

SURENIAN, EDWARDS, BUZAK, & NOLAN LLC

311 Broadway, Suite A

Point Pleasant Beach, NJ 08742

(732) 612-3100

Attorneys for Declaratory Plaintiff, Borough of Rumson

By: 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*

**AMENDED THIRD ROUND JUDGMENT
OF COMPLIANCE AND REPOSE ORDER**

THIS MATTER having been opened to the Court by Surenian, Edwards, Buzak & 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 Third Round 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, now known as the Special Adjudicator; 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 and enforcement action purposes only; 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”); 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”); 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; and the Borough having subsequently prepared a Third Round Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”), which was adopted by the Borough’s Planning Board on December 7, 2020 and endorsed by the Borough Council on December 15, 2020; and the Borough and FSHC having entered into a First Amendment to the FSHC Settlement Agreement dated December 15, 2020 (hereinafter “First Amendment”); 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 held on February 9, 2021; and the Court having entered a conditional Judgment of Compliance and Repose Order (hereinafter “JOR Order”) on February 24, 2021; and a Consent Order having been entered by the Court on May 20, 2021 between the Borough, FSHC, and objector Stuart Sendell, which is still in full force and effect; and after the Borough satisfied all of the short-term conditions in the conditional JOR Order, a properly noticed continued Compliance Hearing having been held on May 20, 2021; and the Court having entered an order finalizing the Borough’s JOR Order on June 1, 2021; and a Consent Order between the Borough and FSHC having been entered by the Court on January 10, 2022 to adjust the distribution of affordable units and clarify the requirements with some of the Borough’s infill projects; and the Court having entered a Second Consent Order between the Borough and FSHC amending the Borough’s final JOR Order on May 13, 2022 to make further adjustments to the distribution of affordable units and

clarify requirements for some of the Borough's infill projects; and the Borough having to amend the original Settlement Agreement between the Borough and FSHC to add a new one hundred percent affordable family rental project to make up for the Borough's Market to Affordable program not producing affordable units by the deadline specified in the First Amendment; and the Court having held a Case Management Conference on May 29, 2024; and the Court having entered an Order on that same day that scheduled a combined Fairness and Compliance Hearing for October 24, 2024; and the Borough and FSHC having entered into a Second Amendment to the January 16, 2020 Settlement Agreement on May 16, 2024 (hereinafter the "Second Amendment")(Exhibit P-4); and the Court having entered an Order on June 18, 2024 scheduling the deadlines leading up to the combined Fairness and Compliance Hearing; and to incorporate the changes in the Second Amendment, the Borough's Planning Board having adopted an Amended Third Round Housing Element and Fair Share Plan (Exhibit P-1) on August 12, 2024, and the Borough Council having endorsed same on August 13, 2024; and on September 9, 2024, the Borough having provided proper public and direct notice for the combined Fairness and Compliance Hearing, and having also placed on file the Amended Third Round Housing Element and Fair Share Plan, the Second Amendment and other supporting documents for public inspection; and one written objection having been filed with the Court on September 27, 2024 by Steven Firkser, Esq. on behalf of Stuart Sendell (Exhibit O-1), which was responded to in writing by the Borough on October 14, 2024 (Exhibit P-10); and the Special Adjudicator having issued his report on October 23, 2024 (Exhibit P-11); and the Court having held the combined Fairness and Compliance Hearing on October 24, 2024, and written objector Stuart Sendell having been present at the hearing with his counsel, Steven Firkser, Esq.; and Exhibits P-1 to Exhibit P-11 and Exhibit O-1 having been marked into evidence during the hearing, subject to one oral correction being

made during the hearing to the Special Adjudicator's report that the existing house on 15 Maplewood (Block 50, Lot 7) was renovated, not torn down and rebuilt; and the Borough's planner having given testimony during the hearing; and Steven Firkser, Esq., as well as an objector that had not handed in a written objection, having cross-examined the Borough's witness; and Stuart Sendell having testified during the hearing; and the Special Adjudicator having recommended approval of the Borough's Amended Housing Element and Fair Share Plan and the Second Amendment during the hearing and having been subject to cross examination; and the Court having considered the report of the Special Adjudicator (Exhibit P-11), the testimony taken during the hearing, as well as the comments of counsel and the comments of the Special Adjudicator, as well as having reviewed all of the documents submitted into evidence during the hearing; and good cause having been shown;

It is hereby ordered on this 13th day of December, 2024, as follows:

1. The Borough of Rumson's 2024 Amended Third Round Housing Element and Fair Share Plan (Exhibit P-1) creates a realistic opportunity for the production of affordable housing and is hereby approved, and the Borough's Third Round Judgment of Compliance and Repose Order is hereby amended, pursuant to the Settlement Agreement entered into between the Borough and FSHC on January 16, 2020, 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.

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 Second Amendment to the January 16, 2020 Settlement Agreement

between the Borough and FSHC (Exhibit P-4), that said Second Amendment is fair, reasonable, and adequately protects the interest of very-low, low- and moderate-income households, and the Court hereby approves the Second Amendment to the FSHC Settlement Agreement and all terms therein.

3. The Borough's Judgment of Compliance and Repose, as amended, shall remain in full force and 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 repose from all Mount Laurel lawsuits, including, but not limited to, Builder's Remedy lawsuits, except for actions brought to enforce the terms of this Order or the FSHC Settlement Agreement as amended.

4. As per the Court-approved FSHC Settlement Agreement, as amended and the Borough's Court-approved Housing Element and Fair Share Plan, the Borough's Rehabilitation Obligation is 29, the Borough's Prior Round Obligation (1987-1999) is 268, and the Borough's Third Round Obligation (2015-2025) is 335.

5. The Borough prepared an updated Vacant Land Analysis (Appendix 3 to Exhibit P-1), and as a result of that analysis, the Borough, FSHC and the Special Adjudicator agreed that the Borough is entitled to a Vacant Land Adjustment ("VLA"), such that it has a combined Prior Round (1987 to 1999) and Third Round (1999-2025) Realistic Development Potential ("RDP") of 50, and a remaining "unmet need" of 553 (Appendix 3 of Exhibit P-1).

6. The Borough will continue to 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.

7. The Borough will continue to address its combined Prior Round (1987-1999) and Round 3 (1999-2025) RDP of 50 as follows:

- a. Two (2) constructed and occupied Market to Affordable units: One (1) constructed and occupied affordable housing unit located at 19 North Street (Block 46, Lot 15), and one (1) constructed and occupied affordable housing unit constructed by Habitat for Humanity at 68 Blackpoint Road (Block 54, Lot 5).
 - b. One (1) constructed and occupied family rental unit from the Washington Street Inclusionary Development located at 16 Washington Street (Block 8, Lot 5).
 - c. Two (2) constructed and occupied family rental units from the Lafayette Street Inclusionary Development located at 7 Lafayette Street (Block 8, Lot 4).
 - d. One (1) constructed and occupied affordable family for-sale unit, located at 6 Maplewood (Block 51, Lot 17).
 - e. One (1) affordable renovated and occupied family rental unit and 4 proposed supportive and special needs bedroom units, located at 15 Maplewood (Block 50, Lot 7), which is a double lot with an existing house on Lot A that has been renovated into an occupied three-bedroom moderate-income family rental unit, and a proposed second house on Lot B, which will be a four bedroom supportive and special needs home.
 - f. Two (2) under construction affordable family rental units from the 61 South Ward Project, located at 61 South Ward (Block 141, Lot 19).
 - g. 12 age-restricted affordable units from the proposed one hundred percent (100%) affordable Carton Street Project, located on Block 59, Lot 10.
 - h. 12 affordable family rental units from the proposed one hundred percent (100%) affordable West River Road project, located at 49 West River Road (Block 25, Lot 4).
 - i. 13 rental bonus credits.
8. The Borough will continue to 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 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 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 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 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 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. Accessory Apartment Program: The Borough adopted an Accessory Apartment Ordinance to create up to 10 affordable Accessory Apartment units. Any units created under this program up to 10 will be applied to the Borough's unmet need.
- g. Mandatory Set-Aside Ordinance ("MSO"): The Borough adopted a Borough-wide Mandatory Set-Aside Ordinance ("MSO"), 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. Market to Affordable Program: The Borough will keep its Market to Affordable Program in place to help address its unmet need and buy down additional existing residential dwellings to become affordable to low- and moderate-income households. The Borough will identify and purchase market rate residential units as they become available and are financially feasible. Development fee revenues will be used to acquire any such units, bring them

up to code as needed, and deed restrict the units for a minimum of thirty (30) years.

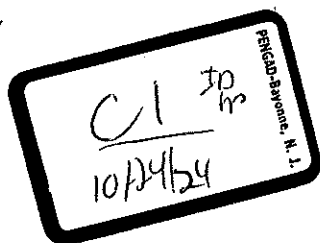
9. As a long-term condition, the Borough shall amend its Third Round Spending Plan should the West River Road project and/or the Carton Street project require funding from the Borough's Affordable Housing Trust Fund prior to the Borough adopting a new Spending Plan for the upcoming Fourth Round, in which case the Borough will instead incorporate said project(s) into its Fourth Round Spending Plan and seek approval of same from the Court or the Program.

10. While the June 1, 2021 JOR Order as modified by this Order is still a Final Judgment, the Court will retain jurisdiction for the limited purpose of (a) allowing FSHC and the Borough the ability to enforce rights under the Settlement Agreement entered into between the Borough and FSHC as amended; and (b) subject to the consent of FSHC, allowing the Borough to have the future ability to seek an amendment or amendments to its Housing Element and Fair Share Plan and/or the JOR Order should that be necessary.

11. All of the other terms and conditions set forth in the JOR Order not modified by this order remain in full force and effect.

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

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



BANISCH
ASSOCIATES, INC.
Planning and Design

Revised
REPORT OF THE SPECIAL MASTER

REGARDING THE FAIRNESS
OF
RUMSON BOROUGH

AMENDED SETTLEMENT AGREEMENT WITH
FAIR SHARE HOUSING CENTER
AND
MOUNT LAUREL COMPLIANCE

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

Prepared by:

Francis J. Banisch III, PP
111 Main Street
Flemington, NJ 08822

The original document was appropriately signed and sealed on October 22, 2024 in accordance with Chapter 41 of Title 13 of the State Board of Professional Planners.

Francis J. Banisch III, PP
Professional Planner #1686

Introduction

This report has been prepared to present my review and recommendations as the Court-appointed Special Master regarding whether the May 16, 2024 amended Settlement Agreement ("Settlement") between the Plaintiff Borough of Rumson ("Borough") and Fair Share Housing Center ("FSHC") is fair and reasonable to low- and moderate-income households and whether the compliance plan satisfies the Borough's constitutional fair share obligation.

Notice of the fairness and compliance hearing scheduled for October 24, 2024, which was provided in accordance with the Court's instructions, included a description of the Amendment to the Settlement Agreement and indicated the Amended Settlement Agreement was available for inspection and photocopying at the Rumson Borough Clerk's office. This report concludes that the Settlement is fair to the protected class of low-and-moderate income households and recommends that the Borough should be granted an amended judgment of compliance and repose.

Basis for Evaluation of Fairness of Settlement Agreement

The original Settlement between the Borough and FSHC was approved by the Borough on January 14, 2020. In my April 10, 2020 report to the Court regarding the fairness of the Settlement, I recommended that the Court approve the January 14, 2020 FSHC Settlement Agreement. The FSHC Settlement was first amended on December 15, 2020, which I also recommended that the court approve in my report dated February 8, 2021. Under consideration is the second amendment to the January 14, 2020 amendment, dated May 16, 2024.

The second amendment decreases the number of units to be constructed for the 62 Carton Street project from 15 units to 12 units. The 62 Carton Street units were previously approved for family rental units and are now proposed as age-restricted units. Additionally, the supportive and special needs units found at 15B Maplewood Avenue will be reduced by one unit, from 5 to 4. Finally, the existing Market to Affordable Program, which provided 9 units in the prior settlement agreement, has been removed from the RDP mechanisms. The program will continue to operate, and any units will be applied to Borough's unmet need. To make up for these reductions, a 12-unit project proposed at 49 W River Road, to be administered through BCUW, has been added to the compliance mechanisms for the third round. This amended Settlement has been reviewed to determine whether any element of the Settlement 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 Settlement, 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, or the Borough will establish a local 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 can conduct a structural 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.

The 2020 Spending Plan included in the Appendix provided \$290,000 for the rehabilitation program and included associated manuals (Resolution 2020-1215-139). Resolution 2020-1215-143, intent to bond in the event of shortfall, has been provided. If the Borough will need to spend funds on the 49 W. River Road prior to the adoption of a round 4 spending plan, an amendment to the spending plan will be required.

Addressing the Prior Round and Third Round Obligation

Rumson has a combined prior round and third round Realistic Development Potential (RDP) of 50, which will be satisfied as outlined in the amended FSHC Settlement, detailed below:

Project	Status	Credit	Bonus	Total
Market to Affordable	Completed	2	0	2
Washington Street (family rental)	Completed	1	1	2
Lafayette Mews (family rental)	Completed	2	2	4
Carton Street (100% affordable – senior rental)	Proposed	12	0	12
6 Maplewood (family for-sale)	Completed	1	0	1
61 South Ward (family rental)	Proposed	2	0	2
15A Maplewood (family rental)	Completed	1	0	1
15B Maplewood (supportive and special needs)	Proposed	4	0	4
49 W. River Road BCUW (senior rentals)	Proposed	12	10	22
Total		37	13	50

The proposed compliance mechanisms include the following:

Completed and Occupied Units

Lafayette Mews, the Washington Street family rental unit, and two (2) market to affordable units are completed. Supporting documentation in Appendix 6 of the Plan has been provided; and the 30-year deed restrictions have been provided and the Court deemed the units creditworthy Feb 24, 2021 Conditional JOR Para 9(d) and June 1 2021 final JOR Paragraph 2, 3 and 4.

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

The Borough's Settlement Agreement with Yellow Brook, dated January 16, 2020, has rezoned 132 Bingham Avenue and 91 Rumson Road for multifamily development, and in return provide an in-lieu contribution by Yellow Brook for construction of off-site affordable housing at Carton Street. As outlined in the amended Settlement Agreement, the Borough agrees to provide 12 age restricted units of affordable housing.

Yellow Brook Property Co., LLC (Developer) will provide a payment in lieu of construction in return for rezoning to permit 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).

According to the Yellow Brook Settlement, previously approved by the Court, Yellow Brook will provide \$1.45 million and has conveyed 62 Carlton to the Borough, which is valued at \$1.7 million. BCUW will provide \$254,685 towards construction costs of the 62 Carton Street project, which will provide 12 age restricted affordable housing units. The Borough has provided a Pro-Forma and a construction timeline for the project.

6 Maplewood (Block 51, Lot 7)

This site provided one (1) 2-bedroom for-sale unit, which was constructed by BCUW and is occupied by a qualified homeowner.

61 South Ward (Block 141, Lot 19)

The site was transferred to BCUW in May 2024 and the 2 units are under construction and nearing completion.

Resolution 2021-0202-30, dated February 2, 2021 and MOU dated February 2, 2021 between Rumson Borough and BCUW which detail the deed restrictions and compliance of the units. An updated developer's agreement has been entered into between BCUW and the Borough.

15 Maplewood (Block 50, Lot 7)

The Borough is the purchaser of this site which includes an existing house. The Borough transferred ownership to BCUW in February 2023 and the existing house was torn down and the single family housing unit on the site known as 15 MaplewoodA has since been constructed and occupied. A second house will be constructed to be used for a four (4)

bedroom supportive and special needs home also managed by BCUW. As to the proposed 4-bedroom group home on the site, known as 15 Maplewood B, BCUW is in the process of arranging funding and should have the unit constructed and occupied by Spring 2025.

Resolution 2020-1013-129, dated October 13, 2020, allocates funds to purchase 15 Maplewood Avenue for affordable housing. Resolution 2021-0202-30 dated February 2, 2021, and an MOU dated February 2, 2021, between Rumson Borough and BCUW detailing the deed restrictions and compliance of the proposed units. An updated developer agreement has been entered.

49 W. River Road (Block 25, Lot 4)

The 100% affordable housing project located at 49 W River Road will consist of 12-unit family rental units. The project will be constructed by BCUW, with the Borough providing funding toward its construction. The Borough has provided a Pro-Forma and a construction timeline for the project that shows the project will commence by January 2025. The Borough paid \$2,455,000 for the land, which will be transferred to BCUW for the project and will contribute an additional \$219,250 to the project from the Borough's Affordable Housing Trust Fund using the funds from the payment in lieu from Yellow Brook. An updated Developer's Agreement has been entered into between the Borough and BCUW regarding the construction of this project, and the site has been zoned. The Borough will provide additional Affordability Assistance Affordable Housing Trust Fund money to help subsidize the very low-income units in this project.

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 50-unit RDP, the Borough has an unmet need of 553 units which will be addressed as follows:

Market-to-Affordable

The Borough will retain the Market-to-Affordable program as outlined in the prior settlement agreement as a means to address the unmet need. The Borough will still be required to identify potential units as they become available and use affordable housing trust funds to acquire and repair as needed to bring the units up to code. All units will be deed-restricted for 30 years.

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 50-unit RDP. In addition, the Settlement Agreement confirms the Borough's commitment to implement a variety of housing opportunities through zoning to address the unmet need portion of its fair share obligation. The Settlement provides a realistic opportunity for at least 37 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.

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.

The agreement requires that "any funds deemed 'committed' by the Court" must be expended within four years of the issuance of a final judgment on the Settlement Agreement and requires annual reporting on the collection and expenditure of trust funds as well as annual reporting on the status of various components of the Fair Share Plan to address its housing obligation.

It also provides for a three-year status report regarding the satisfaction of the very low-income requirements established by the Fair Housing Act and the Settlement Agreement and requires annual updates of regional income limits that are used to income qualify households, establish initial affordable sales prices and rents and index permitted increases in sales prices and rents.

Review of Comments

One comment was received as follows:

Steven Firsker, Esq. for Stuart Sendell via September 27, 2024 letter to Judge Grasso Jones

Mr. Firsker raises the following points::

1. The 2- and 3-bedroom units located in Lafayette Mews are occupied by singles and not families. The Borough has not provided information on the status of the units or whether it has contacted the new owner.
2. The Borough has not complied with the annual monitoring reports as required in the prior settlement agreement.
3. The Housing Element and Fair Share Plan incorrectly identifies several aspects of the recent settlement agreement, including the control of the 6 Maplewood Avenue residence, the status of the conservation easement on 142 Bingham Avenue, the loss of 7 family units as a result of the 62 Carton Street project is concerning and that the project now includes age-restricted units and not family units was done to appease the neighbors.
4. Lack of communication and transparency in the process

5. Lack of construction of units identified in the previous settlement agreement and Judgement of Repose.

Rumson responds to this comment letter in a letter dated October 14, 2024 to Judge Grasso Jones that states:

1. The settlement agreement does identify that Habitat will develop the 6 Maplewood site with one unit. However, the Borough contends this was a typo left over from the prior settlement agreement and that BCUW is the developer for the site. In addition, the Borough is at liberty to contract with the non-profit of their choice.
2. The Borough identified that as a result of the amendment, seven (7) units of family rentals are being replaced with age-restricted units. However, the Borough is still under the 25% cap of age-restricted housing permitted in the regulations and therefore the conversion of the units is appropriate and permissible. The amendment is in response to underlying development issues that prevented the full developable potential of the previously identified mechanisms. Thus, the Borough has taken the initiative to correct and address the short fall in the 3rd round in order to provide a realistic development opportunity to address the current obligation.
3. Mr. Sendell's objection is that the Borough transferred units from 62 Carton to 49 West River Road to appease the Citizen's Affordable Housing Advisory Committee. The Borough states that the relocation of the units was based on sound planning, site suitability, and that 49 West River Road is more suitable for family rentals given its location within walking distance of the schools.
4. The Borough's response to Mr. Sendell's objection over the lack of information provided to the residents living near the 49 West River Road site is that the Borough followed all of the appropriate MLUL notice requirements, held public meetings as required and accepted public comments, of which only Mr. Sendell's was the only written comment.
5. BCUW is not required to request public support for their project, as objected to by Mr. Sendell. Such request for support is not a COAH rule or regulation.
6. Mr. Sendell objected to the timing of the rezoning of 49 West River Road, done prior to the execution of the amended settlement agreement. The Borough contends that such rezoning was done in an effort to address the affordable housing obligation and have the right to do so under Mount Laurel. Should FSHC oppose such rezoning, they would have been free to challenge it but instead reached an agreement on the site.
7. The Borough provided a summary of activities to date for the mechanisms outlined in the Housing Element and Fair Share Plan in response to Mr. Sendell's objection that the Borough has not failed to meet deadlines previously set. The Borough's

continued activity to produce affordable housing was stated as evidence of the Borough's commitment to address their affordable housing obligation.

8. The Borough identifies additional objections raised in Mr. Sendell's letter regarding two family units at 7 Lafayette Street being occupied by single householders. The Borough states that such issues were previously addressed in the May 20, 2021 order and those units will be affirmatively marketed once the current tenants depart. Moreover, family units can consist of one-person households.
9. The Borough contends that all monitoring has been completed in accordance with the regulations.
10. The last objection addressed by the Borough is in response to 142 Bingham Avenue being excluded from the Borough's VLA. The Borough has produced the recorded conservation lease for the site and therefore is appropriately excluded from the VLA.

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 amended Settlement Agreement is fair and reasonable to the interests of low and moderate-income households, or it would enter into the settlement.

Because the subject of this hearing is the fairness of the Settlement and the worthiness of the Borough's compliance plan for an amended Compliance judgment, and in light of the determination by Fair Share Housing Center to enter this agreement, I find the objector comments do not demonstrate that the agreement or the compliance plan are not fair to the protected class.

Compliance Summary

Attachment A details the Borough's compliance with all the requirements in my previous Fairness Reports and the amended settlement agreement. As noted above, if funds need to be expended from the trust fund for 49 W. River Road prior to the adoption of the Round 4 spending plan, the Borough will need to amend the 2020 spending plan to accommodate this change in the compliance plan.

Conclusion and Recommendations

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 well-served by the approval of Rumson's amended Settlement Agreement with FSHC.

It is my opinion that the amended 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 Agreement. 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.

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. As a result, I believe that Rumson Borough is entitled to an Amended Judgment of Compliance and Repose through July 1, 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).

ATTACHMENT A
 REQUIRED ELEMENTS OF FINAL AFFORDABLE HOUSING COMPLIANCE PLAN
 Borough of Rumson, Monmouth County
 October 2, 2024

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.

The Borough has provided a Housing Element and Fair Share Plan dated December 7, 2020, adopted December 15, 2020 (planning board resolution adopted December 7 and Borough Council Resolution adopted 2020-1215-144, adopted December 15, 2020). The Housing Element and Fair Share Plan includes the terms of the settlement agreement.

The Housing Element and Fair Share Plan has been amended on July 2024 to reflect the terms of the amended settlement agreement.

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).

Compliance Discussion regarding the Housing Element and Fair Share Plan and compliance terms

The following documents have been supplied to address this requirement:

- *Planning Board Resolution adopting the Amended Housing Element and Fair Share Plan dated 8/12/2024*
- *Governing Body resolution endorsing the amended Housing Element and Fair Share Plan dated 8/13/2024.*
- *Resolution 2020-1215-140, approving the rehabilitation program and manual, adopted December 15, 2020, with attached rehabilitation manual.*
- *Resolution 2020-1215-142, dated December 15, 2020, which includes a Market to Affordable Program Manual*
- *Ordinance 20-017D, creation of the AH-1 Carton Street Affordable Housing Zone, adopted December 15, 2020*
- *Ordinance 230-003D, amendment of the AH-1 Carton Street Affordable Housing Zone, adopted October 23, 2023*
- *Ordinance 20-014D, adopted on December 15, 2020, creating the RR-Residential Zone for Rumson Road*
- *Ordinance 20-015D creating the BA – Bingham Avenue Housing Zone, adopted on December 15, 2020, providing a payment-in-lieu of five (5) off-site housing units.*
- *Resolution 2020-1013-129, dated October 13, 2020, allocating funds to purchase 15 Maplewood Avenue*
- *Ordinance 20-009D creating the FIIO- Faith Institution Inclusionary Overlay District, adopted December 15, 2020*
- *Ordinance 20-010D, adopted December 15, 2020, creating the ROI-2 – Residential Overlay Inclusionary District*
- *Ordinance 20-011D, adopted December 15, 2020, creating the ROI-4 – Residential Overlay Inclusionary District*
- *Ordinance 20-012D, adopted December 15, 2020, creating the ROI-5 – Residential Overlay Inclusionary District*
- *Resolution 2020-1215-146, adopted December 15, 2020, establishing the Accessory Apartment Program, Ordinance 18-006, permitting accessory apartments in the R-1 and R-2 Zone districts, and manual.*

- *Ordinance 20-013D, adopted December 15, 2020, amending the mandatory affordable housing in the mixed use and multi-family zones in the Borough to include the R-5 zone and provide a 20% set-aside.*
- *Ordinance 23-004D, adopted October 10, 2023, amends the mandatory affordable housing in the mixed-use and multi-family zones in the Borough to exclude Block 25, Lot 4,*
- *Ordinance 20-005G, Affordable Housing Development including revised Development Fee ordinance, adopted 9/15/2020.*
- *Ordinance 20-16D Amending the Development Regulations sections adopted December 15, 2020.*
- *Ordinance 23-006D Amending the Development Regulations sections adopted October 10, 2023*
- *Ordinance 20-18G Amending sections of the affordable housing ordinance regarding development fees, adopted December 15, 2020.*
- *Resolution 2020-1215-143, intent to bond in the event of shortfall, adopted December 15, 2020*
- *Ordinance 23-005D, creation of the AH-21 Affordable Housing Zone, adopted October 10, 2023.*

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.

A spending plan has been provided in the appendix of the Housing Element and Fair Share plan and includes associated manuals (Resolution 2020-1215-139). Resolution 2020-1215-143, intent to bond in the event of shortfall has been provided.

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.

- *Resolution 2020-1215-142, dated December 15, 2020, which includes a Market to Affordable Program Manual*
- *Ordinance 20-017D, creation of the AH-1 Carton Street Affordable Housing Zone, adopted December 15, 2020*
- *Ordinance 23-003D, amendment of the AH-1 Carton Street Affordable Housing Zone, adopted October 23, 2023*
- *Ordinance 20-014D, adopted on December 15, 2020, creating the RR-Residential Zone for Rumson Road*
- *Ordinance 20-015D creating the BA – Bingham Avenue Housing Zone, adopted on December 15, 2020, providing a payment-in-lieu of five (5) off-site housing units.*
- *Resolution 2020-1013-129, dated October 13, 2020, allocating funds to purchase 15 Maplewood Avenue*
- *Ordinance 20-009D creating the FHO- Faith Institution Inclusionary Overlay District, adopted December 15, 2020*
- *Ordinance 20-010D, adopted December 15, 2020, creating the ROI-2 – Residential Overlay Inclusionary District*
- *Ordinance 20-011D, adopted December 15, 2020, creating the ROI-4 – Residential Overlay Inclusionary District*
- *Ordinance 20-012D, adopted December 15, 2020, creating the ROI-5 – Residential Overlay Inclusionary District*

- *Resolution 2020-1215-146, adopted December 15, 2020, establishing the Accessory Apartment Program, Ordinance 18-006, permitting accessory apartments in the R-1 and R-2 Zone districts, and manual.*
- *Ordinance 20-013D, adopted December 15, 2020, amending the mandatory affordable housing in the mixed use and multi-family zones in the Borough to include the R-5 zone and provide a 20% set-aside.*
- *Ordinance 23-004D, adopted October 10, 2023, amends the mandatory affordable housing in the mixed-use and multi-family zones in the Borough to exclude Block 25, Lot 4,*
- *Ordinance 23-005D, creation of the AH-21 Affordable Housing Zone, adopted October 10, 2023.*

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.

- *Ordinance 20-005G, Affordable Housing Development including revised Development Fee ordinance, adopted 9/15/2020.*
- *Ordinance 20-16D Amending the Development Regulations sections, adopted December 15, 2020.*
- *Ordinance 23-006D Amending the Development Regulations sections adopted October 10, 2023*
- *Ordinance 20-18G Amending sections of the affordable housing ordinance regarding development fees, adopted December 15, 2020.*

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.

Resolution 2020-0915-118 adopted September 15, 2020, identifies the Borough Administrative Agent as CGP&H.

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.

Resolution 2020-1215-141 Adopted December 15, 2020, identifies the Borough Administrator as the Affordable Housing Liaison.