

**WESTCHESTER COUNTY BOARD OF LEGISLATORS
COMMITTEE ON GOVERNMENT OPERATIONS**

**Joint meeting with the
COMMITTEE ON LEGISLATION**

**October 21, 2008—1:00 pm
MEETING MINUTES**

In Attendance:

COMMITTEE ON GOVERNMENT OPERATIONS (GO) MEMBERS: Legislators Ken Jenkins, Chair; Lois Bronz, William Burton, Peter Harckham, Judy Myers, Vito Pinto, Martin Rogowsky, Bernice Spreckman. Housing Advisory Member: Albert Annunziata. Committee Coordinator: Barbara Dodds.

COMMITTEE ON LEGISLATION (LEG) MEMBERS: Legislators William Burton, Chair, Thomas Abinanti, Lois Bronz, Peter Harckham, Kenneth Jenkins, Judy Myers, George Oros, Martin Rogowsky. Committee Coordinator, Melanie Montalto.

OTHERS: BOL: Rick Pezzulo; CE: William Randolph; Finance: James Ferrara, Kathy Thorsberg; Law: Rick Cashman, Mary Lynn Nicoles-Brewster; LWWV: Barbara Strauss; WDOM: Meghan Scheffling; CLUSTER: Jon Shenk; WRAID: Karen Tenenbaum; Legal Services: Miniela Petrusci, Jennie Kim; MVUT: Dennis Hanratty; Park Place LLC: Charles Wagner; Apartment Owners Advisory Council: Michael Maseolo, Alana Giuffetili, Charles E. McBin, Kenneth J. Finger; WCBR: Devin Willacy, P. G. Mercurio; BRI: Kenneth Nilsen; WRO: Geoffrey Anderson; Bridge Fund: Lisa Buck.

ITEMS FOR DISCUSSION:

Committee on Government Operations:

- 207. Amendment to County Procurement Policy.

With Committee on Legislation:

- 187. Source of Income Discrimination category in Human Rights Commission legislation.

With quorums present, Leg. Jenkins opened the meeting of the GO Committee at 1:15 and Leg. Burton opened the meeting of the LEG Committee.

- 207. Amendment to County Procurement Policy.

Leg. Jenkins welcomed Rick Cashman, Assoc County Atty. and James Ferrara, County Purchasing Agent to discuss the proposal to amend the County Procurement Policy. Mr. Ferrara said the provision amended the law to require the listing of the titles and names of County commissioners, department heads and officials who were responsible for purchases and signing contracts. The addition is required under New York State Municipal Law 104B for County procurements of goods and services not subject to public hearings. The list will be updated regularly and revisited bi-annually. The intent of the amendment is to give more visibility to the process of procurement.

Leg. Rogowsky asked whether the Board of Legislators should be subject to the existing County Procurement Policy passed by the Board in 1992. Since the Chairman of the Board has laid out certain procurement policies—is the chairman one of the officials of the county following the County Procurement Policy? Should the chairman be on this list if the County Executive is the final arbiter? Leg. Jenkins pointed out that neither the County Clerk nor the District Attorney are controlled by the County Executive but they are listed as officials responsible for procurement in their departments. Leg. Pinto asked why Leg. Rogowsky felt the County Executive was the final arbiter. Leg. Rogowsky noted that the charter says in questions of procurement the County Executive makes the final decision and we should therefore not be under the county policy.

A motion for the Government Operations Committee to approve was moved by Leg. Burton and seconded by Leg. Pinto. All voted in favor. [Note: Item was recommitted at the Board meeting on Nov. 10, amended to exclude reference to County Procurement Policy and approved by unanimous consent at Nov. 24 Board meeting.]

- 187. Source of Income Discrimination category in Human Rights Commission legislation. Legislator Jenkins opened the joint meeting with Legislation continuing discussion from several previous meetings on a proposal to add source of income discrimination in housing to the categories in the Westchester County Fair Housing Law. The Committee had requested the Law Department to draft a document that is now available. He noted that following the last meeting Legislator Abinanti wrote a letter to Planning with questions on Section 8 specifically. Deputy Commissioner Drummond responded on October 20 in a memo received by all members of the Committee. Those responses would be reviewed later.

Mary Lynn Nicolas-Brewster, Assoc. County Attorney, reviewed the legislation prepared by the County Attorney's office as requested to create an additional protective classification to the fair housing law. On the first page under section 1, the department has included source of income as a group identity. Thereafter, a new sub-paragraph has been added in section 700.20 entitled "source of income" which is defined as lawful, verifiable income derived from social security or any form of federal, state or local assistance or housing assistance, grants or loan programs including the federal subsidy program known as Section 8, disability payments, gifts, inheritance, annuities, pensions and child and spousal support but shall not include level of income. For purposes of this article, it shall not constitute discrimination based on source of income to make a written or oral inquiry concerning the level of source of income.—an issue that had come up at the last meeting.

In subparagraph 3 a subdivision section c has been added to indicate that nothing in this article would limit the applicability of any federal or state laws regarding the residency of registered sex offenders. This had also come up in the previous meeting and it was important to avoid impacting existing or pending state laws. The legislation would take effect immediately.

Legislator Burton noted that Mr. Annunziata had with him several members of the Building and Realty Institute that might want to address the Committee. Mr. Annunziata said that several members of the Institute's Apartment Owners Advisory Council were present led by their president Ken Nilson. Leg. Jenkins invited Gill Mercurio, CEO of the Westchester County Board of Realtors to the table.

Mr. Mercurio said the Board of Realtors was very supportive of the Section 8 program and is part of the National Association of Realtors, one of the groups that had encouraged the program in the first place and he introduced Devin Willacy, legislative chairman. The Board has worked with the Planning Department in the past, he said, to promote Section 8 with building owners and have encouraged owners to use that program. But it is specifically the source of income part that is the problem. Section 8 is a program that comes with issues:

Regarding leases for example,

- the payment of rent schedules—
- inspection issues requiring an inspection every time a new Section 8 tenant is added, sometimes the whole building has to be inspected. Without standardization in Westchester, different communities have different requirements—
- how security deposits are handled—
- when people can occupy a unit—
- what to do if there is a dispute and Section 8 freezes the account and no payments are forthcoming.

It's not simply the business of receiving a check from the government. It is enforced enrollment in a program. Mr. Mercurio said his group would like to see an approach that tackles some of these questions and makes Section 8 more palatable to owners rather than forcing building owners into it. Then there could be anger and hostility with owners looking for ways to avoid Section 8 and in the end housing could be restricted. He asked the legislators to look at a National Association of Realtors document that outlined these issues from the point of view of what can be done to make the program work.

Mr. Willacy, also an owner, added that the County is trying to mandate a federal program over which it has no control. An owner cannot negotiate a Section 8 contract—it's either sign it or walk away as opposed to dealing directly with a tenant where things can be worked out. It also does not allow the owner to make remedies and cures during a dispute. Monies can be frozen and not released until the matter is resolved. And the owner can't adjudicate the matter and take Section 8 to court, abridging his legal rights. For the small owners, two months without rent could severely hurt and be their undoing. Without a uniform inspection code there are different standards in different parts of the county and it's not fair.

Ken Finger, Counsel for the Apartment Owners Advisory Council, said that being compelled to enter into contracts that you don't want to be into. Once you take on a Section 8 tenant you have no choice but to enter into several contracts in which you have no choice if you don't you don't get paid your rent. Your penalties are significantly greater than they are under the proposed state civil rights laws. Other impacts have to do with cooperatives and condominiums which put the owners in a position where they might not be able to investigate the source of income and the individual's ability to keep the property up. In this economy, if Section 8 is cut back and the tenant buying a unit loses Section 8 or it is minimized, the loss of common charges for more than two units is a significant burden on the other owners. There are a lot of factors that have not been fully explored and they really need significant explanation and analysis.

Ken Wilson—a landlord in Yonkers and the President of the Builders Institute, commented that this program is far more expansive than programs in other areas cited as comparables. Mucking around with market forces will have unintended consequences such as an increase in the overall level of rents across the board. The feedback he has heard from landlords some say they would push the rents higher than market rates so as to not qualify for Section 8 and therefore not have to deal with this program. Also, this creates a class of people who would have advantages to getting an apartment. Since there isn't enough affordable housing, the issue is who is going to get a limited number of apartments. A subsidized class of priority would get the apartments and increase the demand from the working poor. Fewer apartments will be available for those not supported and rents will therefore be higher for them. The documentation has to increase to protect the landlord from complaints because he has to document the discussion as if he would have to go before the Human Rights Commission—who knows which tenant is going to feel aggrieved and go to a legal services attorney? The whole process then gets more complicated and costly. In addition, if the NYS legislature is taking up this issue why is the County on a local basis? It is now in the Senate.

Mr. Annunziata identified two property owners with Section 8 experiences. Charles McBane, a property owner and manager in Yonkers told about his problems with the 30 day opt out provision in the Section 8 lease. In a residential lease both parties are protected. Under Section 8 the tenant may give a 30-day notice that they are opting out, breaking the residential lease whereas the landlord does not have the same option. Although his tenant had given a 30-day notice and had Section 8 approval to transfer to another apartment, she was still there a month later due to a delay in the program. Eventually it was negotiated to coincide with the end of the residential lease with Section 8 agreeing to pay back rent. The whole process is very convoluted and burdensome and is basically an unequal contract situation. In other states landlords can

decide to not extend the lease but in New York they cannot because of ETPA (Emergency Tenant Protection Regulations).

Lisa Darosa, a property owner and manager in White Plains complained that the proposed legislation forces private housing to become public and takes business decisions away from owners. Under Section 8, the owner becomes responsible for the negligence of the tenant and that's not fair.

Leg. Harckham said he had only heard about the impact on the small owner. He asked if there is a threshold of building size that would be more comfortable. Would six be a more manageable number? Mr. Finger said that at six units it becomes a commercial building. Leg. Jenkins asked what's the difference between requirements and responsibilities of the regular tenant and the Sec. 8 tenant. Discussion ensued on issues of security and property damage. One landlord said the Section 8 law has changed where the tenant now is only responsible for the security deposit which Section 8 does not provide. Inspectors do not care how damages got that way only that something needs to be fixed and rent will be withheld until it is.

Mr. Willacy suggested incentives for first-time vendors such as \$300-\$400 county tax break or a \$400 bonus payment.

Mr. Abinanti joined the meeting. Several questions were posed regarding terms of Section 8 leases and whether this amounts to rent control for apartments not previously controlled. Mr. Abinanti queried if two people apply for an apartment and one has Section 8, is the landlord discriminating if he chooses the non Section 8 applicant. Leg. Burton said that question had come up in a prior meeting including Ms. Brathwaite, Exec. Dir. of the Human Rights Commission, and the answer was no. Multiple discussions led the chairs to redirect the discussion to source of income as a category of discrimination. Tenant advocates came to the table.

Karen Tannenbaum, Westchester Residents Against Discrimination, and Dennis Hanratty, Mt. Vernon United Tenants, addressed some of the questions that had come up during the discussion. Ms. Tannenbaum said the Section 8 tenant contracts with the landlord via both the typical housing system payments (HAP) contract and the Sec. 8 contract. Section 8 does not mandate the relationship. Damages can be deducted from the security deposit the same as with ordinary leases. Tenants can get terminated from the program for damages clearly caused by the tenant. Under Sec. 8, the landlord has to fail three inspections before payment is stopped and, once repairs are made it is resumed. Payment will also stop if the landlord faces foreclosure or the tenant moves out. But the tenant cannot just give 30 days notice and leave. In order to break the lease, the tenant has to be released by the landlord.

Sec. 8 voucher holders come already screened and are required to submit references, credit checks, income verifications and criminal background checks among others. Landlords can opt out of the program after a year. Landlords have the same remedies as with other tenancies.

Mr. Hanratty said Sec. 8 tenants have a strong incentive to stay in the program and follow its rules. They can be terminated if they don't pay their rent on time and are not allowed to get a voucher to move to another Sec. 8 unit without a letter from the

landlord that the rent is up to date. People get screened by the program and go through an orientation and they can get kicked off the program.

Regarding damages, Leg. Rogowsky asked if there is a dispute between landlord and tenant can the landlord still go to court or is the decision maker the inspector? Section 8 payment could be suspended by the order of the inspector? Leg. Pinto said we need to have the administrators of Section 8 come before the Committee. Administrators need to clarify these questions. Contracted inspectors may come from other areas and have different perspectives. Leg. Rogowsky said that he had heard of inspectors ruling for things not in the building code like dust on the windowsill. The local community may have code violations that are stricter than those of the state.

Mr. Hanratty added that Section 8 people are not all DSS clients who are low income. There are working people who may earn as much as \$70,000 and they may have assets and there is no asset test but interest from the assets is factored in as income.

Leg. Jenkins noted that in this economic climate, individuals may now require more assistance than in the past. They may want to stay in their communities and keep their assets but may not be able to—from a source of income perspective. Another question is how they deal with the rents. We need the administrators to tell us if they have flexibility. If Section 8 fixes the rent in the HAP contract and the average rate is two times the amount of that voucher unless the landlord accepts half their rent money, the person won't be able to use that voucher. That becomes an issue for the landlords. There was a question whether our legislation would force landlords to do that and the answer was no.

Leg. Abinanti raised a concern that this legislation may be a way of government control over a lot of apartments. When you are dealing with the smaller number of units and if the owner accepts the Sec. 8 tenant, they are going to have to abide with government rules—have inspections and accept whatever increases they decide. Once an owner of a smaller building that is not an ETPA building has signed on with a Section 8 lease, they have this lease for as long as the tenant wants to stay there and the landlord is bound to the terms of the lease. Many people don't want to deal with government intervention and are willing to let the apartment sit vacant. Mr. Hanratty responded that in a commercial relationship government has a legitimate interest in code enforcement and protecting property in the municipality.

Leg. Jenkins clarified that the threshold number is six units, over that a building becomes commercial property. The way the legislation is written right now, it is not clear how that six is divided, it could be three two-family houses for example.

Leg. Myers spoke about a constituent who has had a problem using a new Section 8 voucher in the coop where she was a long-term resident. Can an existing tenant force the landlord to accept Section 8 voucher?

Ms. Nicolas-Brewster opined that unless there are other reasons for denying the tenant, the landlord would be discriminating if they refuse to accept a voucher for rent. Fair Housing Law contains some exceptions for a single family as well as buildings that contain no more than four families if the owner resides in the building.

Discussion ensued about a hypothetical case where the tenant has been undesirable and the landlord would prefer the tenant to leave. A Section 8 application as income may be an excuse to cancel the lease. More research needs to be done in the case of coops and condos.

Mr. Nilson pointed out that, in addition to the HAP lease, there is a Section 8 lease addendum that is signed separately by the landlord and the tenant that has to do with the relationship—Ms. Tennenbaum said that form will be provided for the next meeting. Leg. Burton said that a series of questions and issues have been identified and will help going through the legislation to make any adjustments. One of our questions is whether this program puts an undue burden on the landlord to remedy a situation that can be dealt with in another way. Leg. Oros noted that unless more vouchers are made available, we are not creating affordable housing only putting an 'unfunded mandate' on landlords. Discussion ensued on the accuracy of the vacancy rate. Leg. Jenkins pointed out that more of a problem is that people are not able to use their vouchers where they want.

Mr. Abinanti requested the Planning Dept. address the issue of landlord created vacancies and are purposefully keeping apartments vacant to avoid Section 8. Leg. Pinto said a lot of landlords are willing to rent to Section 8. Leg. Bronz would like to look at the base leases for coop and condos. Leg. Rogowsky noted that if landlords are allowed the right to look at an applicant's source of income information, how can you determine if the landlord is discriminating. If they deny an applicant, the charge will be made it was because of Section 8.

Leg. Burton made a motion for Legislation Committee to adjourn. Moved and seconded, all in favor. Leg. Jenkins made a motion for Government Operations Committee to adjourn. Moved and seconded, all in favor.