), and condo or coop fees (if applicable). If housing costs exceeded 30% of the gross income of the household, the household generally did not qualify for assistance. YAHD also analyzed the amount of the prospective purchaser’s household income that would be needed to cover housing costs and monthly recurring debt, i.e., student loans, car loans, installment loans, and credit card debt. If housing and recurring debt cost exceeded 38% of the gross income of the household, the household generally did not qualify for assistance.

responsible lending, HAC made available the services and programs of NYMC. Prior to 2002, YAHD staff used lenders who were not necessarily members of the NYMC.

The banking members of the NYMC were advised of the goals and objectives of the Purchase Assistance Program, including its long term affordability enforcement mechanisms. Several of the lenders agreed to participate actively and assisted in program implementation through pre-qualifying applicants, participating in the home-buying courses, enrolling applicants in the Federal Home Loan Bank's Savings Club, and providing thirty-year fixed rate mortgages with reasonable rates and terms.

6. *Individual assistance.* Buying a home is a complex process. For an applicant to the City's Purchase Assistance Program, it was even more challenging. Financial assistance—and in some cases up to four different financing subsidies—were layered on top of the primary mortgage. Most applicants had no history of home buying in their families and did not have the knowledge or tenacity to move through the process. In other cases, there were language barriers.

The City assisted applicants throughout the process, including: linking prospective buyers with buyer's brokers familiar with the Purchase Assistance Program; providing a qualified inspector to evaluate the condition of the property and identify necessary repairs; assisting prospective buyers through the mortgage approval process; and participating in closings not only to assure that the City's enforcement mechanisms for long term affordability were signed and recorded but also to respond to questions and concerns raised by the buyer and other parties at the closing.

These features of the Purchase Assistance Program—sufficient financial assistance, buyer’s brokers, interim contract vendee/purchaser, comprehensive homeownership counseling, credit counseling, savings clubs, affordable mortgage loan products, and personal guidance—contributed to achieving the objectives of the “scattered site” approach to economic and racial desegregation and increased homeownership among low and moderate income households in Yonkers.

The program successfully integrated beneficiaries into neighborhoods other than Southwest Yonkers. It should be noted that the City implemented the Purchase Assistance Program without any community opposition. Another item of note is the uniqueness of the program in enabling households to purchase single family detached housing.

### *Impediments*

The achievements of the Purchase Assistance Program were limited to some extent by the following:

*1. Cooperative Boards and Condominium Boards.* A significant number of households who wished to purchase a cooperative unit were declined by the boards of the cooperatives. This became increasingly troublesome as the price of market-rate housing increased and limited applicants’ homeownership options to condominiums and cooperatives.

To mitigate this problem, the City assisted the applicants in completing their applications to the coop boards, made representatives available to discuss the program with managing agents, boards and their attorneys, and engaged the Westchester Residential Opportunities, a fair housing organization, to prepare applicants for their interviews with the boards.

Still, applicants were declined. Stated reasons (coop boards are not required to provide a reason for the denial) included: requirements that applicants demonstrate a 10% to 25% down-payment; that no secondary financing was permitted (the Yonkers Loan Security Agreement was considered secondary financing); that the resale restrictions would affect the resale value of market-rate units; and the perception that if one or more applicants were approved, many would apply and the resale value of market-rate units would be adversely affected.

In a few cases, the Affordable Housing Office addressed successfully the stated claims. By allowing the assisted shareholder to sell at market-rate with a recapture of the City's assistance, several coop purchasers were approved. With a few others, the City agreed not to secure the full amount of the assistance which enabled the shareholder to demonstrate a high enough down-payment that met the requirements of the cooperative.

*2. Credit and Rent Payment Histories of LTPO Beneficiaries.* The credit and rent payment histories of 50-60% of the applicants who expressed an interest in the Purchase Assistance Program were unsatisfactory and did not meet the underwriting requirements of the program or those of the lending institutions. Applicants were advised to participate in the credit counseling program. A limited number of applicants chose to participate and a significant number of those who enrolled did not take the necessary actions to ready themselves for homeownership. This is an impediment that is not unique to the Purchase Assistance Program. To succeed, assistance programs require components that engage people over a sustained period of time to repair their credit. This limited pool meant that HAC ended up spending considerable resources identifying qualified buyers. It was typical for HAC to review 1,000 applicants and find less than twenty potentially qualified buyers from that pool.

## 2. Rental Assistance Program

In response to concerns expressed by the plaintiffs that homeownership did not address the needs of a significant number of class members, in particular Priority 1 applicants, and in compliance with the Third SLTPO, the City launched the Rental Assistance Program in 2002. The Rental Assistance Program subsidizes the difference between market rent and 30% of the household's income adjusted by an allowance for any tenant paid utilities. Because of changing demographics, the location criteria for both the Rental Assistance Program and the Purchase Assistance Program were modified—north of Glenwood Avenue, or east of the Saw Mill River Parkway, and in a census block where the concentration of African-American or African Americans and Latinos was less than 45%. And applicants who were of a race other than African-American or an ethnicity other than Latino were limited to census blocks where the African-American and Latino concentration was greater than 45% and therefore integrative under the program. The Rental Assistance Program was expanded to allow mobility throughout Westchester County subject to the census block demographic requirements.

The Rental Assistance Program has helped nearly all participating households relocate to neighborhoods where the minority concentration was less than 45%. In most cases, the program has assisted households moving from larger apartment buildings to smaller owner-occupied or investor-owned properties.

### Strengths

The accomplishments of this program can be attributed to the following factors:

1. *Financial Incentives for the Owner.* The program was launched with the following: ability of the Yonkers Affordable Housing Department to approve rents at up to 10% above the established fair market rent for Westchester County and a payment equal to one month's rent to the owner if a broker was not involved. (If there was a broker, the payment was made to the broker.) An additional incentive was the mediation services available post lease-up to landlords and tenants through YAHD.

2. *Pre-screening of Prospective Tenants.* In order to be eligible for the Rental Assistance Program, applicants had to demonstrate a minimum income of \$20,000 and satisfactory credit and rent payment histories. Those who did not meet the requirements were referred to the Credit Counseling Program described under the Purchase Assistance Program. This program characteristic addressed the prospective landlord's concern about timely rent payments and such perceptions as greater wear and tear on the property by occupants.

3. *Tenant Incentives: Financial Assistance for Broker's Fees and Security Deposits.* The City provided financial assistance for broker's fees in an amount equal to one month's rent and for one-half the security deposit. The prospective tenant was required to pay the other half of the security deposit at lease-up and its portion of the first month's rent. Obtaining funds for the balance of the security deposit from the Department of Social Services was discouraged, since the prospective tenant's payment of a portion of the security deposit demonstrated the household's stake in the apartment. The lease also provided for the return of the full security deposit to the tenant, assuming there were no claims against it. This is a different approach than that of the Department of Social Services, whereby any unclaimed security deposit is returned to the Department rather than to the tenant. The City's approach was to provide an incentive to the

tenant to maintain the apartment and to pay rent on time so that the full security deposit would be returned at the termination of the lease and be available for his/her next apartment. Landlords also viewed this approach as an incentive for the tenant to pay rent and maintain the apartment, thereby opening up additional rental opportunities.

4. *Engagement of Local Brokers and Owners.* As with the Purchase Assistance Program, the City invited brokers to participate in the Rental Assistance Program and trained them in the objectives and procedures of the program. Since much of the housing stock is two and three family homes and the objective of the program was to disperse eligible tenants throughout the targeted area to the greatest extent possible, YAHD, with assistance from brokers, “sold” the program to a large number of landlords. Two hundred forty-six (246) owners have participated in the program through December 31, 2009.<sup>106</sup>

5. *Speed and Money.* The time between the acceptance of a household as a tenant by the landlord and a lease signing was a key factor in securing landlords’ participation. Depending on the needs of the tenant and landlord, the time ranged between five and thirty days. The payment of the full security deposit, broker’s fee or owner’s incentive, and first month’s rent was also critical to the owner’s participation. The owner did not have to wait for payment.

The Rental Assistance Program opened up a significant number of rental units in the Northwest and Southeast quadrants of the City for LTPO beneficiaries. (Rental housing opportunities are limited in the Northeast quadrant. Most of the housing is single family-owner

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<sup>106</sup> Since November 2006 when the City met the credit count requirements, there have been tenants who have relocated to another apartment or who have left the program. The replacement tenant may have leased at another location (and therefore from another owner).

occupied.) It also provided an opportunity for a different form of rental housing – two- and three-family homes often occupied by the owner. Most class members lived in large multi-family buildings. The smaller multi-family properties and the large numbers of owner-occupied properties provided an enhanced opportunity for interaction among races and ethnic groups as a significant number of owners are white. Occupancy has been stable; landlords have stuck with the program, most want to renew, and there have been few landlord/tenant problems.

### Impediments

As with the Purchase Assistance Program, there were several challenges with the Rental Assistance Program:

*1. Lack of Multi-Family Buildings.* As compared with Southwest Yonkers, according to HAC, there are a limited number of multi-family rental buildings in the targeted area. The larger multi-family buildings are owner-occupied cooperatives and condominiums.<sup>107</sup> In some cases, qualified prospective renters preferred larger multi-family buildings with an elevator and professional management. Some tenants choose to remain in the Southwest for this reason.

*2. Landlords' Resistance to "Programs."* The initial response of many landlords was that they do not rent to people who receive assistance with their rent payments. Their prejudices about such programs included the following: people who receive rental assistance do not work; they are at home all day; they have large families; they may have drug and alcohol problems; they do not pay their portion of the rent; programs do not pay on a timely basis; there is too much

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<sup>107</sup> According to the NAACP's counsel, Michael Sussman, there were available rental housing opportunities in Northeast Yonkers, which is supported by data that shows more than 5,000 renter-occupied units exist in Northeast Yonkers.

paperwork; the landlords will be required to make unnecessary repairs; and the inspection process is too cumbersome. Although the program design addressed many of the issues raised by prospective landlords, and there was a designated staff person for developing landlord relationships, many landlords refused to participate.

*3. Income Levels and Rent Payment Histories of Class Members.* In order to qualify for assistance, applicants had to establish a minimum income level of \$20,000 and a satisfactory rent payment history. Many applicants fell below this threshold and/or had poor rent payment histories. These applicants were directed to the Credit Counseling Program and were advised that if they could demonstrate that they met the minimum income requirements, and if they paid their rent on time consistently for a six-month period, they would be deemed qualified. Few took advantage of this offer.

### 3. The Affordable Housing Ordinance

The Affordable Housing Ordinance (“AHO”) set the stage for potential affordable housing opportunities in newly constructed, privately owned residential buildings. This technique to promote integrated housing generated the fewest number of units.<sup>108</sup>

Section 43-191, 195 of the Yonkers Zoning Code required that all new multi-family developments in East and Northwest Yonkers include affordable housing units not to exceed 20% of the units. Under certain conditions, the percentage could be decreased to 10%. In exchange for providing affordable housing units, the developer could receive height, bulk and

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<sup>108</sup> Change in market conditions delayed or prohibited planned AHO projects from proceeding.

density bonuses, tax abatements, waivers of application and/or processing fees, use of funds from the Affordable Housing Trust fund or financial assistance from the Yonkers Industrial Development Agency.<sup>109</sup> The City had discretion to provide all or part of these incentives, or other incentives, to developers to encourage them to include affordable housing in their new construction developments.

The AHO developed around the “80/20” concept, i.e. that developers would build housing in which 80% of the units were market-rate and 20% affordable. This approach to developing mixed income housing has been used widely around the country. The financial underpinnings of the “80/20” concept include tax-exempt financing that lowers development and operating costs, high market rents to cross-subsidize the below market rents of the affordable units, and developments of a sufficient size (those with more than 100 units).

The role of YAHD was quite different with the AHO strategy as compared with the Purchase Assistance and Rental Assistance Programs. Its role was reactive rather than pro-active. YAHD awaited proposals from developers rather than initiating them. Market conditions, the required percentage of affordable housing units, the availability of sites, and development issues unrelated to the affordable housing requirement (such as undercapitalized and inexperienced developers, unforeseen site issues, and unrealistic profit expectations) limited the number of AHO units. Significantly, however, developers did not view inclusionary housing as potentially having a negative impact on the sale or rental of the market-rate units.

As a result, a number of the planned AHO projects that would have produced units for the class members failed to move forward. Thus, while it had originally been anticipated that

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<sup>109</sup> See Settlement Agreement at attachment B (Record at 2094).

more than seventy units would be provided through the AHO program,<sup>110</sup> only twelve units have been provided to date, with another sixteen under construction.<sup>111</sup> The developer of a large project, Ridge Hill, had agreed to provide seventy affordable rental units and set aside 10% of the homeownership units (fifty units) for affordable housing. However, according to the HAC, the developer (Forest City Ratner) sold the ownership component to The Horizon Group, which is currently developing the properties (called “The Monarch”) in phases. The first phase will be 160 condominiums, of which 10% (sixteen units) will be affordable. Total build out is 500 units, of which fifty will be affordable. Whether they will build Phase II or III is uncertain at this point. The Horizon Group has assumed the homeownership affordability requirement and is working with HAC. The marketing of the sixteen units will begin in Spring, 2011.

As permitted under the Settlement Agreement, the AHO Ordinance was allowed to expire on December 31, 2008. While there have been several proposals for a new ordinance presented to the City Council in the past year, none have been adopted.

The following site plans were approved under the AHO:

River Club: Approval of 353 units, of which 10% were to be affordable. (Not built as of March 2011 due to market conditions.)

Millennium Project: Approval of seventy units, of which ten were to be affordable. (To date, these are not built. The site plans have expired.)

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<sup>110</sup> According to the Housing Action Council, the Millennium (10 affordable units) and River Club (35 affordable units) were approved AHO projects. However, these projects were never built.

<sup>111</sup> The Monarch is currently under construction and includes 16 affordable units according to HAC.

1465 Midland Avenue: Approval of twenty units with two affordable units. (Project built and occupied.)

Ridge Hill: Approval of a mixed use planned development, which included approximately 1,000 residential units, of which 135 were to be affordable. (The rental phase (seventy affordable units) was under construction as of August, 2009; the homeownership phase has been sold to the Horizon Group as discussed above.) Market conditions will determine the extent to which the development is built out.

The Monarch: Approval of 162 units with sixteen affordable condominium units. (Currently under construction; as noted, this is part of the Ridge Hill development.)

Hudson View Terrace: Approval of forty-eight units with ten affordable units. (Project built and occupied.)

As noted above, while the AHO program still holds some promise, with only twelve affordable units provided as of today, the AHO program has not yet succeeded. Its failure to date has more to do with market conditions not foreseen at the time. However, in addition to suffering from the market downturn, the AHO provision, as implemented under the Orders, may have missed an opportunity for creating affordable housing that would have served the class members well. From 2000 on, downtown Yonkers (located in Southwest Yonkers around the train station) experienced unprecedented growth and development. Downtown is now filled with high-end market-rate condos and is perceived as a very desirable place to live.<sup>112</sup> This location could have

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<sup>112</sup> Elsa Brenner, *It Had the Setting; Now It Has the Housing*, N.Y. Times, Mar. 9, 2008, at RE9.

offered mixed income housing including housing for low-income households with great transportation for employment, as well as a range of services. This would have required a change in focus by the parties but might have provided integrative housing opportunities in Southwest Yonkers.

While the Yonkers AHO was not very successful in terms of providing housing opportunities, mostly because of the market conditions, the program has resulted in more interest in mandatory inclusionary zoning in Westchester County. The cities of White Plains and New Rochelle have enacted ordinances as have the Village of Hastings-on-the-Hudson and the Towns of Cortlandt and Bedford. The concept appears to work best in communities experiencing growth and investment, and where the requirement is 10% or less of the market-rate units—as evidenced by White Plains—rather than 20%.

As with the Purchase Assistance and Rental Assistance Programs, the AHO has the potential for fostering racially and economically integrated housing. The program will yield the best results in a community or neighborhood experiencing market-rate development for upper middle-income and high-income households. Experience in other communities (as the Yonkers ordinance has not yet yielded a significant number of AHO units) shows that inclusionary zoning does not impact adversely the sale or rental of market-rate units. To be effective, it is important that developers understand clearly the requirements and the municipality or its designated agent work with the developer to set the sale prices and rent levels for the AHO units. Unlike an affordable housing developer, a market-rate developer may not be as well versed on maintaining the affordability levels required, the necessity of a band of affordability, and long-term methods for ensuring affordability.

In Westchester County, the City of Yonkers is viewed as a leader in mandatory inclusionary zoning. The City was of one of the first Westchester communities to have an inclusionary zoning ordinance. Its approach has been studied by other communities and modified to fit local needs. Of particular interest to many was the provision that expedited the processing of an AHO development by the Planning Board.

#### 4. Directed New Construction

By the terms of the LTPO and as subsequently modified, the City was required to facilitate four new construction developments—three homeownership developments and one rental, all with a mix of income levels. The final New Construction unit count was reduced somewhat, with a total of fifty-five affordable units for the three sites.<sup>113</sup> Including the fourth New Construction Site, Sprain Lake Estates, brings the total affordable units up to seventy-two units.

Of these affordable units, thirty-two were rental and the remainder homeownership. These projects were all sited outside of Southwest Yonkers in primarily nonminority communities. In terms of class members served, sixty-one Priority 1 families obtained opportunities through the New Construction Program, of which thirty-two were rental and the remaining twenty-nine homeownership. Priority 2 families received two homeownership and five rental units.<sup>114</sup>

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<sup>113</sup> Hoover Road is ten two-family townhouses. This is a total of twenty units including the ownership and rental units.

<sup>114</sup> See *infra* Exhibit 4. Thirteen of the seventeen affordable units at Sprain Lake Estates are under contract. HAC expects that the remaining four units will be sold to Priority 1 families.

Community concerns dissipated after the completion of the site identification process; however, that process took a very long time and delayed the construction and completion of these projects for years. The first sites had been identified in the 1990's, but the first project (Cross Street) was not actually completed until 2001. In fact, the final construction project (Sprain Lake Estates) has not been completed fully as of this writing.<sup>115</sup>

Once completed, however, with each development attractively designed with attention to detail, the occupancy for qualified families was relatively easy to achieve. In addition, the fact that the affordable units are identical, or comparable, to the market-rate units and integrated throughout also helped with the sales on the market side, which were achieved with relative ease with the exception of Grassy Sprain. Grassy Sprain was built at the time the market started collapsing and the project experienced other difficulties. As of February 18, 2011, one market-rate unit has closed; another will close shortly. An effective marketing strategy is underway, and the developer has received three to four offers that are currently under consideration.

All the homeownership units were required to have a range of affordability with the highest affordability at 100% of AMI.

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<sup>115</sup> See *infra* Exhibit 4.

**New Construction:  
Homeownership Affordability**

	<b>&lt; or = 50% AMI</b>	<b>51% to 80% AMI</b>	<b>81% to 100% AMI</b>	<b>Total</b>
<b>Sprain Lake Estates</b>	5	8	4	17
<b>Hoover Road</b>	1	3	1	5
<b>Cross Street</b>	4	6	3	13
<b>Total</b>	<b>10</b>	<b>17</b>	<b>8</b>	<b>35</b>

**New Construction: Rental Affordability**

	<b>&lt; or = 50% AMI</b>	<b>51% to 80% AMI</b>	<b>81% to 100% AMI</b>	<b>Total</b>
<b>Sprain Lake Estates</b>	N/A	N/A	N/A	0
<b>Hoover Road</b>	Not Available	Not Available	Not Available	5
<b>Cross Street</b>	N/A	N/A	N/A	0
<b>St. James/ Yonkers Ave</b>	20	12	Not Available	32

Sprain Lake Estates, which is comprised of thirty-four fee simple homes, is located in Northeast Yonkers. The homes are in a residential neighborhood of single-family homes, across from a county park with a golf course. The semi-attached townhomes were built around a cul-de-sac. Twelve of the seventeen units have certificates of occupancy. As of February 18, 2011,

eight of the seventeen units have closed; an additional four have fully executed contracts and one has a pending contract. All purchasers to date are Priority 1. In order to identify additional Priority 1 applicants, HAC recently sent a mailing to approximately 600 Priority 1 and Priority 2 households that had originally been on the YAHD database and expressed interest in remaining on that database in 2007, plus additional applicants since then. As stated by HAC, the enthusiasm of new homeowners drawn from the Plaintiff class and their effort to take advantage of the opportunity have been impressive.

The Hoover Road Townhomes development included ten two-family homes located in a cul-de-sac in a residential neighborhood in Northwest Yonkers. Each unit included a for-sale and a rental unit. Construction began in 2003 and was completed with all ownership titles transferred by the summer of 2005. The rental units included an affordability requirement which helped cross subsidize the most affordable units with the higher income units within the affordability range. For example, the one homeownership unit that was affordable for a family between 81% and 100% AMI was required to rent its rental unit to a household with an income between 0% and 50% AMI.

Cross Street, the first development, was a twenty-four-unit condominium located in Northeast Yonkers in a residential neighborhood with a mix of ownership types. While the units were not identical in design as they all had a slightly different style and frontage, they all had a townhouse appearance and attractive landscaping throughout. The variety applied to all units, market and affordable. Construction began in 1999, and all units were sold in 2001. Based on a review of Westchester MLS data from 1999 to the present by the HAC, three of the market-rate units have been resold, and all three units sold within 95% of the original asking price. A market-rate three-bedroom unit sold on July 14, 2010 for \$430,000; a 2-bedroom market-rate condo sold

for \$360,000 on December 21, 2010. Based on actual sales of twenty comparable units in the immediate area that closed within the last eighteen months having an average sales price of \$451,175, it is reasonable to conclude that the market-rate units were not adversely affected by the presence of the affordable units.<sup>116</sup> Affordable and market-rate families are all represented in the very active homeowners association. This development set a standard of quality and made the point that mixed income homeownership could succeed.

The three homeownership projects all required that the affordable units be interspersed among the market-rate units and that the design be identical or comparable for the market-rate and affordable units. For each project, the City's Affordable Housing Department was required to market the units in order of Priority as established by the Court. The ultimate sales of these units yielded to date twenty-nine Priority 1 families and two Priority 2 families.<sup>117</sup> The market-rate units were all sold easily despite the integration of affordable housing.

The funding for these homeownership projects in the high cost Yonkers market came from several different sources. For all three projects, the City of Yonkers contributed funds from its Affordable Housing Trust Fund.

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<sup>116</sup> Housing Action Council, March 2011.

<sup>117</sup> See *infra* Exhibit 4.

The subsidy sources were the following<sup>118</sup>:

**Subsidy Sources for Homeownership - Average per Unit Costs**

	<b>Sprain Lake</b>	<b>Hoover (per 2 family)*</b>	<b>Cross Street*</b>
<b>City of Yonkers</b>	\$220,000	\$194,795	\$80,000
<b>NYS Affordable Housing Corp</b>	\$38,118	\$50,000	\$15,385
<b>Westchester County</b>	\$46,650	\$51,370	\$0
<b>Total Subsidies</b>	\$304,768	\$296,165	\$95,385

The one new construction rental project, St. James Gardens (formerly known as the Yonkers Ave site), a sixty-four-unit rental housing development with thirty-two affordable units, was completed in 2003. The original plan for this project was approximately 120 units; however, the community opposed the density as well as the height of the building. The income distribution for the affordable units at St. James Gardens was the following: three units at 20% AMI or below; four units at 30% AMI or below; thirteen units between 41% and 50% AMI; six units between 51% and 60% AMI, and six units between 61% and 80% AMI. Of the affordable units, twenty-eight went to Priority 1 families, and another four to Priority 2 families. The racial makeup in the affordable units is 62.5% African-American and 34.4% Latino.<sup>119</sup> The financing sources for this project included \$2.9 million from the Yonkers’ Affordable Housing Trust Fund, \$520,000 from the New York State Housing Trust Fund, and an allocation of 9% low-income housing tax credits from New York State’s Division of Housing and Community Renewal.

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<sup>118</sup> Housing Action Council, March 2011.

<sup>119</sup> Housing Action Council, March 2011.

Initially, upon rent up the developer was not able to secure the market rents that had been projected. As a result, the market rents turned out to be affordable to households whose incomes were the same as many of those renting the affordable units. Thus, although it was hoped that this development would have a combination of affordable and market-rate residents, the reality was that households with similar income levels were renting the market-rate (or unrestricted) units. In addition, a majority of the households renting the market-rate units were using Section 8 vouchers, and thus their income levels are on the lower end of the spectrum.<sup>120</sup> The project has mostly African-American and Latino residents located in a non-minority area.

These four new construction developments did demonstrate the feasibility of integrative housing although there were substantial challenges to achieving this.

*1. Complexity of Financing Mixed Income Housing.* Allocation of costs between market-rate units and affordable units for public subsidy purposes, appraised values, and marketing concerns were among the issues that added to the complexity of financing housing developments.

Resolution of these issues required skill and care.

*2. No Impact on Marketing Market-rate Units.* With the exception of Sprain Lake Estates, the homeownership developments were built and marketed in a “seller’s market.” The market units were readily sold or rented. There appears to be no impact on sales price as a result of including a significant number of affordable housing units in each development.

*3. Sharing Management Responsibilities.* Only the Cross Street Condominium involved common ownership. As a new condominium, the initial owners elected a Board of Managers.

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<sup>120</sup> See Houk, *supra* note 3, at 52.

The undirected results included representation from owners of the affordable and market-rate units, providing an opportunity for social and business interaction.

*4. Managing Marketing and Qualification of Prospective Tenants and Buyers to Achieve Desired Results.* The marketing plan for the affordable units included prioritizing the units for households who lived or had lived in publicly assisted housing at any time since 1971. It is expected that 90% of the initial households for all new construction units were/will be Priority 1 applicants.<sup>121</sup> Activities that contributed to this high percentage included: targeted marketing to Priority 1 applicants; readying Priority 1 applicants to meet the underwriting and screening guidelines of these developments; providing transportation to the sites to encourage applicants to consider change; and helping applicants develop applications for mortgages, and tenancy that demonstrate how they meet underwriting criteria. These services were provided by HAC through the Yonkers Affordable Housing Department.

*5. Directed development as compared to the AHO.* Directed development (i.e., a municipality or an agency charged with achieving integrated housing identifies sites, develops plans, and coordinates members of the development team) achieved greater results than the Affordable Housing Ordinance which relied on developers proposing sites and moving a development forward. The directed development achieved seventy-two completed units as compared to twelve AHO units for the same time period.

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<sup>121</sup> See *infra* Exhibit 4.

## 5. Small Sites Program

The Small Sites Program had been under consideration since 1993 as part of the SLTPO. The City of Yonkers had hoped to contribute to the Additional Affordable Housing requirement through what it called the Small Sites Program. Under this program, the idea was to secure smaller vacant properties that could be developed for housing. Developers would identify vacant parcels in eligible neighborhoods that would be redeveloped into one to four units of housing. The City offered up to \$70,000 per parcel to cover land costs associated with the development; to assemble a pool of funds to provide below market construction financing; and, to provide design assistance. The City also would provide down payment and rental assistance to achieve affordability for qualified rents and homeowners.

The City conducted a preliminary evaluation of some appropriate vacant parcels and made that inventory available to developers. Three units were completed under the Small Sites Program through the rehabilitation of a vacant three-unit building which was privately owned. HAC owns four sites on behalf of the City. Proposals were solicited. A developer, Trinity Development, was selected. However, the cost of developing the sites proved infeasible because of difficult site conditions and costly infrastructure. This may change with improved market conditions.

A potential financing source for the Small Sites Program would have been New York State's Affordable Housing Corporation Trust fund, which could have provided up to \$40,000 a unit and land acquisition was not required. However, very few appealing sites were identified, and few developers expressed an interest. According to the HAC, the program was not successful partly because: (1) small builders could not secure upfront construction financing; (2) the public

financing was dispersed near completion, making it hard for developers to fill that gap; (3) developers were unwilling to risk the predevelopment costs.

## 6. Other Programs

### ESOP/Use of Section 8 Vouchers

In late 1999 DOJ noted that many Priority 1 families were not financially able to take advantage of the first-time homebuyer's down payment assistance program offered by the City. Since the City had not developed a similar rental assistance program for Priority 1 families, DOJ explored whether the City could contract with the locally-based Enhanced Section 8 Opportunity Program ("ESOP") to provide assistance for families not being served by the City's Existing Housing Program.<sup>122</sup>

ESOP had been created as the result of a Court ordered settlement in a housing discrimination case brought against the Westchester County Housing Authority that required the County to assist households using Section 8 vouchers to move outside of areas of high minority concentration throughout Westchester County. ESOP had been in place since 1993, and in eight years, had helped more than 200 families move. ESOP's efforts included "seeking rent exceptions, raising voucher values, recruiting and negotiating with landlords, advising and advocating for tenants and helping them utilize existing programs."<sup>123</sup>

DOJ's goal was to have ESOP operate a similar program for Priority 1 families to help create housing opportunities in a manner that promoted racial, as well as, economic integration.

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<sup>122</sup> See Letters between DOJ, NAACP and Judge Sand (Record at 1869, 1866, 1865, 1877, 1781).

<sup>123</sup> Schuck, *supra* note 10, at 361-62.

The hope was that ESOP could assist twenty-five to thirty Priority 1 families annually, which DOJ felt was achievable based on ESOP's record at the time. The City of Yonkers refused to agree to this program, and it was not pursued. Instead Judge Sand's order of June 1, 1999 to implement "a rental program" was handled through the HAC.

In addition to the primary programs described above, there were several other programs that should be acknowledged, some of which contributed to meeting the goals under the Orders and others which contributed to either the creation of affordable housing or added to the integrative housing opportunities.

#### Mulford Gardens

The Yonkers Municipal Housing Authority ("YMHA") applied for and received assistance under the Department of Housing and Urban Development's HOPE VI program in 2004. With the award, YAHD moved ahead to rebuild the Mulford Gardens neighborhood converting 550 public housing units located in southwest Yonkers into 350 mixed income units also located in southwest Yonkers. As part of the HOPE VI application, YAHD agreed to provide at least ten units of replacement housing outside of southwest Yonkers. In addition, as part of the HOPE VI effort, YMHA secured 200 Section 8 Housing Choice vouchers to assist Mulford residents in relocating elsewhere.

As part of this effort, YMHA worked with the City of Yonkers to help enable residents with vouchers to make integrative moves. None of these units were considered as part of the Settlement of the case. The HAC provided existing Mulford residents with substantial resident mobility training in late 2005, and then assisted residents with the relocation efforts. Of those residents, the vast majority remained in southwest Yonkers. A few moved to areas outside of southwest Yonkers, and eight former Mulford Gardens residents have contracts of sale for Sprain

Lake (thirteen of those seventeen affordable units were prioritized for Mulford Gardens residents). As of February 18, 2011, eight former Mulford Garden residents have or will purchase units at Sprain Lake.

#### Hudson View Terrace

This project includes ten affordable rental units, which had been completed in 1998. These units must be occupied with LTPO qualified households and must remain affordable for thirty years from the date of initial occupancy.

#### Early Homeownership Units

Ten units were also purchased during 1995 and 1996 under the Fair Housing Implementation Office's maintenance and the HSM's oversight. The purchasers were selected and prepared by the FHIO, and subsidies (between \$20,000 and \$30,000) were granted to them from the Affordable Housing Trust Fund after approval by Judge Sand.<sup>124</sup> The units are counted in this statement's exhibits under the Purchase Assistance Program.

### **Part III. Overview, The Settlement Agreement and the Long Term Impact**

Using the programs described above, the City created 352 units of ownership housing and 286 units of private rental housing.<sup>125</sup> These units, combined with the 200 units of public housing that had been completed in the early 1990s resulted in a total of 828 units of affordable and fair housing opportunities. Through deed restrictions, mortgage covenants and other restrictive covenants, the City will ensure that these units remain affordable for ten to thirty-year terms (and longer for public housing) serving many more households over that span. Moreover,

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<sup>124</sup> See, e.g., Letter to Judge Sand from Marilyn Melkonian, Mar. 3 1996 (Record at 1491) (regarding recommendations approving existing housing subsidy).

<sup>125</sup> See Housing Action Council, March 2011.

the City is committed and was required to monitor these units for a minimum of three years post-Settlement to ensure that they are occupied by qualified families. The City has continued to do so using HAC's services for this purpose.

Through the long term use restrictions that apply to nearly all these units, these homes will serve thousands of households over the life of the implementation programs. As required under the Settlement Agreement, the City will be responsible for monitoring and enforcing the program for the long term. For the homeownership units, the restrictions are in place for a thirty-year period from the transfer of title, and will terminate sometime between 2025 and 2037. The City will also maintain the rental opportunities. The majority of these units provided through the Rental Assistance Program have a ten-year timeframe.

*A. The Settlement Agreement: Background and Overview*

In 2006 the City had almost achieved the 600 credit benchmark set under the SSLTPO as modified, and the parties began to discuss a settlement that would officially end the lawsuit that began in 1980. In addition, the City had completed all the other benchmarks that had been required under the various orders including enacting the AHO, providing the sites for 200 units of scattered site public housing in east Yonkers, and completing the new construction of mixed-income housing.

The goal of the settlement agreement was to acknowledge that the City had met its obligations while also ensuring that the housing opportunities created would remain in place as required. The Settlement set forth specific obligations of the City of Yonkers that would ensure that the affordability as well as integrative requirements would be maintained. The Settlement specifically states that once the Agreement is effective, the "City shall be required to maintain

the pool of affordable desegregative housing created pursuant to the LTPO by implementing the Program” described in detail in the Agreement.<sup>126</sup> In addition, the Settlement Agreement also lifted some of the longstanding restrictions that had been placed on the City of Yonkers. The City may now build public and publicly assisted housing in Southwest Yonkers, for example, without any restrictions.

The attorneys representing the parties drove the settlement process. These individuals worked together over many years to move the experience of the case from one of determined resistance to one of collaborative implementation. Without their efforts, this process would still be languishing in conflicts over *what* the remedy should be instead of moving forward into a phase of working together to determine *how* the remedy should be carried out.

Moreover, once the Orders had been implemented, it was these individuals, on behalf of their clients, who worked on coming to agreement to end the case in a way that was beneficial for all parties. These individuals deserve thanks and recognition for their dedication, patience, creativity and perseverance in this case.

#### *B. The Settlement’s Provisions*

The Settlement Agreement reached by the parties embodied a successful reconciliation of the implementation of the Court’s Orders and put in place the technical provisions to ensure that the housing provided will remain in place for families for the long term. Some of the key elements of the Settlement Agreement are described below.

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<sup>126</sup> See Settlement Agreement, at 10 (Record at 2094).

a. Preserving Affordability in the Homeownership Units

All homeownership units created under these programs must remain affordable for thirty years. One mechanism employed to ensure affordability is a mortgage covenant. The homeownership units purchased by qualified buyers with financial assistance from the City all include mortgage covenants. These covenants require that if the homeowner sells the home within 30 years, it must sell it at an affordable price to a qualified family under the priority system. Even after the unit sells, the next family to own the home is held to the same covenants for the balance of the term.

After 2002, these covenants were modified to prescribe the exact resale price and add primary residence requirements to ensure a fair balance of benefit and burden borne by the homeowner. Moreover, these units are protected from predatory lending and other affordability threats by limiting the circumstances and situations in which the homeowner can refinance the property. The City must approve any subsequent financing and will do so only if the affordability of the home is preserved. These requirements applied both to units provided through the Existing Housing program, as well as homeownership created through New Construction.

Secondly, the New Construction units, both ownership and rental housing, are also subject to deed restrictions that ensure affordability. By placing the affordability restrictions in the deed of the property, the obligation to maintain fair and affordable housing opportunities runs with the land and passes to any successive owner.

Deed restrictions have indeed become one of the most important tools in preserving affordable housing and have been employed successfully by housing advocates and local

governments in many communities. By using this mechanism in fair and affordable housing programs, the commitment to integrative affordable housing is made now and for the future. The specific provisions, and how they affect the units produced through each program, are described below.

b. Existing Housing (Purchase Assistance) Program

The resale and occupancy of these homes has been restricted for thirty years from the date title was first obtained. As noted above, the restrictions have been put in place through deed restrictions, mortgage covenants, UCC-1's, and/or debt restrictions. The owner is required to occupy the premises as his or her primary residence, and must obtain approval for any refinancing. The restrictions are in place through 2027 to 2036.

The resale restrictions require that the units be sold at a price that is affordable to a person in the same income bracket as the borrower at the time of the borrower's purchase. The City's YAHD office determines the appropriate price of the home. There are very specific provisions in place that YAHD must follow in calculating the appropriate resale price for units purchased between 1997 and 2002. The additional ten units that were purchased between 1995 and 1996 under the direction of Fair Housing Implementation Office are subject to similar restrictions.

The resale price definition was modified somewhat for all units purchased in 2003 and after. The modified price allows the homeowner to receive some return for any investment in the property. The revised resale price accounts for major capital improvements made by the homeowner.

c. New Construction Homeownership

A total of thirty-four new construction homeownership units have affordability restrictions. The restrictions are similar to those in place for the Existing Homeownership Units based on the dates when title was acquired. Under the Small Sites Program, there were a total of four units, and those have post-2002 mortgage notes and restrictions.

d. New Construction and Other Rental Units

St. James Gardens has thirty affordable rental units. The owner of these units must provide annual reports certifying to the rent levels and occupancies of the units, and the City is responsible for reviewing and monitoring the reports to ensure that the owner is maintaining the required affordable rental units. When units become available, YAHD will refer qualified renters.

In addition, Hudson View Terrace is also required to rent ten units at affordable rents and occupy those units with LTPO qualified households. The rents vary depending on the incomes served. All units must remain in compliance for a period of thirty years from the date they were first in compliance.

Some families through the Existing Housing Program purchased two family homes (about twelve units), and some of those rental units were required to be restricted for a period of thirty years. The City is responsible for qualifying renters upon turnover, reviewing leases and obtaining an annual certification from the owner that an eligible tenant is in the unit.

e. The Affordable Housing Ordinance

Under the terms of the Settlement Agreement, the City was to keep the AHO in place through December 31, 2008, which it did. The AHO has expired and is no longer in effect. As was noted above, there were a number of projects that would have contributed units to the program if the developments had moved forward.

For the twelve units developed through the AHO program, those units have thirty-year affordability restrictions. These have been put into place with similar mortgage and deed restrictions described above. The additional sixteen units that are under construction will be under similar restrictions.

f. The Rental Program

Under the Settlement Agreement, the City is required to continue to implement the Rental Program until the monitoring requirements for each unit expires (each one has a ten-year term upon initial qualified occupancy), ensuring that the current reservoir of rental units is maintained and utilized by eligible households. This program was launched in 2002. The monitoring requirement is expected to end between 2012 and 2016.

g. The City's Ongoing Role

Under the Settlement Agreement, the City committed to continue to dedicate considerable resources to ensure the long-term provision of the affordable housing, as provided through the Court's orders. Throughout the duration of the programs (anywhere from ten to thirty years), the City committed to quarterly reports to all parties on the status of the programs, including the turnover in ownership and rental units, and the income and race of the participants.

The City also agreed to provide the parties with quarterly reports up until the termination of the rental program, at which point the reports will be completed twice a year. Further, the City has agreed to keep detailed records of the program and give access of those records to the parties. With this combination of reporting, monitoring and recordkeeping any lapse in enforcement can be identified and remedied. These provisions give the other parties an opportunity to hold the City to its obligations.

The City continues to have a number of specific responsibilities that it implements through the Yonkers Affordable Housing Department. The activities include the following:

Homeownership: Identifying and qualifying purchasers, responding to subordination requests, handling foreclosures, or violations of covenants, referring qualified purchasers to any future AHO projects like Ridge Hill.

Rental: YAHD must manage the monthly disbursements to owners, annually certify household incomes, handle lease renewals and inspect units. Identify alternative units if necessary, and qualify additional renters if existing ones leave the program.

In terms of referrals, the City must continue to use the LTPO priorities as well as the income criteria.

*C. Reflections on the Long-Term Restrictions:*

One of the most successful aspects of the case was the creation of long-term affordable, integrated housing opportunities. Several thousand households should benefit from the programs that were put in place, and they will continue to benefit over many years.

For the homeowners, however, there were some real constraints to the program. As developed, the program does not allow for any significant growth in equity. The resale restrictions prevent the homeowner from benefitting, for the most part, from any increase in the value of the home. Modifications made to the resale restrictions now allow the owner to recoup its capital investment, improving the owner's position, but the owners are still not allowed to benefit from appreciation in the price of their homes in a traditional way.

On the other hand, the homes will remain affordable and benefit eligible successor owners, reflecting the purpose of the substantial public investment. The public investment created the opportunity for better living conditions, access to better opportunities, safer neighborhoods, higher quality schools, and improved employment.

#### *D. Conclusion and Additional Reflections*

The City of Yonkers succeeded in providing fair and affordable housing opportunities in areas outside Southwest Yonkers to families who were previously excluded. The provisions that have been put in place will ensure that these opportunities will continue to benefit the residents of Yonkers long after the case was dismissed. In light of these illustrative accomplishments preceded by defiance, resistance, and finally cooperation, the Settlement Agreement represented an appropriate and long-awaited resolution of this case.

Over the past three decades the Yonkers litigation has provided opportunities and frustrations for all involved. It provided experience and insight into the interaction and conflicts between branches of government as the City worked to change official practice and implement remedies. It also illustrated the variety of ways to create and maintain affordable integrated

housing and to overcome the barriers to doing so. It also brought new housing opportunities to low-income and minority families in Yonkers outside areas of minority concentration.

There were flaws and setbacks in how the program was implemented especially due to: City resistance and later to lack of funding; the difficulties of development; changes in the market; and the challenges presented serving very low-income families who comprised most of the Priority 1 families.

The original HRO required a plan for additional affordable housing expected to be created with mixed income developments. In the end, a variety of programs were used and the actual affordable housing opportunities created, excluding the Public Housing Units, was 628 (see Exhibit 3). This does not include the re-use of these opportunities over time. The City received slightly more than the 600 credits required under the Court's order improving its service to Priority 1 households and earning bonus credits.

For the first two years of the Existing Housing (Purchase Assistance) Program, most of the moves made were not integrative. As the program was structured at that time, the City ended up serving mostly Priority 2 families (ninety-six Priority 2 families, as opposed to twenty-one Priority 1 families<sup>127</sup>) and about a third of these moves were nonintegrative; and, in the second year of the program about a third of the families served were white.<sup>128</sup> Only in 1999, when the Court redirected the City to require racially integrative moves, and more importantly provided incentives to serve Priority 1 families, and, only after the parties litigated that Order up to the

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<sup>127</sup> See Housing Action Council, March 2011.

<sup>128</sup> See Year 2 (1998) Existing Housing Chart, Memorandum from Adi Martinez to Counsel, Jan. 19, 2000 (Record at 1901).

Supreme Court (which took two more years) did the City begin implementing a racially integrative program in earnest.

The parties may have missed opportunities to create quality, highly desired housing in parts of Southwest Yonkers which would have been integrative. The development boom in the 2000's, which led to high-end residential development in downtown Yonkers, was not part of the remedy. With the parties focused on ensuring the "strict standard" of placement outside Southwest Yonkers, an opportunity may have been missed to provide good housing opportunities in the new, transit-oriented development located by the train station. (Integrative housing opportunities in this market-driven development may have been created without incentives.) This might have been a good inclusionary zoning program.

In addition, it is possible that pursuing the use of Section 8 vouchers, similar to the Gautreaux program, and which, in theory, could have been done by ESOP, would have been an effective program. However, the City's resistance to such an approach resulted in requiring the City to come up with a new program rather than using an existing one that was already functioning and effective. Perhaps the settlement goals would have been achieved faster and cost less with that program.

Today, the City of Yonkers has an opportunity to provide its current and future residents with hope and a promise to continue progress in fair housing beyond legal forums. Indeed, Yonkers has come a long way from the early days of the Housing Remedy Order. The housing programs in place have produced positive results that have helped to overcome the race-based fear and anxiety that characterized so many of the City's housing decisions in the Twentieth Century. Residents who protested with vehemence against the implementation of the Housing

Remedy Order have welcomed new neighbors and found that their fears were not realized. Mary Dorman, who had been one of the most vocal opponents of the creation of affordable housing, acknowledged in 2007 that her new neighbors did not adversely affect her quality of life. “In a sense, the desegregation plan did work,” Ms. Dorman told the New York Times. “It didn’t spoil our neighborhoods; we had a lot of nice people who lived there. It wasn’t the horror that we all thought it was going to be.”<sup>129</sup> When Mary Dorman died on January 1, 2011, it was said of her that “she was passionate about civil rights in the city, initially protesting court mandated housing then working to facilitate its success by assisting new tenants in the community.”<sup>130</sup> The programs in place are designed to further eliminate racial and ethnic division, to continue to foster diversity and understanding in Yonkers’s communities; and, to allow change to a more open and tolerant environment to continue.

The action brought by the U.S. Department of Justice and the NAACP thirty years ago, targeted a history of discrimination in housing and education in one city. More broadly, it demonstrated that the use of government power to further racial discrimination and segregation is intolerable and against the law. The resistance, time and expense of achieving the remedy, served to illuminate the nature of that wrong. The detailed findings, decision, and remedy orders of Judge Sand of the U.S. District Court for the Southern District of New York, upheld by the Second Circuit Court of Appeals and the U.S. Supreme Court, not only helped bring an end to racial segregation in Yonkers, they set an example that has helped to uphold and further the values of racial equality and justice across America.

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<sup>129</sup> See, e.g., Fernanda Santos, *Healing 27-year Rift, Yonkers Settles a Fight Over Housing Segregation*, N.Y. Times, Apr. 20, 2007, at B5.

<sup>130</sup> See Flower Funeral Home, Obituaries, <http://www.flowerfh.com/obituaries.php> (search “Search by Name” for “Dorman”; then follow hyperlink).

### *Acknowledgements*

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Appreciation is also expressed to Daniel Fojas, David Godschalk and Annie Lee for their assistance and comments to this report.

**Exhibit 1: Existing Housing Program: Priorities 1, 2, 3, Analysis**

<b>Years</b>	<b>Priority 1</b>	<b>Priority 2</b>	<b>Priority 3</b>	<b>Total</b>
<b>1997</b>	16	31	1	<b>48</b>
<b>1998</b>	5	65	3	<b>73</b>
<b>1999</b>	7	29	1	<b>37</b>
<b>2000</b>	9	2	0	<b>11</b>
<b>2001</b>	17	2	0	<b>19</b>
<b>2002</b>	49	0	0	<b>49</b>
<b>2003</b>	46	2	0	<b>48</b>
<b>2004</b>	59	8	0	<b>67</b>
<b>2005</b>	41	13	0	<b>54</b>
<b>2006</b>	41	31	0	<b>72</b>
<b>Totals:</b>	<b>290</b>	<b>183</b>	<b>5</b>	<b>478</b>

*Source: Housing Action Council, March 2011*

**Exhibit 2: Credit Allocation by Year**

<b>Number</b>	<b>Year</b>	<b>Credit</b>
<b>Year 1</b>	1997	81.5
<b>Year 2</b>	1998	73
<b>Year 3</b>	1999	34.5
<b>Year 4</b>	2000	0
<b>Year 5</b>	2001	16
<b>Year 6</b>	2002	91
<b>Year 7</b>	2003	71
<b>Year 8</b>	2004	100.5
<b>Year 9</b>	2005	74
<b>Year 10</b>	2006	76
	<b>Total:</b>	<b>617.5</b>

*Source: Housing Action Council, March 2011*

**Exhibit 3: Affordable Housing Opportunities Provided by Program**

	Homeowner- ship	Rental	Total
<b>Purchase Assistance Program</b>	298	0	<b>298</b>
<b>Rental Program</b>	0	227	<b>227</b>
<b>Affordable Housing Ordinance</b>	16	12	<b>28</b>
<b>New Construction</b>	35	37	<b>72</b>
<b>Small Sites</b>	0	3	<b>3</b>
<b>Public Housing</b>	0	200	<b>200</b>
<b>Totals:</b>	<b>349</b>	<b>479</b>	<b>828</b>

*Data provided by Housing Action Council, March 2011*

**Exhibit 4: New Construction Analysis**

	Affordable				Subtotal Affordable	Market		Subtotal Market	Totals
	Rental		Homeownership			Rental	Home-own- ership		
	P1	P2	P1	P2					
<b>Sprain Lake Estates</b>			13*		17		17	17	34
<b>Hoover</b>	4	1	5		10		10	10	20
<b>Cross Street</b>			11	2	13			11	24
<b>Yonkers Avenue/ St. James Gardens</b>	28	4			32	32		32	64
<b>Totals:</b>	<b>32</b>	<b>5</b>	<b>29</b>	<b>2</b>	<b>72</b>			<b>70</b>	<b>142</b>

\* For Sprain Lake, 13 of 17 units are under contract. Since the completion of the project was delayed, Housing Action Council has not yet completed the selection process for the remaining four units. They anticipate that they will be sold to P1 households.

*Source: Housing Action Council, March 2011*

**Exhibit 5: Chronology of Case**

<b>Chronology of Case</b>	
1980	Case Filed by United States Department of Justice
1981	NAACP – Yonkers Branch Joined the Department of Justice in filing United States v. Yonkers Board of Education
1983-1984	92-Day Trial
November 1985	Liability Decision Rendered by Judge Leonard B. Sand of the United States District Court for the Southern District of New York
May 1986	Housing Remedy Order
December 1987	Decision by U.S. Court of Appeals for the Second Circuit District Court affirming decision.
January 1988	Consent Decree
June 1988	Long Term Plan Order (LTPO)
October 1993	Supplemental Long Term Plan Order (SLTPO)
November 1996	Second Supplemental Long Term Plan Order (SSLTPO)
December 1999	Third Supplemental Long Term Plan Order
July 2003	Fourth Supplemental Long Term Plan Order
April 2007	Settlement Agreement
July 2007	Final Order of Dismissal Signed by Judge Leonard B. Sand