


September 16, 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 Restrictive Covenants – 98 Washington Avenue, Pleasantville.**

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 16, 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 16, 2024 “blue sheet” calendar.

Thank you for your prompt attention to this matter.



George Latimer
County Executive

September 16, 2024

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

Dear Honorable Members of the Board of Legislators:

On June 6, 2016, your Honorable Board enacted legislation in connection with “Capital Project BPL10-New Homes Land Acquisition” (“Capital Project BPL10”) and “Capital Project BPL50-Fair and Affordable Housing” (“Capital Project BPL50”), in support of the real property purchase and conveyance by the County of Westchester (the “County”), and development financing for the construction of one (1) building with fourteen (14) affordable rental units that would affirmatively further fair housing (the “Affordable AFFH Units”) at 98 Washington Avenue in the Village of Pleasantville (the “Property”). The Property is currently owned by Migi Asset Acquisition, LLC (“Migi”). Of the fourteen (14) Affordable AFFH Units, three (3) units were to be available to eligible households that earn at or below fifty (50%) percent of the Westchester County area median income (“AMI”), and the remaining eleven (11) units would be available to eligible households that earn up to sixty (60%) percent of AMI, all to remain affordable for a period of not less than fifty (50) years (the ‘Development”).

In particular, your Honorable Board approved Resolution No. 74-2016 which issued a Negative Declaration declaring that the Property purchase and conveyance, and construction of the Development would have no significant adverse impact on the environment; Act No. 173-2016 which amended the 2016 County Capital Budget for Capital Project BPL50 for an increase in an amount of \$993,000; Act No.174-2016 which authorized the issuance of bonds of the County in an amount not-to-exceed \$1,800,000 as part of Capital Project BPL10 to finance the Property purchase and conveyance; Act No. 176-2016 which authorized the County to purchase and convey the Property in an amount not to exceed \$1,800,000; and Bond Act No. 175-2016 which authorized the issuance of bonds of the County in an amount not-to-exceed \$993,000 as part of Capital Project BPL50 in support of a portion of the costs of the Development.

The closing for the transaction took place on December 28 2016, and construction of the Development was to be completed on or before June 30, 2020. Migi failed to complete construction of the Development and your Honorable Board subsequently authorized the commencement of litigation by the County against Migi by Act No. 41-2022.

By Act No. 88-2024, your Honorable Board authorized the settlement of the litigation, upon certain terms and conditions detailed in Act No. 88-2024 (the “Settlement”).

Office of the County Executive

Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601

Telephone: (914)995-2900

email: ceo@westchestercountyny.gov



In accordance with the Settlement, Lifting Up Westchester (“LUW”) has entered into an agreement with Migi for the purchase of the Property in an amount of \$2,100,000. Upon acquisition of the Property, LUW has agreed to complete the construction of the Affordable AFFH Units.

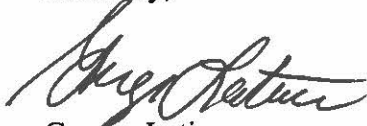
It is anticipated that the County will provide an amount not to exceed \$3,250,000 from the HOME-ARP Program to LUW to assist in the purchase of the Property and the construction of the Development. Pursuant to the requirements of the HOME-ARP Program, ten (10) of the Affordable AFFH Units will be available to households that are homeless and have an income at or below fifty (50%) percent of AMI, with priority given to those who are employed full time. Marketing of these units will be conducted through the County Continuum of Care program. The remaining four (4) units will be available to households with incomes at or below sixty (60%) percent of AMI. These units will be marketed through the County’s approved marketing plan.

I have been advised that on May 3, 2016, the Westchester County Planning Board (the “Planning Board”) adopted Resolution No. 16-22 which recommended funding for the Property purchase and conveyance, and a portion of the costs for the construction of the Development. Since there is no material change to the plans for the Development, the original Planning Board resolution is still in force and effect. However, I have been informed that the Planning Board was apprised of the Settlement by memorandum as an information item on September 10, 2024. Resolution No. 16-22 and the memorandum are annexed hereto.

Authority is being requested from your Honorable Board to enact the proposed Act in order to approve LUW as the new Developer, to restate and amend the existing Declaration of Restrictive Covenants (“DRC”) in order to allow Migi to assign, and LUW to assume as the new owner, all of the rights and responsibilities included in the DRC, and to amend the affordability requirements as stated herein, for a fifty (50) year period of affordability. Please note that the fifty (50) year period of affordability does not commence until the Affordable AFFU Units are completed and occupied.

Based on the importance of the completion and occupancy of the Affordable AFFH Units, your favorable action on the annexed Act is respectfully requested.

Sincerely,



George Latimer
County Executive

Attachments
GL/BL/LAC

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

Your Committee is advised that on June 6, 2016, your Honorable Board enacted legislation in connection with “Capital Project BPL10-New Homes Land Acquisition” (“Capital Project BPL10”) and “Capital Project BPL50-Fair and Affordable Housing” (“Capital Project BPL50”), in support of the real property purchase and conveyance by the County of Westchester (the “County”), and development financing for the construction of one (1) building with fourteen (14) affordable rental units that would affirmatively further fair housing (the “Affordable AFFH Units”) at 98 Washington Avenue in the Village of Pleasantville (the “Property”). The Property is currently owned by Migi Asset Acquisition, LLC (“Migi”). Of the fourteen (14) Affordable AFFH Units, three (3) units were to be available to eligible households that earn at or below fifty percent (50%) percent of the Westchester County area median income (“AMI”), and the remaining eleven (11) units would be available to eligible households that earn up to sixty percent (60%) percent of AMI, all to remain affordable for a period of not less than fifty (50) years (the ‘Development”).

In particular, your Honorable Board approved Resolution No. 74-2016 which issued a Negative Declaration declaring that the Property purchase and conveyance, and construction of the Development, would have no significant adverse impact on the environment; Act No. 173-2016 which amended the 2016 County Capital Budget for Capital Project BPL50 for an increase in an amount of \$993,000; Bond Act No. 174-2016 which authorized the issuance of bonds of the County in an amount not-to-exceed \$1,800,000 as part of Capital Project BPL10 to finance the Property purchase and conveyance; Act No. 176-2016 which authorized the County to acquire and convey the Property in an amount not to exceed \$1,800,000; and Bond Act No. 175-2016 which authorized the issuance of bonds of the County in an amount not-to-exceed \$993,000 as part of Capital Project BPL50 in support of a portion of the costs of the Development.

Your Committee is further advised that the closing for the transaction took place on December 28, 2016, and construction of this Development was to be completed on or before June 30, 2020. Migi failed to complete construction of the Development and your Honorable

Board subsequently authorized the commencement of litigation by the County against Migi by Act 41-2022.

Your Committee is further advised that your Honorable Board authorized the settlement of the litigation, upon certain terms and conditions detailed in Act No. 88-2024 (the "Settlement"). As part of the Settlement, Lifting Up Westchester ("LUW") has entered into an agreement with Migi for the purchase of the Property in an amount of \$2,100,000. Upon acquisition of the property, LUW has agreed to complete the construction of the Affordable AFFH Units.

Further, your Committee is advised that it is anticipated that the County will provide \$3,250,000 from the HOME-ARP Program to assist in the purchase of the Property and the construction of the Development. Pursuant to the requirements of the HOME ARP Program, ten (10) of the Affordable AFFH Units will be available to households that are homeless and have an income at or below fifty (50%) percent of AMI, with priority given to those who are employed full time. Marketing of these units will be conducted through the County Continuum of Care program. The remaining four (4) units will be available to households with incomes at or below sixty (60%) percent of AMI. These units will be marketed through the County's approved marketing plan.

Your Committee has been advised that on May 3, 2016, the Westchester County Planning Board (the "Planning Board") adopted Resolution No. 16-22 which recommended funding for the Property purchase and conveyance, and a portion of the costs for the construction of the Development. Since there is no material change to the plans for the Development, the original Planning Board Resolution is still in force and effect. However, your Committee is informed that the Planning Board was apprised of the Settlement by memorandum as an information item on September 10, 2024. Resolution No. 16-22 and the memorandum are annexed hereto.

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. The Department of Planning (“Planning”) has advised that it classified the original action as an Unlisted action. A Short Environmental Assessment Form was prepared and a Negative Declaration was issued by Resolution No. 74-2016 of your Honorable Board. Planning has advised that, since the County’s action merely involves the amendment of the developer constructing the Development and the affordability requirements associated with it, and there is no physical change to the Development itself, with respect to SEQRA, this does not constitute an action as defined in section 617.2(b) of 6NYCRR Part 617. As such, no environmental reviewed is required and the original Negative Declaration remains valid. A copy of Planning’s memorandum is attached for your Honorable Board’s review. Your Committee concurs with this analysis.

Annexed hereto is a proposed Act which, if enacted would authorize LUW as the new Developer for the construction of the Development, to restate and amend the existing Declaration of Restrictive Covenants (“DRC”) in order to allow Migi to assign, and LUW to assume as the new owner, all of the rights and responsibilities included in the DRC, and to amend the affordability requirements as stated herein, for a fifty (50) year period of affordability. Your Committee is informed that the fifty (50) year period of affordability does not commence until the Affordable AFFU Units are completed and occupied.

After careful review, your Committee believes that the proposed 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

FISCAL IMPACT STATEMENT

CAPITAL PROJECT #: BPL50

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

98 Washington Ave Pleasantville amend for new owner info and affordability requirements

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

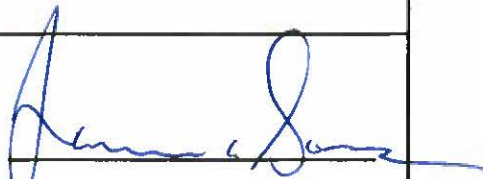
Prepared by: Dianne Vanadia

Title: Associate Budget Director

Department: Budget

Date: 9/12/24

Reviewed By:



Budget Director

Date:

9/13/24

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

98 Washington Ave Pleasantville amend for new owner info and affordability requirements

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: 9/12/24

Reviewed By: 

Budget Director

Date: 9/13/24

TO: Leonard Gruenfeld
Program Administrator

FROM: David S. Kvinge 
Assistant Commissioner

DATE: September 12, 2024

SUBJECT: **SEQR DOCUMENTATION FOR AMENDMENT OF RESTRICTIVE
COVENANTS – 98 WASHINGTON AVENUE, PLEASANTVILLE**

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 one affordable housing building located at 98 Washington Avenue in Pleasantville, which was constructed with financial assistance from multiple sources, including the County's New Homes Land Acquisition Fund and Housing Implementation Fund, to facilitate affordable housing. A Negative Declaration was adopted by the County in 2016 for the original project. However, construction was never completed by the original owner and a new owner has entered into an agreement to complete the construction. Authorization of the Board of Legislators is being sought to approve the new developer and restate and amend the existing Declaration of Restrictive Covenants to allow the transfer of the property to the new owner and amend the affordability requirements.

Since the County's action merely involves the amendment of the developer constructing the project and affordability requirements associated with it 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 Negative Declaration 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: Information Item
Change in ownership and Amendment of Declaration of Restrictive Covenants for 98
Washington Avenue in the Village of Pleasantville

Date: September 10, 2024

In 2016, 98 Washington Avenue in the Village of Pleasantville was assisted by the County of Westchester (the “County”), through both the New Homes Land Acquisition (\$1,800,000) (“NHLA”) and the Fair and Affordable Housing (\$993,000) (“FAH”). This development (the “Development”) was to include the construction of 14 affordable units that would affirmatively further fair housing (“Affordable AFFH Units”). Eight years later, the Development remains incomplete, vacant and a blight in the downtown area of the Village of Pleasantville. Construction and occupancy of this Development by the current owner, Migi Asset Acquisition, LLC (“Migi”) was supposed to have been completed on or before June 30, 2020. Your Honorable Board approved a resolution on May 3, 2016, recommending the County funding proposed to proceed with the Development.

Migi failed to complete construction of the Development and the County commenced litigation against Migi in 2022, pursuant to approval of the County Board of Legislators. Subsequently, the County and Migi reached a settlement of the litigation (the “Settlement”) which included the sale of the Development to a not for profit affordable housing developer and services provider Lifting Up Westchester (“LUW”) in the amount of \$2,100,000. LUW will be responsible for completing construction of the Development. The Settlement was approved by the County Board of Legislators on May 6, 2024.

To facilitate the sale and completion of the Development, it is anticipated that the County will provide an amount not to exceed \$3,250,000 from the HOME-ARP Program to LUW to assist in the purchase of the Property and the construction of the Development. Pursuant to the

requirements of the HOME-ARP Program, ten (10) of the Affordable AFFH Units will be available to households that are homeless and have an income at or below fifty (50%) percent of AMI, with a priority given to those who are employed full time. Marketing of these units will be conducted through the County Continuum of Care program. The remaining four (4) units will be available to households with incomes at or below sixty (60%) percent of AMI. These units will be marketed through the County's approved marketing plan.

Therefore, in accordance with the approved Settlement, the County will proceed, subject to the approval of the County Board of Legislators, to amend the existing Declaration of Restrictive Covenants ("DRC") in order to authorize Migi's assignment of the rights and responsibilities of the DRC, the assumption of the rights and responsibilities of the DRC by LUW, and to amend the affordability requirements of the DRC so as to meet the affordability requirements of the HOME-ARP Program.

As an information item, there is no action required by the Planning Board at this time.

RESOLUTION 16- 22

WESTCHESTER COUNTY PLANNING BOARD

**BPL50 Fair and Affordable Housing and BPL10 New Homes Land Acquisition
Capital Project Funding Requests
98 Washington Avenue, Village of Pleasantville**

WHEREAS, Board of Legislators Act No. 155-2009 (as amended) required the County Budget Office to establish a capital project, which capital project would be financed by \$21.6 million in non-County shares Community Development Block Grant (CDBG) monies in the County's federal HUD account and \$30 million which would be financed by County funds, as required pursuant to the Stipulation and Order of Settlement and Dismissal entered into in connection with the lawsuit titled, *U.S. ex rel. Anti-Discrimination Center of Metro New York v. Westchester County* ("Settlement Agreement"); and

WHEREAS, in furtherance of the foregoing, Capital Project BPL50 Fair and Affordable Housing ("FAH") was created; and

WHEREAS, these funds are to be used to finance developments that affirmatively further fair housing ("AFFH") as set forth in 432 U.S.C. Section 5304(b)(2) and as required pursuant to the Settlement Agreement; and

WHEREAS, Westchester County has established Capital Project BPL10 New Homes Land Acquisition ("NHLA") to assist in the acquisition of property associated with the development of affordable housing; and

WHEREAS, Westchester County proposes to purchase a 0.17 acre lot, improved with a partially constructed structure that will be demolished, to facilitate construction of 14 affordable AFFH rental units (the "Affordable AFFH Units") at 98 Washington Avenue (the "Development") in the Village of Pleasantville, identified on the tax maps as Section:106.6, Block:1, Lot:44 (the "Property"), and sell it to Marathon Development Group, LTD (the "Developer"), its successors or assigns; and

WHEREAS, the County proposes to purchase from the owner of record the Property upon which the Affordable AFFH Units will be built in an amount not-to-exceed \$1,800,000 from BPL10 NHLA and sell it to the Developer, its successors or assigns for one dollar (\$1); and

WHEREAS, the County proposes to fund development costs related to the proposed Development in support of the 14 Affordable AFFH Units for an amount not-to-exceed \$993,000 from Capital Project BPL50 FAH; and

WHEREAS, following said purchase, and prior to the sale of the Property to the Developer, a Declaration of Restrictive Covenants will be filed against the Property to include affordability restrictions that require the Affordable AFFH units be rented to households with incomes at or below 50% and 60% of the Westchester County Area Median Income for a period of not less than 50 years; and

WHEREAS, in furtherance of the above, the County Executive will be submitting legislation to the Board of Legislators which would amend Capital Project BPL10 NHLA to add the Development in order to authorize bonding in an amount of \$1,800,000 in support of the acquisition of the Property; and

WHEREAS, in furtherance of the above, the County Executive will also be submitting legislation to the Board of Legislators which would add this Property to and increase Capital Project BPL50 FAH in an amount of \$993,000 in order to authorize bonding for certain development costs to create the 14 Affordable AFFH Units; and

WHEREAS, the Property is located in a census block that meets the requirements set forth in Paragraph 7(a) of the of the Settlement Agreement, under which the County is to ensure the development of at least 750 units of affordable AFFH housing; and

WHEREAS, these one- and two-bedroom Affordable AFFH Units will be rented to eligible households pursuant to an approved Affirmative Fair Housing Marketing Plan; and

WHEREAS, the funding to support the development of fair and affordable housing is consistent with and reinforces *Westchester 2025 – Policies to Guide County Planning*, the County Planning Board's adopted long-range land use and development policies, by contributing to the development of "a range of housing types affordable to all income levels;" and

WHEREAS, the staff of the County Department of Planning has reviewed the proposal and recommends the requested funding associated with the acquisition of the Property and development costs; and

WHEREAS, advancement of the development is subject to appropriate approvals by the Village of Pleasantville; now, therefore, be it

RESOLVED, that the Westchester County Planning Board after completing a review of the physical planning aspects of the proposed capital projects recommend it, noting that it is currently proposed that the County provide the following:

\$ 1,800,000	BPL10 NHLA Acquisition
\$ 993,000	BPL50 FAH for Development Costs
\$ 2,793,000	Total; and be it further

RESOLVED, that the County Planning Board amends its Report on the 2016 Capital Project Requests to include the proposed AFFH Units located at 98 Washington Avenue in the Village of Pleasantville as a new component project in Capital Project BPL10 NHLA and in Capital Project BPL50FAH under the heading of Buildings, Land and Miscellaneous.

Adopted this 3rd day of May 2016.


Jeremiah Lynch, Chair

ACT NO. _____ - 2024

AN ACT approving Lifting Up Westchester as the new developer and authorizing the County of Westchester to enter into a Restated and Amended Declaration of Restrictive Covenants to be recorded against 98 Washington Avenue, in the Village of Pleasantville in order to allow the current owner Migi Asset Acquisition, LLC to assign, and Lifting Up Westchester to assume as the new owner, all of the rights and responsibilities included in the original Declaration of Restrictive Covenants, and to amend the affordability requirements for the fifty (50) year period of affordability

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") hereby approves Lifting Up Westchester as the new developer for the development described in a certain Declaration of Restrictive Covenants recorded against 98 Washington Avenue, in the Village of Pleasantville ("Declaration of Restrictive Covenants"), and hereby authorizes the County to enter into a Restated and Amended Declaration of Restrictive Covenants in order to allow the current owner, Migi Asset Acquisition, LLC to assign, and Lifting Up Westchester to assume as the new owner, all of the rights and responsibilities included in the Declaration of Restrictive Covenants.

§2. The affordability requirements contained in the Declaration of Restrictive Covenants shall be amended as follows: ten (10) of the Affordable AFFH Units will be available to households that are homeless and have an income at or below fifty (50%) percent of the area median income for Westchester County, as established by the U.S. Department of Housing and Urban Development ("AMI"), with a priority given to those who are employed full time. The marketing of these units will be conducted through the County Continuum of Care program. The remaining four (4) units will be available to households with incomes at or below sixty

(60%) percent of AMI. These units will be marketed through the County's approved marketing plan.

§3. All of the remaining terms and conditions of the Declaration of Restrictive Covenants, except as amended herein, shall remain in full force and effect.

§4. 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.

§5. This Act shall take effect immediately.

W. L. S. (illegible)
2022
[Illegible signature and date]