

# Integrating the Suburbs: Harnessing the Benefits of Mixed-Income Housing in Westchester County and Other Low-Poverty Areas

MATTHEW SHIERS STERNMAN\*

*The opportunity for housing is the central goal of the Fair Housing Act. This can be enhanced through the creation of mixed-income housing developments, which increase the opportunity for integration and benefit those moving to a community, as well as those already there. In New Jersey, the decision in Southern Burlington County NAACP v. Mt. Laurel and the State's Fair Housing Act have not provided sufficient mechanisms to spur the creation of integrated affordable housing or mixed-income developments. Due to a recent housing settlement, Westchester County has the chance to integrate its low-poverty municipalities through mixed-income housing. To realize this opportunity, Westchester, and other counties and municipalities throughout the country, should enact legislation incentivizing mixed-income housing developments.*

## I. INTRODUCTION

Since Congress passed the Fair Housing Act<sup>1</sup> (“FHA”) in 1968, federal, state, and municipal governments have had trouble implementing the Act’s goal of furthering fair housing, defined as increasing opportunities for affordable, integrated housing.

---

\* Managing Editor, COLUM. J.L. & SOC. PROBS., 2010–2011. J.D. Candidate 2011, Columbia Law School. The author would like to thank Professors Diane L. Houk, Fred Freiberg, Michael A. Heller, and the *Journal* staff for their guidance.

1. Pub. L. No. 90-284, 82 Stat. 81 (codified as amended at 42 U.S.C. §§ 3601 to 3619 (2006)).

Courts have stated that furthering fair housing is a compelling government interest,<sup>2</sup> but the goal has not yet been realized, and there is no consensus on how the government should achieve it.<sup>3</sup> Methods used in the past have resulted in varied successes,<sup>4</sup> but as of now, no framework for achieving fair housing goals has proven completely successful.

Recently, commentators have advocated mixed-income housing as a mechanism for achieving fair housing goals in low-poverty suburban areas because of its potential for increasing housing choice and integration.<sup>5</sup> Mixed-income developments can include either a combination of market-rate and affordable units or exclusively affordable units priced at different levels.<sup>6</sup> The affordable units are made available to households with incomes less than the surrounding area median income (“AMI”).<sup>7</sup> By including units at multiple price levels, mixed-income developments afford members of various socioeconomic classes greater housing choice in communities where such choice might not otherwise be available.

Mixed-income housing will benefit suburban communities by fostering racial and socioeconomic integration.<sup>8</sup> Such integration can yield social benefits including expanded networking and job opportunities for those entering higher-income areas.<sup>9</sup> Those who move into a mixed-income development in a low-poverty neigh-

---

2. See *Walker v. City of Mesquite*, 169 F.3d 973, 982 (5th Cir. 1999).

3. See generally Peter H. Schuck, *Judging Remedies: Judicial Approaches to Housing Segregation*, 37 HARV. C.R.-C.L. L. REV. 289 (2002).

4. See *id.* (comparing fair housing remedies used in Mt. Laurel, New Jersey; Yonkers, New York; and Montgomery County, Maryland).

5. See, e.g., DIANE L. HOUK, ERICA BLAKE & FRED FREIBERG, FAIR HOUSING JUSTICE CENTER, INCREASING ACCESS TO LOW-POVERTY AREAS BY CREATING MIXED-INCOME HOUSING 57–59 (2007). This Note examines, in the vein of the *Mt. Laurel* case and Westchester County housing settlement, mixed-income developments as a fair housing solution for low-poverty areas. In higher-poverty areas, fair housing plans may need to differ from those advocated here.

6. *Id.* at 2.

7. AMI is the median income for a particular area, usually a county, which is used as a benchmark for the income levels at which units will be affordable. A unit will generally be considered affordable if the rent is one-third its occupant’s income and remains affordable for a defined period of time. See Ann S. Matthews, *Inclusionary Zoning in Westchester County, New York: Is It a Viable Tool to Reduce a County-Wide Housing Crisis?*, 27 PACE L. REV. 89, 92 (2006).

8. See discussion *infra* Part II.B.

9. See *id.*

borhood should also benefit from high-quality housing and good public schools.<sup>10</sup>

Throughout the United States there have been attempts to solve housing issues with varied success.<sup>11</sup> In New Jersey in the 1970s, there was a dearth of available housing for low- to moderate-income families.<sup>12</sup> The governor of New Jersey at the time described the situation as a “crisis.”<sup>13</sup> Affordable housing and segregation issues in New York’s Westchester County have been similarly well publicized.<sup>14</sup> Despite this publicity, as well as judicial action,<sup>15</sup> there remains a lack of affordable housing in Westchester County.<sup>16</sup> New Jersey has made attempts to address its affordable housing “crisis,” but few would say that the problem has been solved.<sup>17</sup> Westchester County is just now beginning to address some of its housing issues and has the opportunity to solve its own affordable housing problem while setting an example for other counties throughout the United States.<sup>18</sup>

In the landmark decision *Southern Burlington County NAACP v. Township of Mt. Laurel*, the New Jersey Supreme Court held that municipalities have an affirmative obligation to allow for the construction of their regional “fair share”<sup>19</sup> of affordable housing.<sup>20</sup> Issues with implementing and enforcing the decision<sup>21</sup> led the

---

10. *See id.*

11. *See generally* Florence Wagman Roisman, *Opening the Suburbs to Racial Integration: Lessons for the 21st Century*, 23 W. NEW ENG. L. REV. 65 (2001) (discussing affordable housing programs throughout the United States).

12. *S. Burlington County NAACP v. Twp. of Mt. Laurel*, 336 A.2d 713, 716–17 (N.J. 1975).

13. *Id.*

14. *See, e.g.*, Fernanda Santos, *After 27 Years, Yonkers Housing Desegregation Battle Ends Quietly in Manhattan Court*, N.Y. TIMES, May 2, 2007, available at <http://www.nytimes.com/2007/05/02/nyregion/02yonkers.html> (describing the issues stemming from the desegregation battle in Yonkers).

15. *See* *United States v. Yonkers Bd. of Educ.*, 624 F. Supp. 1276 (S.D.N.Y. 1985), *aff’d*, 837 F.2d 1181 (2d Cir. 1987).

16. *See generally* Matthews, *supra* note 7.

17. *See infra* Part III.

18. *See infra* Part IV.

19. *See S. Burlington County NAACP v. Twp. of Mt. Laurel*, 336 A.2d 713, 732–36 (N.J. 1975), for an explanation of “fair share.”

20. Before *Mt. Laurel*, many New Jersey municipalities used restrictive land use regulations to prevent the construction of affordable housing. These zoning laws included provisions requiring one-family detached homes, minimum lot sizes, minimum lot frontage, and maximum building size. *Id.* at 719–22.

21. *See S. Burlington County NAACP v. Twp. of Mt. Laurel (Mt. Laurel II)*, 456 A.2d 390, 409–10 (N.J. 1983) (explaining that ten years after the initial decision in *Mt. Laurel*,

state legislature to adopt the New Jersey Fair Housing Act (“NJFHA”).<sup>22</sup> Likely due to pushback from legislators in higher-income, suburban areas, the NJFHA contained provisions contravening policies embodied in *Mt. Laurel* and the FHA.<sup>23</sup> For example, one such provision, Regional Contribution Agreements (“RCAs”), allowed wealthy municipalities to transfer their affordable housing obligation to higher-poverty municipalities.<sup>24</sup> Another provision in the NJFHA reduced incentives to create certain types of mixed-income housing.<sup>25</sup> These policies stunted integration and housing choice in New Jersey.

In 2006, the non-profit Anti-Discrimination Center of Metro New York (“the Center”) brought an action against Westchester County (“Westchester” or “the County”) under the False Claims Act.<sup>26</sup> The Center alleged that the County falsely certified that it affirmatively furthered fair housing after receiving \$45 million in federal funds.<sup>27</sup> The suit ended in a settlement (“the Settlement”) requiring Westchester to aid in the creation of affordable housing in County municipalities with predominantly white residents.<sup>28</sup>

---

many towns in New Jersey, including Mt. Laurel itself, still had blatantly exclusionary zoning policies).

22. N.J. STAT. ANN. §§ 52:27D-301–52:27D-329 (West 2006).

23. See *infra* Part III (B)–(C).

24. N.J. STAT. ANN. § 52:27D-312.

25. N.J. STAT. ANN. § 52:27D-321.1; § 5:43-1.4(c).

26. 31 U.S.C. §§ 3729–3733 (2006).

27. *United States ex rel. Anti-Discrimination Ctr. of Metro N.Y., Inc. v. Westchester County*, 495 F. Supp. 2d 375, 377–78 (S.D.N.Y. 2007). The Westchester County municipalities at the center of the false claims allegations are the members of the Westchester Urban County Consortium (hereinafter “consortium municipalities”). *Id.* at 377. The consortium municipalities include Ardsley, Bedford, Briarcliff Manor, Bronxville, Buchanan, Cortlandt, Croton-on-Hudson, Dobbs Ferry, Eastchester, Elmsford, Greenburg, Harrison, Hastings-on-Hudson, Irvington, Larchmont, Lewisboro, Mamaroneck Town, Mamaroneck Village, New Castle, North Castle, North Salem, Ossining Town, Ossining Village, Peekskill, Pelham Village, Pelham Manor, Pleasantville, Port Chester, Pound Ridge, Rye City, Rye Town, Rye Brook, Scarsdale, Sleepy Hollow, Somers, Tarrytown, Tuckahoe, and Yorktown. These smaller towns combine to apply for housing funding, which the towns would be unable to acquire individually. Westchester Urban County Consortium, Community Development Block Grant, available at <http://www.westchestergov.com/planning/housing/CDBG%20Manual/CDBG%20Program%20Manual%202009-2011.pdf> (last visited Jan. 6, 2010); Westchester Urban County Council, [http://planning.westchestergov.com/index.php?option=com\\_content&view=article&id=1252&Itemid=3248](http://planning.westchestergov.com/index.php?option=com_content&view=article&id=1252&Itemid=3248) (last visited July 26, 2010). The municipalities in Westchester not included in the consortium are Mount Pleasant, Mount Vernon, New Rochelle, White Plains, and Yonkers. *Anti-Discrimination Ctr.*, 495 F. Supp. 2d at 377.

28. See Stipulation and Order of Settlement and Dismissal, *United States ex rel. Anti-Discrimination Ctr. of Metro N.Y., Inc. v. Westchester County*, No. 06 Civ. 2860 (DLC),

The Settlement, though it has some weaknesses, should allow for the development of mixed-income housing in Westchester. Through the Settlement and its modification procedures,<sup>29</sup> Westchester is in a unique position to serve as an innovator in furthering fair housing goals and achieving integration through mixed-income developments.

This Note argues that legislatures should encourage mixed-income housing as one way to expand affordable housing into low-poverty, suburban communities and increase integration in furtherance of the Fair Housing Act.<sup>30</sup> Part II explores the goals of the Fair Housing Act, the obligations it imposes on local governments, and the role of mixed-income housing in fulfilling these obligations. Part III discusses the decision in *Southern Burlington County NAACP v. Mt. Laurel* and the resulting New Jersey Fair Housing Act, while identifying how the two failed to encourage integration and facilitate mixed-income housing. Part IV reviews the recent housing settlement in Westchester County, analyzing how mixed-income housing can effectively fulfill the obligations imposed by the Settlement. Part V discusses how Westchester and other local governments can learn from the shortcomings in New Jersey as they attempt to implement legislation that will facilitate sustainable mixed-income housing.

## II. USING MIXED-INCOME HOUSING TO FULFILL LEGAL OBLIGATIONS WHILE BENEFITING THE REGIONAL COMMUNITY

Federal legislation requires at least a minimal level of “fair housing” in every jurisdiction within the United States.<sup>31</sup> The term “fair housing” is quite vague and open-ended. As federal, state, and local governments work with non-profits to increase housing access, there is a growing debate about whether and how affordable housing should be spread. Working within various levels of regulations, local governments have a mandate to allow,

---

(S.D.N.Y. Aug. 10, 2009) [hereinafter “Settlement”], available at <http://www.hud.gov/content/releases/settlement-westchester.pdf>.

29. *Id.* at 15.

30. Any legislative action, of course, requires broad-based constituent support. Although local support for mixed-income housing may not come on its own without some federal or state requirements, this Note argues that mixed-income housing should be an appealing option for fulfilling affordable housing obligations that do, or may, exist.

31. See Fair Housing Act, 42 U.S.C. §§ 3601–3619 (2006).

at least, for some amount of housing choice within their jurisdiction. Mixed-income housing fits within these mandates and should provide for greater affordable housing choice while benefiting communities.

#### A. FEDERAL FAIR HOUSING REQUIREMENTS

The term “fair housing,” and any actions taken to ameliorate housing issues within the United States, must be framed with reference to the Fair Housing Act,<sup>32</sup> which sought “to replace the ghettos ‘by truly integrated and balanced living patterns.’”<sup>33</sup> To achieve these goals, rules combating discrimination and segregation were necessary. Section 3604 of the FHA prohibits “discrimination because of race, color or national origin in the sale or rental of housing.”<sup>34</sup> Additionally, no government can enact policies that impede the creation of affordable housing if these policies have a disproportionately discriminatory effect.<sup>35</sup> The discriminatory effect can include an “adverse impact on a particular minority group [or] harm to the community generally by the perpetuation of segregation.”<sup>36</sup>

Victims of housing discrimination have employed private causes of action against local governments on the grounds of disparate impact<sup>37</sup> to vindicate their rights under the FHA.<sup>38</sup> Although there is disagreement amongst the circuit courts of ap-

---

32. *Id.*

33. *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 936 (2d Cir. 1988), *aff'd in part*, 488 U.S. 15 (quoting Senator Mondale, the author of the FHA, 114 CONG. REC. 3422 (1968)).

34. *United States v. Starrett City Assocs.*, 840 F.2d 1096, 1100 (2d Cir. 1988) (citing 42 U.S.C. § 3604 (2006)). Section 3604 additionally prohibits discrimination on the basis of religion, sex, and familial status. 42 U.S.C. § 3604.

35. *Southend Neighborhood Improvement Ass'n v. County of St. Clair*, 743 F.2d 1207, 1210 (7th Cir. 1984) (holding that Section 3604(a) of the Fair Housing Act “is violated by discriminatory actions, or certain actions with discriminatory effects, that affect the availability of housing”); *see also id.* at 1210 n.3; *Starrett City Assocs.*, 840 F.2d at 1100. *But see Arthur v. City of Toledo*, 782 F.2d 565, 577 (6th Cir. 1986) (holding that “not every denial, especially a temporary denial, of low-income public housing has a discriminatory impact on racial minorities sufficient to establish a prima facie violation of the Fair Housing Act. . . . Otherwise municipalities would be forced to approve public housing projects regardless of cost, design, or other considerations.”).

36. *Huntington Branch, NAACP*, 844 F.2d at 937.

37. For an explanation of the theory behind disparate impact, see *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

38. *See, e.g., Huntington Branch, NAACP*, 844 F.2d at 933–36.

peals regarding the exact test for disparate impact under the FHA,<sup>39</sup> even courts with more exacting tests acknowledge that discriminatory intent may not be necessary to find a violation.<sup>40</sup> In general, to establish a prima facie case for disparate impact, a plaintiff must demonstrate the discriminatory effect of a governmental action.<sup>41</sup> This is rebuttable by proof that the government had a legitimate regulatory interest in taking the particular action and that there was not a less discriminatory alternative.<sup>42</sup> A successful rebuttal shifts the burden back to the plaintiffs who, to prevail, must show that there was another feasible alternative.<sup>43</sup>

Because discriminatory intent may not be required to make out a prima facie case of disparate impact under the FHA, jurisdictions with racially segregated areas are vulnerable to litigation if they continue to develop and zone so as to exclude affordable housing. Development and zoning decisions will come under great scrutiny, as municipalities must prove that their policies further a legitimate “governmental interest and that no alternative would serve that interest with less discriminatory effect.”<sup>44</sup> This vulnerability may be compounded, as the FHA is to “be broadly interpreted,”<sup>45</sup> and standing to sue under the Act is conferred liberally.<sup>46</sup> Fair housing obligations are even more demanding for communities that receive a federal Community De-

---

39. See *id.* (disavowing the narrower “impact-plus” test used by the Seventh Circuit in *Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 558 F.2d 1283, 1289–90 (7th Cir. 1977), and implementing a broader “impact-only” test).

40. See *Arlington Heights*, 558 F.2d at 1290 (“We therefore hold that at least under some circumstances a violation of section 3604(a) [of the FHA] can be established by a showing of discriminatory effect without a showing of discriminatory intent. A number of courts have agreed.”); see also *Huntington Branch, NAACP*, 844 F.2d at 934 (“Under disparate impact analysis . . . [t]he plaintiff need not show that the decision complained of was made with discriminatory intent.”); accord *Resident Advisory Bd. v. Rizzo*, 564 F.2d 126, 146–48 (3d Cir. 1977); *Smith v. Anchor Bldg. Corp.*, 536 F.2d 231, 233 (8th Cir. 1976) (“Effect, not motivation, is the touchstone because a thoughtless housing practice can be as unfair to minority rights as a willful scheme.”); see generally Andrea D. Panjwani, *Beyond the Beltway: Have the Courts Created an Atmosphere of Zero Tolerance for Housing Discrimination in Their Interpretations of the Fair Housing Act?*, 6 J. AFFORDABLE HOUS. & CMTY. DEV. L. 17 (1996).

41. See Panjwani, *supra* note 40, at 18.

42. See *id.* at 20.

43. *Id.*

44. *Huntington Branch, NAACP*, 844 F.2d at 936; accord *Rizzo*, 564 F.2d 126, 148–49.

45. *Huntington Branch, NAACP*, 844 F.2d at 936.

46. *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 212 (1972).



velopment Block Grant (“CDBG”),<sup>47</sup> which requires the recipient to affirmatively further fair housing within its jurisdiction.<sup>48</sup>

To affirmatively further fair housing, a local government must conduct an analysis of impediments to fair housing choice, take actions to overcome these impediments, and record the actions taken.<sup>49</sup> A jurisdiction is instructed to address impediments to housing choice by, among other things, assuring that local laws encourage or mandate lower-income housing.<sup>50</sup> These goals and strategies are quite broad and allowing for, or creating, mixed-income housing marketed towards a diverse population certainly helps a jurisdiction fulfill its obligation.

As jurisdictions must allow for affordable housing in some way or another, local legislatures should aim to fulfill their obligations so as to have a positive impact on those who move to the community and on the community as a whole. Mixed-income housing achieves these goals while allowing a municipality to comply with the Fair Housing Act and affirmatively further fair housing.

## B. THE BENEFITS OF MIXED-INCOME HOUSING

Mixed-income developments are open to families and individuals with various income levels<sup>51</sup> and can be created through reg-

---

47. Forty-nine states and Puerto Rico receive CDBG funds. These funds are distributed by the states to municipalities with fewer than 50,000 residents and counties with fewer than 200,000 residents, while larger cities and counties receive the funds directly from the federal government. U.S. Dep’t of Hous. & Urban Dev., State Administered CDBG, <http://170.97.167.13/offices/cpd/communitydevelopment/programs/stateadmin/index.cfm> (last visited Nov. 19, 2009). For an explanation of CDBG, see U.S. Dep’t of Hous. & Urban Dev., Community Development Block Grant Program, <http://www.hud.gov/offices/cpd/communitydevelopment/programs/> (last visited Oct. 27, 2009).

48. 42 U.S.C. § 5304(b)(2) (2006) (“[T]he grantee will affirmatively further fair housing.”); see U.S. Dep’t of Hous. & Urban Dev., Promoting Fair Housing, <http://www.hud.gov/offices/ftheo/promotingfh.cfm> (last visited Nov. 2, 2009).

49. U.S. DEP’T OF HOUS. & URBAN DEV., TOP SEVEN KEYS TO AFFIRMATIVELY FURTHERING FAIR HOUSING, available at [http://www.hud.gov/offices/cpd/about/conplan/fairhousingexs/Module5\\_TopSevenAFFH.pdf](http://www.hud.gov/offices/cpd/about/conplan/fairhousingexs/Module5_TopSevenAFFH.pdf) (last visited Sept. 13, 2010).

50. *Id.*

51. See Atlanta Regional Commission, Mixed-Income Housing — Community Choices Tools, available at [http://www.atlantaregional.com/documents/mixed\\_income.pdf](http://www.atlantaregional.com/documents/mixed_income.pdf) (last visited Oct. 25, 2009); see also NEW YORK CITY DEP’T OF HOUS. PRESERVATION AND DEV., PROGRESS REPORT 2005 7 (2006), available at <http://www.nyc.gov/html/hpd/downloads/pdf/2005-annual-report.pdf> (describing New York City’s 50/30/20 mixed-income housing program, which combines market-rate, middle-income, and low-income units within a single development).



ulation,<sup>52</sup> developer incentives, or a combination of the two.<sup>53</sup> Such developments are especially advantageous in segregated, low-poverty, suburban areas that lack affordable housing, as they can foster development-wide and community-wide socioeconomic and racial integration.

The problems with segregation and the advantages of living in diverse communities are well documented and recognized by the Supreme Court.<sup>54</sup> While mixed-income housing does not guarantee increased racial diversity within a low-poverty community, it certainly increases the possibility for community integration. On average, African American and Hispanic households have lower incomes than white households,<sup>55</sup> and even where income is the same, white households are more likely to be located in low-poverty areas.<sup>56</sup> To counteract these issues, any mixed-income development should be accompanied by a targeted “affirmative marketing” plan.<sup>57</sup> Because of the undeniable correlation between race and income in the United States, building mixed-income developments in low-poverty areas should engender opportunities for more racially integrated, diverse communities.<sup>58</sup> In contrast,

---

52. For example, Montgomery County, Maryland, has inclusionary zoning legislation requiring 12.5–15 percent of any development over fifty units to be affordable. Roisman, *supra* note 11, at 78.

53. Alex Schwartz & Kian Tajbakhsh, *Mixed-Income Housing: Unanswered Questions*, 3 CITYSCAPE: J. OF POL'Y DEV. & RES. 71, 73, 87–91 (1997), available at <http://www.huduser.org/periodicals/cityscape/vol3num2/current.html>.

54. In *Trafficante v. Metropolitan Life Insurance Co.*, the Supreme Court held that “the loss of important benefits from interracial associations” is an injury that can grant standing under the Fair Housing Act. 409 U.S. 205, 210 (1972).

55. See Press Release, U.S. Census Bureau, Household Income Rises, Poverty Rate Unchanged, Number of Uninsured Down (Aug. 26, 2008), available at [http://www.census.gov/newsroom/releases/archives/income\\_wealth/cb08-129.html](http://www.census.gov/newsroom/releases/archives/income_wealth/cb08-129.html) (“Among the race groups and Hispanics, black households had the lowest median income in 2007 (\$33,916). This compares to the median of \$54,920 for non-Hispanic white households. Asian households had the highest median income (\$66,103). The median income for Hispanic households was \$38,679.”).

56. HOUK, BLAKE & FREIBERG, *supra* note 5, at 1.

57. For an explanation of affirmative marketing, see U.S. Dep't of Hous. & Urban Dev., Affirmative Marketing, <http://www.disasterhousing.gov/offices/cpd/affordablehousing/training/web/crosscutting/equalaccess/marketing.cfm> (last visited Nov. 2, 2009) (discussing affirmative marketing in the context of HOME PJ). See also Florence Wagman Roisman, *The Role of the State, the Necessity of Race-Conscious Remedies, and Other Lessons from the Mount Laurel Study*, 27 SETON HALL L. REV. 1386, 1399–1403 (1997).

58. It is oft-argued that “economics cannot be used as a proxy for race, [and] that economic remedies cannot be used to solve racial problems . . . [or] promote racial integration in the suburbs.” Roisman, *supra* note 11, at 72. Although the mixed-income devel-

simply placing a low-income minority-concentrated development within a wealthy suburb could create racial isolation and segregation within a community. Living side-by-side in a mixed-income development allows diverse tenants in affordable and market-rate units to have more opportunities for interaction, which can produce important social benefits.

According to the sociologist William Julius Wilson, those who live in concentrated poverty experience social isolation and are deprived of the same kind of role models available to those who live in other communities.<sup>59</sup> Mixed-income developments will likely contain residents with a wide variety of jobs yielding more working role models than a concentrated low-income development.<sup>60</sup> This should increase the opportunity for networking, which can be important for helping low-income residents to learn about employment and other opportunities. It has been argued that, despite socioeconomic differences, residents can form relationships through common hobbies or political interests<sup>61</sup> which might not be apparent without physical proximity.<sup>62</sup> These relationships may lead to positive externalities for lower income residents including increased job opportunities.<sup>63</sup>

---

opments advocated in this Note are on their face race-neutral, mixed-income developments can be used in conjunction with affirmative marketing and administrative oversight assuring the absence of discrimination or steering. See Myron Orfield, *Land Use and Housing Policies to Reduce Concentrated Poverty and Racial Segregation*, 33 *FORDHAM URB. L.J.* 877, 918 (2006). There is, of course, the chance that poor whites will move into the newly created mixed-income housing. Although in such a situation the goal of racial integration will not be reached, the government merely has the power to set up a framework and the opportunity to allow for integration, it cannot mandate or force integration. For this reason, it is recommended that any mixed-income housing program be accompanied with an affirmative marketing program aimed at minority-concentrated neighborhoods.

59. Cara Hendrickson, *Racial Desegregation and Income Deconcentration in Public Housing*, 9 *GEO. J. ON POVERTY L. & POL'Y* 35, 74 (2002). See generally WILLIAM J. WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* 55–62 (University of Chicago 1987).

60. See Hendrickson, *supra* note 59.

61. See Terry A.C. Gray, *De-Concentrating Poverty and Promoting Mixed-Income Communities in Public Housing: The Quality Housing and Work Responsibility Act of 1998*, 11 *STAN. L. & POL'Y REV.* 173, 183 (1999).

62. Research on the effects of physical proximity is inconclusive. Schwartz & Tajbakhsh, *supra* note 53, at 74. Studies, however, have shown that low-income tenants in mixed-income developments do interact with their neighbors. *Id.* at 78.

63. *Id.* Not all scholars agree that increased diversity is good for communities. See Robert D. Putnam, 2006 Johan Skytte Prize Lecture, *E Pluribus Unum: Diversity and Community in the Twenty-First Century*, 30 *SCANDINAVIAN POL. STUD.* 137 (2007) (arguing from a statistical analysis of data gathered in the United States that ethnically diverse

Mixed-income developments should also provide lower-income tenants with a better place to live. Studies have shown that low-income tenants in mixed-income developments are more satisfied than similarly situated tenants in non-mixed-income developments.<sup>64</sup> The satisfaction may be unrelated to the income mixing, but is likely at least tangentially related. To attract moderate and higher income tenants, a mixed-income development must include “plus-factors” such as a popular location and well-constructed and maintained premises with ample amenities.<sup>65</sup> These plus-factors probably do not exist in low-income developments. Developers building solely for low-income tenants do not need to spend as much money to attract residents — low-income tenants have less housing choice overall. Without the rent from higher income tenants, and potential government subsidies, these plus-factors would not be economically feasible in low-income developments.

### III. NEW JERSEY’S INABILITY TO FOSTER INTEGRATION AND MIXED-INCOME HOUSING

Government holds the key to providing communities with integrative mixed-income housing. Before crafting fair housing legislation, a legislature should examine how and why New Jersey failed to achieve its goals of creating integrated, affordable housing in low-poverty areas so as to avoid the same shortcomings.

#### A. LITIGATION AND LEGISLATION HISTORY

In *Southern Burlington County NAACP v. Township of Mt. Laurel*, a group of poor African Americans and Hispanics<sup>66</sup> alleged

---

neighborhoods yield less trust, altruism, friendship, and community cooperation among community members). Regardless, the *Mt. Laurel* cases and the Westchester Settlement show that diversity is an increasingly important governmental goal, and effective mechanisms for enhancing it are vital for communities that wish to develop in compliance with federal and state regulations.

64. Schwartz & Tajbakhsh, *supra* note 53, at 80.

65. Schwartz & Tajbakhsh, *supra* note 53, at 75, 77, 80. Renting out high-quality units in highly demanded locations at below-market rents is certainly an expensive endeavor which individuals, either developers or market-rate tenants, will likely be unwilling to subsidize on their own. As is the case in Westchester, developing integrative mixed-income housing will likely require substantial government subsidies.

66. 336 A.2d 713, 717 (N.J. 1975).

that land use regulations in Mt. Laurel, New Jersey, unlawfully excluded them from living in the township.<sup>67</sup> In this landmark decision, the Supreme Court of New Jersey, for the first time, struck down certain local zoning measures, holding that the ordinances unlawfully excluded certain citizens from living in Mt. Laurel.<sup>68</sup> The court proclaimed these ordinances contrary to the “general welfare”<sup>69</sup> of the state in violation of the New Jersey State Constitution.<sup>70</sup>

The court in *Mt. Laurel* held that a developing municipality must “make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live there . . . including those of low and moderate income.”<sup>71</sup> This opportunity was to be accomplished through land-use regulations aimed at affording the opportunity for a “fair share of the present and prospective regional need” of affordable housing to be built within each developing municipality.<sup>72</sup>

Municipalities failed to implement the decree effectively, leading to further litigation and, eventually, a judicially imposed remedy.<sup>73</sup> In *Mt. Laurel II*, the New Jersey Supreme Court held that municipalities must implement affirmative devices such as density bonuses<sup>74</sup> to induce developers to construct affordable housing.<sup>75</sup> The court crafted a “builder’s remedy,” allowing devel-

---

67. *Id.* at 716.

68. The challenged zoning ordinances included provisions requiring one-family detached homes, minimum lot sizes, minimum lot frontage, and maximum building size. *Id.* at 719–22.

69. *Id.* at 725.

70. *Id.* (“It is required that, affirmatively, a zoning regulation, like any police power enactment, must promote public health, safety, morals or the general welfare. (The last term seems broad enough to encompass the others.) Conversely, a zoning enactment which is contrary to the general welfare is invalid.”); *see also* N.J. CONST. art. 1, ¶ 1.

71. *Mt. Laurel*, 336 A.2d at 731–32.

72. *Id.* at 724. The court later discussed how fair share might be calculated. *Id.* at 746–47.

73. *S. Burlington County NAACP v. Twp. of Mt. Laurel (Mt. Laurel II)*, 456 A.2d 390, 410 (N.J. 1983).

74. A density bonus is a mechanism by which a municipality allows a developer to contravene density-based zoning regulations in return for a preferred land use, e.g. construction of affordable housing. *See, e.g.*, COUNTY OF SONOMA PERMIT & RES. MGMT. DEPT., DENSITY BONUS PROGRAM, available at <http://www.sonoma-county.org/CDC/pdf/DbBrochure.pdf> (last visited Nov. 6, 2009).

75. *Mt. Laurel II*, 456 A.2d at 419.

opers to challenge local zoning ordinances<sup>76</sup> and giving lower courts the authority to rework the ordinances so as to assure compliance with the court's order.<sup>77</sup>

Giving the courts this equitable power was problematic, however, as they began to act like quasi-administrative agencies engaging in complex economic analysis to determine the viability of housing plans.<sup>78</sup> Recognizing these problems, the New Jersey State Legislature enacted the New Jersey Fair Housing Act,<sup>79</sup> which requires municipalities to allow for the development of their "fair share" of affordable housing.<sup>80</sup>

#### B. THE IMPACT OF *MT. LAUREL* AND THE NEW JERSEY FAIR HOUSING ACT

Although *Mt. Laurel* and the NJFHA were well intentioned, many analysts believe they were unsuccessful in addressing the need for fair housing in New Jersey.<sup>81</sup> As of 2002, fewer units had been built than were deemed necessary by the New Jersey Council on Affordable Housing.<sup>82</sup> Additionally, many of the units that were built ended up in urban areas rather than the intended suburban areas<sup>83</sup> and thus did not provide many poor people from minority-dense cities with housing in the mostly white suburbs.<sup>84</sup>

The NJFHA's allowance of Regional Contribution Agreements ("RCAs") permitted wealthy suburban municipalities to stifle integration within New Jersey.<sup>85</sup> RCAs enabled a municipality to

---

76. *Id.* at 452–53.

77. *Id.*

78. See Schuck, *supra* note 3, at 313.

79. Fair Housing Act, N.J. STAT. ANN. §§ 52:27D-301–52:27D-329 (West 2009).

80. N.J. STAT. ANN. § 52:27D-309 (West 2009).

81. See, e.g., Schuck, *supra* note 3, at 314 n.109.

82. *Id.* at 314–15. The New Jersey Coalition for Affordable Housing is a state agency created by the NJFHA which has various responsibilities including assigning, calculating, adjusting, certifying, and de-certifying municipalities' fair shares. *Id.* at 313 (citing N.J. STAT. ANN. § 52:27D-305); see also N.J. Dep't of Community Affairs, Council on Affordable Housing, available at <http://www.state.nj.us/dca/affiliates/coah/index.html> (last visited July 26, 2010).

83. Schuck, *supra* note 3, at 314–15.

84. See *id.* at 315–16; Orfield, *supra* note 58, at 912; see generally Naomi Bailin Wish & Stephen Eisdorfer, *The Impact of Mount Laurel Initiatives: An Analysis of the Characteristics of Applicants and Occupants*, 27 SETON HALL L. REV. 1268 (1997) (providing extensive analysis of a study of the effects of *Mt. Laurel*).

85. N.J. STAT. ANN. § 52:27D-312.

“transfer . . . up to 50 percent of its fair share to another municipality within its housing region.”<sup>86</sup> As a result, instead of providing for their “fair share” of affordable housing, wealthy, predominantly white municipalities paid poorer, minority-concentrated municipalities to build additional affordable housing.<sup>87</sup> RCAs permitted New Jersey municipalities to circumvent the original intent of *Mt. Laurel* and impeded the creation of “truly integrated and balanced living patterns.”<sup>88</sup> Additionally, RCAs frustrated New Jersey’s own legislative goals, as expressed in the NJFHA.<sup>89</sup>

---

86. N.J. STAT. ANN. § 52:27D-312(a).

87. Within the first fifteen years of the enactment of the NJFHA, RCAs were used to transfer 7,396 units of affordable housing from suburban to urban areas. Schuck, *supra* note 3, at 315. See also N.J. HOUS. & MORTGAGE FIN. AGENCY, HMFA AFFORDABLE FAMILY HOUSING LIST, available at <http://www.state.nj.us/dca/hmfa/consu/renters/afford/familyhousing.pdf> (last viewed Oct. 23, 2009) (showing most of New Jersey’s available affordable rental housing in the urban areas of Camden, Newark, Patterson, Jersey City, Trenton, and Atlantic City).

88. 114 CONG. REC. 3422 (1968) (statement of Senator Mondale, the author of the federal Fair Housing Act).

89. In enacting the N.J. Fair Housing Act, the legislature expressly sought to accomplish several goals:

a. The New Jersey Supreme Court, through its rulings in *South Burlington County NAACP v. Mount Laurel* and *South Burlington County NAACP v. Mount Laurel [II]* has determined that every municipality in a growth area has a constitutional obligation to provide through its land use regulations a realistic opportunity for a fair share of its region’s present and prospective needs for housing for low and moderate income families.

....

c. The interest of all citizens, including low and moderate income families in need of affordable housing, . . . would be best served by a comprehensive planning and implementation response to this constitutional obligation.

d. There are a number of essential ingredients to a comprehensive planning and implementation response, including the establishment of reasonable fair share housing guidelines and standards, the initial determination of fair share by officials at the municipal level and the preparation of a municipal housing element, State review of the local fair share study and housing element, and continuous State funding for low and moderate income housing to replace the federal housing subsidy programs which have been almost completely eliminated.

....

h. The Supreme Court of New Jersey in its *Mount Laurel* decisions demands that municipal land use regulations affirmatively afford a reasonable opportunity for a variety and choice of housing including low and moderate cost housing, to meet the needs of people desiring to live there. While provision for the actual construction of that housing by municipalities is not required, they are encouraged but not mandated to expend their own resources to help provide low and moderate income housing.

N.J. STAT. ANN. § 52:27D-302 (West 1986) (internal citations omitted).



In sum, RCAs stunted the furtherance of fair housing within New Jersey and hindered integration.<sup>90</sup>

According to a study of the families affected by *Mt. Laurel*, white households in New Jersey tended to apply for affordable housing only when it was available in the suburbs, whereas African American and Hispanic households applied for the housing regardless of its location — even if it meant moving from suburbs to cities.<sup>91</sup> As the authors of the study stated, “[i]t may be that Whites apply for . . . housing to secure a more favorable location, but that Blacks and Latinos, who have fewer choices, apply for . . . housing to secure better housing, wherever it may be found.”<sup>92</sup> From these findings, it seems that if affordable housing were made available equally in suburbs and cities, there would be greater opportunity for integration.

The New Jersey State Legislature eventually realized that RCAs were thwarting its plans for integration and dispersed affordable housing. As a result, in 2008, the legislature decided that RCA “fair share” transfers would no longer be acceptable.<sup>93</sup>

---

90. See Wish & Eisdorfer, *supra* note 84, at 1302–03 (“Another way of summarizing the movement of the 2675 households in the database for which previous residence and race or ethnicity is known is the following: 182 families, or only 7 percent, moved from urban areas to suburbia. Of those 182 households, 121 (66 percent) were White, 42 (23 percent) were Black, 3 (2 percent) were Latino, and 16 (9 percent) were others. A total of 30 families who had previously lived in suburbia moved to urban areas, none of them White, 27 (90 percent) Black, 1 (3 percent) Latino, and 2 (6 percent) others. The net effect of this pattern of movement is that, while 81 percent of all suburban AHMS-administered units are occupied by White households, 85 percent of all urban AHMS-administered units are occupied by Black or Latino households.”). Many of those who benefited from the NJFHA had “high socioeconomic status but [were] at a low point in their lifetime earning potential,” such as divorcees, graduate students, and the retired. Schuck, *supra* note 3, at 315 (internal quotation marks omitted). Additionally, “judicial intervention and the [NJFHA] have resulted in very few urban residents moving to suburban areas. In fact, of the 2675 cases for which we know both current and previous residence as well as race and ethnicity, 1248, 47 percent, previously lived in urban areas, and only 15 percent (182 households) of these previously urban households have moved to housing in suburban municipalities.” Wish & Eisdorfer, *supra* note 84, at 1303; see also J. Mark Powell, Note, *Fair Housing in the United States: A Legal Response to Municipal Intransigence*, 1997 U. ILL. L. REV. 279, 298 (1997); James J. Hartnett, Note, *Affordable Housing, Exclusionary Zoning, and American Apartheid: Using Title VII to Foster Statewide Racial Integration*, 68 N.Y.U. L. REV. 89, 118 (1993).

91. Wish & Eisdorfer, *supra* note 84, at 1302–03.

92. *Id.* at 1303.

93. N.J. STAT. ANN. § 52:27D-302(j) (West 2009) (“The Legislature finds that the use of regional contribution agreements, which permits municipalities to transfer a certain portion of their fair share housing obligation outside of the municipal borders, should no longer be utilized as a mechanism for the creation of affordable housing by the council.”);



The legislature found that RCAs allowed municipalities to “duck their affordable housing responsibilities,” essentially permitting wealthy municipalities to maintain the pre-*Mt. Laurel* status quo.<sup>94</sup> Although the legislature should be commended for ending RCAs despite their continued political support,<sup>95</sup> the use of RCAs delayed progress towards integration for more than twenty years, while concentrating poverty and decreasing housing choice.

### C. MIXED-INCOME HOUSING AND THE NEW JERSEY FAIR HOUSING ACT

The current enactment of the NJFHA fails to encourage mixed-income housing. While the NJFHA gives incentives to builders to construct low-income housing units through tax credits<sup>96</sup> and other funding,<sup>97</sup> these incentives are not absolute for mixed-income developments. The affordable portion of any “fair share” housing development will yield tax credit or Balanced Housing funding<sup>98</sup> only if the developer can “conclusively demonstrate the market rate residential or commercial units are unable to internally subsidize the affordable units, and the affordable units are developed contemporaneously with the commercial or market rate residential units.”<sup>99</sup>

---

N.J. STAT. ANN. § 52:27D-312(g) (“No consideration shall be given to any regional contribution agreement for which the council did not complete its review and grant approval prior to the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.). On or after the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.), no regional contribution agreement shall be entered into by a municipality, or approved by the council or the court.”).

94. Press Release, N.J. General Assembly, Roberts Introduces Landmark Affordable Housing Reform Legislation (Mar. 13, 2008), available at <http://www.assemblydems.com/pdf/0809Session/prroberts031308.pdf>.

95. The New Jersey Senate Republican Plan for COAH Reform, <http://www.senatenj.com/coah/introduction.php> (last visited Oct. 23, 2009).

96. N.J. Hous. & Mortgage Fin. Agency, Low Income Housing Tax Credits, <http://www.state.nj.us/dca/hmfa/biz/devel/lowinc/index.html> (last visited Sept. 13, 2010) (“The credit, a dollar for dollar reduction in federal tax liability, acts as a catalyst to attract private investment into the historically underserved affordable housing market.”).

97. New Jersey’s Balanced Housing fund is a statewide trust fund appropriated for affordable housing purposes. See N.J. DEP’T OF CMTY. AFFAIRS, A GUIDE TO AFFORDABLE HOUSING FUNDING SOURCES 6 (2008), available at <http://www.state.nj.us/dca/affiliates/coah/resources/planresources/fundguide.pdf>.

98. *Id.*

99. N.J. STAT. ANN. § 52:27D-321.1 (West 2009). An internal subsidy occurs when the loss in rent paid by tenants in affordable units is absorbed by charging the other tenants a higher than market-rate rent. Apparently, the legislature intends for a developer to incur a loss on affordable units before it can receive tax credits.

In New Jersey, the state government does not build affordable housing;<sup>100</sup> as a result developer incentives take on an important role. However, by denying developers tax credits for mixed-income developments where market-rate units subsidize the affordable units, the NJFHA discourages certain mixed-income developments. If a developer can build efficiently and price units in a manner that covers the costs of the affordable units with market-rate units, this should be encouraged. The NJFHA creates a point at which a developer is likely to forgo including any affordable units in a development: once market-rate units would subsidize affordable units, there is no incentive to build any affordable units whatsoever. Instead of this bright-line policy, New Jersey should offer a sliding scale of benefits depending on the number or proportion of affordable units within a development. This would encourage developers to make more units affordable but would also incentivize making only a few units affordable where this is the only possibility.

Another problem with eligibility for tax credits is the requirement that affordable units be built contemporaneously with market-rate units.<sup>101</sup> If a developer owns a market-rate building and wants to receive a tax benefit by making some units affordable, this should be encouraged. Conversion of an existing unit is an easier, less costly alternative to new construction. Since New Jersey is a densely developed state<sup>102</sup> which has allowed the use of RCAs to transfer affordable housing obligations, it is likely that some wealthy municipalities in New Jersey lack affordable units or space for new development. A logical way to create affordable housing within this framework is to encourage owners of market-rate developments to make existing units affordable, but conversions are not encouraged in the NJFHA. Overall, this section of the NJFHA<sup>103</sup> provides a barrier to mixed-income housing as a

---

100. Rather, New Jersey uses a “developer-led” approach. Arthur C. Nelson & Susan M. Wachter, 12 *J. AFFORDABLE HOUS. & CMTY. DEV. L.* 173, 181 (2003).

101. N.J. STAT. ANN. § 52:27D-321.1.

102. U.S. Census Bureau, Map — Population Density for States and Puerto Rico: July 1, 2008 (2008), <http://www.census.gov/popest/gallery/maps/st-popdens-map2008.pdf>. Based on the U.S. Census Bureau’s 2008 estimates, New Jersey has the highest population density in the United States, at 1181 people per square mile. U.S. Census Bureau, Table Associated with July 1, 2008, Population Density Map, <http://www.census.gov/popest/gallery/maps/state2008.xls> (last visited Sept. 12, 2010).

103. N.J. STAT. ANN. § 52:27D-321.1.

fair housing solution in low-poverty communities. These impediments have not stopped motivated New Jersey developers and non-profits from developing mixed-income housing,<sup>104</sup> but they do nothing to increase the prevalence of such housing in the state.<sup>105</sup>

Without proper safeguards or incentives for assuring that integrative affordable housing is developed in low-poverty communities, *Mt. Laurel* and the NJFHA do not do enough to further fair housing policies. *Mt. Laurel* remains important for its groundbreaking attempt to create affordable housing in low-poverty suburbs; however, the methods used for realizing its goals have been largely unsuccessful. Faced with a similar need to create affordable housing in low-poverty suburban areas, Westchester County should take note of the shortcomings in New Jersey as it creates an affordable housing plan.

#### IV. DEVELOPING INTEGRATIVE MIXED-INCOME HOUSING IN WESTCHESTER COUNTY

Westchester County is one of the wealthiest counties in New York and in the United States.<sup>106</sup> The County has avoided comprehensively embracing affordable housing for decades.<sup>107</sup> Due to the settlement of an action brought by a local non-profit, West-

---

104. The Fair Share Housing Development Corporation, a non-profit developer, built a mixed-income development in Mt. Laurel, New Jersey. The 140-unit apartment complex, opened in 2001, is an entirely affordable development serving a range of renters with different incomes, ranging from ten percent AMI to eighty percent AMI. Developments such as these, which do not have market-rate units and are developed all at once, run no risk of disqualification for funding or tax credits. HOUK, BLAKE & FREIBERG, *supra* note 5, at 57–59. See also Alan S. Oserscotch, *Perspectives: After Mount Laurel; Reshaping New Jersey Housing Patterns*, N.Y. TIMES, Apr. 2, 1989, at 9.

105. Cf. Jason McCann, *Pushing Growth Share: Can Inclusionary Zoning Fix What is Broken with New Jersey's Mount Laurel Doctrine*, 59 RUTGERS L. REV. 191, 215–16 (2006) (“For example, Princeton Township has subsidized a 280-unit mixed income development called Griggs Farm as a way to meet its past Mt. Laurel obligation. Of the 280 units constructed in cooperation with a private developer, 50 percent are designated affordable units. In order to construct the project, Princeton had to incur about \$7 million in debt to help finance the affordable units. However, a Princeton official has hailed the project for its diverse sense of community and efficient utilization of land.”).

106. See Bureau of Economic Analysis, *Bearfacts: Westchester County*, <http://www.bea.gov/regional/bearfacts/action.cfm?fips=36119&areatype=36119> (last visited June 26, 2010).

107. See Matthews, *supra* note 7.

chester County is now being forced to address its affordable housing issue.<sup>108</sup>

### A. LITIGATION HISTORY

In 2006, the Anti-Discrimination Center of Metro New York brought an action<sup>109</sup> under the False Claims Act<sup>110</sup> against Westchester County. The Anti-Discrimination Center alleged that the County “falsely certified that it was in compliance with its obligation to conduct an analysis of impediments to fair housing choice and affirmatively to further fair housing, which it was required to do by statute<sup>111</sup> to receive Community Development Block Grant and other federal funds [totaling \$45 million].”<sup>112</sup> Westchester denied these allegations, claiming that it affirmatively furthered fair housing in its consortium municipalities<sup>113</sup> by analyzing housing needs based on income, and that under the FHA, it was unnecessary to analyze housing impediments based on race.<sup>114</sup> The federal district court disagreed with Westchester, holding that “when a grantee certifies that the grant will be conducted and administered in conformity with . . . the Fair Housing Act, and certifies that it will affirmatively further fair housing, the grantee must consider the existence and impact of race discrimination on housing opportunities and choice in its jurisdiction.”<sup>115</sup>

---

108. See *infra* Part IV.A.

109. United States *ex rel.* Anti-Discrimination Ctr. of Metro N.Y., Inc. v. Westchester County, 495 F. Supp. 2d 375, 377–78 (S.D.N.Y. 2007).

110. 31 U.S.C. § 3729-3733 (2006).

111. The court alludes to the Housing and Community Development Act, 42 U.S.C. § 5304(b)(2) (2006) (“[T]he grantee will affirmatively further fair housing.”).

112. *Anti-Discrimination Ctr.*, 495 F. Supp. 2d at 377.

113. See *supra* note 27 and accompanying text. The consortium municipalities eligible for housing under the Settlement are Ardsley, Bedford, Briarcliff Manor, Bronxville, Buchanan, Cortlandt, Croton-on-Hudson, Dobbs Ferry, Eastchester, Harrison, Hastings-on-Hudson, Irvington, Larchmont, Lewisboro, Mamaroneck Town, Mt. Pleasant, New Castle, North Castle, North Salem, Ossining Town, Pelham, Pelham Manor, Pleasantville, Pound Ridge, Rye, Rye Brook, Scarsdale, Somers, Tarrytown, Tuckahoe, and Yorktown (“settlement municipalities”). WESTCHESTER COUNTY, YOU’VE HEARD ABOUT THE HOUSING SETTLEMENT . . . NOW, GET THE FACTS, available at [http://www.newcastlenow.org/images/articles/Housing\\_-\\_Brochure\\_-\\_3-panel.pdf](http://www.newcastlenow.org/images/articles/Housing_-_Brochure_-_3-panel.pdf) (last visited Sept. 12, 2010).

114. *Anti-Discrimination Ctr.*, 495 F. Supp. 2d at 377–78, 383–84.

115. *Id.* at 387 (internal quotation marks omitted).

Although Westchester County officials originally made light of the lawsuit, labeling it as “garbage,”<sup>116</sup> the court denied the County’s motion to dismiss,<sup>117</sup> denied the County’s motion for summary judgment, and granted summary judgment in part against the County.<sup>118</sup> Shortly after its unsuccessful attempts to dispose of the litigation, Westchester County entered into a settlement with the United States<sup>119</sup> and the Anti-Discrimination Center in August 2009.<sup>120</sup> The Westchester County Board of Legislators approved the Settlement about a month later.<sup>121</sup>

## B. THE SETTLEMENT

In the Settlement, Westchester County agreed to take into account regional housing needs when developing fair housing policies and to take legal action against municipalities that refused to comply with its policies.<sup>122</sup> The County paid \$21,600,000 to the U.S. Department of Housing and Urban Development (“HUD”) to be used “for the development of new affordable housing units that will [affirmatively further fair housing] in the County”;<sup>123</sup> paid \$8,400,000 to the United States to settle the False Claims Act allegation;<sup>124</sup> and paid \$2,500,000 in attorney’s fees.<sup>125</sup> The money paid to HUD and the United States is to be used from “2009 through 2014 for land acquisition, infrastructure improvement,

---

116. Ford Fessenden, *County Sued Over Lack of Affordable Homes*, N.Y. TIMES, Feb. 4, 2007, at 5.

117. *Anti-Discrimination Ctr.*, 495 F. Supp. 2d at 389.

118. *United States ex rel. Anti-Discrimination Ctr. of Metro N.Y., Inc. v. Westchester County*, 668 F. Supp. 2d 548 (S.D.N.Y. 2009), *motion to certify interlocutory appeal denied*, No. 06 Civ. 2860 (DLC), 2009 WL 970866 (S.D.N.Y. Apr. 9, 2009).

119. The United States, as a matter of right, intervened in the action in early 2009. *Complaint-in-Intervention of the United States, United States ex rel. Anti-Discrimination Ctr. of Metro N.Y., Inc. v. Westchester County*, No. 06 Civ. 2860 (DLC), 2009 WL 2899692 (S.D.N.Y. Aug. 10, 2009).

120. Settlement, *supra* note 28.

121. Joshua Brustein, *Westchester Board Approves a Housing-Integration Pact*, N.Y. TIMES, Sept. 23, 2009, at A29.

122. Settlement, *supra* note 28, at 2.

123. *Id.* at 4.

124. *Id.* at 5. The payment to the United States was discounted, with a credit given to the County based on its payments to HUD. *Id.*

125. *Id.* Additionally, \$7,500,000 was paid to the Anti-Discrimination Center in a separate agreement. See *Anti-Discrimination Ctr. of Metro N.Y., Inc., Fact Sheet on Key Elements of the Settlement*, available at <http://www.antibiaslaw.com/westchester-false-claims-case/fact-sheet-key-elements-settlement> (last visited Dec. 30, 2009).

construction, [and housing] acquisition . . . [to aid in the] development of new affordable housing units that [affirmatively further fair housing].”<sup>126</sup>

A majority of the funds will go towards developing at least 750 new affordable housing units.<sup>127</sup> Six hundred thirty of these units are to be built in municipalities which, according to the 2000 Census, have less than 3 percent African American population and less than 7 percent Hispanic population, while sixty may be built in municipalities with less than 7 percent African American population and less than 10 percent Hispanic population, and sixty more may be built in municipalities with less than 14 percent African American population and less than 16 percent Hispanic population.<sup>128</sup>

At least 50 percent of the units are to be rental units, of which at least 20 percent are to be occupied by households with incomes at or below 50 percent AMI, with the balance going to households with incomes at or below 65 percent AMI.<sup>129</sup> The remaining units are to be home-ownership units occupied by households with incomes at or below 80 percent AMI.<sup>130</sup> No more than 25 percent of the total units may be “achieved through the acquisition of existing housing units.”<sup>131</sup>

The Settlement takes further steps to increase integration in Westchester’s consortium municipalities. In addition to placing the units in municipalities with few African American and Hispanic residents, the County is required to affirmatively market the new units “in geographic areas with large non-white populations”; advertise the rights of all persons to fair housing; promote the available avenues to redress housing discrimination; and collect data to identify impediments to fair housing based on race.<sup>132</sup> Additionally, the County is to adopt an official policy stating that the elimination of discrimination and segregation are official County goals and that the location of affordable housing is central to reducing residential segregation.<sup>133</sup> Furthermore, the

---

126. Settlement, *supra* note 28, at 6.

127. *Id.*

128. *Id.* at 6–8.

129. *Id.* at 8. For an extended discussion of AMI, see discussion *supra* note 7.

130. Settlement, *supra* note 28, at 9.

131. *Id.* at 10.

132. *Id.* at 26–27.

133. *Id.* at 25.

County is required to create a campaign to broaden support for fair housing which, among other things, “specifically addresses the benefits of mixed-income housing.”<sup>134</sup>

The Settlement further requires the appointment of a “Monitor” who has important equitable powers.<sup>135</sup> The Monitor can modify certain parts of the Settlement, including the manner in which funds are to be used, the AMI requirements for the 750 units, and the proportion of units that will be for rent.<sup>136</sup> To realize all of these obligations, the County will create a “plan setting forth with specificity the manner in which the County plans to implement the provisions of [the Settlement].”<sup>137</sup>

### C. THE VIABILITY OF MIXED-INCOME HOUSING IN WESTCHESTER COUNTY

In an article examining the usefulness of mixed-income housing, two professors at the New School for Social Research, Alex Schwartz and Kian Tajbakhsh, lay out factors that they believe determine whether mixed-income housing will be successful in a particular community.<sup>138</sup> The authors argue that the most difficult part of creating mixed-income developments is attracting market-rate or higher-AMI tenants. For a mixed-income development to attract wealthier tenants, certain preconditions are necessary: a desirable location, facilities that are well designed and maintained, high-quality amenities, and good management.<sup>139</sup> Under these criteria, Westchester’s consortium municipalities should provide good locations for mixed-income developments.

The desirability of living in a given location is difficult to measure; however, many of Westchester’s consortium municipalities appear to be desirable. According to *U.S. News & World Report*, eight of the consortium municipalities have public high schools that rank in the top 100 statewide, including four high

---

134. *Id.* at 27.

135. *Id.* at 11–19.

136. *Id.* at 15–17.

137. *Id.* at 19.

138. Schwartz & Tajbakhsh, *supra* note 53. The article offers as a definition of “success” high occupancy and low turnover rates for all units. *Id.* at 79.

139. *Id.* at 75.



schools that rank in the top 100 nationally.<sup>140</sup> The higher average home costs in some of these municipalities, as compared to surrounding municipalities, may also indicate desirability.<sup>141</sup> Westchester borders New York City and has extensive public transportation, making it easy to take advantage of work or social opportunities throughout New York City.<sup>142</sup> At worst, it does not appear that locating mixed-income developments in Westchester's consortium municipalities will deter potential residents.

Only the county and the municipalities that oversee the construction of a development can make certain that it is well built and well maintained. Assuredly, even those opposed to affordable housing in their neighborhoods would prefer that any developments that are built be aesthetically pleasing and kept in good condition. This community pressure should ensure that mixed-income developments in the county are of an acceptable quality. Additionally, converting existing market-rate units into affordable units can help ensure that affordable housing will be aesthetically acceptable in the community.<sup>143</sup>

As for the developments themselves, the market effects of a reluctance to live alongside poor ethnic minorities could, ironically,

---

140. Blind Brook High School, Bronxville High School, Byram Hills High School, Edgemont Junior-Senior High School, Hastings High School, Horace Greeley High School, Rye High School, and Scarsdale High School are all considered by *U.S. News* to be among New York's top 100 high schools. U.S. News & World Report, *Best High Schools — New York*, available at [http://www.usnews.com/listings/high-schools/new\\_york](http://www.usnews.com/listings/high-schools/new_york) (last visited Oct. 30, 2009). *U.S. News* additionally ranks Blind Brook as the 87th best high school in the nation; Edgemont as the 51st best high school in the nation; Horace Greeley as the 46th best high school in the nation; and Scarsdale as the 92nd best high school in the nation. *Id.*; 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, 411 (2006) (indicating that quality schools may attract "professional families" to mixed-income developments).

141. Compare Yahoo Real Estate, Mt. Vernon Neighborhood Profile, [http://realestate.yahoo.com/New\\_York/Mt\\_Vernon/neighborhoods](http://realestate.yahoo.com/New_York/Mt_Vernon/neighborhoods) (last visited Oct. 30, 2009) (median home value in Mt. Vernon is \$417,276), with Yahoo Real Estate, Scarsdale Neighborhood Profile, [http://realestate.yahoo.com/New\\_York/Scarsdale/neighborhoods](http://realestate.yahoo.com/New_York/Scarsdale/neighborhoods) (last visited Oct. 30, 2009) (median home value in Scarsdale is \$1,305,000). Mt. Vernon and Scarsdale are fewer than 10 miles apart.

142. See Westchester County, Mapping Westchester County, <http://giswww.westchestergov.com/gismap/viewer.aspx> (last visited Oct. 30, 2009); Metropolitan Transit Authority of N.Y., MTA Metro-North Railroad Map, <http://www.mta.info/mnr/html/mnrmap.htm> (last visited Oct. 30, 2009); Bee-Line Bus, Westchester County Bee-Line Bus System Map, <http://www.beelinebus.com/> (last visited Oct. 30, 2009) (follow "Bee-Line System Map" hyperlink).

143. Settlement, *supra* note 28, at 10.

help fill market-rate units in a mixed-income development. If there is a stigma<sup>144</sup> associated with living in a mixed-income development, this should depress the price of the market-rate units. Those who can afford to live elsewhere will likely do so, thus lowering demand for the market-rate units. The lowered demand will decrease the price of these units relative to other market-rate units, thus creating a new price level of housing that may not have previously existed. This could create an opportunity for households, not poor enough to be targeted by affordable housing statutes and regulations but not wealthy enough to be living in Westchester, to move into the County. These households will likely fill the market-rate units in mixed-income developments, as these units could provide these middle-class households their only opportunity to reap the benefits of living in the settlement municipalities.

From the above analysis, it appears that the consortium municipalities can provide good locations for sustainable mixed-income housing developments. Because they would likely thrive in Westchester, mixed-income developments offer a good solution for fulfilling the obligations of the Settlement. Unfortunately, as currently formulated, the Settlement may hinder the development of integrative mixed-income housing.

#### D. SETTLEMENT MODIFICATION NECESSARY TO CREATE INTEGRATIVE MIXED-INCOME HOUSING

Although the Settlement mentions integration as being important for Westchester County,<sup>145</sup> certain modifications to the Settlement may be necessary before integration will occur. Early in the Westchester housing litigation, Federal District Judge Denise L. Cote repeatedly mentioned that to affirmatively further fair housing, the County must consider race and how it relates to housing opportunities.<sup>146</sup> In the Settlement, Westchester asserts that

---

144. See Robert J. Sampson & Stephen W. Raudenbush, *Neighborhood Stigma and the Perception of Disorder*, 24 FOCUS 7 (2005), available at <http://www.irp.wisc.edu/publications/focus/pdfs/foc241b.pdf>.

145. Settlement, *supra* note 28, at 1, 26–27.

146. United States *ex rel.* Anti-Discrimination Ctr. of Metro N.Y., Inc. v. Westchester County, 495 F. Supp. 2d 375, 376 (S.D.N.Y. 2007).

the development of affordable housing in a way that affirmatively furthers fair housing is a matter of significant public interest[;] the broad and equitable distribution of affordable housing promotes sustainable and integrated residential patterns[;] [and that to achieve these goals] municipal land use policies and actions shall take into consideration the housing needs of the surrounding regions . . . .<sup>147</sup>

These pronouncements seem to indicate that Westchester's affordable housing plan should encourage migration from surrounding, minority-concentrated areas. Mixed-income developments can be used to achieve the County's objectives, but the Settlement is not completely conducive to realizing their integrative potential. Despite this, the confines of the Settlement do allow for some amount of mixed-income development.

The technical requirements of the Settlement do not create insurmountable obstacles to mixed-income housing. The Settlement does not require all affordable units to be consolidated in only a few developments, thus the County is free to mix affordable housing with market-rate housing. Further, the Settlement expressly recognizes multiple levels of income that must be provided with affordable housing.<sup>148</sup> Mandating that some portions of a development be provided to households with 50 percent AMI and 65 percent AMI<sup>149</sup> does not preclude developments with more income levels. In theory, some units in a development could be market-rate, and others affordable for those making 65 percent AMI, 50 percent AMI, and even less.

As the Settlement stands, the only income designations for rental units are 65 percent AMI and 50 percent AMI.<sup>150</sup> Although the Settlement does not prohibit units affordable for households with income below these levels, it is unlikely such units will exist. A rational economic actor building units to fulfill the Settlement will try to get "credit" for as many units as possible at the lowest cost. To accomplish this, the units will be priced as high as possible within the 65 percent and 50 percent AMI designations.

---

147. Settlement, *supra* note 28, at 1–2.

148. *Id.* at 8.

149. *Id.*

150. *Id.*

Such pricing would make the units unattainable for households with incomes below these levels without other assistance.<sup>151</sup>

In a county with wealthy residents, units priced at 65 percent and 50 percent AMI may not be affordable to lower-income households from poorer surrounding areas. Westchester County's median household income is \$79,195,<sup>152</sup> well above the New York State median household income of \$55,980.<sup>153</sup> The County is obligated to build only 20 percent of the rental units affordable at 50 percent AMI; this is likely all that will be built. If the County maximizes its available 65 percent AMI rental units and its 80 percent AMI home-ownership units, only 10 percent (75 units) of the 750 required units would be affordable for residents making significantly below the state's median income.<sup>154</sup> This limits socioeconomic integration and does not provide housing opportunity for those who need it most.

The prohibitively high AMI percentages for the affordable units may hamper the Settlement's goal of achieving racial integration.<sup>155</sup> Through affirmative marketing, the Settlement declares that Westchester must look beyond its borders to make sure the units it develops are made available to minorities in surrounding areas.<sup>156</sup> It is likely that the Settlement's crafters envisioned attracting residents from both the Bronx and Westchester's non-consortium municipalities.

The Bronx is immediately adjacent to Westchester County, but has a very different socioeconomic and racial composition.

---

151. For example, Section 8 housing vouchers could be used to render some units more easily affordable, but from an efficiency standpoint it would be preferable for the Settlement housing to be available to lower-income households without requiring additional governmental assistance. For an explanation of Section 8 housing vouchers, see U.S. Dep't of Hous. and Urban Dev., Choice Vouchers Fact Sheet, [http://portal.hud.gov/portal/page/portal/HUD/topics/housing\\_choice\\_voucher\\_program\\_section\\_8](http://portal.hud.gov/portal/page/portal/HUD/topics/housing_choice_voucher_program_section_8) (last visited Jan. 1, 2010).

152. U.S. Census Bureau, State & County Quick Facts: Westchester County, <http://quickfacts.census.gov/qfd/states/36/36119.html> (last visited Sept. 12, 2010). Although the statistics are unavailable, it is likely that the median income of the consortium municipalities is even higher than that of the County as a whole.

153. U.S. Census Bureau, State & County Quick Facts: New York, <http://quickfacts.census.gov/qfd/states/36000.html> (last visited Sept. 12, 2010).

154. In Westchester, 50 percent AMI is \$39,597.50; 65 percent AMI is \$47,517; 80 percent AMI is \$63,356. See U.S. Census Bureau, State & County Quick Facts: Westchester County, *supra* note 152.

155. Settlement, *supra* note 28, at 1.

156. *Id.* at 26–27.

The Bronx has a median household income of \$35,108 and only 12 percent non-Hispanic white residents.<sup>157</sup> Because 50 percent AMI in Westchester is \$39,597, it is possible that *none* of the new units will be affordable to median-income Bronx residents. Even if Westchester places affordable units in municipalities that are almost exclusively white and affirmatively markets those units in areas populated by minorities, relocation and integration will not occur if the available units remain prohibitively expensive.

In paragraph 15(a)(iv) of the Settlement, the Monitor is given the power to modify the income requirements for the affordable rental units.<sup>158</sup> This is one of the most important parts of the Settlement. Recognizing that the creation of affordable, fair housing is complex, the Settlement's crafters provided this safety valve. To achieve integration in the consortium municipalities, the Monitor should modify the Settlement to require that some of the units are affordable at 30 percent AMI or less.<sup>159</sup> With this modification the consortium municipalities would be able to attract more African Americans and Hispanics from within Westchester and the Bronx, further fostering racial and socioeconomic integration.

## V. HOW WESTCHESTER COUNTY AND OTHER JURISDICTIONS CAN FACILITATE INTEGRATIVE MIXED-INCOME HOUSING

As the Settlement sets out only a broad framework, there are other, more specific mechanisms necessary to aid in the creation of integrative mixed-income developments. Westchester County and any legislature contemplating addressing affordable housing issues should consider other criteria when developing an affordable housing plan.<sup>160</sup>

---

157. U.S. Census Bureau, State & County Quick Facts: Bronx County, <http://quickfacts.census.gov/qfd/states/36/36005.html> (last visited Sept. 13, 2010). Westchester County, by comparison, has 60 percent non-Hispanic white residents, and the municipalities delineated in the Settlement have even more. U.S. Census Bureau, State & County Quick Facts: Westchester County, *supra* note 152.

158. Settlement, *supra* note 28, at 16.

159. 30 percent AMI units have been used to create mixed-income housing in the past. See Terry A.C. Gray, *supra* note 61, at 177–78 (describing the Quality Housing and Work Responsibility Act, which uses a 30 percent AMI designation for certain affordable units in mixed-income developments).

160. Settlement, *supra* note 28, at 19.

## A. ADDRESSING CONCERNS WITH MIXED-INCOME HOUSING

As evidenced in *Mt. Laurel* and the Westchester Settlement, a racially segregated jurisdiction without ample affordable housing may be subject to litigation — especially if it receives CDBG funds.<sup>161</sup> To prevent this costly litigation,<sup>162</sup> local legislatures should encourage affordable housing and thereby preempt potential lawsuits. Even if there is no fear of litigation, ideally, a legislature would look for ways to help its constituency by increasing housing opportunities within its jurisdiction. As argued in this Note, mixed-income housing is an effective means of accomplishing these goals in low-poverty communities.

Although many commentators encourage the use of mixed-income housing,<sup>163</sup> some remain skeptical of its value.<sup>164</sup> Before fashioning legislation encouraging mixed-income housing, lawmakers should address the skeptics' concerns. Some of the issues noted by commentators include increased development costs, inability to achieve integration by using income as a proxy for race, and lack of units available to those with the lowest incomes.<sup>165</sup>

Mixed-income developments will not necessarily increase development costs. On the surface, it may appear that mixed-income developments will cost more to construct than low-income developments because of the quality demands of the market-rate residents. If a regulation incentivizes or requires some type of affordable housing, mixed-income developments are likely more attractive to developers than all-affordable developments, as some of the lost profit from the affordable units can be recouped through the market-rate units. Affordable units may cost more to construct in mixed-income developments, but the market-rate units can offset this additional cost. These profits will result in lowered need for costly governmental inducements or subsidies.

Building a mixed-income development is not the only step in the process of achieving integration.<sup>166</sup> As in Westchester, the

---

161. See discussion *supra* Parts III–IV.

162. For example, the litigation in Yonkers, New York “produced nothing but \$15 million of lawyers’ bills . . .” Schuck, *supra* note 3, at 356.

163. See, e.g., HOUK, BLAKE & FREIBERG, *supra* note 5.

164. See, e.g., Hendrickson, *supra* note 59, at 74–89.

165. *Id.*

166. Yale Law School professor Robert C. Ellickson argues that mixed-income housing, though better than some affordable housing solutions, is not the best mechanism to solve

construction of affordable housing can be combined with mechanisms such as affirmative marketing.<sup>167</sup> Since racial quotas should not and cannot be used,<sup>168</sup> affirmative marketing programs may be the best way to foster integration.

Mixed-income housing is not a cure-all for society's housing ills. Low-income housing is surely a necessity, and mixed-income developments may not provide as many low-income units as concentrated affordable developments would provide. The use of mixed-income housing does not, however, preclude the implementation of other low-income housing programs. Mixed-income housing is just one particularly effective way to create affordable housing in low-poverty municipalities.

#### B. IMPLEMENTING LEGISLATION TO CREATE MIXED-INCOME HOUSING

Once legislatures recognize the benefits of mixed-income housing in low-poverty municipalities, the next step should be to incentivize their creation. To produce sustainable, integrative mixed-income housing, a legislature should do the following: 1) create a mechanism for determining a localized affordable housing obligation and prohibit municipalities from "ducking" it; 2) give "credit" to a wide range of units, including existing units that are made affordable and higher-priced units that are placed within mixed-income developments; 3) take into account a sufficient surrounding area when calculating AMI; 4) create developer incentives for mixed-income developments; 5) execute an affirmative marketing and mobility counseling plan; and 6) collect data regarding the perception of the development within the community after the development is occupied.

---

the affordable housing problem in the United States. Ellickson notes that even his preferred voucher system may have some shortcomings, including the lack of an effective mechanism for increasing integration. Even while arguing against the use of mixed-income housing, Ellickson implicitly notes that different affordable housing solutions each have their stronger and weaker aspects, further demonstrating that there cannot be, and should not be, a single mechanism for solving society's housing issues. See Robert C. Ellickson, *The False Promise of the Mixed-Income Housing Project*, 57 UCLA L. REV. 983 (2010).

167. See *supra* note 57.

168. *United States v. Starrett City Assocs.*, 840 F.2d 1096 (2d Cir. 1988).



The court in *Mt. Laurel* was well informed to analyze housing supply throughout the state so as to better create localized affordable housing obligations. Housing requirements should be set to assure that affordable housing is built throughout a region and not concentrated in a few areas. Yet affordable housing was not spread throughout New Jersey because RCAs allowed municipalities to circumvent their obligations.<sup>169</sup> Similar allowances will maintain the status quo of concentrated poverty, limiting the opportunity for some to live in low-poverty areas. This may have a disproportionate effect on the housing choices of minorities in violation of the Fair Housing Act. If there are no opportunities to duck “fair share” obligations, affordable housing will be built in low-poverty municipalities and should spur integration.

Mixed-income developments may be discouraged by regulations requiring a fixed number of affordable, low-income units. To meet this obligation, a municipality may build an all-affordable development, creating an insulated, low-income enclave. This is not ideal. Instead, some credit should be given for the existence of higher-priced units situated within a mixed-income development in a low-poverty community. Mixed-income housing would be encouraged, as municipalities surely will not object to building higher-priced units while fulfilling an affordable housing obligation. This should yield more mixed-income developments and less high-poverty density — a benefit to those within a development and to the surrounding community.

Giving affordable housing credit to higher-priced units does not have to dilute the total amount of affordable housing. Prospective legislation can require more mixed-income developments with less affordable density or additional affordable units to be created elsewhere. Additionally, existing units in low-poverty areas should be eligible to count towards an affordable housing obligation if the units are made affordable. These units can be made affordable quickly, do not entail construction cost, and will create income mixing without having to attract new market-rate tenants.

Using the AMI of a wealthy county to calculate affordable housing prices can make the “affordable” units too expensive for those who live in poorer surrounding areas. Households living in

---

169. See *supra* Part III.B.

minority-concentrated, high-poverty areas may be prevented from moving into new mixed-income developments in segregated, low-poverty areas. In Westchester, housing priced at 65 percent or 80 percent AMI may be too expensive to attract many minorities from the Bronx or Westchester's non-consortium municipalities.<sup>170</sup> To ensure that this does not occur, a legislature should include a large, diverse area when determining the AMI it will use to set affordable housing prices. This will create an opportunity for integration and increased regional housing choice.

Without tax credits or other incentives, developers are less likely to construct mixed-income developments. The NJFHA limited the tax credits and state funding available for some affordable units within mixed-income developments.<sup>171</sup> Incentives should be structured so as to encourage mixed-income developments even if the developments are not perfect. Tax credits, tax abatement,<sup>172</sup> and density bonuses should certainly be greater for mixed-income developments with a sufficient proportion of affordable units, but this does not preclude lower incentives for less ideal developments.

To increase integration, a diverse group of households must move into a new development. In *Mt. Laurel*, most of the people who moved into the suburban affordable housing were white<sup>173</sup> — this did not increase integration. Zoning restrictions, restrictive covenants, and discrimination have all caused segregation, and proactive measures must be taken for this to be undone.<sup>174</sup> Affirmative marketing in nearby minority concentrated areas, teamed with rigorous enforcement of the Fair Housing Act's ban on discrimination, should allow for increased integration.<sup>175</sup>

To succeed, a mixed-income housing plan must go beyond initial implementation so as to develop and grow within ever-changing communities. A mechanism to collect data about new mixed-income developments would allow a local government to make necessary adjustments to ensure sustainability. First, as-

---

170. See *supra* Part IV.D.

171. See *supra* Part III.C.

172. For an explanation of tax abatement as used in New York City, see NYC.gov, Cooperative and Condominium Tax Abatement, [http://www.nyc.gov/html/dof/html/property/property\\_tax\\_reduc\\_coop\\_condo.shtml](http://www.nyc.gov/html/dof/html/property/property_tax_reduc_coop_condo.shtml) (last visited Jan. 1, 2010).

173. Wish & Eisdorfer, *supra* note 84, at 1302–03.

174. See Gray, *supra* note 61, at 174.

175. Hendrickson, *supra* note 59, at 65–70.

sessing and reacting to the opinions of a development's residents will assure that residents are satisfied with their living situations and that the development will continue to attract tenants. In addition, it can be helpful to gather opinions from other community members.<sup>176</sup> A positive perception throughout the community is important for achieving true integration with social benefits for all involved.

## VI. CONCLUSION

Learning from the shortcomings of *Mt. Laurel* and the New Jersey Fair Housing Act, Westchester has a unique opportunity to fulfill its obligation to affirmatively further fair housing and pave the way for suburban integration. Westchester should use the Settlement, with slight modifications, to create mixed-income housing in its low-poverty municipalities. This will allow for integration and will be beneficial for both new and existing community members. Beyond Westchester, segregated, low-poverty areas throughout the country should recognize how mixed-income housing can help to realize the goals of the Fair Housing Act and create integrated, diverse communities.

---

176. See Gray, *supra* note 61, at 181.