

**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

**CONDITIONAL JUDGMENT OF  
COMPLIANCE AND REPOSE  
AND ORDER APPROVING AN  
AMENDMENT TO THE  
SETTLEMENT AGREEMENT  
BETWEEN THE BOROUGH OF  
RUMSON AND FAIR SHARE  
HOUSING CENTER**

**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 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 later as an intervenor for settlement purposes only and the Borough having agreed that FSHC shall have party status for any enforcement actions; and the Court having allowed Yellow Brook Property Co., LLC

(hereinafter “Yellow Brook”) to intervene in the DJ Action; and the Borough and FSHC having entered into a Settlement Agreement to settle the Borough’s DJ Action globally dated January 16, 2020 (hereinafter the “FSHC Settlement Agreement”, which is attached hereto as part of Exhibit P-5); and said FSHC Settlement Agreement having set agreed upon fair share obligations and how the Borough would satisfy same; and the Borough having also entered into a Settlement Agreement with Yellow Brook on January 14, 2020 (hereinafter the “Yellow Brook Settlement Agreement”, which is attached hereto as part of Exhibit P-2); and the FSHC Settlement Agreement and Yellow Brook Settlement Agreement having been approved by the Court following a properly noticed Fairness Hearing held in June and July of 2020, which was memorialized by an Order entered by the Court on July 29, 2020 (attached hereto as Exhibit P-7); and the Borough having subsequently prepared a Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”), which is attached hereto as Exhibit P-1; and the Borough’s Fair Share Plan having been adopted by the Borough’s Planning Board on December 7, 2020 (resolution attached hereto as Exhibit P-3) and endorsed by the Borough Council on December 15, 2020 (resolution attached hereto as Exhibit P-4); and the Fair Share Plan, along with its Appendix (attached hereto as Exhibit P-2), having been put on file and posted on the Borough’s website for public review; and the Borough and FSHC having entered into a “First Amendment” to the FSHC Settlement Agreement dated December 15, 2020 (attached hereto as Exhibit P-5), which was also put on file and posted on the Borough’s website for public review; and a combined Fairness and Compliance Hearing to approve the Borough’s Fair Share Plan and the First Amendment to the FSHC Settlement Agreement having been scheduled for February 9, 2021; and the Borough having properly noticed the combined Fairness and Compliance Hearing; and Counsel for the Borough having prepared a Notice Certification (attached hereto as Exhibit P-13) to document that proper notice of the combined Fairness and Compliance Hearing had been given; and two written objections having been filed, which were responded to in writing by

the Borough; and the Court Master having submitted a report to the Court on February 8, 2021 (attached hereto as Exhibit P-15) regarding the approval of the Borough's Fair Share Plan and the First Amendment to the FSHC Settlement Agreement; and the Fairness and Compliance Hearing having been held on February 9, 2021, during which Exhibits P-1 to P-15 and Exhibits YB-1 to YB-7, which are attached hereto, were marked into evidence; and the Court having considered the report of the Court Master, the testimony taken during the Fairness and Compliance Hearing, as well as the comments of counsel; and the Court having reviewed all of the documents submitted into evidence during the Fairness and Compliance Hearing; and good cause having been shown;

It is hereby ordered on this 24th day of February, 2021, as follows:

1. Subject to the satisfaction of the conditions in Paragraph 9 of this Order, the Borough of Rumson's Fair Share Plan (Exhibit P-1) creates a realistic opportunity for the production of affordable housing and is hereby approved and the Borough is granted a Judgment of Compliance and Repose as to its Rehabilitation Share, its Prior Round Obligation (1987-1999), and its Third Round Obligation (1999-2025), pursuant to the Court approved Settlement Agreement entered into between the Borough and FSHC as amended, the Fair Housing Act (N.J.S.A. 52:27D-301, et. seq.) ("FHA"), the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1, et seq.) ("UHAC"), applicable Council on Affordable Housing (hereinafter "COAH") substantive rules, and Mount Laurel case law, including the New Jersey Supreme Court's Mount Laurel IV decision.

2. 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 First Amendment to the FSHC Settlement Agreement (Exhibit P-5), dated December 15, 2020, entered into between the Borough and FSHC, that said Amendment is fair, reasonable, and adequately protects the interest of very-low, low- and

moderate-income households, and the Court hereby approves the First Amendment to the FSHC Settlement Agreement.

3. Subject to the satisfaction of the conditions in Paragraph 9 of this Order, the Borough's Judgment of Compliance and Repose shall remain in effect for ten (10) years beginning on July 2, 2015 and ending on July 2, 2025, and during this ten (10) year period the Borough shall have immunity from all Mount Laurel lawsuits, including, but not limited to, Builder's Remedy lawsuits, other than actions brought to enforce the terms of the FSHC Settlement Agreement as amended or the Court's orders. If the Conditions in Paragraph 9 are not satisfied by the date indicated in Paragraph 9 below, then the Borough's immunity can be extended for a time period as allowed for by the Court should an extension of the deadline be granted.

4. As per the Settlement Agreement between the Borough and FSHC as amended, 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.

5. The Borough will address its Rehabilitation Obligation of 29 by working with Community Grants Planning & Housing ("CGP&H") to run a local rehabilitation program to rehabilitate existing rental and ownership units in the Borough.

6. The Borough prepared a Vacant Land Analysis (Appendix A to the FSHC Settlement Agreement), and, as a result of that analysis, the Court found at the Fairness Hearing held in June and July of 2020, and its Order entered on July 29, 2020 (Exhibit P-7), 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.

7. 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: BC UW (5 SN + 10 family rentals)	1	2	15	10	25
6 Maplewood (family for sale)			1		1
61 South Ward: (family rental)		1	2		2
15A Existing Maplewood: (family rental)			1		1
15B Proposed Maplewood: (5 SN)	1		5		5
<b>Total Credits Provided</b>	<b>2</b>	<b>3</b>	<b>38</b>	<b>13</b>	<b>51</b>
				<b>Balance</b>	<b>0</b>
Micro-requirements			Required		Provided
Min. Total Family- 50% of obligation-surplus-bonus			19		28
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		26
Min. Family Rental - 50% of total rental			7		16
Maximum Senior - 25% of obligation			0 (12 max)		0

8. 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 adopted an Ordinance (part of Exhibit P-2) that creates an affordable housing overlay zone that requires 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 adopted an Ordinance (part of Exhibit P-2) that amended 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 adopted an Ordinance (part of Exhibit P-2) that creates an affordable housing overlay zone over certain parcels in the R-2 district that permits 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 requires a twenty percent (20%) affordable housing set-aside.
- d. R-4 Overlay Zone: The Borough adopted an Ordinance (part of Exhibit P-2) that creates an affordable housing overlay zone over certain parcels in the R-4 district that permits 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 requires a twenty percent (20%) affordable housing set-aside.
- e. R-5 Overlay Zone: The Borough adopted an Ordinance (part of Exhibit P-2) that creates an affordable housing overlay zone over certain parcels in the R-5 district that permits 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 requires 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 adopted a Borough-wide Mandatory Set-Aside Ordinance (“MSO”) (part of Exhibit P-2), which requires a twenty percent (20%) affordable housing set-aside for residential developments comprised of five (5) or more dwelling units for both rental and for-sale units.
- h. Development Fee Ordinance: The Borough will continue to collect residential and non-residential development fees under its newly adopted and updated Development Fee Ordinance (“DFO”) (part of Exhibit P-2).

9. On or before April 19, 2021, the following conditions in Attachment B in the Court Master’s February 8, 2021 report (attached hereto as Exhibit P-15) shall be addressed and resolved by the Borough, by which date the Borough shall submit a status update report along with all supporting certifications and documentation to the Court, the Court Master, FSHC, and

all interested parties. Said deadline can only be extended if the Borough, the Court Master, FSHC, and the Court agree to such an extension. The conditions to be satisfied in Attachment B of the Court Master's February 8, 2021 report (Exhibit P-15) are as follows:

- a. 19 North Street (Block 46, Lot 15): The Borough will ensure that an at least 30-year deed restriction is put in place for this constructed and occupied moderate-income 2-bedroom unit that is consistent with UHAC and that shall govern any resales. The deed restriction shall state that the Borough maintains the discretion to extend the affordability controls after at least 30 years.
- b. 16 Washington Street (Block 8, Lot 5): The Borough will ensure that an at least 30-year deed restriction is put in place for this constructed and occupied low-income 1-bedroom family rental unit that is consistent with UHAC. The deed restriction shall state that the Borough maintains the discretion to extend the affordability controls after at least 30 years. The Borough will provide a certification from its Administrative Agent with the following information:
  - i. If the current tenant in the unit is still the initial tenant (i.e., no turnover), then evidence shall be provided of affirmative marketing, and that the initial tenant was income/household eligible. A copy of the most recent lease demonstrating that that the initial tenant is still in the unit shall also be provided.
  - ii. If there has been turnover, the certification should set forth who lived in the unit and for what period of time, there should be documentation demonstrating that the unit was affirmatively marketed before each tenant was selected, as well as documentation demonstrating that each tenant was income/household eligible for the unit.
- c. 7 Lafayette Street (Block 8, Lot 4): The Borough will ensure that an at least 30-year deed restriction is put in place for both the constructed and occupied low-income 2-bedroom family rental unit, and the constructed and occupied moderate-income 3-bedroom family rental unit in this project that is consistent with UHAC. The deed restriction shall state that the Borough maintains the discretion to extend the affordability controls after at least 30 years. The Borough will provide a certification from its Administrative Agent with the following information:
  - i. If the current tenants in the units are still the initial tenants (i.e., no turnover), then evidence shall be provided of affirmative marketing, and that the initial tenants were income/household eligible. A copy of the most recent leases demonstrating that that the initial tenants are still in the units shall also be provided.
  - ii. If there has been turnover in either unit, the certification should set forth who lived in the unit and for what period of time, there should be

documentation demonstrating that the unit was affirmatively marketed before each tenant was selected, as well as documentation demonstrating that each tenant was income/household eligible for the unit.

- d. 68 Black Point Road (Block 54, Lot 5): It has been confirmed via the documentation submitted as part of Exhibits P-1 and P-11, and the testimony given during the combined Fairness and Compliance Hearing on February 9, 2021, that the constructed and occupied for-sale 3-bedroom unit located at 68 Black Point Road is a low-income unit. This unit is currently creditworthy, and no further documentation needs to be provided by the Borough.
- e. Carton Street Proposed Project (Block 59, Lot 10): The Borough will enter into and provide a Developer's Agreement with a developer for this 15-unit non-age-restricted 100% affordable (10 family rental units and 5 special needs units) project, along with a pro-forma and a construction schedule.
- f. 61 South Ward Proposed Project (Block 141, Lot 19): The Borough will enter into and provide a Developer's Agreement with a developer for this 2-unit family rental non-age-restricted 100% affordable project, along with a pro-forma and a construction schedule.
- g. 15 Maplewood Proposed Project (Block 50, Lot 7): The Borough will enter into and provide a Developer's Agreement with a developer for this 6-unit project (5 special needs units and 1 affordable rental non-age-restricted unit), along with a pro-forma and a construction schedule.
- h. 6 Maplewood Proposed Project (Block 51, Lot 17): The Borough entered into a Memorandum of Understanding ("MOU") with BCUW/Madeline Housing Partners, LLC ("BCUW") on February 2, 2021, which is attached hereto as Exhibit P-9, to have the 2-bedroom moderate-income non-age-restricted family unit renovated, deed restricted, and occupied by December 31, 2021. Therefore, the condition in the Court Master's report regarding this project has already been satisfied.
- i. Pursuant to the Settlement Agreement as amended between FSHC and the Borough, Rumson shall ensure and require that all of the affordable units at Carton Street, 61 South Ward, 15 Maplewood, 6 Maplewood, and produced via the market-to-affordable program and unmet need mechanisms be subject to deed restrictions consistent with UHAC and affordability controls of at least thirty (30) years from the date of initial occupancy, and the affordability controls shall remain unless and until the Borough, in its sole discretion, takes action following 30 years to extend or release the affordable unit from such controls.
- j. Pursuant to the Settlement Agreement as amended between FSHC and the Borough, Rumson shall provide written confirmation to the Court, Court Master, and FSHC by each date specified in the agreement as to whether the affordable units have been produced and ready for occupancy.



- k. All affordable units shall be affirmatively marketed consistent with UHAC and applicable law as well as the Settlement Agreement as amended, including posting of all affordable units on the online New Jersey Housing Resource Center website.
- l. 91 Rumson Road Project (Block 124, Lot 31): Ordinance 20-01D, which was adopted on December 15, 2020 to rezone the 91 Rumson Road site will be amended to ensure that the proposed project on this site can be adjusted from 16 to 14 total units as per the revised concept plan that was marked into evidence during the combined Fairness and Compliance Hearing as Exhibit YB-5. The Court finds that despite the changes in the revised concept plan, 91 Rumson Road, the property remains available, suitable, developable and approvable, as defined by COAH regulations, for inclusionary development. This Order also confirms that developer Yellow Brook submitted site plan applications and accompanying documents required by the Borough Ordinance and checklists to the Borough Planning Board for both the 91 Rumson Road project and the 132 Bingham Avenue project (Block 94, Lot 5) on February 4, 2021. The site plan submission letters and applications are attached hereto as Exhibits YB-3 and YB-4.
- m. 9 Market-to-Affordable Units: Although the implementation of the Borough's Market-to-Affordable Program is not part of Attachment B of the Court Master's report or subject to the April 19, 2021 deadline above, in accordance with the FSHC Settlement Agreement as amended, the Borough will produce nine (9) market-to-affordable units for families on properties to be identified and purchased by the Borough. At least five (5) of the nine (9) units shall be low-income units. No more than three (3) of the nine (9) units may be one-bedroom units. The Borough has agreed to provide five (5) units on or before July 1, 2022, and an additional four (4) units on or before July 1, 2024.

10. The Court further finds that, since the Carton Street property does not have to be dedicated to the Borough from Yellow Brook until Yellow Brook obtains unappealable, site plan approval with all conditions satisfied for Rumson Road and Bingham Avenue, as per the Section 5.2 of the Yellow Brook Settlement Agreement, the Borough will make all reasonable efforts to assist Yellow Brook with the processing of the Bingham Avenue and Rumson Road site plan applications.

11. The Court shall conduct a supplemental final Compliance Hearing on May 20, 2021, at 9:00 a.m., to determine whether the Borough met the conditions specified in Paragraph 9 above, and whether this Conditional Judgment of Compliance and Response should become a Final Judgment of Compliance and Repose. The Borough will provide notice for the final

Compliance Hearing which shall be conducted via Zoom, and instructions shall be provided via Zoom invitation to all parties and interested parties to the case, as well as to any individual participants that wish to listen and/or be heard on the matter. Any objections to the Borough receiving a Final Judgment of Compliance and Repose must be filed in writing to the Court, the Court Master, and all parties to the case no later than May 10, 2021. The Court Master will issue a supplemental report regarding the satisfaction of the conditions in Paragraph 9 no later than May 19, 2021.

12. The Borough's Spending Plan, which is part of the Appendix attached hereto as Exhibit P-2, is hereby approved. The Borough is free to expend funds in its Affordable Housing Trust Funds in accordance with the FSHC Settlement Agreement as amended, the Borough's Fair Share Plan, the FHA, applicable COAH regulations and all other applicable law.

13. The Borough's updated and adopted Development Fee Ordinance, which is part of the Appendix attached hereto as Exhibit P-2, is hereby approved by the Court.

14. Reporting and Monitoring obligations of Rumson:

- a. On January 16, 2022, and every anniversary thereafter through July 1, 2025, Rumson shall provide an annual reporting of its affordable housing trust fund activity to the New Jersey Department of Community Affairs ("DCA"), Council on Affordable Housing ("COAH"), Division of Local Government Services ("DLGS"), or other entity designated by the State of New Jersey, with a copy provided to FSHC and posted on the municipal website, using forms developed for this purpose by DCA, COAH or DLGS, or approved and endorsed by FSHC.
- b. On January 16, 2022, and every anniversary thereafter through July 1, 2025, Rumson shall provide an annual reporting of the status of all affordable housing activity within the municipality, using forms previously developed for

this purpose by COAH (or any other form(s) endorsed by the Special Master and FSHC), by posting the completed forms on the municipal website and providing a copy to FSHC. The annual report shall state how many units have been rehabilitated to satisfy the Rehabilitation Obligation, the status of all RDP mechanisms, and the status of any development in the overlay zones, including whether any development has applied for approval, been approved, and/or been constructed and the number of total dwelling units and the number and type, income distribution, and bedroom distribution of the affordable units. It shall also include information as to whether any affordable units have been created via the Borough's mandatory set-aside ordinance and the number of total dwelling units and the number and type, income distribution, and bedroom distribution of the affordable units.

- c. Within thirty (30) days of the third anniversary of this Judgment, and every third year thereafter, Rumson shall post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low-income requirements, including the family very low-income requirements in the Settlement Agreement. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low-income housing obligation under the terms of the Settlement Agreement as amended.

15. Rumson shall not repeal, modify or amend its Affordable Housing Ordinance, Housing Element and Fair Share Plan, Spending Plan, or any other municipal ordinance in effect as of the date of this Judgment that affects the use or development of the affordable housing committed to, except with the consent of FSHC and the Court's approval upon notice and opportunity to be heard to all interested parties, unless such a change does not materially change

what has been adopted and does not alter the terms and conditions agreed upon in the FSHC Settlement Agreement as amended.

16. Pursuant to Paragraph 25 of the Settlement Agreement and Paragraph 10 of the First Amendment, FSHC and/or Rumson may enforce any provision of the Settlement Agreement as amended, and by extension this Judgment, through a motion to enforce litigant's rights or by the filing of a separate action in the Superior Court, Monmouth County.

17. Counsel for the Borough shall provide copies of this Order to all Counsel of Record within seven (7) days of the date hereof per the Rules of Court.

*1s/ Hon. Linda Grasso Jones, J.S.C.*  
**HONORABLE LINDA GRASSO JONES, J.S.C.**