

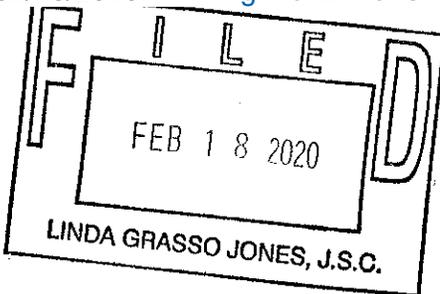
Included is the Documented Communication That Led to the Superior Court Rescheduling The Rumson Affordable Housing Fairness Hearing from March 12, 2020 to March 26, 2020

Pages 2-3: Court Decision to Reschedule Fairness Hearing

Pages 4-7: Initial Request from “ROSAH” to Reschedule Fairness Hearing

Pages 8-11: “Yellow Brook Property Company” Response to Fairness Hearing Reschedule Request

PREPARED BY THE COURT



_____ : SUPERIOR COURT OF NEW JERSEY
 : LAW DIVISION:MONMOUTH COUNTY
 :
 I/M/O APPLICATION OF THE :
 BOROUGH OF RUMSON :
 : Docket No. MON - L-2483-15
 :
 : Civil Action
 :
 : **CASE MANAGEMENT ORDER**
 :
 _____ :

THIS MATTER currently scheduled for a Fairness Hearing on March 12, 2020, and public notice having been provided of this date, and a request having been made for an adjournment of that date by an outside entity, Rumson Open Space and Affordable Housing, Inc. (ROSAH), and appropriate public notice already having been provided for the March 12, 2020 Fairness Hearing date, and adequate and appropriate public notice already having been provided of the March 12, 2020 Fairness Hearing date;

IT IS hereby **ORDERED** on this 18th day of February, 2020 as follows:

1. It would not be appropriate for the Fairness Hearing to be adjourned for the length of time requested by counsel for ROSAH in the February 13, 2020 letter to the court. Given the availability of the court's Special Master and of the court, this would push the Fairness Hearing off until May 2020, which would create an unacceptable delay in moving this case, which addresses the requirement and potential for provision of affordable housing within the Borough of Rumson.

2. The court is adjourning the Fairness Hearing to **Thursday, March 26, 2020 at 9:00 a.m.**
This adjournment shall be placed on the record on March 12, 2020 at 9:00 a.m., the publicly-noticed date. All counsel shall appear telephonically on March 12, 2020 at 9:00 a.m., the initial Fairness Hearing date, for adjournment of the Fairness Hearing on the record.
3. The court order entered on January 21, 2020 which was published by the Borough of Rumson scheduling the March 12, 2020 Fairness Hearing shall remain in full force and effect, except that written objections to the FSHC Settlement Agreement and/or the Yellow Brook Settlement Agreement entered into in the above matter shall be due March 5, 2020; responses to oppositions shall be due March 12, 2020; and the Special Master's report shall be due March 19, 2020.

/s/Linda Grasso Jones, J.S.C.
HON. LINDA GRASSO JONES, J.S.C.



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February 13, 2020

VIA E-COURTS

Hon. Linda Grasso Jones, J.S.C.
Superior Court of New Jersey
Law Division
Monmouth County Courthouse
71 Monmouth Park
Freehold, New Jersey 07728

**Re: In the Matter of the Application of the Borough of Rumson,
County of Monmouth, Docket No. MON-L-2483-15**

Dear Judge Grasso Jones:

We represent Rumson Open Space and Affordable Housing, Inc. (ROSAH), which is a nonprofit organization established to support the development, financing, construction and public support of decent, safe, sanitary and affordable housing for low income persons and families (including the elderly, physically handicapped and intellectually handicapped, where appropriate) in the State of New Jersey, while also seeking to preserve a permanent legacy of historical buildings, open space, the environment and natural habitat, with respect for the real property rights of taxpayers and affected residents. ROSAH represents the interests of its members, many of whom are residents of the Borough of Rumson (the "Borough"), in matters concerning the development of housing which is affordable to low- and moderate-income households. As such, ROSAH is an interested party with respect to the constitutional compliance action captioned In the Matter of the Application of the Borough of Rumson, County of Monmouth, Docket No. MON-L-2483-15 (the "Rumson Mt. Laurel Action") now pending before the Court.

As my colleague Howard D. Geneslaw, Esq., of this office discussed with Special Master Francis J. Banisch, III, PP, AICP, and for the reasons set forth below, ROSAH respectfully requests that the Fairness Hearing scheduled for March 12, 2020, and the deadline of February 20, 2020 for submitting objections, each be adjourned. We understand that Mr. Banisch will be traveling in the first part of April, returning on April 22, 2020, and therefore request that the Fairness Hearing be rescheduled for after that date, and that objections be due, consistent with the current schedule, three (3) weeks in advance of the rescheduled Fairness Hearing.

The reasons supporting this request are threefold.

First, discussions by the Borough concerning this matter were conducted out of the public eye, and when members of the public made inquiry, they were told by Borough officials that they were precluded from discussing it due to the imposition of a "gag" order. Upon our engagement, we searched the filings in this matter and could find no such order; however, the fact remains that the Borough was under the misapprehension that it could not inform residents that it intended to

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meet its constitutional obligations with respect to affordable housing by rezoning to permit luxury market rate multi-family housing as a quid pro quo for a developer's contribution of land and capital to construct affordable housing off-site. As a result, Borough residents only became aware of the specific actions which were contemplated – including effectively granting a builder's remedy, even though this is a constitutional compliance case – when a public hearing was announced for January 14, 2020, with respect to separate settlement agreements between (i) the Borough and Fair Share Housing Center ("FSHC"), and (ii) the Borough and intervenor Yellow Brook Property Co., LLC ("Yellow Brook"). Only then did Borough residents learn that the Borough had agreed to a luxury 18-unit multi-family development at 132 Bingham Avenue (Block 94, Lot 5), and a luxury 16-unit multi-family development at 91 Rumson Road (Block 124, Lot 31), both of which Yellow Brook proposed. Each of these projects would be market rate, and rather than construct affordable housing on these sites, Yellow Brook would donate to the Borough a property it owns on Carton Street (Block 59, Lot 10) and contribute \$1.45 million to the Borough's Affordable Housing Trust Fund, to fund a portion of the construction of a 14-unit 100% affordable project to be developed by others on the Carton Street property, a location which appears to be appropriate for the construction of affordable housing given its proximity to retail services and transportation routes.

The January 14, 2020 public hearing was attended by at least 900 people, a level of public interest that required the Borough Council to move its regular meeting to an alternate location in order to accommodate the number of residents in attendance – and then, to move it again based on the public turnout. It was at this meeting when the Borough first communicated to its residents in a public forum how it intended to satisfy its affordable housing obligations.

During the period from August 21, 2018 until January 14, 2020, there was neither affirmative action by the Borough Council regarding affordable housing nor discussion of affordable housing issues initiated by the Borough Council, as evidenced by the minutes of the Borough Council for that time period. Noteworthy is a comment during the public comment session at a December 18, 2018 meeting of the Borough Council where, in response to a question from an interested member of the public, Councilman Conklin advised that a public meeting regarding affordable housing issues, while ideal, would "work against the town and everyone here, and create uncertainly [sic] and frustration."

Moreover, there does not appear to be any closed or executive session during which the Borough Council met to discuss litigation, which causes significant concern as to how the Borough Council was kept adequately informed regarding the status of the litigation, particularly during the period of negotiations with Yellow Brook and FSHC regarding settlement. Regardless of the vote on January 14, 2020, this lack of discussion is of serious concern. Any such discussion of the litigation would need to be conducted in strict accordance with the Open Public Meetings Act, and further investigation is necessary to determine whether the Borough actually complied with these obligations.

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ROSAH is concerned both about the process that was followed in reaching the settlement agreements, as well as the site suitability of the market rate sites at 132 Bingham Avenue and 91 Rumson Road for any type of multi-family housing, without which the settlement cannot move forward since it is the development of those sites with market rate multi-family housing which enables Yellow Brook to contribute land and capital for the construction of affordable housing on the Carton Street property. Thus, determining whether the settlement agreements are fair to low- and moderate-income households – the very purpose of the Fairness Hearing – requires an understanding of the market rate sites and their ability to be developed in the manner contemplated. Had the Borough not mistakenly believed it was subject to a “gag” order, information about the Borough’s proposed compliance mechanism could and should have been communicated to Borough residents substantially sooner, so that they could have both been better prepared at the January 14, 2020 meeting to ask relevant questions, and been able to gather information and determine whether to engage professionals and participate in this matter as interested parties. Unfortunately, this process appeared to proceed out of public view until the last possible moment.

Second, in anticipation of the formation of ROSAH, which was created on February 12, 2020, upon which it immediately engaged this firm to represent it with respect to the Rumson Mt. Laurel Action, we filed a comprehensive Open Public Records Act (“OPRA”) request with the Borough on January 23, 2020 (in advance of the entity’s formation), which sought copies of numerous documents broadly concerning (i) the Borough’s affordable housing obligations, (ii) its efforts to satisfy them, (iii) studies which were undertaken concerning the proposed rezoning of 132 Bingham Avenue, 91 Rumson Road and the Carton Street property, and (iv) the Borough’s compliance with the Open Public Meetings Act. On January 30, 2020, within the response period provided by OPRA, the Borough’s affordable housing counsel produced some limited responsive documents, and requested “a 14-day extension to find and produce those documents that are public non-confidential documents that respond to your OPRA demand.” A further response was received yesterday evening. At this time, there remain significant open issues with the Borough’s response to the OPRA request, though the Borough has asserted that it considers the OPRA request fulfilled, and ROSAH (and other interested parties) require time to review the response in its entirety. For instance, on first blush, despite the Borough Council establishing an “Affordable Housing Committee” as a standing committee during its January 1, 2019 reorganization meeting, the Borough has now advised that no such committee exists. ROSAH and its professionals will review these documents to evaluate the proposed settlement, and to determine its fairness as well as any specific bases which may support objections, but will not be able to review and produce its objections and expert reports until after the February 20, 2020 date on which objections and expert reports must be filed with the Court.

Third, the notice of the Fairness Hearing was published in the ASBURY PARK PRESS on January 30, 2020. It specifies that objections, together with expert reports on which experts will rely, must be submitted in writing by February 20, 2020. That provides interested parties like ROSAH with a mere three (3) weeks from the date of the notice of the Fairness Hearing within which to engage experts, and for the experts to gather the relevant documents, perform their

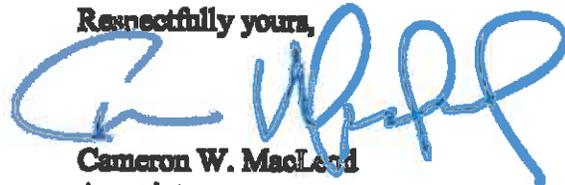
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independent analyses, develop conclusions, discuss their conclusions with ROSAH, and prepare expert reports. Given the perceived "gag" order which prevented residents from learning of the Borough's proposed method of satisfying its constitutional obligations concerning affordable housing until January 14, 2020, coupled with the Borough's responses to OPRA requests, it is impossible for ROSAH (as well as any other interested parties that may wish to participate in the Fairness Hearing) to submit objections and expert reports by the date specified in the notice. For this reason, the schedule as presently established deprives interested parties such as ROSAH of the ability to participate in this most important proceeding which will have long-lasting implications to the Borough, its residents, and the low- and moderate-income households for which affordable housing is to be developed, and on which this case centers.

ROSAH acted diligently as soon as the material terms of the settlement became publicly known, by forming an entity quickly and seeking relevant documents through an OPRA request even before the entity was created. ROSAH therefore respectfully requests that the Court adjourn the Fairness Hearing to a date after April 22, 2020, and set the date for submitting objections three (3) weeks prior to the rescheduled Fairness Hearing, so that it and other interested parties can participate in a meaningful way.

Respectfully yours,



Cameron W. MacLeod
Associate

cc: Francis J. Banisch, III, PP/AICP (via e-courts & e-mail to frankbanisch@banisch.com)
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February 15, 2020

VIA E-FILING

Honorable Linda Grasso Jones, J.S.C.
Monmouth County Courthouse
71 Monmouth Park, 2nd Floor
Freehold, NJ 07728

Re: In the Matter of the Application of the Borough of Rumson,
County of Monmouth
Docket No. MON-L-2483-15

Dear Judge Grasso Jones:

Please recall this office represents Yellow Brook Property Company, LLC (“Yellow Brook”) in connection with the above referenced matter. Please accept this letter as an objection to Rumson Open Space and Affordable Housing, Inc.’s (“ROSAH”) request that the fairness hearing scheduled for March 12, 2020, and the deadline of February 20, 2020 for submitting objections, each be adjourned. Yellow Brook objects to the proposed adjournment as the time frames provided are consistent with relevant case law and the only issue before the Court at the Fairness Hearing is whether the settlement agreements between the Borough of Rumson (“Rumson”), Fair Share Housing Center (“FSHC”), and Yellow Brook are fair to the interests of low-to-moderate income households. ROSAH fails to establish any legal or equitable grounds for adjournment of the fairness hearing.

ROSAH, which apparently became concerned about affordable housing only after its members learned that such housing would be built in Rumson, raises three arguments to support its adjournment request: (1) not enough time was provided with the notice of the Fairness Hearing, (2) it did not like how the Borough communicated with the public about these settlements, and (3) it still believes there are open issues with its OPRA request, though the Borough considers it fulfilled.

ROSAH’s first claim – insufficient notice in order to prepare an objection – is without merit and provides no basis for an adjournment. First, members of the public, which presumably include member of ROSAH, have been aware the terms of this settlement and the Fairness Hearing since the January 14th Borough Council meeting, and counsel for ROSAH by his own

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admission has been preparing for an objection since at least January 23rd. Second, the time frames for the Fairness Hearing, which were prescribed in the Court's Amended Case Management Order of December 23, 2019, conform to the governing case law on fairness hearings – E./W. Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 321 (App. Div. 1996). In that case, Fort Lee published its notice of hearing on May 9, 1994 for a fairness hearing scheduled for June 15, 1994, which notice provided that “any interested party may file objections to the proposed agreement and may appear at the hearing.” Although it is not clear from the case when the exact date for submission of objections were due, the court recognized that thirty-seven (37) calendar days between the notice and fairness hearing is adequate. Id. Here, the notice was published on January 30, 2020 for a hearing scheduled on March 12, 2020, providing forty-two (42) calendar days between the notice and fairness hearing.

In addition, it is important to remember the purpose of the Fairness Hearing. As outlined in E./W. Venture, a fairness hearing is to ensure that any settlement adequately protects the interest of the protected class – low income households. To do so, the court in E./W. Venture analyzed Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359, 369 (Law Div. 1984), which held that a court must (1) find that the “settlement had apparent merit; (2) notice to all members of the class and others who may have an interest in the settlement was given; (3) a court hearing was conducted where those affected had sufficient time to prepare; and (4) the court concludes based upon adequate findings of fact, that the settlement was ‘fair and reasonable; to the members of the protected class.’” E./W. Venture, 286 N.J. Super. at 326.

In determining the “fairness” issue, a court should consider “the number of affordable housing units being constructed, the methodology by which the number of affordable units has been derived, any other contribution being made by the developer to the municipality in lieu of affordable units, other components of the agreement which contribute to the municipality’s satisfaction of its constitutional obligation, and any other factors which may be relevant to the ‘fairness’ issue.” Id. at 328.

The present case is not a builder’s remedy¹ but a declaratory judgment action filed by the Borough. Fair Share Housing Center (“FSHC”), an organization founded in 1975 and entirely devoted to defending the housing rights of New Jersey’s poor, is a party to the settlement. They are vastly more qualified to protect the interests of the poor than ROSAH.

Obviously, the Court should not preclude members of the public or ROSAH from commenting on the settlement agreements at the Fairness Hearing, but the comments should be

¹ ROSAH’s claim that the Yellow Brook’s settlement “effectively grant[ed] a builder’s remedy, even though this is a constitutional compliance case” demonstrates ROSAH’s lack of understanding of this entire process, which feeds the current hysteria on social media in Rumson. If Yellow Brook did receive a builder’s remedy, these developments would be vastly different.



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viewed in the context of whether the settlements adequately protect the interests of the poor.² Further, following a Fairness Hearing, there will be a Compliance Hearing, where all parties will have to demonstrate that the projects and adopted zoning ordinances “create a realistic opportunity for affordable housing.” Therefore, ROSAH will have ample time to prepare and present an objection on those issues at a Compliance Hearing if it desires.

ROSAH’s other two arguments concerning the manner in which the Borough Council communicated this settlement with the public and the Borough response to its OPRA requests are wholly irrelevant to the Fairness Hearing. Those are political issues; not issues relevant to a Fairness Hearing. Initially, though no “gag-order” was issued, many of the negotiations were part of confidential mediation. Though that does not preclude a governing body from discussing the existence of the affordable housing litigation or that they are contemplating settlement, no town is going to discuss litigation strategy at a recorded public hearing.

Setting aside the fact that the documents requested in ROSAH’s OPRA request are not relevant to the Fairness Hearing, the Borough has already advised ROSAH that the OPRA request has been fulfilled. Further, the information sought in the OPRA requests will be in the new HE&FSP that will be prepared after the Fairness Hearing and prior to the Compliance Hearing.

ROSAH’s goal is not to shed light on whether the interests of the poor are adequately addressed in the settlements; rather, its goal is to ensure those interests are delayed or thwarted. And granting an adjournment of the Fairness Hearing only furthers that goal. The Supreme Court decision required “prompt voluntary compliance” with “reasonable speed” in these actions. In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 33–34 (2015). By the time there is a Compliance Hearing, we will be five years removed from that directive. There is no reason to further delay compliance.

As such, Yellow Brook respectfully requests that the Court deny the request for the fairness hearing to be adjourned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Craig M. Gianetti', written over a horizontal line.

Craig M. Gianetti

² However, to ensure over redundancy, counsel for ROSAH should provide to the court and all counsel a list of all of its members to ensure that individual members, who are represented by counsel through its organization, are not also speaking at Fairness Hearing as well.



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CMG

cc: Erik Nolan, Esq.
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