



Peter J. O'Connor, Esq.
 Adam M. Gordon, Esq.
 Laura Smith-Denker, Esq.
 David T. Rammler, Esq.
 Joshua D. Bauers, Esq.
 Bassam F. Gergi, Esq.

August 14, 2020

Via eCourts

Hon. Linda Grasso Jones, J.S.C.
 Monmouth County Courthouse
 71 Monument Park, 3rd Floor
 Freehold, New Jersey 07728

Re: Rumson Open Space and Affordable Housing v. Borough of Rumson, et al.,
 Docket No. MON-L-755-20

Dear Judge Jones:

I write on behalf of Fair Share Housing Center (FSHC) to respectfully ask Your Honor's leave, pursuant to Rule 1:6-3(a), to supplement FSHC's May 6, 2020 Motion to Dismiss the Complaint in the above-captioned matter. The enclosed became available only after FSHC filed its reply brief, and it is highly material to the disposition of the motion.

Since the motion to dismiss was argued in June, a several-day fairness hearing was held in the related Mount Laurel matter, see In the Matter of the Application of the Borough of Rumson, Docket No. MON-L-2483-15.

At the fairness hearing in the Mount Laurel matter, Rumson Open Space and Affordable Housing (ROSAH) presented the testimony of an expert planner and engineer and argued that the January 16, 2020 settlement agreement between the Borough of Rumson and FSHC, and the January 16, 2020 settlement agreement between Rumson and Yellow Brook Property Co., LLC, were somehow contrary to the New Jersey Fair Housing Act/Mount Laurel, the Council on Affordable Housing's (COAH) rules, and not in the public interest.

After ROSAH presented testimony and made these arguments (in addition to submitting a written objection), and after argument and/or expert testimony from FSHC, Rumson, Yellow Brook and dozens of members of the public, Your Honor entered a thoughtful and comprehensive oral decision on July 20, 2020, that rejected ROSAH's arguments and found the settlement agreements fair and reasonable to lower-income households and consistent with the Fair Housing Act/Mount Laurel, COAH's rules, and in the public interest.

Your Honor's decision was subsequently memorialized in the July 29, 2020 Order Approving Settlement Agreements Between the Borough of Rumson and Fair Share Housing Center and the Borough of Rumson and Yellow Brook Property Co, LLC.

FSHC respectfully notes the above and encloses a certification from the undersigned with a transcript of Your Honor's oral decision and the subsequent order on fairness¹ because,

¹ The court can take judicial notice of its oral decision and subsequent order even though not in the Complaint. See Banco Popular N. Am. v. Gandji, 184 N.J. 161, 183 (2005) (In evaluating a motion to dismiss, the court may "consider 'allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim.'" (quoting Lum v. Bank of Am., 361 F.3d 217, 221 (3d Cir. 2004))).

in its Complaint in the present matter, ROSAH had three counts that are identical to the arguments it raised at the fairness hearing in the Mount Laurel matter: Count 4 (“Arbitrary, Capricious, or Unreasonable and Contrary to the Public Interest”); Count 5 (“Failure to Comply with Fair Housing Act and Mount Laurel IV”); and Count 6 (“Failure to Comply with Second Round Regulations, N.J.A.C. 5:93”).

In FSHC’s motion to dismiss, we argue that ROSAH should be estopped from relitigating in this matter claims and arguments that it raised in the Mount Laurel matter. ROSAH’s response was that because no decision had yet been rendered in the Mount Laurel matter, it should be allowed to litigate the same claims in two parallel actions.

Now that a decision has been made in the Mount Laurel matter – which came only after Your Honor heard testimony from ROSAH’s experts and heard argument on the issues – ROSAH’s attempt to relitigate the same issues decided there herein should be estopped and Counts 4, 5, and 6 in its Complaint should be dismissed with prejudice.

As the State’s appellate courts have repeatedly held, “[b]oth collateral estoppel and law of the case are guided by the ‘fundamental legal principle . . . that once an issue has been fully and fairly litigated, it ordinarily is not subject to relitigation between the same parties either in the same or in subsequent litigation.’” State v. K.P.S., 221 N.J. 266, 277 (2015) (quoting Morris Cnty. Fair Hous. Council v. Boonton Twp., 209 N.J. Super. 393, 444 n.16 (Law Div. 1985))). This is because, “[g]enerally the question to be decided is whether a party has had his day in court on an issue.” McAndrew v. Mularchuk, 38 N.J. 156, 161 (1962).

ROSAH has had its day in court on these issues; in fact, it has had several days in court on these issues. It would be both wasteful and prejudicial to allow ROSAH to continue to relitigate issues that Your Honor has already thoughtfully and comprehensively decided.

If Your Honor has any questions, please let us know. Thank you for your attention to this matter.

Respectfully,



Bassam F. Gergi, Esq.
Counsel for Fair Share Housing Center

c: eCourts Service List

Fair Share Housing Center

510 Park Boulevard
Cherry Hill, New Jersey 08002
P: 856-665-5444
F: 856-663-8182

Attorneys for Fair Share Housing Center
By: Bassam F. Gergi, Esq. (302842019)
bassamgergi@fairsharehousing.org

**Rumson Open Space and
Affordable Housing, Inc.,**

Plaintiff.

v.

**Borough of Rumson, Fair Share
Housing Center, Inc., and Yellow
Brook Property Co., LLC,**

Defendants.

SUPERIOR COURT OF NEW JERSEY
Law Division, Monmouth County
Docket No. MON-L-755-20

CIVIL ACTION

**Certification of
Bassam F. Gergi, Esq.**

1. I, Bassam F. Gergi, Esq., am an attorney in the State of New Jersey. I certify the following to be true.

2. Attached as **Exhibit A** is a true and correct copy of the July 20, 2020 Transcript of Fairness Hearing Decision issued by the Hon. Linda Grasso Jones, J.S.C., in In the Matter of the Application of the Borough of Rumson, Docket No. MON-L-2483-15. The transcript was provided to me by counsel for Yellow Brook Property Co., LLC, Craig Gianetti, Esq.

3. Attached as **Exhibit B** is a true and correct copy of the July 29, 2020 Order Approving Settlement Agreements Between the Borough of Rumson and Fair Share Housing Center and the Borough of Rumson and Yellow Brook Property Co, LLC, ssued by the Hon. Linda

Grasso Jones, J.S.C., in In the Matter of the Application of the
Borough of Rumson, Docket No. MON-L-2483-15.

I certify that the foregoing statements made by me are true. I am aware that if any of the statements are willfully false, I am subject to penalty.

Dated: August 14, 2020

Bassam Gergi

Bassam F. Gergi, Esq.
Fair Share Housing Center

Exhibit A

SUPERIOR COURT OF NEW JERSEY
MONMOUTH COUNTY
HEARD VIA ZOOM
LAW DIVISION, CIVIL PART
DOCKET NO. MON-L-2483-15

IN THE MATTER OF THE)
APPLICATION OF THE BOROUGH)
OF RUMSON.)
X-----X

TRANSCRIPT
OF
FAIRNESS HEARING
DECISION

Place: Monmouth County Courthouse
71 Monmouth Park
Freehold, N.J. 07728

Date: July 20, 2020

BEFORE:

THE HONORABLE LINDA GRASSO JONES, J.S.C.

TRANSCRIPT ORDERED BY:

CRAIG GIANETTI, ESQUIRE
(Day Pitney, LLP)

APPEARANCES:

ERIK NOLAN, ESQUIRE
(Jeffrey R. Surenian And Associates, LLC)
Attorney for The Borough of Rumson.

CRAIG M. GIANETTI, ESQUIRE
(Day, Pitney, LLP)
Attorney for Yellow Brook Property Co., LLC.

Transcriber:
Geraldine Famularo
19 Cherrywood Circle
Brick, New Jersey 08724
(732)458-8298

Sound Recorded
By Michele Tuchy

APPEARANCES:

CAMERON MacLEOD, ESQUIRE
(Gibbons, P.C.)
Attorney for ROSAH.

BASSAM GERGI, ESQUIRE
(Fair Share Housing Center)
Attorneys for Fair Share Housing Center.

I N D E X

DECISION
By The Court.....4

1 (The Court's decision commenced at 2:16 p.m.)

2 THE COURT: This is In The Matter of the
3 Borough of Rumson. It's a Fairness Hearing. It's a
4 Mount Laurel case and basically this case started by
5 the Borough of Rumson filing a what was a Declaratory
6 Judgment action pursuant to a case that's sometimes
7 called Mount Laurel IV. It's In Re: Adoption of
8 N.J.A.C. 5:96 and 5:97 By The New Jersey Council on
9 Affordable Housing, 221 New Jersey 1. That's the
10 designation where you'd find that if you looked for it
11 in the law books. It was decided in 2015. In the
12 Declaratory Judgment actions the Borough of Rumson
13 sought temporary immunity from Constitutional
14 compliance claims and builders remedy litigation and a
15 final determination of the Township's Constitutional
16 Affordable Housing obligation and compliance therewith.

17 Under the Fair Housing Act, which is
18 N.J.S.A. New Jersey Statutes annotated 52:27B-301 and
19 thereafter Mount Laurel IV, the Fair Housing Act, and
20 Mount Laurel I and Mount Laurel II, and a number of the
21 other cases that you've heard discussion about, they
22 are called the Mount Laurel Doctrine.

23 The Borough has reached a settlement with the
24 Fair Share Housing Center and the Borough has reached a
25 settlement with Yellow Brook Properties which is a

1 developer for Mr. Mumford is the -- I don't know if
2 he's the CEO -- he's some sort of high ranking position
3 with Yellow Brook and he's -- with reference to, at
4 least with the public perceived him to be the face of
5 Yellow Brook, and the Borough entered an agreement with
6 Yellow Brook.

7 So this process, as I said, is called a
8 Fairness Hearing. Now, there have been references, as I
9 indicated, this lawsuit potentially was started by the
10 Borough in 2015. During that time period some people
11 have come and some people have gone. I know there were
12 other Judges involved in this case before I was
13 involved, but I think the constant in there was Mr.
14 Banisch. Mr. Banisch is the Special Master who, of
15 course, is appointed in cases like this with the
16 acceptance of the Court an agreement. But the Court
17 appoints someone who is a Special Master and that's
18 because it's recognized that some of the issues
19 involved here having to do with, you know, planning and
20 calculation of numbers in terms of the municipalities'
21 obligation under the Mount Laurel Doctrine, and it's
22 helpful to the Court to have a Special Master, someone
23 who provides information ultimately at the end provides
24 a report like Mr. Banisch provided and along the way
25 provides assistance not only in terms of letting the

1 Court know how things are going, if a settlement can be
2 reached, but also provides some assistance to the
3 parties, making suggestions so that sometimes between
4 the municipality and the Fair Share Housing Center and
5 the other parties might be able to reach an agreement.

6 I received a report from Mr. Banisch, who
7 provided testimony here today in accordance with that
8 report. I have received and reviewed submissions from a
9 number of interested individuals. I received a
10 submission from ROSAH, R-O-S-A-H, and, in fact, as I
11 mentioned earlier in this proceeding, ROSAH had when
12 they got involved, they asked for an adjournment of the
13 Fairness Hearing so they could submit materials, and I
14 granted the adjournment, and I think it was over the
15 objection of at least some of the other parties. But I
16 think it's always better to give someone the
17 opportunity, you know, with reference to a Fairness
18 Hearing, given the opportunity to submit something,
19 which they did, a legal brief, and also I got reports
20 from two experts on behalf of ROSAH.

21 I had done a Case Management Order that
22 provided timing for submissions, and ROSAH provided
23 submissions. I also got -- I didn't specifically count
24 them, but I counted besides the Master's report I think
25 there 130 submissions, 129 of them were in opposition,

1 one of them was sort of in opposition, sort of in
2 support of the Settlement Agreements. And I read all of
3 those.

4 In terms of this proceeding when I'm checking
5 and saying, "Are we on the record?" It means that
6 there's a recording being made of this. So if someone
7 wants to get a copy of the recording, I think it's \$10
8 to get a copy of the CD of the recording, \$10 per day,
9 and sometimes people will order transcripts. That's a
10 whole lot more than \$10 because you have to pay someone
11 to type out everything that's said. But everything
12 that's happened in this proceeding has been recorded.
13 The visual isn't recorded. So in terms of what, you
14 know, this would look like or my terrible haircut that
15 I've been giving myself since March, you're not going
16 to be able to get that, but you do get my words and the
17 words of everyone else who spoke.

18 Because we do have -- there's been a lot of
19 talk about Mount Laurel and the Mount Laurel Doctrine,
20 because we do have a lot of members of the public who
21 have expressed an interest, who have participated, I do
22 want to go over a little bit what the Mount Laurel
23 Doctrine is about. And it's a New Jersey Doctrine.
24 Other States may have particular cases that address
25 rules in terms of what you have to do in terms of, you

1 know, providing Affordable Housing. Other States may,
2 you know, on a statewide basis have no rules. This is
3 now a Doctrine that has been in place in New Jersey
4 since 1975. The first case, Mount Laurel I, is South
5 Burlington County NAACP versus Mount Laurel is at 67
6 New Jersey 151. And again that's the book it's located
7 in, that's the location where you find it. And again it
8 was decided March 24th of 1975.

9 Now, it's interesting because 1975, you know,
10 sometimes people say, "What were you doing in a
11 particular time?" Think about it, 1975 was a couple
12 years I guess Richard Nixon wasn't our President
13 anymore. It was a really long -- I don't know. So the
14 1975 decision from the New Jersey Supreme Court and
15 they say there's not the slightest doubt that New
16 Jersey has been and continues to be faced with a
17 desperate need for housing especially of decent living
18 accommodations economically suitable for low and
19 moderate income families. With reference to young and
20 elderly couples, single persons, and large growing
21 families not at the poverty class but still cannot
22 afford the only the kinds of housing realistically
23 permitted in most places of relatively high priced
24 single-family detached dwellings on sizable lots. In
25 the Mount Laurel I case which we call Mount Laurel

1 because it was Mount Laurel Township being sued -- so
2 I'm sure they're delighted that the Doctrine is named
3 after them. You know, I think they'd probably like to
4 be on the best vacation spot in New Jersey as opposed
5 to the place that the Mount Laurel Doctrine was named
6 for. But the Court said in Mount Laurel I,

7 "We accept the representation of the
8 municipality's counsel at oral argument that the
9 regulatory scheme," which is basically the
10 zoning scheme, "was not adopted with any desire
11 or intent to exclude prospective residents on the
12 obviously illegal basis of race, origin, or
13 beliefs, social incompatibility."

14 Now, Mount Laurel was very different in that
15 there was a lot more open space. Rumson is -- you know,
16 Monmouth County is not the same municipality to
17 municipality. Some municipalities in Monmouth County
18 have loads of open space and what happens is developers
19 come in and they're interested in developing this big
20 piece of land that used to be a farm. Rumson has none
21 of that. What Rumson has is a very much developed --
22 because it's close to the ocean -- but doesn't have a
23 lot of open space, and that's where the discussion when
24 everyone spoke about this vacant land analysis, vacant
25 land adjustment. So Rumson is very different than what

1 Mount Laurel was like in 1975.

2 But they talk about Mount Laurel when they
3 say the general Ordinance provides four residential
4 zones designated R-1, R-1B, R-2, and R-3. All permit
5 only single-family detached dwellings, one house per
6 lot, the usual form of development. Attached
7 townhouses, apartments, except on farms for
8 agricultural workers, and mobile homes are not allowed
9 anywhere in the Township under the general Ordinance.
10 The general Ordinance requirements allows restricted
11 developable for the municipality. Nonetheless,
12 realistically allow only homes within the financial
13 reach of persons of at least middle income. Minimum lot
14 size they describe is increased for the zones to about
15 one-half acre or 20,000 square feet. They talk about
16 the Zoning Plan in Mount Laurel and say the extensive
17 development plan is detailed in the Ordinance make it
18 apparent that the scheme was not designed for and would
19 be beyond the means of low and moderate income
20 retirees.

21 Now, in that case there was a very extensive
22 record made. There was a hearing and basically
23 testimony was provided in terms of the zoning scheme
24 and perhaps decisions that were made to arrive at that
25 zoning scheme. In this case I have a Settlement that's

1 reached by the parties.

2 Now, we've heard some discussions of builders
3 remedy lawsuits. This isn't a builders remedy lawsuit,
4 and I'll discuss that in a moment. This is a Settlement
5 reached between the parties in this case. Now -- and
6 again, a Settlement that I was reviewing at a Fairness
7 Hearing. So when you look at the history of Mount
8 Laurel cases there may be some language in some of the
9 cases that are relevant to this and some that are not
10 relevant because of how everyone landed in here. In
11 terms of the Settlement, in many different kinds of
12 cases, in most cases the Court encourages settlement
13 where settlement can be reached. "Case law says
14 settlement in litigation ranks high in our public
15 policy." That's under Jannerone versus WT Company, 65
16 New Jersey Super 472. It's an Appellate Division case
17 which was -- certification was denied by the New Jersey
18 Supreme Court at 35 New Jersey 61 in 1961.

19 "It has often been said that a good
20 settlement is one in which one sides feels that
21 it's given too much and the other side feels it
22 has received too little. The essence of a
23 settlement is that each side analyzes the
24 strengths and weaknesses of their respective
25 positions and decides that although not perfect,

1 the agreement addresses their priorities and
2 concerns in a tolerable manner. It eliminates
3 uncertainty and gives the parties the opportunity
4 to mold their future rather than leaving it to
5 the Court to decide."

6 Now, we have several Divisions here at the
7 Courthouse. In the Criminal Division they, I guess you
8 could call them settlements are reached, pleadings, but
9 in Family -- I sat in Family for quite a few years --
10 we always encouraged people to settle because -- and
11 what I would always say to the litigants is, "Do you
12 really want me telling you when you can see your kids?
13 Reaching a settlement means that you decide, the
14 litigant, when you get to see your kids or whether you
15 have the house." Well, a case like this is almost one
16 person then when you get to see your kids. It's
17 personal to the town, a municipality, because here if
18 Rumson does not reach settlement, the way it works is
19 at a hearing or a trial and I decide where the housing
20 goes.

21 So in this case Rumson through its elected
22 representatives with the assistance of its counsel on
23 Affordable Housing issues and the planner reached a
24 settlement with Fair Share Housing Center and with
25 Yellow Brook because Rumson wanted to decide where the

1 Affordable Housing is going to go and how it was going
2 to be accomplished, because if Rumson did not reach an
3 agreement -- and I will tell you, the one thing I have
4 been focused on -- and again I'm not indicating that
5 there's anything inappropriate about suggestions to the
6 parties that they maintain confidentiality while they
7 were discussing settlement, but I wanted to make clear
8 when someone had said that I issued an Order. I had
9 issued an Order. I came along, I became involved in
10 this case in July of 2019 and what I did tell Rumson
11 was -- and there's an expression, you know, "fish or
12 cut bait" -- "Settle this case or you're going to
13 trial." The case is four years old, far longer than
14 many of the other cases that I had. Rumson was enjoying
15 the benefits of immunity from builders remedy lawsuits.
16 That had been ordered by the Judges prior to me and
17 that I had continued. Well, the point of Mount Laurel
18 IV -- which I'll get to in a moment -- was when the
19 public entity, when a municipality files that
20 Declaratory Judgment action, essentially what it's
21 saying is, "Judge, we're going to take care of this. We
22 are going to work out an agreement in terms of how this
23 is going to happen." And I'm not a fisher person, but,
24 "fish or cut bait," means there's something on the
25 line, you throw it in the water and hang on the dock.

1 And if you're just going to hang out on the dock, you
 2 have to go to trial and I will decide the issues. And I
 3 absolutely told Rumson that. I told Fair Share Housing
 4 Center that, and I told Yellow Brook that. "Either you
 5 reach an agreement, because this case is old." This
 6 third round that we're talking about includes 2015 to
 7 2025. I'm not going to be looking at that in 2024 and
 8 saying, "Hey, kids, have you reached an agreement yet?"

9 So in terms of where we're at, this is not a
 10 builders remedy lawsuit. There's a Settlement Agreement
 11 that was reached by Rumson with Fair Share Housing
 12 Center and a Settlement Agreement reached by Rumson
 13 with Yellow Brook.

14 In terms of the Mount Laurel I decision --
 15 and again it was 1975 -- they made a determination that
 16 certain land use patterns, land use regulations, were
 17 adopted by Mount Laurel with certain purposes. I'm not
 18 making that determination. I know I have some argument
 19 that says Rumson has historically been trying to keep
 20 certain people out of town and not doing what they're
 21 supposed to, and I have arguments, you know, very
 22 eloquently, you know, put forth by counsel for the
 23 Borough of Rumson saying, "No, no, no, we've done what
 24 we need to." All I will say is I'm not reaching -- I
 25 haven't heard testimony in terms of those specifics. I

1 have heard about the development, the Master Plan from
 2 1988 forward, and I certainly am considering that.

3 I don't need to decide whether Rumson has
 4 been trying to keep people out of town. What I deal
 5 with is what is the zoning plan in Rumson. What do the
 6 zones provide for? What type housing can be developed?
 7 Supporting that, one noted the policy of the land use
 8 regulations for a fiscal end derives from New Jersey
 9 tax structure which has imposed on multiple real estate
 10 of municipal and county government of the primary and
 11 secondary education of the municipality's total. The
 12 latter expense is so much more. So basically the fewer
 13 the school children, the lower the tax rate. Sizable
 14 industrial and commercial ratables are eagerly sought
 15 at homes and from which they situate are required to be
 16 large enough through minimum lot size and minimum floor
 17 areas to have substantial value in order to produce
 18 greater tax revenues to meet school costs. Large
 19 families who cannot afford to buy large houses and must
 20 live in cheaper rental accommodations are definitely
 21 not wanted. So we must address the federal restrictions
 22 for want of a complete obligation of multiple family or
 23 other feasible housing for those of lesser income.

24 In Mount Laurel I they discuss that this
 25 pattern of land use regulations has been adopted for

1 the same purpose in developing a municipality after
2 developing municipalities. And that was important in
3 Mount Laurel I because they revisit that in Mount
4 Laurel II. They say almost everyone acts solely in own
5 selfishness interests and in effect builds a wall
6 around itself to keep out those people or entities
7 despite the locations of the municipality or the demand
8 for various housing. There has been no effective
9 intermural or area planning or land use regulations or
10 indicated in this elementary theory that all police
11 power enactments, no matter at what level of
12 government, must conform to the basic State
13 Constitutional requirements of substantive due process
14 and equal protection of the law. It is required that
15 affirmatively in zoning regulations, like any police
16 power enactment, must promote public health, safety for
17 the general welfare. Congress zoning enactment which is
18 contrary to the general welfare is invalid. If a zoning
19 regulation violates the enabling act, it is also
20 theoretically invalid under the State Constitution.

21 "This Court has said even in cases decided
22 some years ago -- in reference to 1975 -- sanctioning
23 of a broad number of restricted municipal decisions of
24 the inevitability of change in judicial approach and is
25 mandated by change in the world around it. This

1 implicates the matter of whose general welfare must be
2 served or not violated in the field of land use
3 regulations.

4 Which brings us to -- and I am grabbing
5 pieces from various places in the case -- "Which brings
6 us to the relation of housing for this concept of
7 general welfare and the results in terms of land use
8 regulations which that relationship mandates. There
9 cannot be the slightest doubt that shelter and food are
10 the most basic human needs. The question of whether a
11 citizen may have adequate and sufficient housing is
12 certainly one of the prime considerations in assessing
13 the general health and welfare. It is plain that proper
14 provisions for adequate housing of all categories of
15 people is certainly and absolute essential in promotion
16 of the general welfare required in all local land use
17 regulations. It has to follow presumptive obligation
18 arises for each such municipality affirmatively to plan
19 and provide by its land use regulations the reasonable
20 opportunity for an appropriate variety and choice of
21 housing including, of course, low and moderate housing
22 to meet the needs, desires, and resources of all
23 categories of people who may desire to live within its
24 boundaries.

25 "In sum, we are satisfied beyond any doubt

1 that by reason of the basic importance of appropriate
2 housing and the longstanding need for it especially in
3 the low and moderate category and of the exclusionary
4 zoning practices so many municipalities' conditions
5 have change and consistent with the (indiscernible)
6 judicial attitudes must be altered to meet the
7 obligations cited earlier to require and we address
8 that a broader view of the general welfare and the
9 presumptive obligation on the part of developing
10 municipalities to at least -- at least to afford the
11 opportunity by granting regulations for appropriate
12 housing for all."

13 And they went back to talk about Mount Laurel
14 housing, and they said, "The Township's general zoning
15 Ordinance including the cluster zone provision permits,
16 as we have said, only one type of housing, single-
17 family detached dwellings. This means that all other
18 types, multi-family including garden apartments and
19 other kinds of housing, more than one family
20 (indiscernible) townhouses, row houses, mobile home
21 parks are prohibited. Moreover, single-family dwellings
22 are the most expensive type of quarters and a great
23 number of families cannot afford them. Certainly they
24 are not pecuniarily feasible for low and moderate
25 income families, most young people, and many elderly

1 and retired persons except for some of moderate income
2 by the use of low cost construction on small lots."

3 They concluded without further elaboration,
4 "Our opinion is that Mount Laurel Zoning Ordinance is
5 presumptively contrary to the general welfare and
6 outside the intended scope of the zoning power in the
7 particulars mentioned. A faithful showing of invalidity
8 is thus established. Shifting to the municipalities the
9 burden of establishing valid superceding reasons for
10 its actions and non-actions."

11 Mount Laurel has argued the fiscal arguments,
12 some of which we heard, cluster kids going to school,
13 schools aren't big enough. The Court noted, "In other
14 words the condition is that any municipality may zone
15 to seek and encourage the good facts of industry and
16 commerce and limit the permissible types of housing to
17 those having school children or to those providing
18 sufficient value to obtain or approach paying their own
19 way tax-wise."

20 The Court indicated, "We have no hesitancy in
21 naysaying and do so emphatically that considering the
22 basic importance of the opportunity to approach
23 appropriate housing for all classes of our citizenry,
24 no municipality may exclude or limit categories of
25 housing for that reason or purpose. While we fully

1 recognize the increasingly heavy burden of taxes when
2 municipal governmental and school costs on homeowners
3 relief from the consequence of the tax system will have
4 to be furnished by other branches of government but
5 cannot legitimately be accomplished by restricting
6 types of housing through the zoning process in
7 developing municipalities."

8 Now, the Court's decision in that case said,
9 as a developing municipality that Mount Laurel needs to
10 do such things -- Mount Laurel must by its land use
11 regulations make realistically possible the opportunity
12 for an appropriate variety and choice of housing for
13 all categories of people who may desire to live there,
14 of course, including those of low and moderate income.
15 It must permit multi-family housing without bedroom or
16 similar restrictions as well as small dwellings on
17 various small lots, low cost housing of other types
18 and, in general, high density zoning without artificial
19 and unjustifiable minimum requirement of the lot size,
20 building size and the lot to meet the full panoply of
21 those needs.

22 They said, "Such municipalities must zone
23 primarily for the welfare of people and not for the
24 benefit of the local tax base."

25 So the Court did go on to recognize the part

1 that a builder may play (indiscernible) to not build
2 housing nor do municipalities. That function is
3 performed by private builders, various associations, or
4 for public housing by special agencies created for that
5 purpose at various levels of government. The municipal
6 function is initially to provide the opportunity
7 through appropriate land use regulations and spelled
8 out what Mount Laurel must do in that regard.

9 They concluded, "The municipality should
10 first have full opportunity to self act without
11 judicial supervision. We trust it will do so in the
12 spirit we've suggested both by appropriate zoning
13 Ordinance amendments and whatever additional actions
14 encouraging the fulfillment of its Fair Share of the
15 regional need for low and moderate income housing may
16 be indicated as necessary and advisable."

17 So that was Mount Laurel I in 1975.

18 Mount Laurel II came down in 1983 and there
19 were a number of municipalities who were sued -- or
20 which were sued. It noted, "After all this time, ten
21 years after the Trial Courts initial Order invalidated
22 its zoning Ordinance Mount Laurel remains afflicted
23 with a blatantly exclusionary Ordinance.

24 (indiscernible) rationalized by hired experts, the
25 Ordinance at its core is true to nothing but Mount

1 Laurel's determination to exclude this. Mount Laurel
2 was not alone. We believe that there is widespread non-
3 compliance with the Constitutional mandates of our
4 original opinion in this case. To the best of our
5 ability," the Court said, "we shall not allow it to
6 continue. This Court is more firmly committed to the
7 original Mount Laurel Doctrine than ever and we are
8 determined within appropriate judicial bounds to make
9 it work. The obligation is to provide a realistic
10 opportunity for housing, not litigation. We have
11 learned from experience, however, that unless a strong
12 judicial hand is used, Mount Laurel will not result in
13 housing, but in paper, process, witnesses, trials, and
14 appeals. We intend by this decision to strengthen it,
15 clarify it, and make it easier for public officials
16 including Judges to apply it."

17 Now, the language that was used to describe
18 Mount Laurel in the first decision in developing
19 municipalities and in Mount Laurel II the Court made
20 clear the obligation does not apply only to developing
21 municipalities. The Court noted, "It would be useful to
22 remind ourselves that the Doctrine does not arise from
23 some theoretical analysis of our Constitution but
24 rather from underlying concepts of fundamental fairness
25 in the exercise of governmental power. The basis for

1 the Constitutional obligation is simple; the State's
2 total use of the plan, all of the plan. In exercising
3 that control it cannot favor rich over poor. It cannot
4 legislatively set aside dilapidated housing in urban
5 ghettos for decent housing elsewhere for everyone else.
6 The government that controls the land represents
7 everyone. While the State may not have the ability to
8 eliminate poverty, it cannot use that condition as a
9 basis for imposing further disadvantage. And the same
10 applies to the municipality to which this control over
11 land has been constitutionally delegated. The clarity
12 of the constitutional obligation is seen most simply by
13 imagining what this State could be like were this claim
14 never to be recognized and enforced. Poor people
15 forever zoned of substantial areas of the State, not
16 because housing could not be built for them, but
17 because they are not wanted. Poor people forced to
18 living in urban slums forever, not because suburbia
19 developing rural areas fully developed residential
20 sections, seashore resorts, and other attractive
21 locations could not accommodate them, but simply
22 because they are not wanted. It is a vision not only of
23 variances and requirements that the zoning power be
24 used for the general welfare, but with all context of
25 fundamental fairness and decency that underpin many

1 Constitutional obligations. Subject to the clear
2 obligations to preserve open space and find
3 agricultural land a builder in New Jersey who finds it
4 economically feasible to provide decent housing for
5 lower income groups will no longer find it
6 governmentally impossible. Builders may not be able to
7 build just where they want. Our parks and conservation
8 areas are not a land bank for housing speculators but a
9 sound planning of an area allows the rich and middle
10 class to live there, it must also realistically and
11 practically allow the poor. We note that upper and
12 middle income groups may search with increasing
13 difficulty for housing within their needs. For low and
14 moderate income people, there's nothing to search for."

15 The Court noted, "We act first and foremost
16 because the Constitution of our State requires
17 protection of the interest involved and because the
18 Legislature has not protected them. We recognize the
19 social and economic controversy and its political
20 consequences that has resulted in relatively low
21 Legislative actions. We understand the enormous
22 difficulty of achieving a political consensus that
23 might lead to significant Legislation enforcing the
24 Constitutional mandate, Legislation that might
25 completely remove this Court from those controversies.

1 But enforcement of Constitutional rights cannot await a
2 political consensus. So while we have always preferred
3 Legislative to judicial action in this field, we shall
4 continue until the Legislature acts to do our best to
5 uphold the Constitutional obligations that underlies
6 the Mount Laurel Doctrine. That is our duty. We may not
7 build houses, but we do enforce the Constitution."

8 Now, the Court concluded, "Every
9 municipality's land use regulations should provide a
10 realistic opportunity for decent housing for at least
11 part of its residents who now occupy dilapidated
12 housing. The zoning power is no more abused by keeping
13 out the region's poor than by forcing out the region's
14 poor. The existence of a municipal obligation to
15 provide a realistic opportunity for a Fair Share of the
16 region's present and prospective low and moderate
17 income housing needs will no longer be determined by
18 whether or not a municipality is developing. The
19 obligation extends instead to every municipality, any
20 portion of which is designated by the State through the
21 FDGP as a growth area. This obligation imposes remedial
22 measures does not extend to those area where the FDGP
23 discourages growth, namely, open spaces, rural areas,
24 prime farmland, conservation areas, limited growth
25 areas, parts of the Pinelands, and certain coastal zone

1 areas. The obligation to encourage lower income
2 housing, therefore, will hereafter depend on rational
3 long range land use planning incorporated in the FDGP
4 rather than upon the sheer economic forces that have
5 dictated whether a municipality is developing.
6 Moreover, the facts that a municipality is fully
7 developed does not eliminate its obligation, although
8 obviously it may affect the extent of the obligation
9 and the timing of its satisfaction. Mount Laurel will
10 ordinarily include group of a municipality's Fair Share
11 of low and moderate income housing in terms of the
12 number of units needed immediately as well as the
13 number needed for a reasonable period of time in the
14 future. The municipal obligation to provide a realistic
15 opportunity for low and moderate income housing is not
16 satisfied by a group attempt. The housing opportunity
17 provided must, in fact, be the substantial equivalent
18 of its Fair Share. The municipality obligation to
19 provide a realistic opportunity for the construction of
20 its Fair Share of low and moderate income housing may
21 require more than the elimination of unnecessary
22 (indiscernible) requirements and restrictions.
23 Affirmative governmental devices should be used to make
24 that opportunity realistic including lower income
25 density bonuses and mandatory set asides."

1 And we talk about building remedies will be
2 afforded to plaintiffs in Mount Laurel litigation where
3 appropriate on a case by case basis. "Where the
4 plaintiff," who is the builder, "has acted in good
5 faith and attempted to obtain relief without litigation
6 and thereafter vindicates the Constitutional obligation
7 in Mount Laurel type litigation ordinarily a builders
8 remedy will be granted provided that the proposed
9 project includes an appropriate portion of low and
10 moderate income housing and provides further that it is
11 located and designed in accordance with sound zoning
12 and planning concepts including its environmental
13 (indiscernible). We reassure all concerned that Mount
14 Laurel is not designed to sweep away all land use
15 regulations, release our open spaces and natural
16 resources. Municipalities consisting largely of
17 conservation, agricultural, or environmentally
18 sensitive areas will not be required to grow because of
19 Mount Laurel. No forest or small (indiscernible) may be
20 paved over and covered with high rise apartments. But
21 for those municipalities that may have to make
22 adjustments in their lifestyle to provide for their
23 Fair Share of low and moderate income housing, they
24 should remember that they are not being required to
25 provide more than their Fair Share. A proof of a

1 municipality's bonafide attempt to provide a realistic
2 opportunity to construct its Fair Share of lower income
3 housing shall no longer suffice."

4 That's why I tell you it doesn't make a
5 difference me and I'm not having a hearing on the issue
6 of whether Rumson has tried really hard. What I have is
7 what I have which is the proof, the facts in terms of
8 Rumson's zoning plan and in terms of the actual amount
9 of low and moderate income housing that has so far been
10 provided by Rumson, and that's what I deal with.

11 The issue of what we're doing here today is
12 somewhat addressing the Morris County Fair Housing
13 Council versus Boonton Township case. It's from 1984 at
14 197 New Jersey Super 359. That case, what they talk
15 about is, "This motion presents significant issues
16 regarding procedures to be followed in the settlement
17 of Mount Laurel litigation when the entry of a Judgment
18 of Compliance is a precondition of the municipal
19 defendant's willingness to settle."

20 In this case I'm not at the Judgment of
21 Compliance stage. I'm at the Fairness Hearing stage.
22 The procedure is found in the Fair Share Housing Center
23 and the elements in front of me is in the present two
24 Settlement Agreements we want you to include the
25 agreements. If they are approved the town, Fair Share

1 needs to do a number of things and some of those things
2 involve going in front of the local Board, the local
3 Boards, Land Use Boards, and they will come back to me
4 for a follow-up hearing which is the Judgment of
5 Compliance hearing. A lot of the language talks about
6 the danger of entering a Judgment of Compliance in this
7 case which I am not -- this is not the last word in
8 terms of me dealing with this matter, dealing with
9 Rumson, dealing with the Agreement.

10 The East West Venture versus Borough of Fort
11 Lee case which is at 286 New Jersey Super 311, an
12 Appellate Division case from 1996. Now, I am required,
13 of course, to follow all decisions of the New Jersey
14 Supreme Court. I am required as a Trial level Judge to
15 follow all the decisions, all published decisions of
16 the Appellate Division. The East West Venture case is a
17 published decision from the New Jersey Superior Court
18 Appellate Division, and what the East West Venture case
19 does is provide a lot of information in terms of what
20 happens at a Fairness Hearing, and that's why the East
21 West Venture case is considered to be the standard of
22 what I am supposed to do at a Fairness Hearing.

23 The indicates, "We conclude that a Trial
24 Judge may approve a Settlement in Mount Laurel
25 litigation after a Fairness Hearing to the extent the

1 Judge is satisfied that the Settlement adequately
 2 protects the interest of lower income persons on whose
 3 behalf the affordable units proposed by the Settlements
 4 are (indiscernible). That analysis involves a
 5 consideration of the number of Affordable Housing units
 6 being constructed, the methodology for the number of
 7 affordable units to be provided, any other
 8 contributions being made by the developer to the
 9 municipality in lieu of affordable units, other
 10 components of the Agreement which contribute to the
 11 municipality's satisfaction of its Constitutional
 12 obligation, and another factors which may be relevant
 13 to the fairness issue."

14 There were certain arguments that were made
 15 in the East West Venture case that allowing, approving
 16 units that provided for rezoning of a particular piece
 17 of property to its spot zone, meaning that only that
 18 one piece of property would be rezoned. And the Court
 19 concluded that, in fact, it was not. It was an action
 20 by the municipality -- and that, by the way, provided
 21 for a 538 unit high rise to be built on a 4.88 acre
 22 tract known as Lot 2C. An argument was made that
 23 separating the Affordable Housing from the market rate
 24 units violates the spirit of Mount Laurel. The Court
 25 said, "We know of no judicial or Legislative rule

1 mandating inclusion of the affordable and market rate
 2 units on a single place."

3 The standard that's of the East West Venture
 4 case that was discussed by Ms. Lelie and that has been
 5 discussed by the Special Master Mr. Banisch, that is
 6 what is set forth in that case.

7 In Builders League versus South Jersey, Inc.
 8 Versus Gloucester County Utilities Authority case, a
 9 2006 decision by the Appellate Division the Court again
 10 revisited the issue of what is to happen at a Fairness
 11 Hearing. The Court noted, "In making a fairness
 12 determination a Trial Court must not forget that it is
 13 reviewing a settlement proposal rather than ordering a
 14 remedy in a litigated case."

15 Which reminds me, I am not hearing all the
 16 evidence and making a determination myself in terms of
 17 where I think, keeping in mind all of Rumson, where I
 18 think Affordable Housing should go and how it should be
 19 implemented. Basically I am reviewing a settlement
 20 proposal.

21 Quoting from City of Detroit (indiscernible)
 22 they mention that another Court observed that, "In a
 23 Fairness Hearing the reviewing Court must achute any
 24 rubber stamp approval in favor of an independent
 25 evaluation, yet at the same time it must stop short of

1 the detailed and thorough investigation that it would
2 undertake if it were actually trying the case."

3 As one of the objectors had mentioned, the
4 positive, you know, similarity of class action
5 settlements.

6 The Court said, "This approach has been taken
7 in this State not only in the context of
8 (indiscernible) development but also to review
9 settlements in land use litigation."

10 The Court notes, "The purpose of the Fairness
11 Hearing is to assure that the Settlement is reasonable,
12 not to adjudicate the case on its merits."

13 And it should to be noted that when an
14 argument was made in the Building League of South
15 Jersey that the Settlement cannot be approved because
16 the formula in N.J.S.A. 40:40E-14 plaintiffs point to
17 was not literally followed and the Court noted, "We
18 find no merit to this argument."

19 Now, in terms of how Rumson and Fair Share
20 Housing Center and Yellow Brook and ROSAH and the
21 objectors -- and the sort of objectors, sort of
22 supporter -- you'll all end up in front of me is under
23 -- or In Re: N.J.A.C. 5:96 and 5:97. Basically those
24 are the Administrative Code regulations which the
25 Supreme Court decision at 221 New Jersey 1. That's

1 called Mount Laurel IV. You may have at one point
2 referenced to COAH. COAH, as Mr. Bernard talked about
3 at the Council on Affordable Housing, had been that the
4 Court after Mount Laurel II the New Jersey Legislature
5 the Fair Housing Act. The Council on Affordable Housing
6 was the place you went to, to get approval of your --
7 if you were a municipality -- of your Affordable
8 Housing plan. For various reasons the Court became
9 unhappy with COAH's apparent inability to come up with
10 regulations that would govern on an ongoing basis
11 municipalities' obligations under the Mount Laurel
12 Doctrine. And in this March of 2015 case the Court
13 said, "Well, it looks like COAH is not going to do it,
14 so I guess it's going to have to come back to the
15 Court." And that's how everyone lands in front of me.

16 So the Court in Mount Laurel IV said,
17 "Accordingly, we conclude that towns must subject
18 themselves to judicial review for Constitutional
19 compliance as was the case before the Fair Housing Act
20 was enacted. Under our tri-part type form of government
21 the Courts always present an available forum for
22 redress of alleged Constitutional violations or
23 alternatively the towns seeking affirmative declaration
24 that their zoning actions were done in compliance with
25 Mount Laurel obligations."

1 As noted in another case, "When approving a
2 fledgling Fair Housing Act program if the Fair Housing
3 Act proves it achieved nothing but delay the Courts
4 would resume their role in Affordable Housing
5 litigation. Therefore, under the authority of Rule
6 1:10-3 we hold that the Courts may resume their role as
7 the forum of first instance for evaluating municipal
8 compliance with Mount Laurel obligations as hereinafter
9 directed. In the event of a municipality's inability or
10 failure to adopt a compliance plan to a Court's
11 satisfaction the Court may consider the range of
12 remedies available to cure the violations consistent
13 with the steps outlined herein and in our accompanying.
14 We establish a transitional process before allowing
15 exclusionary zoning actions against a town that has
16 sought to use the Fair Housing Act mechanisms in
17 recognition of the various stages of municipal
18 preparation that exists as a result of a long period of
19 uncertainty attributable to COAH's failure to
20 promulgate third round rules."

21 Essentially what that means is
22 municipalities were given a limited period of time, 60
23 or 90 days, to file their own action and say, "Hey,
24 we've taken care of it." So that's why so many Mount
25 Laurel lawsuits have 2015 start dates within Monmouth

1 County and throughout New Jersey. And that is the case
2 with Rumson. Potentially Rumson said, "We're taking
3 care of it." Rumson could have just submitted something
4 to the Court and said, "This is our plan." Rumson
5 engaged in discussions with Fair Share Housing Center
6 because it recognized in Mount Laurel IV that the Fair
7 Share Housing Center is traditionally and historically
8 the entity that protects low and moderate income
9 households and they are an indispensable party in every
10 one of these Mount Laurel lawsuits. I have Fair Share
11 Housing Center in front of me in all of them.

12 Now, as part of this, "Hang on, we're going
13 to take care of it," because Rumson filed that plan
14 through a Judgment action within the prescribed period
15 of time they had what the Court describes as a limited
16 period of time of immunity from a builders remedy
17 lawsuit. What that means is builders who wanted to
18 build low and moderate income housing in Rumson were
19 not allowed to sue Rumson. Now, I know they worked -- I
20 see one of the Ordinances with Mr. (indiscernible) name
21 on it. So it might have been Mr. (indiscernible) was
22 involved in the beginning. Judge Perri I know was
23 involved. I know Judge O'Brien was involved. Builders
24 remedy immunity is not a given and the reason it's
25 granted is to give Rumson a chance to work its

1 obligations out, to work out a plan in conjunction with
 2 Fair Share Housing Center which is recognized in every
 3 one of these cases as a necessary party, but it does
 4 not necessarily last forever if Rumson did not come up
 5 with a plan. If Rumson said, "Here's plan," and I found
 6 it to be unreasonable, Rumson would not have immunity
 7 from builders remedy litigation.

8 So I wanted to mention that because I know
 9 one or more of the individuals who spoke said, you
 10 know, "Oh, builders remedy litigation, we're not
 11 subject to that." Well, that's because I have an Order
 12 in place that relieves Rumson of that, but that doesn't
 13 stay in place if Rumson doesn't resolve the issue. If
 14 Rumson is involved in litigation, if Rumson puts
 15 forward a plan that Fair Share Housing Center says,
 16 "You know, this is absolutely unacceptable," it's
 17 litigation and I decide what the appropriate number of
 18 units are, what the appropriate obligation is.
 19 Ultimately I would decide where the units would go, I
 20 would decide where the rezoning would be, and as part
 21 of that it very likely would have been a builder suing.

22 So in this case I do want to mention to the
 23 objectors, to ROSAH, they have described Yellow Brook
 24 and Mr. Mumford is sort of nefarious terms. He has
 25 entered into an agreement, a Settlement Agreement with

1 Rumson. If Rumson had not entered into an agreement
 2 with Fair Share Housing Center that was acceptable to
 3 Fair Share Housing Center very likely what we would
 4 have been looking at is litigation and Yellow Brook
 5 would have been on the other side. Rumson would not
 6 have had immunity from builders remedy lawsuits.
 7 Builders, Yellow Brook, and perhaps others would have
 8 been able to sue and say, "We have the ability to build
 9 low and moderate income housing in Rumson," and they
 10 would have presented their plan to me, and that would
 11 have been part of the litigation.

12 Now, I was not involved in -- and even if I
 13 was, I would not reveal settlement discussions, but I
 14 can pretty figure out that Rumson said, "You know what,
 15 we've got I think it's five units we've developed since
 16 1975. We can go with that or maybe, maybe we can talk
 17 to Fair Share Housing Center and come up with something
 18 that would be more likely, that is more likely to be
 19 successful in front of the Judge." I'm figuring if
 20 Rumson felt, you know, in consultation with its
 21 counsel, if Rumson felt good about, "We've had five
 22 units and that's all we can do, and no more," I would
 23 have seen them or whoever was doing Mount Laurel work
 24 at that point in time, would have seen them
 25 (indiscernible) 2015 and say it's their plan.

1 I know there was somewhat of a delay. Judge
2 Jacobson was handling a very long, very involved case
3 that had to do with how do you come up with the
4 numbers. And I know everyone was sort of waiting and
5 saying, "Oh, let's see what Judge Jacobson decides in
6 terms of how numbers should be calculated." But that
7 came out in 2017 or 2018 and now we're in 2020. So in
8 terms of the who's who, when objectors or ROSAH says,
9 "We want to be heard," well, I have given everyone, I
10 think, a lot of opportunities to be heard. As a matter
11 of fact I delayed these proceedings to give ROSAH a
12 chance to get their submissions in, gave everyone, the
13 objectors a chance to be heard. And, quite frankly, I
14 heard a whole lot that wasn't in the letter of
15 objection that ROSAH sent, but I listened to them
16 anyway. So I think that everyone has had, you know, a
17 lot of opportunity to be heard on this issue. But just
18 keep in mind in terms of, you know, residents of
19 Rumson, they are represented because a Settlement
20 Agreement has been entered into in this case by Rumson.
21 This isn't something that's being hoisted on Rumson.
22 Rumson may not like it. Like I said, I read the
23 transcript of that public hearing. I know Rumson
24 doesn't like it. And it's one of the cases I have in
25 front of me. Mr. Gergi knows what it is, Mr. Nolan

1 knows what it is, but, you know, one of the cases
2 suggested, like, "Okay. Let's get real." The developer
3 wants to build as many units as possible. The town
4 wants none of it. They've basically come into the plate
5 and that's where they say, "Well, Fair Share want
6 this." Unless Fair Share Housing Center is real busy
7 and trying to clear their plate, Fair Share Housing
8 Center stepped in and played a very important role in
9 standing in, basically standing up to be heard on the
10 rights of low and moderate income households.
11 But in terms of, you know, this isn't the
12 last rodeo on this thing. This is just the beginning.
13 My recommendation is that, you know, those involved
14 step back for a minute and realize sort of what could
15 have been, which is a litigated conclusion where Rumson
16 potentially loses control over -- you know, I'm pretty
17 much figuring that Fair Share Housing Center wanted
18 more in terms of the right now units and maybe in terms
19 of the overall units, but Fair Share Housing Center
20 settled for less than it wanted. Rumson would have been
21 pretty happy going forward and saying, "We've got five
22 units that we built ages ago, and that's good and we're
23 done," but we're probably very correctly thinking, "I
24 don't know that that's going to really, you know,
25 satisfy the Judge. If the Judge is deciding this, we're

1 at a litigation conclusion." So Rumson said, "You know
2 what, how about we decide this ourselves by way of a
3 Settlement Agreement."

4 Like I said, Yellow Brook and Mr. Mumford
5 have been described as, "a big, bad terrible
6 developer." I do view it as I'm sure Mr. Mumford or
7 Yellow Brook, you know, are making money on this thing.
8 That's what they do. He's not a non-profit developer. I
9 would hope that he's making money on his units because
10 that's what outside developers do. But he is providing
11 a source of funds for allowing the Affordable Housing
12 to be constructed.

13 In one way Rumson is at a huge disadvantage.
14 It's a hugely advantaged population. I understand that.
15 I heard from Mr. Bernard who, by the way, is possibly,
16 you know, the most credentialed individual in the State
17 on Affordable Housing issues. He has been doing this
18 within COAH, outside of COAH --

19 UNIDENTIFIED VOICE: Your Honor --

20 THE COURT: -- you cannot challenge his
21 background. The difficulty that Rumson has, what a lot
22 of towns do -- can you guys hear me?

23 UNIDENTIFIED VOICE: You broke up for a couple
24 seconds, Your Honor.

25 THE COURT: My connection is unstable.

1 UNIDENTIFIED VOICE: Right after you said that
2 Art Bernard was probably the most credentialed --

3 THE COURT: He's basically been doing this
4 forever and he is very good, very experienced in terms
5 of what he does.

6 The difficulty that Rumson has is Rumson
7 doesn't have lots of open space. If they had the
8 rolling hills of somewhere they probably -- I don't
9 know specifically how much they have in their trust
10 fund, their Affordable Housing trust fund -- but they
11 haven't had development, after development, after
12 development come in and build a bunch of condos and pay
13 25 grand for a condo, and have tons of money sitting
14 there from paying in on those units. So the money is
15 coming from Yellow Brook because Rumson is fairly
16 developed and having a policy that says anyone who does
17 -- you know, part of this Settlement Agreement, if you
18 build five or more units, you have to pay money into
19 the Affordable Housing trust fund. Okay, that's great.
20 How many properties are there now, right now, where
21 people were going to be building this housing? If
22 they're not building housing, they're not paying into
23 the trust fund. So that is the disadvantage of a lovely
24 community like Rumson, that's a disadvantage of a
25 lovely community like Rumson.

1 So that is -- I'm sorry, but that's how you
2 got here. So you're in front of me at this point in
3 time, and the determinations that I make is not nearly
4 at this point, not nearly as wide ranging as what
5 people want it to be. Are these Settlement Agreements
6 fair to low and moderate income households.

7 Now, this is the part I really don't like
8 doing because -- but it is important that I let you
9 know I've heard all the testimony and what I think in
10 terms of the testimony provided by the experts in this
11 case -- because this really was an expert driven case.
12 ROSAH did have two experts who came in to testify and
13 there was objection to their plan and to testify by the
14 planner and the planner's expertise in the area of
15 Affordable Housing. I found that she is an expert and
16 she has that background. But as I indicated at the
17 time, there are different -- number one, the fact that
18 someone has expertise doesn't mean you have to accept
19 their opinion because there are obviously different
20 opinions and people have different levels of expertise.
21 The expertise that Ms. Bruder has is not nearly the
22 expertise that Mr. Bernard has and not nearly the
23 expertise that Ms. Lelie has. Basically, she has less
24 expertise in the area of Affordable Housing and
25 (indiscernible) I think she is, you know, testifying

1 within the scope of how she sees this, but there are a
2 couple of really big problems with the testimony that
3 she provided to me. The report that she did doesn't
4 address the Fairness Hearing issues. The testimony she
5 provided didn't analyze this in terms of a Fairness
6 Hearing which is the East West Venture case. So the
7 report and the testimony that I received from her were
8 really more like what you hear in an objection to a
9 planned development in front of a Zoning Board of
10 Adjustment which she said we should be following the
11 Master Plan.

12 Well, the problem in this case is -- and
13 again I'm not making any findings with reference to
14 Rumson if they're just, you know, a little bit
15 neglectful or, you know, tried to exclude people -- but
16 as Mr. Bernard testified, you can't build anything
17 other than expensive single-family homes in every
18 residential district in Rumson. That's the Master Plan.
19 So it's a circular argument that is, quite, frankly,
20 unconstitutional in my viewpoint to say you've got to
21 follow the Master Plan when the Master Plan doesn't
22 provide for what the New Jersey Supreme Court says
23 needs to be provided for. And she basically intimated,
24 well, you know, you can have a multi-use district. Yes,
25 you can have apartments now with the 2018 amendment for

1 apartments running along Main Street. I've got real
2 issues with a land use plan that basically bars anyone
3 who is low and moderate income from any of the
4 residential districts and lets them live in apartments
5 on Main Street, and that's it. And that's under the
6 2018 amendment.

7 The Master Plan was adopted in 1988 and I
8 think it's been looked at maybe four or five times
9 since then, most recently in 2015. The original Mount
10 Laurel was in 1975. We are 45 years, 45 years into the
11 original Mount Laurel case. So having a Master Plan
12 that provides for no low and moderate income housing in
13 the residential districts, I can't agree with her that,
14 you know -- I can agree that it was okay for Rumson to
15 have looked at the Master Plan and said, "Hey, why
16 don't we change this," but they didn't. So in terms of
17 saying that the Settlement Agreements are unfair -- and
18 again she says on the first page, "The settlement
19 should be rejected as unfair to low and moderate income
20 households." I didn't see anything in her report and I
21 didn't hear anything in her testimony that really
22 related it to low and moderate income households.

23 She mentions in her report and it was brought
24 out on cross-examination that the interference by an
25 opportunistic developer and housing advocacy. I think

1 that, you know, Fair Share Housing Center and the
2 Supreme Court viewed the Fair Share Housing Center as
3 an opportunistic housing advocacy group, the New Jersey
4 Supreme Court views Fair Share Housing Center as an
5 important, playing a very important role in these
6 cases. I think that probably the Township is described
7 as having been involved with in terms of Affordable
8 Housing or Mount Laurel projects were, I think, really
9 differently situated. And she really has not addressed
10 issues like are present with reference to Rumson.

11 But in terms of the Master Plan whose
12 planning goals, objectives, and policies, she talked
13 about as being thoughtful planning. If they really
14 thought about this, then it makes the Master Plan look
15 worse and worse. You know, I'm thinking that it's just
16 accepting that they really weren't focused on it. But I
17 think the Court made clear in Mount Laurel I and II, it
18 doesn't make it any more supportable.

19 So, no, I absolutely cannot find that the
20 Settlement Agreements are not fair to low and moderate
21 income households because the development of the two
22 parcels, the Bingham property and the Rumson Road
23 property as described in the Settlement Agreement it is
24 inconsistent, absolutely, with the Master Plan. But the
25 Master Plan does not provide an opportunity for

1 development of low and moderate income housing in the
2 six residential zones. So I cannot rely upon that
3 argument.

4 The involvement, the inclusion of the
5 historic site, I think that Yellow Brook --

6 UNIDENTIFIED ATTORNEY: Your Honor --

7 THE COURT: -- Yellow Brook --

8 UNIDENTIFIED ATTORNEY: -- Your Honor, Your
9 Honor, you kind of froze. You said, "With respect to
10 the historic site Yellow Brook," and then you froze for
11 a little while.

12 THE COURT: Sorry. With respect to the
13 historic site, I think Yellow Brook is the contract
14 purchaser. Yellow Brook can knock the house down
15 whenever it wants if it wants to. But the important
16 thing is again a Settlement Agreement. If this were me
17 making a decision on what's in and what's out, probably
18 from what I've heard maybe Buena Vista would be in,
19 maybe Rumson Road would be out. With reference to the
20 regulations, I think the initial part of the regulation
21 -- let me see if I can find it here -- okay. It is --
22 we've heard a lot of testimony about 5:93-4.2, lack of
23 land. And so far it's (e)(3).

24 "Historic and architecturally important sites
25 may be excluded as follows. Historic and

1 architecturally important sites shall be excluded
2 if such sites are listed on the State registry
3 of historic places in accordance with
4 N.J.A.C. 7.4 prior to the submission of the
5 petition for substantive certification."

6 Now, if this were an argument being made
7 during trial, probably I think some subparts read that
8 the (indiscernible) is water and subpart is more
9 specific. So it may very well be that if this were
10 being presented to me at trial, I might say that, you
11 know, okay Rumson Road gets excluded. I might not
12 because the language is, you know, shall. But we'd have
13 to go into a lengthy discussion of, you know,
14 Legislative interpretation.

15 This is a Settlement Agreement. Rumson has
16 made the decision, they want Buena Vista out for
17 whatever reason. I don't know what the Buena Vista
18 Apartments looks like. It's ten acres. That's what
19 Yellow Brook wanted to develop. I can tell you if that
20 came in front of me in a litigated sense, I'm guessing
21 that I'd be hearing from Yellow Brook that they want to
22 develop Buena Vista, and Rumson Road, and Bingham,
23 because it's sort of like, you know, when you go in to
24 buy a car, you say, "I'll pay this," the car dealer
25 says, "No, we want you to pay that," and you work your

1 way down to the middle. That's what this is. It's a
2 Settlement Agreement. They might not be in the exact
3 middle in terms of numbers, but this is not -- this
4 being presented to me is not the most that Rumson would
5 have to do. That's the nature of a settlement. The
6 language I read which is in the Settlement, no one gets
7 everything that they want. So if this were litigated,
8 I'm quite certain Yellow Brook would come in with they
9 want Buena Vista. They're agreeing not to develop Buena
10 Vista. I don't know anything about that. I haven't
11 heard word one back and forth in terms of why this is
12 in, why that's out. But I am absolutely certain that
13 Rumson can agree, just like that regulation, this isn't
14 being hoisted on Rumson. Rumson can agree to have that
15 site that's been on and off the market since 2014, they
16 can agree to have that site as part of the plan. They
17 can agree to count that in, just like Yellow Brook can
18 agree -- even though they probably don't fundamentally
19 agree with it -- they can agree not to calculate in
20 Buena because Buena Vista isn't the property with their
21 agreement they're not going to try to develop.

22 So as part of the Settlement, to me, the
23 actual reading of that in terms of the language is not
24 terribly important because the concept is, the
25 regulation is, "If I'm going to be adding, what do I

1 include?" And I'm not doing the adding. I'm reviewing
2 the Settlement Agreement that was reached in this
3 matter between the parties. So in terms of the reasons,
4 the information that was provided by Ms. Bruder, it
5 really doesn't address the concept of what I have to
6 deal with on a Fairness Hearing basis. It really is
7 more like -- if there were no Fair Housing Act, if
8 there were no Mount Laurel principles, if Yellow Brook
9 came in -- if New Jersey never said, you know, "Rumson,
10 you have a Constitutional obligation to make sure that
11 you're providing for, you know, housing for low and
12 moderate income households," if that didn't exist and
13 Yellow Brook came in and said, "Yeah, that property on
14 Rumson Road, I think I'd like to put some
15 (indiscernible) on there," the local Land Use Board
16 would absolutely look and they would say, "Wait a
17 second. That's not in conformance with our Master Plan.
18 Our Master Plan was adopted in 1988 and it was
19 revisited in 2015." If the town wanted that to be, you
20 know, multi-family housing or whatever, that's an
21 absolute basis for denying an application in front of
22 Land Use Board where the application is not that
23 involves low and moderate income housing.

24 So I felt that Ms. Bruder's report and her
25 testimony was really more of what I would hear with

1 reference to a land use application, not with reference
2 to a Mount Laurel Fairness Hearing.

3 Now, with reference to the engineer's report
4 from Mr. Petry, it originally had more information in
5 it. I think that he was presented as an engineer and an
6 agreement was reached in terms of what was taken out of
7 the report. The report is, whatever, we marked as
8 P-1a, something like that, with the report redacted.

9 Now, what Mr. Petry talked about, it says the
10 report of 91 Rumson Road and 132 Bingham Avenue. I
11 heard him talk about 91 Rumson Road. I didn't hear
12 about any -- unless I'm mistaken, I didn't hear about
13 the environmental issues, you know, wildlife issues
14 with regard to Bingham Avenue. With reference to Rumson
15 Road I heard about two things. One was the wetlands
16 issue -- and, in fact, if there's wetlands in the area
17 where Yellow Brook is planning to put the carriage
18 homes, I think they're going to have to deal with it in
19 terms of (indiscernible) and they're going to have to
20 deal with in front of a local Planning Board. But
21 that's not an issue for the Fairness Hearing. That
22 absolutely happens after the Fairness Hearing. So I
23 would not say no because of the layout. That is
24 something that the parties are going to have to deal
25 with before they come back to me on a Compliance

1 Hearing. I'm going to have to see, okay, how is this
2 working? What does the ET say about this? In terms of
3 the potential environmental issues and the wildlife,
4 there may be something living there, there may not be
5 something living there that is needs to be protected. I
6 don't, number one, have any firm evidence in front of
7 me, but it's absolutely not an issue that I would deal
8 with at this point for a Fairness Hearing. That is
9 something that after this -- you know, there were a lot
10 of concerns raised, "Why is there so much detail on
11 these carriage homes that Yellow Brook wants to build?"

12 Well, the feeling I got is because the town
13 -- I think the town thinks they were doing a good job
14 for residents in terms of making them big, fancy, and
15 expensive, and they wanted to have drawings showing
16 they're big, fancy, and expensive, the stuff that's
17 going on Rumson Road and maybe 132 Bingham. So the
18 concept is the fact that there's a lot of drawings of
19 that doesn't bother me. Basically, the parties are
20 going to go forward with reference to that project as
21 well as Rumson, as well as Bingham Avenue. As a matter
22 of New Jersey law the Affordable Housing does not have
23 to be provided on that site. Yellow Brook is providing
24 money in support of the Affordable Housing. This
25 argument in terms of, "Well, when you count in the

1 value of the property, is it really a lot of money,"
2 sounds like a good amount of money on each unit, but
3 it's not my call. I'm looking at this and saying is
4 this fair to low and moderate income households? And
5 based upon what has provided to me in terms of the
6 amount of money that's being paid in, I don't need to
7 have an appraisal of the property as to value that if
8 it's 1.8 million or something like that -- not more.

9 What's the name of the street?

10 UNIDENTIFIED ATTORNEY: Carton Street.

11 THE COURT: I don't have to -- I'm not
12 required to have that level of detail for this Fairness
13 Hearing process. Members of the public, ROSAH, are
14 absolutely allowed to participate. And I know they
15 think, "I (indiscernible) this is a done deal." Well,
16 the town did make the determination on behalf of its
17 residents to enter into this Settlement and they have
18 entered into the Settlement, and they're asking me to
19 approve it.

20 One of the things I heard is, like, "Well, we
21 haven't seen any alternatives from ROSAH." We don't do
22 alternative here. My job isn't to look and say, "Well,
23 this is available, but what else is there out there?
24 What other alternatives?" It's not ROSAH's job, as far
25 as I'm concerned, to come up with a different

1 alternative between January and now because I don't
2 look at alternatives. I'm going into a lot of issues
3 now only because property owners raised them.

4 I read from the case law because the concerns
5 that were raised in terms of, "There's going to be
6 school kids." Probably. Some of the units are designed,
7 some of these affordable units are designed for
8 families. I think in 1975, in 1982 or '83, the New
9 Jersey Supreme Court made it really clear you can't
10 zone trying to keep school kids out because they're
11 expensive.

12 We have originally in this proceeding we
13 noticed in the newspapers, the Asbury Park Press. I
14 think the Borough has continually at my request
15 provided notices. Like I said, first we were trying to
16 do this by way of the New Jersey Courts website, sort
17 of simulcast. It wasn't working out. So everyone came
18 in and joined up on the Zoom proceeding and notice of
19 that was provided to individuals who wanted to
20 participate, and individuals, in fact, have
21 participated.

22 The issue in front of me is under the
23 applicable law governing Fairness Hearings should I
24 accept the two Agreements, the Settlement Agreement
25 that was reached between Rumson and Fair Share Housing

1 Center, and the Settlement Agreement that was reached
2 between Rumson and Yellow Brook.

3 In East West Venture versus Township of Fort
4 Lee, which is 286 New Jersey Super 311, an Appellate
5 Division case from 1996, the Court held that Mount
6 Laurel litigations could be settled only after a
7 finding by the Court that the Settlement has merit,
8 notice was given to all members of the class and others
9 who may have an interest in the Settlement, a Court
10 hearing was conducted where those issues were heard,
11 the Court concludes based upon adequate findings of
12 fact that the Settlement is fair and reasonable to
13 members of the protected class.

14 I find that the Settlement, both Settlement
15 Agreements do have (indiscernible). Notice was given to
16 all members of the class and others who may have an
17 interest in the Settlement. A Court hearing was
18 conducted where those affected had sufficient time to
19 prepare and, in fact, were given more time at their
20 request to prepare. In terms of all of the information
21 that was provided I find that the Settlement is fair
22 and reasonable to low and moderate income household.

23 One thing -- and I apologize. I meant to
24 mention this a moment ago. The Master Plan of Rumson
25 has two provisions in it in terms of how low and

1 moderate income housing would be provided. And this is
2 according to Ms. Bruder's report. She says, "The Master
3 Plan repeatedly recommends that the Borough should
4 allow for companion apartments on single-family
5 residential lots in order to accommodate and integrate
6 Affordable Housing units."

7 That would involve someone actually saying,
8 "I think I want to turn my garage into a separate
9 apartment, have it deed restricted, by the way, for low
10 and moderate income households," and you don't even get
11 to really choose who lives there because it's a risk.
12 This maintains the Borough municipal offices. I
13 haven't seen that come to fruition. I think a question
14 was asked someone in the last twenty years how many of
15 those units have been approved and the answer was none.
16 Given the restrictions that are imposed, I can't
17 imagine that someone would actually even ask for that.
18 But the actual -- you know, it's one thing to say, "I
19 want to turn my upstairs garage into an apartment so my
20 daughter can live there," but that's not what low and
21 moderate income housing is which is governed by rules
22 provides for. So whether there have been tons of
23 applications and they've been turned down or no
24 applications, it does say to me that that is not a
25 realistic way to provide for the obligation. As

1 indicated, I think that the total number of units that
2 have been provided for, I think it's five or six over
3 the years.

4 The Morris County Fair Housing case, the
5 Court noted that, "In a contested matter such as a
6 builders remedy lawsuit a municipality's objective is
7 to be assigned a small Fair Share of lower income
8 housing; a developer's objective is to secure approval
9 of his project. If a Judgment of Compliance is entered
10 approving the Settlement Agreement which advances both
11 of these objectives the result would be the
12 construction of a small number of lower income housing
13 units while insulating the municipality from further
14 Mount Laurel litigation for the remainder of the Mount
15 Laurel cycling. The danger of accepting a proposed
16 Resolution in a municipality's Affordable Housing
17 obligation and it's concern post Resolution does not
18 adequately protect the interest of lower income persons
19 is substantially reduced when the interest of lower
20 income persons are represented in the matter by the
21 public advocate or another public interest organization
22 because it may be assumed that generally the public
23 interest organization will only approve a Settlement
24 which it concedes to be in the best interest of the
25 people they represent. That is the role that is played

1 in this matter by the Fair Share Housing Center. The
2 Court recognized that even a public interest
3 organization may incorrectly devalue the strengths
4 and weakness of its claim or will be overly anxious to
5 settle a case for internal organization and, thus, a
6 subsequent review of the Settlement reached with the
7 assistance of a Special Master, planning professional
8 with experience in the area on the provision of
9 Affordable Housing under the Mount Laurel Doctrine."

10 The East West Venture case, the Court
11 indicated there's a five-part test which the Court is
12 to apply.

13 One, consideration of the number of
14 Affordable Housing units being constructed.

15 The number being constructed is small
16 compared to the overall needs. And, quite frankly, you
17 could scale the determination of the overall need and
18 have (indiscernible) small. But Rumson does have a
19 problem. Rumson is a developed municipality and a lot
20 of Rumson's burden, if you want to call it that, has to
21 be looked at on a going forward basis.

22 The development of the site (indiscernible)
23 conclusion, it could be that Rumson ends with
24 development on three sites, you know, market
25 development on three sites because as I indicated I

1 don't think Yellow Brook would be pulling back on the
2 Buena Vista property.

3 But I am happy to accept the conclusions of
4 the Special Master and the determination of Fair Share
5 Housing Center and of the Borough and of Yellow Brook
6 that the number of Affordable Housing units to be
7 constructed is appropriate, having had the opportunity
8 to review all the materials.

9 Two, the methodology by which the number of
10 affordable units has to be provided.

11 The methodology is something that has been
12 subject to (indiscernible) to date. Judge Jacobson's
13 hard work that she had in the case and it gave everyone
14 sort of a lot of waiting to see what was going to
15 happen in that case, give everyone, you know, some
16 guidance. Additionally, looking at, you know, prior how
17 things were handled on COAH I am satisfied that the
18 methodology which has been agreed to only for purposes
19 of this litigation because if it's fought to a non-
20 agreed conclusion Fair Share Housing Center is going to
21 be arguing for more and the Borough is going to be
22 arguing for less. But I'm satisfied that given the
23 Settlement methodology is appropriate. Any other
24 contributions to be made by the developer to the
25 municipality in lieu of affordable units and that's

1 been testified to substantially with reference to the
2 Carton Street property and the payments will be made in
3 lieu of the development of affordable units on the
4 particular sites, the Rumson Road and the Bingham
5 sites.

6 Other compliance of the agreement which
7 contribute to the municipality's satisfaction of its
8 Constitutional obligations and any other factors which
9 may be relevant to the fairness issue. Basically that
10 was the subject language.

11 In order to qualify for inclusion in a
12 Township's Affordable Housing plan a proposed site must
13 first be shown to be available, approvable, develop-
14 able, and suitable. The specific definitions of each
15 criteria are set forth in N.J.A.C. 5:93-3.

16 Approvable site means a site that may be
17 developed for low and moderate income housing in a
18 manner consistent with the rules and regulations of all
19 agencies on the site. A site may be approvable but not
20 currently zoned for low and moderate income housing.
21 Available site means a site with clear title, free of
22 encumbrances for approved development for low and
23 moderate income housing. Developable site means a site
24 that has access to appropriate water and sewer
25 infrastructure and is consistent with the applicable

1 area-wide (indiscernible) plan including a wastewater
2 management plan where it is included to the area wide
3 water quality management plan submitted and under
4 review by the Department of Environmental Protection.
5 Suitable site means a site that is adjacent to
6 compatible land uses, has access to appropriate
7 streets, and is consistent with the environmental
8 policy delineated in N.J.A.C. 5:93-4.

9 As I indicated, the fact that the Yellow
10 Brook Rumson Road and Bingham sites, the construction
11 of housing that is around three units per acre, it
12 isn't consistent with the surrounding properties but it
13 is a -- especially in light of, quite frankly, there's
14 no place in Rumson that Affordable Housing can be
15 developed in any residential zone.

16 I find that the sites are suitable for
17 construction of the housing that Yellow Brook wants to
18 construct there and in exchange providing money for the
19 construction of the other two Affordable Housing
20 includable sites.

21 One of the things I just wanted to mention is
22 if this were a litigated case -- which it is not. At
23 this point it's a settled case -- I don't know that I
24 haven't seen, you know, I didn't limit it on the
25 process going forward -- I have a feeling Rumson's plan

1 -- Yellow Brook's plan for the Bingham site and the
2 Rumson Road site would look a whole lot different. You
3 know, people talked about the fact you're supposed to
4 have six units per acre. I don't know that objectors
5 really want at least fifteen units per acre on those
6 sites. You know, I know what I was asked for was, "Just
7 give us some time. We'll come up with something
8 different." I don't know if you're listening to each
9 other. Some people are saying this stuff shouldn't be
10 there at all, it's a historic house. Some people are
11 saying, you know, it's not inclusive, it should be
12 inclusive. If this were coming in front of me as a
13 litigated case, I think -- you know, I don't know
14 Yellow Brook, I have no idea what's in their minds --
15 but, you know, what I might see is, you know, those
16 townhouse complexes, like boom, boom, boom, a minimum
17 of six units per acre. You know, Yellow Brook might be
18 coming in saying, "I want ten units per acre, twelve
19 units per acre." And some of the objectors were saying
20 these sites should include Affordable Housing because
21 the Affordable Housing shouldn't be just in one place;
22 it should be on that site. Well, assuming -- I don't
23 know how much we think they're selling for -- but if
24 they're selling for over a million dollars, there's no
25 way to whittle down a million-plus house, you know,

1 carriage house, down to something that fits into
2 Affordable Housing. So what would end up going there if
3 the conclusion were reached that the Affordable Housing
4 should be included on that site, you're going to end up
5 with a whole lot more units on that site. I don't know
6 what was proposed for Buena Vista or the background,
7 but a lot of projects that include Affordable Housing,
8 they have some garden apartments, some condos, they
9 have some townhouses. It's usually not a three-bedroom
10 garden apartment and a \$1.1 million houses. And it's
11 much higher density. That's the minimum six units per
12 acre analysis. So the concept of, "Just give us some
13 time," I don't know if the objectors noted there is
14 great disparity even among these objectors in terms of
15 what they want.

16 You have members of the Rumson public body
17 who act on behalf of the residents of Rumson who
18 entered into this agreement, and I'm guessing they
19 entered into this agreement because they thought that
20 the people of Rumson would like what Yellow Brook
21 agreed to put there better than six, seven, eight,
22 nine, ten units per acre which is what you'd have if
23 there were Mount Laurel inclusive housing on the site.

24 I think that in terms of -- and one of the
25 reasons that I went over in detail the language from

1 the earlier case, the Mount Laurel case, was I think it
2 really addresses -- and Mr. Banisch properly addressed
3 the category of complaints or concerns that were
4 raised. Some of them are, you know, exercises in like,
5 telling me what the law is and saying in terms of the
6 projects haven't been in front of the local Board yet,
7 that's a process, "So we're worried about we don't want
8 people driving out onto Osprey Lane, or too many cars
9 on, you know, Rumson Road," you talk about that in
10 front of the local Board in terms of Master Plan, in
11 terms of the schools, you know, the property taxes,
12 schools.

13 I think basically what I tried to do and I
14 think I have addressed pretty much addressed pretty
15 much the issues that were issues that were raised in
16 the letter -- oh, the issue, the environmental issues
17 with reference to the Carton Street property;
18 interestingly to me, I didn't hear anything from Mr.
19 Petry about that. He's an expert, an engineer. I didn't
20 hear anything from Mr. Petry about Carton Street at
21 all, and I think that the letter that came didn't
22 really focus on Carton Street. I don't have any
23 testimony in front of me that I would be able to rely
24 on that would tell me that Carton Street ultimately
25 cannot appropriately be used for Affordable Housing. I

1 recognize that some people -- I guess it's an office
2 building and there's a dance studio and other stuff
3 there -- I certainly can't make it not Affordable
4 Housing so that that can continue. I think that Yellow
5 Brook is a related entity that owns the property and
6 their other entity is certainly permitted to use this
7 for that purpose. In terms of the environmental issues,
8 that is something that will roll out as process
9 continues.

10 But it would absolutely not be appropriate
11 for me to find that these Settlement Agreements are not
12 fair to low and moderate income households for those
13 reasons, especially, like I said, given the lack of any
14 expert testimony on that issue.

15 I think what I tried to do is cover all the
16 issues that were raised, give some background. This is
17 not the last time I'm going to be seeing the parties in
18 this. My suggestion to ROSAH, the objectors, the sort
19 of objector sort of not objectors, but going forward
20 you can view however you want. I'm certainly not
21 encouraging ROSAH or the objectors to try to torpedo
22 the plans. They're absolutely free to do whatever they
23 think is appropriate, but keep in mind that if it does
24 not work out for some reason, whether it's because of a
25 local Board not cooperating or something happened where

1 it's not going to happen, we're either going to be
2 involved in litigation to enforce the Settlement or the
3 Settlement ends up not going forward and we'll be
4 involved in a litigated case. And in a litigated case,
5 like I said, it's when you go to the car dealer and
6 this is the deal that was reached in terms of how much
7 you're paying for the car, it's not the most you could
8 have paid, it's not the least you could have paid. I
9 think that Rumson probably had different positions when
10 the case started. I think Yellow Brook had different
11 positions. And then they have agreed to a Settlement
12 under these terms. I would just suggest that everyone
13 not look at someone else like the enemy because this
14 isn't a builders remedy lawsuit. Fair Share Housing
15 Center is not the enemy or someone to be disliked or
16 hated. And the way I view it, I think that Yellow Brook
17 is assisting the Borough in meeting its obligation.
18 That's how I view it.

19 So I find -- I've considered everything
20 that's been presented, all of the evidence, all of the
21 -- I do find, by the way, that Mr. Bernard is very
22 credible, very authoritative, very experienced. I find
23 Ms. Lelie to be credible in terms of the testimony that
24 she provided. In light of everything that's been
25 presented I am satisfied that the Settlement Agreement

1 reached between Rumson and the Fair Housing Act, and
2 Rumson and Yellow Brook are fair and reasonable, and
3 for the interest of low and moderate income households
4 which is the standard that I am applying here today as
5 I am instructed to do by the Appellate Division and by
6 the Supreme Court.

7 So I am granting preliminary approval of the
8 plan. It does mean that the immunity will continue.
9 There is in Mr. Banisch, there is a list of things that
10 need to be taken care of before everyone comes back to
11 see me, Attachment A.

12 So what I'm going to do is schedule a final
13 Compliance Hearing. I realize this case is a little bit
14 more complicated than some. I scheduled the final
15 Compliance Hearing today. If it has to get rescheduled
16 for some reason, I will go on the record that day and I
17 will let everyone know what the new date is. Sometimes
18 it takes everyone a little bit more time to do the
19 things that they need to get done. I don't do like
20 partial like final Compliance and, you know, "Well, you
21 did half of it and that's good enough." I'm not big on
22 that. So what I'm going to do is take a look at the
23 calendar and what I'd like is if everyone could take a
24 look at that calendar and you'll tell me when you'd
25 like this to be.

1 UNIDENTIFIED ATTORNEY: (inaudible)

2 THE COURT: And how is this going to happen?
3 Is it going to be in person? Is it going to be on Zoom?
4 I do not know, but the plan will be to do it however we
5 need to do it.

6 (After a pause)

7 THE COURT: So I think we're talking November;
8 correct?

9 UNIDENTIFIED ATTORNEY: Correct.

10 THE COURT: All right.

11 UNIDENTIFIED ATTORNEY: We have Wall on the
12 9th, Your Honor, which is a big one, too. So --

13 THE COURT: Are you suggesting a new date?

14 UNIDENTIFIED ATTORNEY: (indiscernible)

15 THE COURT: Okay. I'm taking the week of
16 November 30th. We generally don't schedule things that
17 week because of other things going on. We're now going
18 to need to do the week of the 16th or the week of the
19 30th.

20 UNIDENTIFIED ATTORNEY: The 30th is good, Your
21 Honor. It gives us extra time.

22 UNIDENTIFIED ATTORNEY: The 30th, Your Honor,
23 I think I have a teaching conflict. The 16th I'm
24 available.

25 THE COURT: Well, the week of the 16th won't

1 be --
2 UNIDENTIFIED ATTORNEY: That Monday, Tuesday,
3 Wednesday, the 16th, 17th, 18th work for me.
4 UNIDENTIFIED ATTORNEY: Me, as well, Your
5 Honor.
6 UNIDENTIFIED ATTORNEY: Your Honor, on the
7 morning of the 16th I think we have the Colts Neck.
8 THE COURT: Okay. I saw that on the calendar.
9 So how about the 18th, Wednesday? Does that work?
10 UNIDENTIFIED ATTORNEY: That's good, Your
11 Honor.
12 UNIDENTIFIED ATTORNEY: That works for me.
13 UNIDENTIFIED ATTORNEY: That works for me.
14 UNIDENTIFIED FEMALE: Your Honor, may I speak
15 for the Borough?
16 THE COURT: Sure.
17 UNIDENTIFIED FEMALE: Just given that we have
18 120 days from the date of approval and knowing dealing
19 with the public hearings and this is a contentious
20 issue, I'd rather push it to the 30th so that it's
21 actually more likely that we get everything
22 accomplished, especially given the fact that we have to
23 come up with Thanksgiving. (indiscernible) not have to
24 ask for an extension of the Judgment of Compliance
25 Hearing.

1 UNIDENTIFIED ATTORNEY: I have no problem with
2 that, Your Honor.
3 THE COURT: Okay. So the 30th, you know, is
4 not good. The 1st, 2nd, 3rd is available.
5 UNIDENTIFIED ATTORNEY: The 1st is fine for
6 me.
7 UNIDENTIFIED ATTORNEY: December 1st?
8 UNIDENTIFIED ATTORNEY: December 1st.
9 THE COURT: December 1st at nine a.m. And what
10 I'm going to do is get from the Township, Mr. Nolan,
11 you're going to be preparing the form of Order.
12 MR. NOLAN: I will, Your Honor.
13 THE COURT: Keep in mind everything that is
14 listed in Mr. Banisch's report. I am looking to have it
15 done and I am expecting that any interested residents,
16 to the extent that is going to be discussed at public
17 meetings, there's going to be a Planning Board or a
18 Zoning Board meeting, something like that, you can
19 expect to see individuals there. So I'd appreciate it
20 if the form of Order to be really specific as to what
21 the town has to do and also if you could sort of guide
22 getting this thing taken care so all the provisions are
23 met.
24 MR. NOLAN: Will do.
25 THE COURT: Okay. Is there anything else,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

Counsel?

UNIDENTIFIED ATTORNEY: No, Your Honor.

UNIDENTIFIED ATTORNEY: No, Your Honor.

THE COURT: I want to thank everyone for listening to me talk for such a long time and working so hard on this. It took a lot of work on the parties, and the individuals who are members of the public who obviously care a lot about this. Maybe seeing some of you in the future asking questions and wanting to give information about many of these issues.

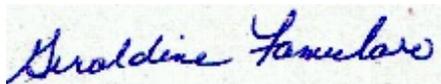
So thank you very much for all of your hard work. This includes the Rumson Fairness Hearing. Everyone have a really great evening.

(The matter concluded at 4:08 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

CERTIFICATION

I, Geraldine Famularo, the assigned transcriber, do hereby certify the foregoing transcript of proceedings Courtsmart 7/2/20, index 2:16:10 to 4:08:36 is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.



GERALDINE FAMULARO

#154
AOC NUMBER

Dated: July 24, 2020

Exhibit B

SURENIAN, EDWARDS & NOLAN, LLC

707 Union Avenue, Suite 301

Brielle, NJ 08730

(732) 612-3100

Attorneys for Declaratory Plaintiff, Borough of Rumson

By: Jeffrey R. Surenian (Attorney ID: 024231983)

Erik C. Nolan (Attorney ID: 014032006)

**IN THE MATTER OF THE
APPLICATION OF THE BOROUGH OF
RUMSON, COUNTY OF MONMOUTH**

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MONMOUTH COUNTY

DOCKET NO.: MON-L-2483-15

CIVIL ACTION – *MOUNT LAUREL*

**ORDER APPROVING SETTLEMENT
AGREEMENTS BETWEEN THE
BOROUGH OF RUMSON AND FAIR
SHARE HOUSING CENTER AND THE
BOROUGH OF RUMSON AND
YELLOW BROOK PROPERTY CO.,
LLC**

THIS MATTER having been opened to the Court by Surenian, Edwards & Nolan, LLC, attorneys for declaratory plaintiff, Borough of Rumson (hereinafter the “Borough” or “Rumson”) via a Declaratory Judgment Complaint filed on July 2, 2015 to approve the Borough’s Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”), as may be amended, in response to In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) (“Mount Laurel IV”); and the Court having granted the Borough immunity from all Mount Laurel lawsuits from the time of the filing of the Borough’s Declaratory Judgment action (hereinafter “DJ Action”) to the present; and the Court having appointed Frank J. Banisch, III, P.P., A.I.C.P., as the Special Mount Laurel Court Master (hereinafter the “Court Master”); and Fair Share Housing Center (“FSHC”), having participated in the Borough’s DJ Action as an interested party; and FSHC’s expert, David Kinsey, Ph.D., P.P., F.A.I.C.P., having issued an expert report that calculated fair share obligations for all of the

municipalities in the state; and the Borough having hired Econsult Solutions, Inc., which produced its own expert report calculating fair share obligations for all municipalities in the state; and the Borough's representatives and Kevin D. Walsh, Esq., of FSHC having entered into Court required confidential mediation supervised by the Court Master to try to agree on the magnitude of the Borough's Round 3 fair share obligation, and how the Borough would comply with same; and the Court having allowed Yellow Brook Property Co., LLC (hereinafter "Yellow Brook") to intervene in the DJ Action; and the Borough's representatives and Yellow Brook having entered into confidential mediation under the supervision of the Court Master; and the Borough's representatives and FSHC having agreed upon a form of Settlement Agreement, which was executed by Kevin D. Walsh, Esq., on behalf of FSHC (hereinafter the "FSHC Settlement Agreement," which is attached hereto as Exhibit P-1); and the Borough's representatives and Yellow Brook having agreed upon a form of Settlement Agreement, which was executed by Roger Mumford on behalf of Yellow Brook (hereinafter the "Yellow Brook Settlement Agreement," which is attached hereto as Exhibit P-3); and after a public presentation was held regarding both settlement agreements on January 14, 2020, the Borough Council having adopted resolutions (attached hereto as Exhibits P-2 and P-4) authorizing the Mayor of Rumson to execute the FSHC Settlement Agreement and the Yellow Brook Settlement Agreement, which he did; and the Court having originally set a date of March 12, 2020 for a Fairness Hearing to entertain approval of the settlement agreements, and to determine whether said settlements are fair, reasonable and adequately protect the interest of very low, low, and moderate income households; and the Borough having provided proper public and actual notice of the Fairness Hearing; and Rumson Open Space and Affordable Housing, Inc. (hereinafter "ROSAH") having objected to the settlement agreements and having asked for an adjournment of the Fairness Hearing, which the Court granted by moving the Fairness Hearing to March 26, 2020; and other residents of Rumson

having objected to the settlement agreements; and due to the Covid-19 virus nationwide emergency, the Court having adjourned the Fairness Hearing to begin instead on June 15, 2020; and the Court Master having submitted a report to the Court on April 10, 2020 (attached hereto as Exhibit P-5), in which he recommended that the Court approve both the FSHC Settlement Agreement and the Yellow Brook Settlement Agreement; and counsel for the Borough having prepared a Notice Certification, (attached hereto as Exhibit P-6), to document that proper public and direct notice of the Fairness Hearing had been given; and the Fairness Hearing having begun on June 15, 2020, having continued on June 22, 2020, July 9, 2020, July 15, 2020, and having concluded on July 20, 2020, during which Borough Exhibits P-1 to P-7, FSHC Exhibits FS-1 to FS-11, Yellow Brook Exhibits YB-1 to YB-6, and ROSAH Exhibits R-1a, R-2 to R-10 were marked into evidence; and the Court having considered the testimony taken, the objections made, and the comments of counsel during the Fairness Hearing; and the Court having reviewed all of the documents submitted into evidence during the Fairness Hearing, as well as all of the written objections that were filed with the Court; and the Court being satisfied that the parties are entitled to the relief sought; and good cause having been shown;

It is hereby ordered on this 29th day of July, 2020 as follows:

1. The Court finds and determines, pursuant to the judicial standards prescribed by the Appellate Division in East/West Venture v. Bor. Of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996), and through analysis of the FSHC Settlement Agreement (attached hereto as Exhibit P-1) and the Yellow Brook Settlement Agreement (attached hereto as Exhibit P-3), the Court Master's report (attached hereto as Exhibit P-5), and on the basis of the testimony taken during the Fairness Hearing conducted in June and July of 2020; that the settlement agreements between FSHC and the Borough, and Yellow Brook and the Borough, are fair, reasonable and adequately protect the interest of very low, low, and moderate income households, the Court hereby approves the FSHC

Settlement Agreement and the Yellow Brook Settlement Agreement, which are attached hereto as Exhibits P-1 and P-3.

2. Within 120 days of the date of the Fairness Hearing, the Borough and its Planning Board shall (a) prepare, adopt and endorse a Housing Element and Fair Share Plan, which shall include a Spending Plan, and shall reflect all of the terms and conditions of the FSHC Settlement Agreement (Exhibit P-1), and will also satisfy all of the conditions listed in Attachment A on pages 20-21 of the Court Master's April 10, 2020 report (Exhibit P-5); and shall (b) submit at least thirty (30) days before the Compliance Hearing the adopted and endorsed Housing Element and Fair Share Plan, with all required supplementary documentation and adopted ordinances and resolutions needed to implement the plan, to the Court, the Court Master and FSHC for final review and recommendation by the Court Master for consideration of approval by the Court.

3. A Compliance Hearing to consider approval of the Borough's Housing Element and Fair Share Plan and the issuance of a Judgment of Compliance and Repose, which will provide the Borough and its Planning Board immunity from all Mount Laurel lawsuits, other than those brought to enforce the terms of the Settlement Agreements or the Court's orders through July 2, 2025, is scheduled for December 1, 2020 at 9:00 a.m.

4. The temporary immunity from all Mount Laurel lawsuits, including builder's remedy lawsuits, that is currently in place for the Borough and its Planning Board, will remain in place until one month after a final Compliance Hearing is completed.

5. As a result of the Settlement between the Borough and FSHC, the Borough's Rehabilitation Obligation is 29, the Borough's Prior Round Obligation (1987-1999) is 268 and the Borough's Gap (1999-2015) + Prospective Need (2015-2025) or Round 3 Obligation is 335. Said affordable housing obligations are hereby approved by the Court.

6. The Borough will address its Rehabilitation Obligation of 29 by working with Monmouth County, and by working with an entity to run a local rehabilitation program to rehabilitate units in the Borough in accordance with the requirements in the Court Master’s report (Exhibit P-5) and the FSHC Settlement Agreement (Exhibit P-1).

7. The Borough prepared a Vacant Land Analysis (Appendix A to Exhibit P-1), and, as a result of that analysis, the Borough, FSHC and the Court Master have agreed that the Borough is entitled to a Vacant Land Adjustment such that it has combined Prior Round (1987-1999) and Round 3 (1999-2025) Realistic Development Potential (hereinafter “RDP”) of 51, and a remaining portion of its combined Prior Round and Round 3 Obligations (hereinafter “Unmet Need”) of 552. The Court hereby approves the Borough’s RDP of 51.

8. The Borough will address its combined Prior Round (1987-1999) and Round 3 (1999-2025) RDP of 51 as follows:

Compliance Mechanisms 51 RDP Third Round Obligation (1999-2025)	VL Units Senior/SN	VL Units Family	Credits	Bonuses	Total
Market to Affordable					
Completed			2		2
Proposed			9		9
Inclusionary Development - Complete					
Washington Street (family rental)			1	1	2
Lafayette Mews (family rental)			2	2	4
100% Municipally Sponsored					
Carton Street: BCUW (4 SN beds + 10 family rentals)	2	3	14	10	24
North Street: BCUW (4 SN beds + 6 senior rentals)			10		10
Total Credits Provided	2	3	38	13	51
				Balance	0
Micro-requirements			Required		Provided
Min. Total Family- 50% of obligation-surplus-bonus			19		19
Min. Very Low Required - 13% of units developed after 7/17/2008			5		5
Min. Very Low Family Required- 50% of Total VL			3		3
Min. Total Rental - 25% of obligation			13		19
Min. Family Rental - 50% of total rental			7		13
Maximum Senior - 25% of obligation			12		6

9. The Borough will address its remaining combined Prior Round (1987-1999) and Round 3 (1999-2025) unmet need as follows:

- a. Faith Institution Overlay Zone: The Borough will adopt an overlay zone that will require a twenty percent (20%) affordable housing set-aside over the Holy Cross Church (Block 104, Lot 1.01) at 6 du/acre, the First Presbyterian Church (Block 10, Lot 6) at 8 du/acre, Congregation B’Nai Israel (Block 81, Lot 6) at 6 du/acre.
- b. Downtown GB/NB/POB Overlay Zone: The Borough will amend the existing overlay zone over the GB, NB and POB zones to expand the GB zone, permit three story mixed use development and permit multi-family development at 12 du/acre, all with a twenty percent (20%) affordable housing set-aside requirement.
- c. R-2 Overlay Zone: The Borough will adopt an overlay zone on certain parcels in the R-2 district to permit multi-family housing (townhouse, duplex, triplex, quads) at a density of 3 du/acre on a minimum lot size of 3 acres, but with an affordable housing set-aside equal to what would be required at a density of 6 du/acre. The Borough will subsidize the affordable units associated with a density that exceeds 3 du/acre or will allow a density of 6 du/acre if funding is not made available. The overlay zone will require a twenty percent (20%) affordable housing set-aside.
- d. R-4 Overlay Zone: The Borough will adopt an overlay zone on certain parcels in the R-4 district to permit multi-family housing (townhouse, duplex, triplex, quads) at a density of 8 du/acre on a minimum lot size of 1 acre. The overlay zone will require a twenty percent (20%) affordable housing set-aside.
- e. R-5 Overlay Zone: The Borough will adopt an overlay zone on certain parcels in the R-5 district to permit multi-family housing (townhouse, duplex, triplex, quads) at a density of 12 du/acre on a minimum lot size of 1 acre. The overlay zone will require a twenty percent (20%) affordable housing set-aside.
- f. 10 Accessory Apartment Units: The Borough will run an Accessory Apartment program to create up to 10 affordable Accessory Apartment units.
- g. Mandatory Set-Aside Ordinance (“MSO”): The Borough will adopt a Borough-wide Mandatory Set-Aside Ordinance (“MSO”), which will require a twenty percent (20%) affordable housing set-aside for residential developments comprised of five (5) or more dwelling units.
- h. Development Fee Ordinance: The Borough will continue to collect residential and non-residential development fees under an updated Development Fee Ordinance (“DFO”).

10. All other terms and conditions in the FSHC Settlement Agreement (Exhibit P-1) and the Yellow Brook Settlement Agreement (Exhibit P-3) shall be adhered to, and all such terms and conditions are hereby incorporated by reference.

11. Counsel for the Borough shall provide copies of this Order to all counsel of record and to the Court Master within seven (7) days of receipt.

/s/Linda Grasso Jones, J.S.C.
Hon. Linda Grasso Jones, J.S.C.