


September 26, 2024

TO: Hon. Vedat Gashi, Chair
Hon. Jose Alvarado, Vice Chair
Hon. Tyrae Woodson-Samuels, Majority Leader
Hon. Margaret Cunzio, Minority Leader

FROM: George Latimer 
Westchester County Executive

RE: **Message Requesting Immediate Consideration: Act – Amendment of
Declaration of Restrictive Covenants – 2500 Jacob’s Hill Road,
Cortlandt.**

This will confirm my request that the Board of Legislators allow submission of the referenced communication to be submitted to the Board of Legislators September 30, 2024 Agenda.

Transmitted herewith for your review and approval is an Act, as referenced above.

Therefore, since this communication is of the utmost importance, it is respectfully submitted that the County Board of Legislators accepts this submission for September 30, 2024 “blue sheet” calendar.

Thank you for your prompt attention to this matter.



George Latimer
County Executive

September 20, 2024

Westchester County Board of Legislators
800 Michaelian Office Building
White Plains, New York 10601

Dear Honorable Members of the Board of Legislators:

In 2004, your Honorable Board enacted legislation in connection with “Capital Project BPL10 New Homes Land Acquisition” (“NHLA”) and enacted legislation in connection with “Capital Project BPL1A Housing Implementation Fund II” to finance certain infrastructure improvements, including, but not limited to, construction of a road, curbing, sidewalks, fencing, and landscaping (the “Infrastructure Improvements”) in support of the construction of four (4) buildings (the “Development”) with one-hundred three (103) affordable rental units that will affirmatively further fair housing (the “Affordable AFFH Units”) at 2500 Jacob’s Hill Road in the Town of Cortlandt. Of the one-hundred three (103) Affordable AFFH Units, eighty-one (81) are available to eligible senior households age 55 and over that earn at or below sixty percent (60%) of the Westchester County area median income (“AMI”), and the remaining twenty-one (21) Affordable AFFH Units are available to households that earn up to fifty percent (50%) of AMI, all to remain affordable for a period of not less than forty (40) years. One unit is an employee unit.

In particular, your Honorable Board approved Bond Act No. 149-2004 which authorized the issuance of bonds of the County of Westchester (“County”) in an amount not-to-exceed \$2,890,000 as part of Capital Project BPL10 to finance the Acquisition and Act No. 148-2004 which authorized the County to acquire and convey the development site to WB Jacob’s Hill Associates, LLC, its successors or assigns (“collectively the “Developer”). Your Honorable Board also approved Bond Act No. 152-2004 which authorized the issuance of bonds of the County in an amount not to exceed \$1,155,000 as part of Capital Project BPL1A to finance the Infrastructure Improvements; and Act No. 150-2004 which authorized the County to enter into an Inter-Municipal Developer Agreement (the “IMDA”) with the Town of Cortlandt (the “Town”) and the Developer. Lastly, your Honorable Board also approved Act 151-2004 for a Capital Budget Amendment to modify BPL1A to include this location.

Your Honorable Board is advised that in addition to the County funds, the Development was originally financed through the award and allocation of 9% Low Income Housing Tax Credits from New York State Housing and Community Renewal (“HCR”) along with subsidy funding from HCR. The Development, per the recorded Declaration of Restrictive Covenants (“DRC”), is to remain affordable for 40 years. Presently, the Development is roughly halfway through the affordability period. It is the intent of the Development’s owner to seek an extension of the

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affordability period when it seeks recapitalization of the Development through HCR at the end of the affordability period which will include rehabilitation.

At the time when this Development closed, it was commonplace for the County DRC to include a reverter clause. In the event of non-compliance with the DRC's restrictions, this clause, would result in the property ownership reverting to the County. This poses significant risk to lenders who could see their liens disappear should the County enforce the reverter clause.

When this Development closed along with others in the late 1990's and early 2000's, the County placed reverters on a few developments before the realization that the reverter clause created issues for the developments to seek financing. In the case of this Development, the owner is seeking to refinance the existing debt with a new loan through a Federal National Mortgage Association ("Fannie Mae") or Federal Home Loan Mortgage Corporation ("Freddie Mac") execution. Like most lenders, Freddie Mac and Fannie Mae will not permit the existence of a reverter clause. With this clause in the current DRC, the refinancing is unable to occur, causing potential harm to the ownership as they might not be able to repay the existing loan prior to its maturity.

On June 2, 2004, the Westchester County Planning Board (the "Planning Board") adopted Resolution No. 2004-17 and No. 2004-20 (the "Planning Board Resolutions") to recommend funding to finance the acquisition and conveyance along with the Infrastructure Improvements for the Development. Because no material change to the Development is contemplated by the proposed amendment to the DRC, the Planning Board Resolutions remain in full force and effect. However, it should be noted that the Planning Board was apprised of the proposed amendment as an information item at its September 4, 2024 meeting. The Planning Board Resolutions and information item are annexed hereto for your Honorable Board's review.

Sincerely,



George Latimer
County Executive

Attachments
GL/BL/DLV

**HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER**

Your Committee is in receipt of a communication from the County Executive recommending the adoption of an Act in order to amend the reverter clause contained in the County Declaration of Restrictive Covenants (“DRC”) dated August 30, 2004.

Your Committee is advised that on, 2004, your Honorable Board enacted legislation in connection with “Capital Project BPL10 – New Homes Land Acquisition” to finance the acquisition of the development site and enacted legislation in connection with “Capital Project BPL1A – Housing Implementation Fund” to finance infrastructure improvements in support of the construction of four (4) buildings (the “Development”) with one hundred three (103) affordable rental units that will affirmatively further fair housing (the “Affordable AFFH Units”) at 2500 Jacob’s Hill Road in the Town of Cortlandt (the “Property”). Of the one hundred three (103) Affordable AFFH Units, eighty-one (81) are available to eligible senior households age 55 and over that earn at or below sixty percent (60%) of the Westchester County area median income (“AMI”), and the remaining twenty-one (21) Affordable AFFH Units are available to households that earn up to fifty percent (50%) of AMI, all to remain affordable for a period of not less than forty (40) years. One unit is an employee unit.

In particular, your Honorable Board approved Bond Act No. 152-2004 which authorized the issuance of bonds of the County of Westchester (“County”) in an amount not-to-exceed \$1,155,000 as part of Capital Project BPL1A to finance the Infrastructure Improvements; and Act No. 150-2004 which authorized the County to enter into an Inter-Municipal Developer Agreement (the “IMDA”) with the Town of Cortlandt (the “Town”), WB Jacob’s Hill Associates, LLC , its successors or assigns (“collectively the “Developer”). Lastly, your Honorable Board also approved Act 151-2004 for a Capital Budget Amendment to modify BPL1A to include this location.

Your Committee is advised that in addition to the County funds, the Development was originally financed through the award and allocation of 9% Low Income Housing Tax Credits

from New York State Housing and Community Renewal (“HCR”) along with subsidy funding from HCR. The Development, per the recorded Declaration of Restrictive Covenants (“DRC”), is to remain affordable for 40 years. Presently, the Development is roughly halfway through the affordability period. It is the intent of the Development’s owner to seek an extension of the affordability period when it seeks recapitalization of the Development through HCR at the end of the affordability period which will include rehabilitation.

Planning has further advised that Developer have requested that the reverter clause, found in the County DRC be removed. At the time when this Development closed, it was commonplace for the County DRC to include a reverter clause. In the event of non-compliance with the DRC’s restrictions, this clause, would result in the property ownership reverting to the County. This poses significant risk to lenders who could see their liens disappear should the County enforce the reverter clause. When this Development closed along with others in the late 1990’s and early 2000’s, the County placed reverters on a few developments before the realization that the reverter clause created issues for the developments to seek financing. In the case of this Development, the owner is seeking to refinance the existing debt with a new loan through a Federal National Mortgage Association (“Fannie Mae”) or Federal Home Loan Mortgage Corporation (“Freddie Mac”) execution. Like most lenders, Freddie Mac and Fannie Mae will not permit the existence of a reverter clause. With this clause in the current DRC, the refinancing is unable to occur, causing potential harm to the ownership as they might not be able to repay the existing loan prior to its maturity.

Therefore, Planning has requested that your Honorable Board authorize an amendment to the County DRC to remove the reverter clause. so that the Development can successfully pursue a refinancing. All other terms and conditions of the County DRC will remain in full force and effect.

Your Committee is further advised that Planning has noted that the Declaration of Restrictive Covenants dated August 30, 2004, and filed in the Westchester County Clerk’s Office which requires that all of the Affordable AFFH Units will remain affordable for a term of

not less than forty (40) years, will also be amended to reflect the aforesaid deletion of the reverter clause.

Your Committee is also advised that on June 2, 2004, the Westchester County Planning Board (the "Planning Board") adopted Resolutions No. 2004-17 and No. 2004-20 (the "Planning Board Resolutions") to recommend funding to finance the acquisition and conveyance along with the and Infrastructure Improvements for the Development. Because no material change to the Development is contemplated by the proposed amendment to the DRC, the Planning Board Resolutions remain in full force and effect. However, it should be noted that the Planning Board was apprised of the proposed amendment as an information item at its September 4, 2024 meeting. The Planning Board Resolutions and information item are annexed hereto for your Honorable Board's review.

As your Honorable Board is aware, no action may be taken with regard to the proposed legislation until the requirements of the State Environmental Quality Review Act ("SEQRA") have been met. Planning has advised that County's action merely involves the amendment of the Declaration of Restrictive Covenants to remove the reverter clause to facilitate the extension of the affordability period of the existing units and there is no physical change to the project itself, with respect to the State Environmental Quality Review (SEQR) Act, this does not constitute an action as defined in section 617.2(b) of 6NYCRR Part 617. As such, no environmental review is required and the original environmental review remains valid.

After careful review, your Committee believes that the Act is in the best interest of the County and therefore recommends its adoption, noting that it requires no more than an affirmative vote of the majority of your Honorable Board.

Dated: _____, 2024
White Plains, New York

COMMITTEE ON

c/dlv 9-16-24

FISCAL IMPACT STATEMENT

CAPITAL PROJECT #: BPL1A

NO FISCAL IMPACT PROJECTED

SECTION A - CAPITAL BUDGET IMPACT

To Be Completed by Budget

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

Source of County Funds (check one):

Current Appropriations

Capital Budget Amendment

2500 Jacob's Hill Rd, Tn of Cortlandt amend to remove reverter clause in DRC

SECTION B - BONDING AUTHORIZATIONS

To Be Completed by Finance

Total Principal

PPU

Anticipated Interest Rate

Anticipated Annual Cost (Principal and Interest):

Total Debt Service (Annual Cost x Term):

\$ -

Finance Department:

SECTION C - IMPACT ON OPERATING BUDGET (exclusive of debt service)

To Be Completed by Submitting Department and Reviewed by Budget

Potential Related Expenses (Annual): \$ -

Potential Related Revenues (Annual): \$ -

Anticipated savings to County and/or impact of department operations

(describe in detail for current and next four years):

SECTION D - EMPLOYMENT

As per federal guidelines, each \$92,000 of appropriation funds one FTE Job

Number of Full Time Equivalent (FTE) Jobs Funded:

n/a

Prepared by: Dianne Vanadia

Title: Associate Budget Director

Department: Budget

Date: 9/18/24

Reviewed By: 

DV 9/18/24
@ 9/19/24

Budget Director

Date: 9/19/24

FISCAL IMPACT STATEMENT

CAPITAL PROJECT #: BPL10

NO FISCAL IMPACT PROJECTED

SECTION A - CAPITAL BUDGET IMPACT

To Be Completed by Budget

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

Source of County Funds (check one):

Current Appropriations

Capital Budget Amendment

2500 Jacob's Hill Rd, Tn of Cortlandt amend to remove reverter clause in DRC

SECTION B - BONDING AUTHORIZATIONS

To Be Completed by Finance

Total Principal

PPU

Anticipated Interest Rate

Anticipated Annual Cost (Principal and Interest):

Total Debt Service (Annual Cost x Term):

\$ -

Finance Department:

SECTION C - IMPACT ON OPERATING BUDGET (exclusive of debt service)

To Be Completed by Submitting Department and Reviewed by Budget

Potential Related Expenses (Annual):

\$ -

Potential Related Revenues (Annual):

\$ -

Anticipated savings to County and/or impact of department operations

(describe in detail for current and next four years):

SECTION D - EMPLOYMENT

As per federal guidelines, each \$92,000 of appropriation funds one FTE Job

Number of Full Time Equivalent (FTE) Jobs Funded:

n/a

Prepared by: Dianne Vanadia

Title: Associate Budget Director

Department: Budget

Date: 9/18/24


Reviewed By: 

DVA 11/18/24
CD 9/18/24

Budget Director

Date: 9/19/24

TO: Leonard Gruenfeld, Program Director
Division of Housing and Community Development

FROM: David S. Kvinge, AICP, RLA, CFM 
Assistant Commissioner

DATE: September 12, 2024

SUBJECT: **SEQR DOCUMENTATION FOR AMENDMENT OF RESTRICTIVE
COVENANTS – JACOB’S HILL ROAD, CORTLANDT**

Pursuant to your request for an environmental review of the above referenced action, the Planning Department has determined that no environmental review is necessary.

The property involves a four buildings including over one hundred affordable housing units located at Jacob’s Hill Road in Cortlandt, constructed with financial assistance from multiple sources, including the County’s New Homes Land Acquisition Fund and Housing Implementation Fund, to facilitate affordable housing. The Town of Cortlandt declared itself Lead Agency for the original construction and conducted a coordinated review. As an involved agency, the County adopted a Findings Statement in 2004. The owner of the development now seeks to extend the affordability period and remove the reverter clause contained in the Declaration of Restrictive Covenants, because such clauses restrict the ability to secure the federal funding the owner is seeking to extend the affordability period.

Since the County’s action merely involves the amendment of the Declaration of Restrictive Covenants to remove the reverter clause to facilitate the extension of the affordability period of the existing units and there is no physical change to the project itself, with respect to the State Environmental Quality Review (SEQR) Act, this does not constitute an action as defined in section 617.2(b) of 6NYCRR Part 617. As such, no environmental review is required and the original environmental review remains valid.

cc: Blanca P. Lopez, Commissioner
Claudia Maxwell, Principal Environmental Planner

To: Honorable Members of the Westchester County Planning Board

From: Blanca P. Lopez
Commissioner
Department of Planning

Leonard Gruenfeld
Program Director– Community Development
Department of Planning

Re: **No-Action Memo to the Planning Board
Jacobs Hill Apartments - Removal of Restrictive Covenant Reverter Clause**

Date: August 28, 2024

Jacobs Hill Apartments (the “Development”) in the Town of Cortlandt was assisted by the County of Westchester through both the New Homes Land Acquisition (“NHLA”) and the Housing Implementation Fund (“HIF”) and currently provides 103 units of affordable housing for seniors including one unit for an employee. The Development was completed in 2006 and includes 81 one-bedroom and 22 two-bedrooms units in four buildings with parking and amenities.

At the time when this Development closed, it was commonplace for the County to include a reverter clause in the Declaration of Restrictive Covenants (“DRC”). In the event of non-compliance with the DRC’s restrictions, this clause would result in the property ownership reverting to the County. This poses significant risk to lenders who could see their liens disappear should the County enforce the reverter clause.

In the case of this Development, the owner is seeking to refinance the existing debt with a new loan through a Federal National Mortgage Association (“Fannie Mae”) or Federal Home Loan Mortgage Corporation (“Freddie Mac”) execution. Like most lenders, Freddie Mac and Fannie Mae will not permit the existence of a reverter clause. With this clause in the current DRC, the refinancing is unable to occur, causing potential harm to the ownership as they might not be able to repay the existing loan prior to its maturity.

Therefore, the County will proceed, with Board of Legislators approval, to amend the existing DRC to remove this clause so that the refinancing can occur. This will bring the DRC for the Development in line with other current County developments.

ACT NO. _____ - 2024

AN ACT authorizing the County of Westchester to enter into an amendment to the County Declaration of Restrictive Covenants for one hundred three affordable rental units located at 2500 Jacob's Hill Road, in order to delete the reverter clause.

BE IT ENACTED by the members of the Board of Legislators of the County of Westchester as follows:

Section 1. The County of Westchester (the "County") is hereby authorized to enter into an amendment to a County Declaration of Restrictive Covenants (the "DRC"), dated August 30, 2004, and previously authorized on July 12, 2004, by Acts No. 148-2004 and 150-2004, in order to delete the reverter clause as contained in the DRC.

§2. All of the remaining terms and conditions of the DRC, except as amended and ratified herein, shall remain in full force and effect.

§3. The County Executive or his duly authorized designee is hereby authorized and empowered to execute all instruments and to take all action necessary and appropriate to effectuate the purposes hereof.

§4. This Act shall take effect immediately.