

# Affordable Housing in Westchester County

Laurence F. O'Connell

New School for Social Research

---

## Abstract

As municipalities across the United States struggle to provide affordable housing for its citizens, they face a myriad of ethical, legal, legislative, economic and social issues. This paper first traces the ethical and moral reasons for municipalities providing affordable housing; next, it synthesizes the major legal and national legislation pieces related to affordable housing and exclusionary practices and finally investigates inclusionary land practices in Westchester County, NY.

*JEL classification*; H4, H44, D62

*Keywords*: inclusion, exclusion, zoning, public goods, neighborhood effects, Tiebout model

---

I wish to thank Professor Duncan Foley of the Economics Department at The New School and Professor Alex Schwartz of The New School for Public Engagement for their thoughtful comments, critiques and insights. I thank my loving wife, Mary, and children, Laurence and Krista for putting up with me during this journey.

Local community financial budgeting is more than a “number crunching affair”; it is both a managerial tool and a public policy document since it communicates local priorities, details funding and distribution of scarce resources and reveals how public goods are intended to be allocated. As such, local decision-making processes become highly political given the myriad goals of interested stakeholders.

A good number of municipalities in the United States have been accused of housing bias toward African American families and/or households with lower income. In Westchester County, New York, a number of municipalities were cited by the Anti-Defamation League and subsequently by the Housing and Urban Development department of the United States government of practicing discriminatory affordable housing schemes. Much of the literature on housing discrimination focuses on zoning, redlining and related activities, while the literature on local governments contributing to this practice is scant. Using Westchester County, budget and financial documents as a template, I try to distinguish between “good” public goods and “necessary” public goods; where “good public goods” are things such as parks, playgrounds and community facilities; whereas, “necessary public goods” might include sewer and water utilities. That is, the municipalities that

invested in good public goods were more resistant toward affordable housing for minorities and households of lower income than those municipalities investing in necessary public goods. Justifiably, one may argue that the local government, consciously or not, is creating legislation the voters in the community desire.

## **THE NUMBER AND NATURE OF LOCAL GOVERNMENTS**

In some sense, the proliferation of local governments seems counter-intuitive; given that the Industrial Organization literature suggests efficiency gains via economies of scale and scope and the history of corporations becoming ever larger. As early as Roman times (Duncan-Jones, 2002, pp. 159-192) to Adam Smith and beyond, has economies of scale been thought to be beneficial to a progressive society by reducing cost, increasing efficiency and enhancing the overall consumer experience. However, Adam Smith and later writers, for just one example, Viscusi, Harrington & Vernon, recognize the fact of monopolization and price-fixing.

This chapter describes the relationship between state and local governments, assesses the role of county and local government, explains the growth of suburbs and role of local government and investigates the challenges of local government administrators.

The United States has a Federalist governmental structure. Federalism is an explosive word but I try to define it in a non-ideological framework, where a constitution distributes power between the central government and smaller governments – such as states and local governments. That is, the constitution separates and clearly defines the authorities and responsibilities of the central

government and the state and local governments. (Magely, Light, Nemacheck, 2014, pp. 26-27)

Overall, the number of local governments has expanded in the United States, and vary in structure, size, authority and relationship to the state and each other. The United States Constitution makes no mention of local governments, rather, their authority is provided by the respective state, via Dillon’s Rule. TABLE \_\_\_\_ details the number of governments in the United States from 1930 through 2012

TABLE \_\_\_\_ NUMBER OF GOVERNMENTAL UNITS IN THE UNITED STATES: 1930 TO 2012

Year	Total Units	U.S. Government	State Governments	Local Governments	County Government	Municipal Government	Townships	School Districts	Special Ddistricts
1930	175,388	1	48	175,339	3,053	16,366	20,262	127,108	8,550
1942	154,306	1	48	154,257	3,050	16,220	18,109	108,579	8,299
1952	116,807	1	50	116,756	3,052	16,807	17,202	67,355	12,340
1957	102,392	1	50	102,341	3,050	17,215	17,198	50,454	14,424
1962	91,226	1	50	91,175	3,043	17,987	17,144	34,678	18,323
1967	81,299	1	50	81,248	3,049	18,048	17,105	21,782	21,264
1972	78,269	1	50	78,218	3,044	18,517	16,991	15,781	23,885
1977	79,913	1	50	79,862	3,042	18,862	16,822	15,174	25,962
1982	81,831	1	50	81,780	3,041	19,076	16,734	14,851	28,078
1987	83,237	1	50	83,186	3,042	19,200	16,691	14,721	29,532
1992	85,006	1	50	84,955	3,043	19,279	16,656	14,422	31,555
1997	87,504	1	50	87,453	3,043	19,372	16,629	13,726	34,683
2002	87,576	1	50	87,525	3,034	19,429	16,504	13,506	35,052
2007	89,527	1	50	89,476	3,033	19,492	16,519	13,051	37,381
2009	87,576	1	50	87,525	3,034	19,429	16,504	13,506	35,052
2012	90,107	1	50	90,056	3,031	19,519	16,360	12,880	38,266

Scources:  
 Proquest Statistical Abstract of he United States, 2018 Table 463, pg. 296 for years 1967 through 2012 except year 2009  
 For year 2009: Magleby, Light and Nemachek; State and Local Politics; Government by the People, 15th Edition, pg. 11  
 For year 1930 The Council of State Governments, Committee on State-Local relations, State-Local relations, Chicago: Council of State Governments, 1946, page 183  
 Norman Beckman and Marjorie Brazer, "Governments Galore", National Civic Review, LII No. 3, March 1963, page 134M

Note: The data is normally presented with "Types of Governments" listed vertically and Year" horizontally, I transposed.

The number and composition of governmental units was first investigated by political scientist, Professor William Anderson, in the 1930s and subsequently updated by the United State Census Bureau. (Individual State Descriptions: 2012, September, 2013)

The number of local governments declined nearly by half from 175,339 in 1930 to 91,175 in 1962 mainly due to consolidation of school districts. Taking a playbook from the corporate nexus, the thought was that consolidation, sometimes referred to reorganization or regionalism reduces administrative and overhead cost through economies of scale and improve educational quality. (Howley, Johnson and Petrie, February, 2011).

In New York State, Governor Andrew Cuomo, as Attorney General, railed against the number of government entities, somewhere between 10,000 and 10,500 depending on how you count. The 2012 Census Bureau indicated there were 3,453 local governments in New York State as of June 30, 2012. A brief synopsis follows:

- 57 Counties: The state is governed by separate county government> Note – the five counties of New York City are not counted as counties rather as a city of part of New York City.
- 1,543 Subcounty General Purpose Governments: This is further tailored to municipalities: cities and village governments and town governments. These three types of governments have similar authority and responsibilities and developed based on historical circumstances.
- 614 Municipal Governments: The Census Bureau considers cities and villages as municipal government. While NYS considers towns as municipalities, the Census Bureau considers towns as “towns”. While cities exist outside towns, villages are included within a town and subject to town and village taxes. There is no size classification to designate towns or villages and they have broad home rule authority.
- 929 Towns or Townships: Towns have similar legal authority as municipalities and villages but counted separately by the Census Bureau. In NYS, towns are further divided between “first class towns”, with population greater than 10,000 and “second class towns” with population than 10,000. And all towns in Westchester County are classified as “first class towns”.
- 715 Public School Systems, which can be further divided into:

- 679 School District Governments which includes: Central School Districts, Central High School Districts, City School Districts, Common School Districts, Enlarged City School Districts and Union-Free School Districts.
  - 36 Dependent Public School Districts, which includes: Community Colleges, the school districts of the cities of Buffalo, New York City, Rochester, Syracuse and Yonkers as these cities have population greater than 125,000; the community colleges of the City University of New York (CUNY) and the Fashion Institute of Technology (FIT)
  - No Count Available: Other School Districts such as The Board of Cooperative Education Services that provides specialized, trade, and vocational services.
- 1,174 Special District Governments: These districts serve a specific purpose; and include: fire districts, library districts, lake districts, waterfront commissions, health research, housing authorities, industrial development, soil and water conservation and urban development and community development. The Metropolitan Transit Authority and The Port Authority of New York and New Jersey are also considered within the confines of special district governments.

In Westchester County, there are: 6 cities, 19 towns, 23 villages, 28 CDPs (New York State administrative service agencies) and 14 Hamlets.

As an example, in the Town of Mount Pleasant in Westchester County, NY, where I reside, there are six School Superintendents: Doctor Kurtis Kotes of Mt. Pleasant School District, Doctor Emily Hersh of Mount Pleasant Blythedale (note – this is a special school/hospital for children with very, very serious physical and mental disabilities, cancer rehabilitation, wound and burn management, neural-muscular disorders (muscular dystrophy, spina-bifida and others)), Doctor Stephen Beovich – Interim Superintendent of the Cottage School with six direct reports. The Cottage School addresses the needs of children and adults with law enforcement issues, The Pleasantville Union Free School District, administered by Doctor Mary Fox

Alter, the Valhalla School District overseen by Doctor Koren Geelan and the Hawthorne School District, managed by Mr. Richard Spirito.

The total number of governments has been rather steady since 1962; however, the composition has switched as the number of school districts decreased and the number of special districts increased.

### **WHY IS HOUSING UNLIKE OTHER GOODS OR SERVICES?**

President Franklin Delano Roosevelt declared in his 1944 State of the Union address that economic security is a necessity for a democratic society and there is a broad need for economic and social rights; including a right to housing:

We have come to a clear realization of the fact true individual freedom cannot exist without economic security and independence. "Necessitous men are not free men"... These economic truths have become accepted as self-evident. We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all – regardless of station, race or creed. Among these are the right to earn enough to provide adequate food and clothing, the right to adequate medical care ... (along with several other listed rights) the right of every family to a decent home (State of the Union Address to Congress, January 11, 1944)

Thomas Jefferson wrote in a similar vein

I am conscious that an equal division of property is impracticable. But the consequences of this enormous inequality producing so much misery to the bulk of mankind, legislators cannot invent too many devices for subdividing property, only taking care to let their subdivisions go hand in hand with the natural affections of the human mind. The descent of property of every kind therefore to all the children, or to all the brothers and sisters, or other relations in equal degree is a politic measure, and a practicable one. (1785)

There are a good number of inequities that need redressing in the United States: opioid addiction, homelessness, income inequality, discrimination and segregation in educational opportunities, career opportunities, housing opportunities and rising health-care expenses. Often, these inequities complement

and compound themselves; for example: discrimination in career opportunities leads to income inequality or discrimination in educational opportunities leads to lost career opportunities and then subsequently - income inequality.

Ameliorating these inequities requires vast amounts of financial, personnel and physical capital resources. One issue is that government budgets are sometimes developed to target one of the inequities without (intentionally or not) recognizing the thread running throughout. A focus on affordable housing provides several opportunities in ameliorating inequities. The first argument rests on moral, religious or ethical dimensions, the second line of argument is political, the third social and finally economic.

Of course, these remarks do not frame affordable housing as we know today. However, "What is 'adequate'?" or "What is a 'decent home'?" is an evolving concept. At first, "adequate" meant free from vermin and fire, proper sanitation and air ventilation. With the seminal Supreme Court case, "Village of Euclid v. Ambler Realty Co., zoning of land into various categories; generally three tranches: residential, commercial and industrial became a milestone of real estate and property law. The communicated philosophy is American society needs to provide for all its citizens; where the definition of adequate provisions considers additional attributes as our communities evolve and progress.

Louis Wirth (1947) argued housing has three important implications: (1) a social value, (2) relation to the community or neighborhood and (3) a social policy. One way we consider "value of housing" is as a hierarchy in relation to other goods and services such as automobiles, health care, education and other items. Secondly,



housing is not isolated from the neighborhood or community as beside property values, housing location is positively valued by its location to excellent schools, libraries, recreation centers and parklands and negatively valued by its proximity to criminal activity, pollution and negative externalities. Unlike the automobile industry or gasoline industry, where stakeholders are rather limited, there are a myriad of stakeholders with specific interests and goals in the housing industry. The stakeholders in the home market include:

- Public regulation via building, permits, lot size, zoning codes and sanitary, fire and safety codes
- Neighborhood and community activist and organized or non-organized or semi-organized property owners
- Local government officials and budgetary constraints
- Architects
- Builders
- The trades: carpenters, plumbers, electricians

Scholars observe real estate markets distribute much more than a physical product; they distribute education, security, health, wealth, employment, social status and interpersonal connections. The utility one receives from one's home is not along a monotonic plane; as the location of a family's home determines the quality of children's education, public, recreational, cultural and environmental benefits, career opportunities, wealth building capacity and social networking opportunities. (Massey, et al, 2013, Saegert, 2006; Hartman, 2006; Stone, 2006; Tilly, 2006; Denton, 2006).

### ***The Bundle of Sticks Metaphor***

What is often referred to as property is really the access right to a stream of benefits from a given set of resources (Meyer, nd). To use a metaphor, property rights are a, "bundle of sticks", where "stick" is a "right" and the bundle expands as sticks are added and reduced as sticks are taken away.

The dullest individual among the people knows and understands that his property in anything is a bundle of rights. (Lewis, 1888, pg 43)

Other things equal, a property owner has the right to sell, dispose or lease their property; they can subdivide their land or grant an easement, property owners have the right to enjoyment and have the right to exclude (Kimmons, 2018).

This line of reasoning was furthered by United States Supreme Court rulings in *Kaiser Aetna v United States* (1979) and *United States v Craft* (2002) (Ellickson, 2011, pg 215). In *Kaiser*, the Court ruled a real estate developer, that dredged a 500-acre "fishpond" next to a Hawaiian beach to construct a marina, resort and shopping venue restricted residents' access; since 1852, Hawaii considered fish ponds as private property. (Ellickson, 2011, pg 215; Justia Supreme Court Ruling, 1979) Interference with economic expectations and the Court's recognition of "the right to exclude" others as a fundamental element of property rights were dispositive factors in this case. The Court held a natural waterway on private property made navigable by private funds was navigable was subject to the right of public access without compensation (Kelly, 2017)

However, Justice Benjamin N. Cardozo (1928, pg 129) wrote:

The bundle of power and privileges to which we give the name of ownership is not constant through the ages. The faggots must be put together and rebound from time to time. Cardozo, 1928, pg 129).

Each stick represents a different property right, and depending on the words in the deed or other document by which you acquire title, you may be entitled to exercise all, or only some, of the rights associated with a piece of real estate.

Now why is this important? The amount you pay for a piece of property may vary depending on what rights—sticks—are present and what rights have been retained by the grantor/seller. For example, the grantor/seller might retain the right to extract minerals. You don't have the entire bundle of sticks and your property could, conceivably, be worth less as a result.

In Westchester County, NY, 12 municipalities (one was the village of Pleasantville, where I reside) out of 55 were cited as practicing housing discrimination by prohibiting or making it very, very difficult, for minorities and people of lesser income to purchase affordable housing. The Anti-Defamation League (ADL) in 2006 and then subsequently by The Housing and Urban Development department of the federal government. being discriminatory designated to be racially and ethnically.

Table \_\_\_\_ shows the difference in various economic, educational, ethnic and racial differences between the municipalities cited by the ADL and the Department of Housing and Urban Development (HUD).

### **The Westchester Lawsuit**

In April, 2006, The Anti-Discrimination Center of Metro NY (ADC) filed a lawsuit in U.S. District Court of the Southern District of New York under the False Claims Act that Westchester County had, “Failed to affirmatively further fair housing (AFFH) while accepting federal funds.” Subsequent Court rulings, were adverse to the County, thereupon, the Federal Housing and Urban Development (HUD) Department tried to

negotiate a compromise. In August, 2009, the Court issued a Stipulation and Order of Settlement and Dismissal, otherwise known as a Consent Decree and generally referred to the Housing Settlement Agreement (HSA). Faced with a potential \$180 million penalty, then County Executive, Andrew Spano, signed the HAS, which was approved by the County Board of Legislators in September, 2009.

The HSA requires the County to develop 750 “fair and affordable” housing units in 31 municipalities by December 31, 2016, deemed “eligible”. These 31 communities had an African American population of less than 3% and Hispanic population of less than 7% according to the 2000 Census. In addition, among other requirements, the Court appointed a Monitor, Mr. James Johnson, to ensure compliance (League of Women Voters of Westchester. December, 2014, Westchester County Fair and Affordable Housing Implementation Plan, 2010)

**Error! Not a valid link.**

Table \_\_\_\_\_ summarizes the differences in various economic and social components between the towns on the Monitor’s list and those that are not

TABLE \_\_\_\_\_

	On Monitor List	Not On Monitor List
Homeowner Vacancy Rate Source: (8)	1.36%	1.79%
Renter Vacancy Rate Source (8)	6.20%	7.97%
Total Population (000) Source (4)	12,579	13,898

White Source (4)	9,158	5,967
African American Source (4)	507	2,960
Hispanic Source (4)	1,961	3,909
Other Source (4)	953	1,061
Percent White	78.12%	58.97%
Percent African American	3.18%	14.06%
Percent Hispanic	11.20%	20.03%
Percent Other	7.50%	6.94%
Current (November, 2014) Unemployment rate (Source: 9)	5.23%	5.58%
Year Ago (November 2013) Unemployment Rate (Source 9)	6.14%	6.50%
Average House Value: Source (7)	\$663,783	\$486,684
Growth Rate Since 2000 Source (7)	66.84%	74.61%
Average Real Estate Taxes Paid (Source (5) by Dividing Real Estate Taxes By Number of Returns Claiming Deduction	\$16,255	\$11,384
School District Rating Source (7) (low number is excellent)	213.26	801.49
Percentage of Students Eligible For Free or Reduced Lunch Source (9)	11.73%	29.83%

Avg. Income Per Household: Source (7)	\$127,450	\$102,014
Total number of 2012 Federal Tax Returns (Source: 5)	6103	7783
\$1 under \$25,000 95) (Source: 5)	1706	2812
\$25,000 under \$50,000 (Source: 5)	901	1713
\$50,000 under \$75,000 (Source: 5)	683	1059
\$75,000 under \$100,000 (Source: 5)	510	682
\$100,000 under \$200,000 (Source: 5)	1133	1033
\$200,000 or more (Source: 5)	1169	485
Percent of Number of Returns Between AGI \$1 and \$25k (Source: 5)	0.268060867	0.320287783
Percent of Number of Returns Between AGI \$25,000 under \$50,000 (Source: 5)	13.82%	19.29%
Percent of Number of Returns Between AGI \$50,000 under \$75,000 (Source: 5)	10.84%	13.07%
Percent of Number of Returns Between AGI \$75,000 under \$100,000 (Source: 5)	8.40%	9.33%
Percent of Number of Returns Between AGI \$100,000 under \$200,000 (Source: 5)	19.44%	16.76%

Percent of Number of Returns Between AGI \$200,000 or more (Source: 5)	20.70%	9.52%
Returns Having Real Estate Deductions (Source: 5)	2947	2335
Amount of Real Estate Taxes Paid In Thousands (Source: 5)	\$48,730	\$24,062
Average Real Estate Tax Paid (Source: 5)	\$16,255	\$11,218
Current (02/16) home price for sale	\$1,373,576	\$755,513
Current (02/16)square foot	3485	2956
Current (02/16) acreage	0.874	0.488

Much of the literature on housing discrimination focused on zoning issues; however, the recent book by Richard Rothstein, [The Color of Law: A Forgotten History of How Our Government Segregated America](#), explored government’s role in fostering discrimination.

Thomas DiNapoli, the Comptroller of New York State, provides a detailed report of operating and maintenance expenditures by county and municipality within the county. (link: [dinapoli file local governments nys 100718 copy.xls](#))

Using this data, Table \_\_\_\_ displays various governmental expenditures on a per-capita basis between the “non-excluding” municipalities and the “excluding” municipalities.

			TOTAL GENERAL GOVERNMENT	TOTAL PUBLIC SAFETY	TOTAL HEALTH	TOTAL TRANSPORTATION	TOTAL SOCIAL SERVICES	TOTAL ECONOMIC DEVELOPMENT	TOTAL CULTURE & RECREATION	TOTAL COMMUNITY SERVICES	TOTAL SANITATION	GRAND TOTAL
			operations, admin, county, misc, zoning, judgements	police, fire, emergency response	public health administration, services, mental health care, facilities	highways, railroads, waterways, facilities	Admin, Services, Youth Service, Housing, Medical	Admin, Infrastructure, Services	Adult Recreation, Youth Recreation, Cultural Activities	Constituents, Elderly, Youth, Natural	Sewer, Drains, Landfill	
NON-EXCLUDING	MEAN		\$370.87	\$602.80	\$1.03	\$124.83	\$33.39	\$28.02	\$146.41	\$2.72	\$78.92	\$1,388.99
	MEDIAN		\$289.40	\$582.10	\$0.21	\$128.66	\$0.12	\$10.49	\$118.37	\$0.00	\$87.00	\$1,606.35
EXCLUDING	MEAN		\$344.79	\$577.03	\$5.08	\$246.75	\$0.17	\$1.77	\$207.01	\$6.73	\$115.66	\$1,504.99
	MEDIAN		\$353.24	\$573.69	\$0.27	\$246.17	\$0.00	\$0.00	\$198.37	\$0.00	\$115.06	\$1,529.69

Now, some of these may seem counter-intuitive – or not. The non-excluding municipalities tend to spend more on a per-capita basis on public safety, government services and administrative services such as youth counseling and housing needs, that is “necessary public goods”, whereas, the excluding municipalities tend to spend more on “good public goods”: recreational activities, nature and youth activities and highways and slightly less on police, fire and emergency services.

My further research is investigating the capital budgets of the respective municipalities to determine a similar finding. cursory analysis suggests the same outlook but more problematic as Capital Budgets of many municipalities are “forward- thinking”, meaning a planning horizon of perhaps five to ten years with respective cash flows and anticipated outlays, versus Operating Budgets which generally are for one period of time.



