

B A N I S C H
A S S O C I A T E S , I N C .

Planning and Design

REPORT OF THE SPECIAL MASTER

REGARDING THE FAIRNESS OF RUMSON BOROUGH

SETTLEMENT AGREEMENTS WITH

FAIR SHARE HOUSING CENTER

AND

YELLOW BROOK PROPERTY CO., LLC

**IN THE MATTER OF THE APPLICATION
OF THE BOROUGH OF RUMSON
DOCKET No. MON-L-2483-15**

Prepared by:

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The original document was appropriately signed and sealed on April 10, 2020 in accordance with Chapter 41 of Title 13 of the State Board of Professional Planners.



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Introduction

The purpose of this report is to present my review and recommendations as the Court-appointed Special Master regarding whether the Settlement Agreements (“Settlement or “Settlements””) between the Plaintiff Borough of Rumson ("Borough") and Fair Share Housing Center ("FSHC") and between Rumson and Yellow Brook Property Co., LLC ("Yellow Brook") are fair and reasonable to low and moderate income households.

Notice of the fairness hearing scheduled for May 4, 2020 and continued, if needed, on May 5, 2020, which was provided in accordance with the Court's instructions, included descriptions of the Settlement Agreements and indicated the Settlement Agreements were available for inspection and photocopying at the Rumson Borough Clerk’s office. If the Court is not open to the public on the scheduled dates due to the ongoing health emergency, there has been discussion about moving the fairness hearing into June.

This report addresses the fairness of the Settlements to the protected class of low-and-moderate income households. It also provides a preliminary assessment of the Borough's eligibility for a judgment of compliance and repose and the steps needed to complete this process.

Basis for Evaluation of Fairness of Settlement Agreements

The Settlement between the Borough and FSHC was approved by the Borough on January 14, 2020, as was the Yellow Brook Settlement. These Settlements have been reviewed to determine whether any element of the Settlements would not be fair to the interests of existing and future low and moderate income households in Rumson's housing region. In evaluating the fairness of the Settlements, I have been guided by the general principles and standards set forth in *Morris County Fair Housing Council v. Boonton Twp.* 197 N.J. Super. 359, 369-71 (Law Div. 1984). Likewise, I have reviewed "whether the components of the settlement protect lower income persons by satisfying, in whole or in part, the municipality's constitutional obligation to provide affordable housing" as set forth in *East/West Venture v. Borough of Fort Lee*, 286 N.J. Super 311, 327 (App. Div. 1996).

According to the Settlement, the Borough is addressing a 1987-2025 fair share obligation consisting of

- present need (rehabilitation share) - 29 units
- prior round obligation (1987-1999) - 268 units
- prospective need obligation (1999-2025) - 335 units

The methods by which the Borough will address this obligation are outlined below.

Addressing the Present Need

The FSHC Settlement acknowledges that the Borough's 29-unit indigenous need rehabilitation share will be addressed through the Monmouth County Rehabilitation

Program in compliance with the requirements set forth by the Council on Affordable Housing (COAH) in N.J.A.C. 5:93-5.2. The Borough also has the ability to conduct a survey to reduce the number of required rehabilitation units. The survey must be completed and its results available at least 45 days prior to the compliance hearing.

Addressing the Prior Round

Rumson has a combined prior round and third round RDP of 51, which will be satisfied as outlined in Exhibit A to the FSHC Settlement and as detailed below:

**Table 1
Tabulation of Credit Allocation for the 51-unit RDP**

Project	Status	Credit	Bonus	Total
Market to Affordable	Completed	2	0	2
Market to Affordable	Proposed	9	0	9
Washington Street (family rental)	Completed	1	1	2
Lafayette Mews (family rental)	Completed	2	2	4
Carton Street (100% affordable)	Proposed	14	10	24
North Street	Proposed	10	0	10
Total		38	13	51

Lafayette Mews, the Washington Street rental and two (2) market to affordable units are completed. The proposed compliance mechanisms include the following:

Market-to-Affordable

The Borough proposes nine (9) market to affordable units to be funded through the Affordable Housing Trust Fund. Five (5) units will be provided before July 1, 2022 and four (4) units will be provided before July 1, 2024. The Borough agrees that should a deficit of market to affordable units occur during either of these timeframes, the Borough will provide 100% affordable units in other forms within one year of each deadline.

Carton Street (Block 59, Lot 10) Yellow Brook Co., LLC

The Borough's Settlement Agreement with Yellow Brook, dated January 16, 2020, will rezone 132 Bingham Avenue and 91 Rumson Road for multifamily development, and in return provide an in-lieu contribution for construction of off-site affordable housing at Carton Street, by Yellow Brook. As outlined in the Settlement Agreements, the Borough agrees to provide 14 units of affordable housing through an arrangement with Yellow Brook Property Co., LLC (Developer) whereby the developer will provide a payment in lieu to permit the construction of market rate developments consisting of 34 units; 18 located at 132 Bingham Avenue (Block 94, Lot 5) and 16 units at 91 Rumson Road (Block 124, Lot 34). In exchange, the developer will convey Block 59, Lot 10, the Carton Street site controlled by the principal of Yellow Brook, to the Borough. The developer will also fund the construction of 9 affordable housing units. The Borough will provide

funding for the construction of an additional 5 units at the site, for a total of 14 affordable units in a 100% affordable development.

The implementation schedule that has been provided would see construction of the first five (5) units within two years of the Settlement Agreement, with the completion of the remaining units within three years. Yellow Brook will provide \$350,000 per unit, for a total of \$3.15 million, \$1.7 million will be credited to the conveyance of the Carton Street property. The Settlement Agreement includes a timeline for the distribution of funds which provides early collection to ensure the construction of the site can commence in the 2-year timeframe.

The Settlement with Yellow Brook Co, LLC, includes draft zoning ordinance amendments for both the Bingham Avenue and Rumson Road sites, concept plans, architectural renderings and outlines conveyance of the Carton Street parcel to the Borough and the 9-unit payment of lieu fee of \$3.15 million dollars to the Borough's affordable housing trust fund in accordance with the terms outlined in the Settlement Agreement with FSHC.

North Street (Block 45, Lot 4)

The Borough will partner with a non-profit developer to construct a 10-unit 100% affordable housing development by July 21, 2022. The Borough is currently in negotiations to purchase the site.

Addressing the Unmet Need

The Borough has a combined prior round and third round obligation of 603 affordable units. Exhibit B to the FSHC Settlement illustrates the overlay zones proposed to address the Borough's unmet need. After subtracting the 51-unit RDP, the Borough has an unmet need of 552 units which will be addressed as follows:

Faith Institutional Overlay Zone

The Borough will provide an inclusionary overlay zone (6 unit/acre with a 20% set-aside) on the Faith Institutional Zone which is comprised of 3 properties, including Holy Cross Church (Block 104, Lot 1.01), First Presbyterian Church (Block 10, Lot 6) and Congregation B'Nai Israel (Block 81, Lot 6).

Holy Cross Church (Block 104, Lot 1.01) consists of 7.6 acres and is located in the R-2 District. The overlay will allow for 6 units per acre with a 20% set-aside.

First Presbyterian Church (Block 10, Lot 6) consists of 2-acres and is located in the R-4 district. The overlay will allow for a density of 8 units per acre with a 20% set aside.

Congregation B'Nai Israel (Block 81, Lot 6) is 5.5 acres and located in the R-1 District. The overlay will provide for a density of 6 units per acre with a 20% affordable housing set-aside.

R-2 Overlay Zone

The Borough agrees to provide an overlay zone on properties (Exhibit B of the Settlement Agreement) in the R-2 district to permit multi-family housing at a density of 3 units per acre on a minimum 3-acre lot. The density will increase to 6 units per acre with an affordable housing set aside of 20%. The Borough will subsidize the affordable housing units associated with the density above 3 units per acre.

R-4 Overlay Zone

The Borough will adopt an overlay zone on properties in the R-4 District (Exhibit B of the Settlement Agreement) to provide multifamily housing at a density of 8 units per acre with a 20% set aside and a minimum tract size of 1 acre.

R-5 Overlay Zone

The Borough will adopt an overlay zone on properties in the R-5 District (Exhibit B of the Settlement Agreement) to provide multifamily housing at a density of 12 units per acre with a 20% set aside and a minimum tract size of 1 acre.

10-Unit Accessory Apartment Program

The Borough will provide an accessory apartment program for 10 units. The Borough will supply an operating manual during the compliance phase. The program will comply with NJAC 5:93-5.9.

Mandatory Set Aside Ordinance (MSO)

The Borough will adopt a Borough-wide Mandatory Set Aside Ordinance requiring a 20% affordable housing set aside for residential developments of 5 units or more.

Fairness Evaluation of FSHC Settlement Agreement

The fairness of a settlement to the protected class of low and moderate income households has long been a concern of the Court. The question of whether or not “the settlement adequately protects the interests of the lower-income persons on whose behalf the affordable units proposed by the settlement are to be built” led the Appellate Court to establish a five-part analysis for evaluating the fairness of a settlement in a *Mount Laurel* lawsuit in East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-329 (App. Div. 1996). I have applied that five-part analysis to Rumson's settlement with FSHC.

1. **Consideration of the number of affordable units being constructed.** The Settlement Agreement acknowledges that the Borough will address the 268-unit prior round and 335-unit third round obligation. In addition, the Settlement Agreement confirms the Borough's commitment to implement a variety of housing opportunities through zoning to meet its fair share obligation. The Settlement provides a realistic opportunity for at least 33 affordable units and a variety of mechanisms to address the unmet need.

2. **The methodology by which the number of affordable units provided is derived.** The settlement offer by FSHC, which forms the basis for this Settlement, is derived from a methodology that FSHC asserts follows the prior round methodology.

3. **Other contributions by the developer.** This prong of the East/West Venture test is not strictly applicable to a settlement that does not involve a builder/plaintiff. However, the terms of the Settlement provide that:

- (a) the Borough will require at least 13 percent of all of the new affordable housing units in its Plan to be affordable to very low-income households earning 30 percent or less of median income and that at least half of these units will be available to families.
- (b) at least 50 percent of all affordable units in each inclusionary site will be affordable to low income and very low-income households with the remainder affordable to moderate income households.
- (c) at least half of all affordable housing units addressing the Third Round Prospective Need will be available to family households.
- (d) at least 25 percent of the Third Round Prospective Need obligation shall be met with rental units, of which at least 50 percent shall be available to families.
- (e) no more than 25 percent of affordable units will be age-restricted.
- (f) the Borough will expand the list of community and regional organizations that will receive notice of the availability of affordable housing units (in the Affirmative Marketing Plan) the following additional organizations: Fair Share Housing Center, the Latino Action Network, the New Jersey State Conference of the NAACP, STEPS OCEAN, Inc., The Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, Greater Long Branch, and Trenton branches of the NAACP, and the Supportive Housing Association.
- (g) the Borough will comply with affirmative marketing and affordability regulations set forth at N.J.A.C. 5:80-26.1, *et seq.* (UHAC) except that in lieu of the requirement at N.J.A.C. 5:80-26.3(d) for 10 percent of all low and moderate income rental units to be affordable to households earning 35 percent or less of median income, the requirement shall be that 13% of all low and moderate income rental units shall be affordable to households earning 30 percent or less of median income.
- (h) within 120 days of the Court's approval of the Settlement Agreement, the Borough will adopt the Housing Element and Fair Share Plan and all required implementing ordinances to ensure that all of the foregoing occurs.

4. **Other components of the Agreement that contribute to the satisfaction of the constitutional obligation.** The process of obtaining the Court's approval of the Borough's Third Round Housing Element and Fair Share Plan, the scrutiny that document has received from FSHC, and the conditions contained in the Settlement and this report requiring the Borough to adopt certain master plan and ordinance amendments will allow the Borough to move forward in the satisfaction of its constitutional obligation.

5. **Other factors that may be relevant to the fairness of the settlement.** This Settlement will ensure that the interests of lower income households will be advanced through the Court's approval, since the Agreement provides for a continuing monitoring program throughout its duration. A Spending Plan amendment will also be required and will be reviewed by the court.

Fairness Evaluation of Yellow Brook Settlement Agreement

I have applied the same standards to the Yellow Brook Settlement and the 5-part analysis is as follows:

1. **Consideration of the number of affordable units being constructed.** The Settlement Agreement provides for an inclusionary development involving 43 total units. The settlement permits construction of a total of 34 market rate townhouse units on two separate sites, with Yellow Brook conveying the Carton Avenue site funding 9 affordable units through in-lieu payments.

2. **The methodology by which the number of affordable units provided is derived.** For towns receiving a VLA, NJAC 5:93-4.2 f provides that

The Council shall consider sites, or parts thereof, not specifically eliminated from the inventory described in (d) above, for inclusionary development. The Council shall consider the character of the area surrounding each site and the need to provide housing for low and moderate income households in establishing densities and set-asides for each site, or part thereof, remaining in the inventory. The minimum presumptive density shall be six units per acre and the maximum presumptive set-aside shall be 20 percent. The density and set-aside of each site shall be summed to determine the RDP of each municipality.

The 344 market rate units will occupy 10.93 acres, resulting in a development density of 3.11 units/acre -- half of the presumptive minimum. The in lieu payments represent a 21% set aside ($9/43=20.93\%$), exceeding the 20% set aside provided by COAH rules for inclusionary developments in towns receiving a vacant land adjustment.

3. **Other contributions by the developer.** Developer Yellow Brook is the owner of the Carton Street property, where the Borough will build a 14-unit 100% affordable housing development. The Carton Street parcel will be conveyed to the Borough. The value of this parcel, combined with cash payments from Yellow Brook, will provide the funding for 9 affordable units at Carton Street.

4. **Other components of the Agreement that contribute to the satisfaction of the constitutional obligation.** Rumson is in the process of obtaining the Court's approval of the Borough's Third Round Housing Element and Fair Share Plan. The Yellow Brook Settlement is a significant element of the FSHC Settlement and, as the document providing for this component, has received approval from FSHC. The Yellow Brook Settlement also includes the zoning standards for the market rate developments that the Borough will enact to provide the funding for the Carton Street development. The inclusion of Carton Street in the FSHC Settlement and the conditions contained in the FSHC Settlement and this report requiring the Borough to adopt certain master plan and ordinance amendments will allow the Borough to move forward in the satisfaction of its constitutional obligation.

5. **Other factors that may be relevant to the fairness of the settlement.** This Settlement requires that Yellow Brook support the Borough's application to the Court for approval of the affordable housing compliance plan.

Review of Objections

The following table provides the names and addresses of those who submitted objection letters to the Court, including date of letter.

Name	Date of letter	Address
Aleffi, Dana	2/27/20	13 North Street
Aleffi, Joseph	2/27/20	13 North Street
Anderson, John	2/27/20	166 Bingham Avenue
Babeuf, John & Linda	2/29/20	18 Ridge Road
Bach, Nancy	3/3/20	7 Woods End Road
Berman, Allen & Erin	3/2/20	4 Osprey Avenue
Besculides, Melanie	3/1/20	135 Bingham Avenue
Blatt, Jon	Rec'd 3/5/20	89 Rumson Road
Bovo, Caitlin	2/29/20	13 Osprey Lane
Brindise, Tammy & William	3/1/20	172 Bingham Avenue
Bukowski, Walter	2/27/20	14 Lincoln Avenue
Bukowski, Marsha	2/27/20	14 Lincoln Avenue
Bunnell, Kristen	3/2/20	5 Azalea Lane
Burk, Regina	3/1/20	12 Harbor Drive
Cady, Jeffrey & Stephanie	3/2/20	4 Tuxedo Road
Carr, Bert	2/27/20	80 Rumson Road
Casey, Brian	3/2/20	136 Bingham Avenue
Casey, Laura	3/1/20	136 Bingham Avenue
Cashion, Carolyn	3/1/20	2 Oyster Bay Drive
Cashion, Daniel	3/1/20	2 Oyster Bay Drive
Cashion, Lilah	3/1/20	2 Oyster Bay Drive
Collard, Megan	3/1/20	49 Shrewsbury Drive
Cornette, Christopher	3/2/20	94 East River Road
Conklin, Olivia	2/27/20	166 Bingham Avenue
Crosson, Russell & Donna	3/3/20	14 Osprey Lane
Cutler, Brian	3/2/20	99 West River Road
Cutler, Karyn	3/2/20	99 West River Road
Cutler, Sharon	3/2/20	2 Alyce Lane
Cutler, Stephen	3/2/20	2 Alyce Lane
Daffan, Megan	2/28/20	7 Ridge Road
Daffan, Nicholas	2/28/20	7 Ridge Road
Dagostino, Anthony & Ciara	3/3/20	180 Bingham Avenue
Daszkowski, Lauren	3/2/20	175 Bingham Avenue
Daszkowski, Walter	3/2/20	175 Bingham Avenue
Delahunt, Timothy	3/5/20	30 Lennox Avenue
deLaszlo, Stephen & Heather	2/29/20	168 Bingham Avenue
Del Negro, Ralph & Robyn	3/3/20	7 S. Rohallion Drive
Devine, Donald	3/4/20	10 Tuxedo Road

Dutcher, Deborah	2/27/20	13 Tuxedo Road
Dzialo, Gerard	3/1/20	15 Warren Street
Eckert, Jon & Deborah	3/2/20	11 Woods End Road
Elsas, Scott & Eileen	2/29/20	11 S. Rohallion Drive
Florio, Jillian	2/28/20	3 Evergreen Drive
Foss, Arthur	3/1/20	2 Heathcliff Road
Foss, Eleanor	Undated	2 Heathcliff Road
Fuschetti, Erin	3/3/20	67 Bingham Avenue
Fuschetti, Thomas	3/3/20	67 Bingham Avenue
Gay, Dorothy Lea & Verne	3/1/20	7 Osprey Lane
Gray, Robert	2/26/20	14 Shrewsbury Drive
Gumbrecht, Renee	2/26/20	92 Washington Street
Harczar, Katherine	2/26/20	10 Osprey Lane
Harczar, Eugene	2/26/20	10 Osprey Lane
Haverstick, Nicole	2/29/20	1 South Rohallion Drive
Haverstick, Shane	2/29/20	1 South Rohallion Drive
Hendricks, Jay	3/2/20	93 Avenue of Two Rivers
Hendricks, Margaret	3/2/20	93 Avenue of Two Rivers
Herman, Russell	3/2/20	17 Avenue of Two Rivers South
Herr, Amber	2/28/20	3 Holly Tree Lane
Hogberg, Hanne	3/2/20	8 Hunt St., Apt. 2
Hoitt, Stephanie	3/3/20	124 Avenue of Two Rivers
Hoitt, Jason	3/3/20	124 Avenue of Two Rivers
Huber, Laurel	2/28/20	77 Ridge Road
Johnson, James & Kathlyn	2/28/20	58 South Ward Avenue
Kahn, Walter	2/29/20	16 Tuxedo Road
Kassinger, Michael	2/29/20	133 Bingham Avenue
Kenney, Darrah	3/5/20	164 Bingham Avenue
Kenney, Jr., Joseph	3/5/20	164 Bingham Avenue
Lane, Kevin	3/1/20	23 Cedar Avenue
Lane, Melissa	3/1/20	23 Cedar Avenue
Larney, John	3/2/20	4 Second Street
Larney, Vita Grillo	3/3/20	4 Second Street
Leckstein, David & Rebecca	2/29/20	86 Rumson Road
Leibee, John	3/2/20	8 Harbor Drive
Long, Krista	3/2/20	49 Buena Vista Avenue
Love, Margaret	3/4/20	121 Avenue of Two Rivers
Lowcher, Philip	3/2/20	122 Avenue of Two Rivers
Maguire, Katherine	3/1/20	18 Warren Street
Mannato, Donovan	2/26/20	13 Tuxedo Road
Mannato, Isabel	2/26/20	92 Washington Street
McBrady, Thomas & Mary	2/29/20	2 Horatius Way
McManus, Kortney	2/28/20	
Menkowitz, Debra & Marc	3/3/20	16 Buttonwood Lane East
Morris, Robert	2/28/20	3 Van Circle
Mulheren, Clark	3/2/20	3 Rumson Road
Mulheren, Gabriela	3/2/20	3 Rumson Road
Mulheren, Monica	3/2/20	15 Conover Lane

Mulheren, Timothy	3/2/20	15 Conover Lane
Mulheren, Alexander	3/2/20	99 Rumson Road
Mulheren, Vanessa	3/2/20	99 Rumson Road
Mulheren, Nancy	3/2/20	17 North Ward Avenue
Mulheren, Wyatt	3/2/20	6 Willowbrook Road
Olsen, Ty & Susan	3/3/20	159 Bingham Avenue
Pascucci, Ivo & Katie	3/1/20	35 Ridge Road
Rettino, Lisa	2/26/20	7 Hance Road
Reustle, Matthew	3/2/20	163 Bingham Avenue
Reynolds, Hannah	2/28/20	15 Black Point Horseshoe
Robinson, Karen	2/27/20	146 Avenue of Two Rivers
Saling, Timothy & Holahan-Saling, Maureen	3/5/20	10 Oyster Bay Drive
Sands, John	3/2/20	82 Buena Vista Avenue
Sands, Nora Mulheren	3/2/20	82 Buena Vista Avenue
Scheffer, Andrew & Alyssa	3/2/20	8 Tuxedo Road
Seckler, Betsy	3/3/20	56 Buena Vista Avenue
Seckler, Mark	3/3/20	56 Buena Vista Avenue
Sendell, Stuart	Undated	7D Lafayette Street
Setteducate, Courtney	2/25/20	19 Circle Drive
Sheehan, Jessica	2/29/20	18 Tuxedo Road
Sheehan, Michael	2/29/20	18 Tuxedo Road
Short, Charles	3/1/20	59 Shrewsbury Drive
Short, Kara	2/28/20	59 Shrewsbury Drive
Smith, Harley	3/2/20	17 North Ward Avenue
Smith, T.K.	3/2/20	17 North Ward Avenue
Tice, Lisa & Mayo, Frank	2/29/20	57 East River Road
Timpone, Korinne	2/23/20	5 Osprey Lane
Tobin, Kathleen	3/2/20	6 Willowbrook Road
Tooker, Michael	2/27/20	19 Church Street
Trudel, Michael & Shannon	2/28/20	9 Bingham Hill Circle
Veninata, Robert	3/2/20	46 Shrewsbury Drive
Viggiano, Maria	2/25/20	54 Black Point Road
Viggiano, Raymond	2/25/20	54 Black Point Road
Ward, Hugh	3/16/20	20 Hartshorne Lane
Warshauer, James	3/2/20	57 Buena Vista Avenue
Warshauer, Mary	3/2/20	57 Buena Vista Avenue
Whittemore, Patricia	3/2/20	6 Avenue of Two Rivers S.
Wickersham, David	3/2/20	12 Woodside Drive
Wickersham, Kellie	3/2/20	12 Woodside Drive
Woodham, Dakota	3/2/20	142 Bingham Avenue
Woodham, Donnie	3/2/20	142 Bingham Avenue
Wurch, John & Janet	3/3/20	19 Ridge Road
Zerillo, Alana	3/1/20	4 Markwood Lane
Yorke, Brian	3/2/20	27 Tuxedo Road

Resident Objection Letters

Most of the letters submitted followed similar lines of reasoning for opposing the Settlements, except the letter from Stuart Sendell. Mr. Sendell, a 10-year resident of Rumson, observes that Rumson has not embraced the constitutional obligation but rather has "delayed, obstructed and conspired to avoid" the constitutional obligation. He nonetheless supports the Settlements as "more than fair".

Based on a thorough review of the remaining letters, the following is a summary of the nature of objections to the Settlement Agreement:

Poor planning

The objectors state that the proposed developments, and their locations, do not meet smart growth principles and basic planning tenets. The objectors state that high density developments, such as the one proposed, should be located near town centers and within walking distance to retail shops and services. However, the proposed development is not walkable to the downtown area. They note that walkability and accessibility are very important for low and moderate income families to provide easy access to services and retail spaces without the need for a car.

Violates local zoning policy

The objectors state that by permitting the increased density on the Yellow Brook properties, the Borough and the settlement negotiations have gone against public policy, the existing zone plan, home rule, and that it amounts to spot zoning. The objections state that under the court process, local zoning powers and home rule are being superseded.

The objectors state that the proposed developments are not in keeping with the character of Rumson, in part because they are to be located adjacent to single-family dwellings on 1.5 acre lots along narrow older roadways. The Borough's "zone plan" for the area is identified as the "estate" area, where larger lots in the Borough are found. The proposed high density development is not in keeping with the existing development or the zone plan. This will create a development that is out of scale with the neighborhood character and place increased demands on adjoining streets and properties and result in a decrease in the quality of life for residents.

Rumson failed to comply with Open Meetings Act/lack of transparency

The objectors state that the settlement negotiation process lacked transparency and failed to comply with the Open Meeting Act in several ways. First, objectors argue that Borough officials would not discuss the Settlement Agreement negotiations with the residents because the Borough was under a "gag order" and were not at liberty to discuss the terms (settlement negotiations) are confidential. Second, the objectors state that the Borough officials bypassed the Open Meetings Act by utilizing a standing committee to conduct the negotiations, and therefore were not subject to notice requirements or public discourse.

Finally, the objectors state that the Settlement Agreement was placed on the agenda and approved in one night with no opportunity for public comment, discussion, or input.

Yellow Brook increased the RDP obligation

The objectors state that Yellow Brook took advantage of the affordable housing litigation to bypass existing zoning and that the developers intervened in the process to force Rumson to agree to a density that would not have been previously allowed through standard zoning. In addition, the inclusion of their properties in the affordable housing litigation process resulted in FSHC increasing the Borough's overall RDP and therefore giving more leverage to the developers to have their development plan approved in the Settlement Agreement.

Fair Share Housing Center artificially inflated RDP based on Yellow Brook sites

The objectors state that because Yellow Brook intervened in the process, FSHC used the Yellow Brook sites to inflate the Borough's overall RDP, therefore requiring the Yellow Brook sites to be in the Plan. The objectors state that FSHC has extorted the Borough, through the Yellow Brook sites, to achieve its goals for affordable housing at a cost to the Borough and the Borough's residents.

Borough's previous plan achieved prior RDP and affordable housing obligation

The objectors state that the Borough had already been in negotiations to achieve its obligations and RDP in 2019 and was able to do so without the inclusion of Yellow Brook's properties. However, once Yellow Brook became an intervenor, FSHC increased the Borough's RDP by including Yellow Brook sites, and therefore required the Borough to negotiate with Yellow Brook in order to reach a settlement agreement.

Affordable housing units should be inclusionary

The objectors state that the affordable housing units should be included within the market rate development and not as a separate development. The objectors feel that segregating the affordable housing units is not good planning and goes against that intent of the Fair Housing Act and that affordable housing units should be interspersed with market rate units to avoid discrimination and provide more inclusion to low- and moderate-income residents.

Historic building loss on Lauriston Estate

Objectors state that the building located on Lauriston Estate is on the State and National Historic Registers of historic places and that demolishing the building should be prohibited.

An increase in property taxes/school taxes due to high-density development

Objectors state the construction of high-density multi-family developments will result in an increase in property taxes as well as an increase in school taxes. Objectors state that the additional demand for water, sewer, roadway upkeep and the additional number of school-

age children will place a disproportionate demand on local service costs that will not be offset by the added tax base.

A decrease in property values

In tandem with the increase in property taxes, objectors state that the high-density multi-family developments would result in a decrease in property values, claiming that single-family houses on 1.5 acre lots will be adversely impacted by a high-density development in those zones. No expert opinion was presented on the issue of value impacts.

Construction of high-density development will impact parking

Objectors state that the construction of high-density development will impact parking throughout the Borough and that the Borough already has limited parking during off-season months to address the needs of residents. During the summer season, parking is in demand. Adding additional residents to the Borough will increase the parking demand.

Traffic impacts

The concerns over impacts on traffic include peak overall traffic volume, concerns over peak demand conflicts in key areas, concerns over season traffic volume, and concerns over traffic during the construction phase.

Brigham Road and school traffic

Of concern is the impact of additional traffic during peak school hours. The Bingham Road development is located near Rumson-Fair Haven High school. During morning and afternoon drop off and pick up, traffic around the high school backs up through all the intersections according to objectors, and increased traffic from the proposed development will exacerbate the problem. In addition, any time there are school events, traffic impacts are significant.

Objectors also cited student safety, noting that an increase in traffic in the area of the school will also place students who walk at an increased risk. Students who must also walk to a school bus stop in the morning, and to home from a stop in the afternoon, will also face safety issues from more cars on the road.

Osprey Lane

Objectors raised concerns regarding the impact on Osprey Lane, which is described by them as a very narrow quiet lane. The objectors state that the proposed development would create traffic and safety issues on the roadway because the road was not constructed to handle a high number of vehicle trips. This would also cause pedestrian safety issues because no sidewalks exist on Osprey Lane.

The objectors also state that should development occur at the Rumson Road site, the entrance and exit should not be on Osprey Lane but on Rumson Road.

Summer month/in-season traffic impacts

Concerns regarding the summer month traffic impacts were expressed by the objectors, who noted that during the summer months, traffic and parking demands increase substantially. Objectors claim that adding the proposed development will create a worsening traffic and parking situation that will diminish property values and create quality of life issues for the residents.

Increased traffic during construction

Objectors also express concerns over the impact of construction traffic, citing concerns over the amount and volume of construction vehicles on the roads and the wear and tear these heavier vehicles may cause to the integrity of the roads, was of concern.

No expert opinion was offered to validate these claims.

Loss of green space and wildlife habitat

Objectors state the loss of green space and wildlife habitat on the proposed development sites will be a detriment to residents. They claim the development will require clearing of 100-year-old trees and will result in a loss of critical habitat where eagles, deer, fox, possum, Coopers Hawk, Osprey, Great Horned Owl, racoon, Bull Frogs, Eastern Box Turtles and other wildlife have been sighted.

Loss of wetlands

The objectors state that the wetlands to be filled in order to develop the properties help to mitigate stormwater and flooding, and the loss of the wetlands will have adverse impacts on the area.

Increased stormwater run-off and flooding issues

The objectors state that developing the properties will have significant negative impacts from increased stormwater runoff and increased flooding in an area currently flood prone where an increase in development will result in an increase of flooding in the area.

Impact local services like volunteer EMS/Fire

Objectors state concern that the increase in residential units, and households, would strain the volunteer Emergency and Fire services in the Borough, currently struggling for membership. Additional residents may require additional services which the volunteer services will have difficulty responding to.

Increase in school-age children population/school capacity

Objectors state that the increase in residential dwellings will result in an increase in school-age children. They state the increase in school children will result in the schools exceeding their capacity.

Decrease in personal security

Objectors state that the development of a high-density multi-family development will result in a decrease in personal security to homes in the area and existing homeowners will be required to install security systems.

Payment-in-lieu amounts are questionable

Objectors question the use of the payment-in-lieu option. They state that the amount will not be sufficient to construct the proposed affordable housing units and that the Borough will then be required to provide additional funding to cover the shortfall.

Carton Street property may not be available for transfer

Objectors questions the ability of Yellow Brook to purchase and transfer the Carton Street property. They state that the property is owned by Gold Carton, LLC and may not be for sale or transferrable to the Borough from Yellow Brook.

Rumson Open Space and Affordable Housing, Inc (ROSAH) Objections

ROSAH, Inc. provided an objection letter dated February 13, 2020 and an additional submission dated March 5, 2020. ROSAH objects to the Settlement Agreement and claims it is not consistent with Mt. Laurel IV or sound planning. ROSAH also claims the Settlements violate COAH rules and the Fair Housing Act.

ROSAH also states that the negotiations took place out of the public venue and residents were unable to gain information on the process. The objection states that inquiries into the matter were not provided because the Borough identified a “gag order” and said they were not at liberty to discuss the details.

ROSAH also states that an OPRA filing with the Borough resulted in documentation that did not address the OPRA request. ROSAH contends the Borough requested a 14-day extension which did not allow for adequate time for review of the documentation.

ROSAH provided additional documentation (March 5, 2020) that further detailed the objections outlined above. They provided an engineering report prepared by J. Michael Petry, PE, PP, AIA, Petry Engineering, LLC entitled “Engineering Report, Evaluation of Potential Development of Property for 91 Rumson Road and 132 Bingham Avenue” dated March 5, 2020. ROSAH also provided a Planner’s report from Leah Furey Bruder, PP, AICP, dated March 4, 2020.

ROSAH Planner's Report

Ms. Bruder's planner's report suggests reasons the Settlement Agreement should be rejected. These include a lack of public participation, that the proposed developments are not in keeping with long term planning of the R-1 zone, are inconsistent with the Borough's Master Plan goals, objectives and policies, and that the sites do not provide a realistic development opportunity. Additionally, Ms. Bruder claims that the VLA and RDP analysis are not in keeping with the Lack of Land analysis (NJAC 5:93-4.2) and the density exceeds the 6 units per acre identified in NJAC 5-93-5.6. She says assigning 6 units/acre for RDP purposes is excessive but does not acknowledge that the actual development densities will be 2.76 units/acre (91 Rumson Road) and 3.49 units/acre (132 Bingham Avenue).

The report also states that the additional mechanisms to address affordable housing in the Settlement Agreement are not realistic. These include the Market to Affordable program, the Faith Institution Overlay Zone, the existing non-residential zoning district overlays and the R-4 Overlay. The overarching reasoning is that the funding, housing stock and ability to develop at higher densities are not realistic. In terms of the Market to Affordable program, the report states that the funding required to convert existing market housing stock to affordable homes exceeds the funds in the current Affordable Housing Program and that there has not been enough documentation provided to justify the program. The remaining items are zoning, and as outlined previously, questions of long term planning, site suitability, community character and feasibility.

The report concludes that affordable housing in the Borough should be small town, small-scale infill redevelopment, small 100% affordable housing developments or supportive and special needs housing, with architectural design that makes it unique.

ROSAH Engineering Report

ROSAH also provided an engineering report by Michael J. Petry, PE, dated March 5, 2020 that claims that the site suitability requirements do not support the development of 91 Rumson Road or 132 Bigham Avenue as outlined in the Settlement Agreement. The report reviewed FEMA flood data, wetlands, data, CAFRA regulations, Threatened and Endangered species, National Historic Register and Rumson Historic Preservation Commission documentation and suggests that these features may mean that the sites cannot be developed as shown on the conceptual plans.

Toward this end, he indicates that these conceptual layouts represent a significant departure from the Rumson master plan, which seeks to maintain the neighborhood character of the Borough. Mount Laurel case law has demonstrated that low and moderate income persons have been denied housing opportunities in communities attempting to protect neighborhood character and that the municipal constitutional obligation is to provide for its fair share of the regional need of housing for low and moderate income households. Fulfillment of the terms of the Settlement will require the town to amend its HE/FSP to include these developments, effectively amending the master plan. Mr. Petry also suggests that

fulfillment of the terms of the Settlement will require the town to amend its HE/FSP to include these developments, effectively amending the master plan.

Mr. Petry also suggests that multi family development is out of character with the residential nature of these neighborhoods. However, multi family development is out of character with the residential nature of these neighborhoods, despite that the duplex and triplex units are attached single family residential units. Additionally, the Yellow Brook Settlement paid close attention to site design, architecture and landscaping details, far more than is typical.

Mr. Petry also identifies wetland areas that have not yet received a letter of interpretation from NJDEP, threatened and endangered species occurrences that may impact the properties and an historic home to be removed. The conclusion of the report indicates that the proposed developments would be subject to review and individual permits to determine the full development potential of both sites.

ROSAH'S March 5, 2020 letter succinctly summarized the conclusions of their consultants as follows:

1. There is not a rational planning basis for the inclusion of 91 Rumson or 132 Bigham Road in the Fair Share Plan and this is reactive, short-sighted, and inconsistent with the Borough's long-term comprehensive planning.
2. The inclusion of the properties is inconsistent with the Borough's Master Plan and sound planning principles.
3. The proposed Settlement Agreement is not consistent with COAH rules and regulations and does not create a realistic likelihood to yield the development of any affordable housing.
4. The realistic development potential (RDP) applied to Rumson as set by the Settlement Agreement is not consistent with COAH regulations.
5. The Settlement Agreement does not provide the expectant yield from the overlay zones and is not a reasoned long term planning approach.
6. There is doubt that the sites are suitable for development, given the wetlands and historic building site status.

Summary of Response to Objections

The purpose for the fairness hearing is to allow the Court to assess the provisions of the Settlement and determine "whether any aspect of the settlement would be unfair" to the low and moderate income protected class. It is not about the perception of fairness to all affected parties. Throughout Mt. Laurel jurisprudence, the Court has recognized that the

prospects for affordable housing are not promising when parochial interests can prevent zoning for apartments or townhouses and permit only single family dwellings.

The builder's remedy, where the Court recognized that builders and developers could assist in delivering affordable units, was crafted for times when local fair share plans are found inadequate. When this happens, zoning is changed to permit inclusionary development - frequently in single family residential neighborhoods. Mr. Laurel IV offered municipalities the opportunity to have the Courts determine constitutional compliance and over 300 towns have FSHC settlements in place.

Court rulings and COAH rules have long recognized the need for inclusionary development standards, to assure that builders are sufficiently motivated and rewarded for building affordable units. When units are for sale, COAH rules require a minimum density of 6 units/acre with a maximum affordable unit set-aside of 20%.

The Rumson Road and Bingham Avenue sites are proposed for townhouse development at densities roughly half the presumptive 6 unit/acre minimum, yet Yellow Brook's set aside is 21%. The Settlement with Yellow Brook provides far more detail about architectural design and site layout than found in a typical settlement. The settlement ordinance requirements are focused on providing for a smooth assimilation of the new development in the neighborhoods, with distinctive architecture and generous landscaping.

None of the comments from objectors has persuasively alleged that there is something unfair to the protected class about the Settlement. A variety of perceived negative impacts are suggested, although no expert opinions are offered to back up the perceived negative traffic and property value impacts. Additionally, there was no finding of unfairness to the protected class by the ROSAH planner and engineer.

Charges are made that a "gag order" prevented local officials from revealing the details of the fair share plan until it was too late for meaningful public input. This may indicate a misunderstanding about the nature of the confidential negotiations that lead to settlements, where participants agree to maintain confidentiality.

Objectors to the introduction of attached single family homes in these detached single family neighborhoods recited concerns about increasing taxes, parking, segregation of affordable units, loss of an historic home, impact on wetlands, flooding and a decrease in personal safety. These are issues that are properly addressed during the site plan review process, where the public will have ample opportunity to review and comment on the proposed designs.

In many cases, addressing the constitutional fair share obligation involves some increases in local property taxes and this is no reason to evade constitutional compliance. The proposed zoning standards call for provision of adequate on-site parking, which should prevent off-site parking problems.

National Register designation of Lauriston, which would prevent the demolition of a listed structure by a governmental entity, provides no such protection from action by a private party. Some municipalities require that photo documentation (interior and exterior) be provided before a demolition permit is issued for a historic building.

The proposal for a 100% affordable development of 14 units at Carton Street, funded in part from in-lieu payments, is well within the scope of appropriate methods of affordable housing production, and Yellow Brook is credibly positioned to convey the lot to Rumson.

Stormwater management and impacts on wetlands are appropriately addressed during site plan review. Concerns for personal safety from the proposed attached single family dwellings are not described in any detail, but do not appear to represent any credible threat from expensive architecturally distinctive townhouses.

I note that ROSAH's planner argued that there are better alternatives than those chosen by the Borough. However, among her recommended alternatives ("infill and redevelopment, the market to affordable program, supportive and special needs housing and small scale 100% affordable developments") are the elements of the Borough's current plan. Bingham Avenue and Rumson Road are infill sites and the Borough has included a market to affordable component along with two small 100% affordable developments, all elements Ms. Furey recommended.

The purpose of the fairness hearing is to determine whether the provisions of the Settlement Agreement are fair to the protected class. While the ROSAH supporters and other residents have expressed a series of concerns opposing the Settlement, they have not offered persuasive evidence that the Settlement entered into by FSHC, a premier affordable housing advocate, is unfair to the protected class.

Challenges to site suitability are appropriate at the compliance hearing, where the Court determines whether the Fair Share Plan creates the realistic opportunity required by New Jersey's Constitution, Mt. Laurel jurisprudence, COAH rules and the FHA. Site design concerns are best resolved during site plan review, where binding conditions can be part of any approvals.

Conclusion and Conditions

This report has been prepared in anticipation of a Fairness Hearing before The Honorable Linda Grasso Jones, J.S.C. in the matter of the Application of the Borough of Rumson for a Determination of *Mount Laurel* Compliance (Docket No. MON-L-2483-15). The Court is being asked to determine whether the interests of low and moderate income households will be served by the approval of Rumson's Settlement Agreement with FSHC and Yellow Brook.

As noted in the holding in *Morris County Fair Housing Council v. Boonton Twp.*, 197 N.J. Super, 359 (Law Div. 1984), aff'd o.b. 209 N.J. Super, 108 (App. Div. 1986), wherein the Court concluded that "...it may be assumed that generally a public interest organization

will only approve a settlement which it conceives to be in the best interest of the people it represents.” Clearly FSHC, an affordable housing advocate, has concluded that the compliance plan contained in the Settlement Agreement is fair and reasonable to the interests of low and moderate-income households, or it would enter into the settlement. That fairness determination is the purpose of this hearing.

It is my opinion that the Settlement provides for a substantial amount of affordable housing and satisfies the criteria set forth by the Appellate Division in East/West Venture, and that the interests of low and moderate income households will be advanced by the Court's approval of the Settlement Agreements. As a result of my analysis, I find that the agreement passes the fairness test, recognizing that compliance with the site suitability criteria will have to be demonstrated for all sites proposed at the Borough's compliance hearing. My recommendation regarding the fairness of the agreement is based on reasonable representations made by the parties. Challenges to the efficacy of the Borough's plan to produce realistic development opportunities can be brought at the compliance hearing.

Additionally, for the reasons provided herein, I find that Rumson's allocation of units and credits for its prior round and third round obligations is designed to implement the March 10, 2015 decision of the N.J. Supreme Court In Re N.J.A.C. 5:96 and 5:97, insofar as can be determined at this time.

Subject to supplementation as outlined in Attachment A, I also find that Rumson Borough will be eligible for a judgment of compliance with the obligation for the period from 1987 through 2025, pursuant to the Mount Laurel decisions, the Fair Housing Act, applicable COAH regulations, and the Supreme Court's decision in Re N.J.A.C. 5:96 and N.J.A.C. 5:97, 221 N.J. (2015). I recommend a 120-day timeframe for completion of the items in Attachment A.

ATTACHMENT A
REQUIRED ELEMENTS OF FINAL AFFORDABLE HOUSING COMPLIANCE PLAN
Borough of Rumson, Monmouth County
April 10, 2020

1. The compliance proposals and the applicable terms of the executed Settlement with FSHC shall be referenced in the Housing Element and Fair Share Plan, which, following review by the Special Master, shall be adopted and submitted to the Court for approval as part of the final Judgment of Compliance and Repose.

The HE/FSP shall provide documentation of the creditworthiness of all existing units and shall be prepared according to the requirements of the Fair Housing Act (FHA), which identifies the “Essential components of the municipality's housing element” at N.J.S.A. 52:27D-310, as follows:

A municipality's housing element shall be designed to achieve the goal of access to affordable housing to meet present and prospective housing needs, with particular attention to low and moderate income housing, and shall contain at least:

- a. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low and moderate income households and substandard housing capable of being rehabilitated, and in conducting this inventory the municipality shall have access, on a confidential basis for the sole purpose of conducting the inventory, to all necessary property tax assessment records and information in the assessor's office, including but not limited to the property record cards;
- b. A projection of the municipality's housing stock, including the probable future construction of low and moderate income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands.
- c. An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;
- d. An analysis of the existing and probable future employment characteristics of the municipality;
- e. A determination of the municipality's present and prospective fair share for low and moderate income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low and moderate income housing; and
- f. A consideration of the lands that are most appropriate for construction of low and moderate income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low and moderate income housing, including a consideration of lands of developers

who have expressed a commitment to provide low and moderate income housing.

2. Prior to the entry of an Order granting a final Judgment of Compliance and Repose, the Fair Share Plan shall be reviewed by the Special Master for compliance with the terms of the executed Settlement Agreement, the Fair Housing Act and the UHAC regulations before being adopted and submitted to the Court. The Fair Share Plan document should include any proposed Ordinances and Resolutions needed to implement the Plan, including zoning amendments, an Affordable Housing Ordinance, a Development Fee Ordinance, an Affirmative Marketing Plan, a Rehabilitation Program description and Manual, a Spending Plan, resolutions appointing an Administrative Agent and a Municipal Affordable Housing Liaison, a resolution adopting the Housing Element and Fair Share Plan (Planning Board) and a resolution endorsing the Housing Element and Fair Share Plan (Governing Body).
3. The Spending Plan shall be prepared, submitted to the Special Master for review and comment, adopted by the Planning Board as part of the Plan and by the Borough Committee as a separate action and submitted to the Court for approval before the Borough will be permitted to expend any funds from its Affordable Housing Trust Fund.
4. All proposed inclusionary and 100 percent affordable housing development zoning amendments shall be prepared, reviewed by the Special Master, and adopted and submitted to the Court prior to the entry of an Order granting a final Judgment of Compliance and Repose.
5. The Borough shall prepare and adopt an Affordable Housing Ordinance that reflects all provisions of the Settlement Agreement, as well as applicable UHAC and COAH Rules and an Affirmative Marketing Plan Resolution consistent with the terms of the Settlement Agreement. These documents shall be reviewed by the Special Master and FSHC, adopted and submitted to the Court prior to the entry of an Order granting a final Judgment of Compliance and Repose.
6. If it has not done so already, the Borough will need to contract with one or more Administrative Agents, responsible to the Borough but paid for by the owners of the affordable housing units created in the Borough, to administer the affordability controls on all of the low and moderate income units that have been or will be created in the Borough. This should be accomplished and submitted to the Court prior to the entry of an Order granting a final Judgment of Compliance and Repose.
7. If it has not done so already, the Borough will need to create the position of Municipal Housing Liaison by Ordinance and fill that position by Resolution of the Governing Body. This should be accomplished and submitted to the Court prior to the entry of an Order granting a final Judgment of Compliance and Repose.

Upon its timely compliance with all of the foregoing and approval of the final submission by the Court, I believe that Rumson Borough will be entitled to a final Judgment of Compliance and Repose through July 1, 2025.