

Below are the closing comments from the official transcript of the Compliance Hearing held on
February 9th, 2021
Before The Honorable
LINDA GRASSO JONES, J.S.C.

1 Q Mr. Bernard, you've heard the discussion
2 amongst counsel and some of the testimony about adding
3 as a condition the adoption of any amended zoning for
4 the Rumson Road site to remove any ambiguity concerning
5 the revised 14-unit concept plan. Did you hear that
6 testimony?

7 A I did.

8 Q And you heard the discussion on counsel
9 agreeing that the Town would adopt such zoning within
10 the time period outlined?

11 A Yes, I did.

12 Q And you are comfortable that by taking such
13 steps that it will further assure that the Rumson Road
14 site is realistic to produce Affordable Housing?

15 A I believe so, yes. I'm not sure it takes ninety
16 days to get there, but I believe so.

17 MR. GIANETTI: That's all I have, Your Honor.

18 THE COURT: Mr. Firkser, do you have any
19 questions of Mr. Bernard?

20 MR. FIRKSER: No questions, thank you.

21 THE COURT: Okay. And, Mr. Bernard,
22 essentially attachment A to your report, as I
23 understand it, is the stuff that Rumson has done;
24 attachment B is as of at least yesterday when your
25 report was done the things the Rumson needed to do?

1 THE WITNESS: That is correct. Other than that
2 amendment that we just talked about, yes, Your Honor.

3 THE COURT: Is there anything that anyone
4 wants to ask?

5 Okay. I told the attorneys last week when we
6 had a phone conference that why don't we -- you know,
7 we have the evidence that you have and I'll make a
8 determination about whether (indiscernible) the
9 amendment to the Fairness Hearing or whether it will be
10 a partial judicial Judgment of Compliance. I think that
11 most of the players, you know, people who were
12 (indiscernible) I don't like to do, you know,
13 conditional Judgments of Repose and Compliance. You
14 know, to me it's like (indiscernible) twice. But there
15 are reasons to do conditional Judgments of Compliance.

16 In this case the thing that ran through my
17 head while I was looking through the papers there was a
18 commercial for some kind of a bank or investment
19 banking or something where the phrase is, you know,
20 change in plan. These people want to find a condo
21 because their daughter is having a baby or something, I
22 don't know, I never remember what the commercial is
23 for. But change in plans is pretty the story here which
24 is two changes in plans. Number one, the change in
25 terms of Yellow Brook site because instead of 15 units

1 on the one site, they're only able to do 14. I'm pretty
 2 impressed that instead of sitting around and like, you
 3 know, sobbing into his handkerchief, you know, Mr.
 4 Mumford said, "Okay, I'm (indiscernible) DEP. Let's
 5 (indiscernible)" The change is with reference to one of
 6 the properties that have to do with North Street,
 7 basically that isn't working out and basically Rumson
 8 leapt into, "Okay. Let's do something. Change of
 9 plans." They didn't sit around and say, "Oh, gosh, I
 10 guess that thing is not going to work. I guess we don't
 11 have to do Affordable Housing." Basically they figured
 12 out a change of plans, they figured out alternative
 13 sites. So on both of those things, I want to say,
 14 "Great Job. Basically you're moving on this, you're
 15 doing what you need to do. If something doesn't work,
 16 you work with something else."

17 With reference to the concept of the Fairness
 18 Hearing, the hearing on whether the agreement as
 19 amended between Fair Share Housing Center and Rumson is
 20 fair to low and moderate income households, at the
 21 initial Fairness Hearing I had done I think a pretty
 22 well recitation of the law, you know, and so many
 23 things are in evidence, like Mr. Banisch's report is in
 24 evidence and it talks about, you know, Statutes, you
 25 know, the East West Venture case, East West Venture

1 versus Township of Fort Lee, 286 New Jersey Super 311,
 2 Appellate Division case from 1996, and in terms of the
 3 amendments, the concept is are they fair to low and
 4 moderate income households. Well, it sounds to me like
 5 the changes meet the standard and, like I said, I'm
 6 pretty happy that everyone rolled up their sleeves and
 7 said, "Okay, let's put in place an alternative,"
 8 because what I hear sometimes complaints about towns is
 9 that any time there's a stumbling block everything
 10 stops and then you have to sort of poke them to move
 11 along. That didn't happen. Basically Rumson jumped in
 12 and said, "Okay, let's figure out an alternative,"
 13 which I think is a wonderful thing. So in terms of the
 14 Fairness Hearing aspect of it, the East West Venture
 15 versus Township of Fort Lee, when a consideration is
 16 (indiscernible) constructed and there's no reduction in
 17 the Affordable Housing units being constructed from
 18 what was previously approved. The methodology, both the
 19 number of affordable units has been derived -- again,
 20 there's no change to that -- any other contribution
 21 being made by the developer to the municipality in lieu
 22 of affordable units. With reference to the contribution
 23 by Yellow Brook, there's no change in that. Yellow
 24 Brook is still making the same contribution. Other
 25 components of the agreement which contribute to the

1 municipality's satisfaction of its Constitutional
2 obligation, and any other factors which may be relevant
3 to the fairness issue.

4 Now, in order to (indiscernible) in the
5 Township's Affordable Housing plan when there's a
6 change in site comes into play, and we heard extensive
7 testimony on this from Ms. Lelie, on the sites
8 approvable, available, developable, or suitable. Now,
9 the site that we did before -- and I think it was a
10 number of apartment units from North Street site, at
11 the time everyone thought it was -- I didn't hear
12 anyone say that they didn't think it was -- it met the
13 East West Venture case -- but, like I said, change in
14 plans, sometimes things change, just like I don't know
15 that Yellow Brook expected to get a letter from the DEP
16 that made them reduce the units from 15 to 14. I can't
17 imagine that, you know, Mr. Mumford dancing happily in
18 the aisle and saying, "Yea, I get to do fewer units,"
19 but he worked with the change. With reference to this
20 I've heard extensive testimony with reference to the
21 individual sites that are going to be used as
22 alternatives and I find that they do meet they are
23 approvable, available, developable, and suitable along
24 with the evidence presented. So I find no reason to not
25 approve the amendments to the agreement that was put in

1 place or agreed to by Fair Share and by the Township.
2 With reference to Yellow Brook, again it looks to me
3 like this is something that needed to be changed and
4 the result of receiving information from the DEP. I
5 think Yellow Brook is anxious to move forward, so it's
6 probably okay with the (indiscernible) so they can make
7 a change and move forward with the project which is
8 what Yellow Brook has decided to do.

9 So the concept of should I be doing a
10 conditional Compliance Hearing, there are two pieces to
11 this at least right now. The overlay zone is a down the
12 road piece. But the two pieces right now are what
13 happens with reference to the sites that Yellow Brook
14 wants to develop on, and the second thing is -- and
15 everyone keeps calling it the lynchpin which is getting
16 those sites developed full. So the Carton Street
17 property gets transferred to the Town and the Town can
18 begin to work at least with reference to that piece.
19 What I'm hearing is from the deadlines with reference
20 to the other cases is the Town does intend to move
21 expeditiously on those other individual sites that are
22 now part of the plan.

23 So, to me, I think it is a good idea in this
24 case to grant the Judgment of -- partial compliance or
25 Judgment of Compliance that is conditioned upon the

1 additional things, the things that are shown on
2 attachment B to Mr. Banisch's report and the additional
3 item with reference to the Yellow Brook site that has
4 been discussed by Mr. Gianetti and by Mr. Nolan because
5 I want Yellow Brook to be able to move on. I want
6 Yellow Brook to be able to start doing the things that
7 Yellow Brook wants to do so Yellow Brook can
8 (indiscernible) that piece of property to the Town
9 because that needs to happen. A big part of the Town's
10 obligation is coming from Carton Street. So I want to
11 get -- I want Yellow Brook to be able to move forward
12 in this matter. So I think it's a good idea to do a
13 Judgment of Compliance in this conditioned upon Rumson
14 taking care of the attachment B items plus an
15 additional item with reference to the Yellow Brook
16 property. Now, I don't mean to diminish in any way the
17 importance of the items that are on attachment B. These
18 things are what make -- these properties aren't
19 supposed to just be a really good deal for the first
20 person who buys them or rents them and after that
21 anyone can move in. The whole process isn't designed to
22 be where the first person who buys the house gets a
23 great deal and then they make a ton of money when they
24 sell it. The concept is to make sure that the deed
25 restrictions are in place. All the pieces that are set

1 forth in attachment B, I've listened to -- and I know,
2 Mr. Sendell (indiscernible) Mr. Sendell has been
3 watching Affordable Housing issues in Rumson for years
4 and maybe in other towns, too, but I know he's been
5 watching Rumson for years, and the points that he makes
6 that I let Mr. Firkser talk about, basically they're
7 good ones. I anticipate -- and I have no problem on the
8 Judgment of Compliance conditional granted, I have no
9 problem giving ninety days to take care of the
10 attachment B items. What I would like is if the Town
11 can move sooner rather than later on the Yellow Brook
12 issue because I really would like Yellow Brook tied up,
13 finished, and done to the extent that Rumson can do
14 that. So the fact that you have -- I'm not going to
15 give a different time frame for that Rumson piece, but,
16 Mr. Nolan, do me a favor, make sure it gets done. I
17 don't want for Mr. Gianetti to have to be calling and
18 saying, "Remember when the Judge said she wanted that
19 done." If you could make it a priority, I would
20 appreciate it because I think that we want to get
21 Yellow Brook finished. Certainly we don't want Yellow
22 Brook to be having any problems in terms of developing
23 the projects because then that's going to delay the
24 transfer of the Carton Street property.
25 With reference to the other items, we have a

1 lot of sticky little details on the attachment B list,
2 and I have no problem if Rumson tells me they want a
3 Judgment of Compliance conditioned upon getting the
4 attachment B things done. I have no problem with giving
5 you ninety days. What I am asking you to do is to make
6 sure that Rumson works on it. Putting these pieces in
7 place is what will insure that the individual
8 properties that are being -- that are part of the and
9 are going to be made part of the Rumson Affordable
10 Housing plan, that they will stay affordable.

11 In terms of what's going to happen before we
12 get off today I'm going to schedule a date. The next
13 date will be sometime in May. I'm going to ask Rumson
14 to do the same thing that they've done before. Public
15 notice is normally just in the newspaper. Especially in
16 these crazy time I'm asking the Town to post on their
17 website notice on how to get -- you know, any citizen,
18 any person who has an interest can jump onto the Zoom
19 and participate. They did in the initial Fairness
20 Hearing, I have people who have jumped on and been part
21 of this process. They can jump on and be on for the
22 next hearing date. I think that Rumson probably, their
23 feeling is, "You know what, can't we just do it via
24 paperwork because we don't have (indiscernible) that
25 day." My feeling is I've heard concerns expressed by

1 Mr. Firkser on behalf of Mr. Sendell, I've heard, you
2 know, concerns raised by Fair Share Housing Center.
3 There's a lot of picky little details on this
4 attachment B, and I would like to make sure that if
5 anyone wants to be heard, they don't have to ask me to
6 turn it into a hearing; it's already a hearing. And you
7 know, it might be fifteen minutes. It might be
8 basically everyone gets on, basically someone gets on,
9 on behalf of Rumson and testifies and tells me that all
10 this stuff is done, and maybe Mr. Firkser is here and
11 says, "Yup, they're right, absolutely everything has
12 been done." Mr. Gergi gets on and says, "Absolutely
13 everything has been done." And hopefully we don't have
14 anything playing in the background, but it may be a
15 really quick proceeding, it may be not so quick if
16 Rumson thinks they've done stuff and they haven't. But
17 the one thing I do very much appreciate is when we had
18 the phone conference yesterday Mr. Nolan, Mr. Gergi,
19 Mr. Firkser, you know, they spoke to each other, they
20 spoke to Mr. Banisch because doing this stuff via Zoom
21 is hard. I have no illusions that it isn't hard. I know
22 it's hard for Rumson to get done what it needs to get
23 done via Zoom. If it's not weird music coming in, it's
24 people dropping off, it's, you know, people what
25 they're saying is, you know, getting garbled because

1 you don't have any good connections. There's a million
2 things that can go wrong, but despite that I am
3 satisfied Rumson has worked awfully hard in terms of
4 putting this together and making it happen. So anyone
5 who says, you know, Rumson really doesn't want to do
6 this, well, they're doing a really good imitation of
7 wanting to do this because they've done an awful lot in
8 terms of what they have to get done. I think about the
9 people who are on the Planning Board, the Zoning Board,
10 and the Town Committee. Generally they're not paid or
11 if they're paid something, it's not a lot. In the
12 meantime it's usually in meetings, they've got kids
13 running around. I mean, I'm in my office right now in
14 chambers because if I were home, I'd have three dogs
15 running around barking which provides, you know, an
16 interesting backdrop in trying to do a public hearing.
17 Everyone has that stuff going on. Mr. Nolan has someone
18 sitting in back of him saying, "Oh, my gosh, is this
19 thing almost over," but we are making this work. Rumson
20 is making this work, Mr. Mumford is making this work
21 for Yellow Brook, and for Fair Share Housing Center
22 they're making it work. So I am absolutely satisfied in
23 looking at this that Rumson has been working hard in
24 terms of getting everything done that they need to.
25 These little pieces that are on Exhibit B -- or

1 attachment B, they are important. So in terms of has
2 Rumson complied with, you know, basically it's a
3 Fairness Hearing. We have an Order that's issued saying
4 you have to do this to get a Judgment of Compliance,
5 I'm satisfied that they've done an awful lot of it.
6 It's the stuff with reference to the individual sites
7 that is a problem that hasn't been completed. So I'm
8 satisfied that it is appropriate as a matter of law to
9 enter a Judgment of Compliance conditioned upon Rumson
10 taking care of those things that are on Mr. Banisch's
11 exhibit B -- or attachment B, but taking care of the
12 one issue that we discussed with reference to Yellow
13 Brook. And like I said, I'm not going to give you a
14 different due date for the Yellow Brook items, but I am
15 asking you if you can, you know, sort of prioritize
16 that because we have certainly Mr. Gianetti anxious to
17 get it taken care of. So I'm sure you're not going to
18 be sending something to Mr. Gianetti and have it sit
19 for weeks on a desk and not deal with it. I'm sure, you
20 know, the (indiscernible) would be calling you and
21 saying, "Hey, did this get done it?"

22 So those are my findings. I do want to thank
23 you all for working so hard on this. I know you have
24 been. What we do need to do is two things. Number one,
25 Mr. Nolan gets the fabulous job of putting together the

1 form of Order today, the Judgment of Compliance
2 conditioned getting the things done. And Mr. Banisch's
3 report will be attached and the Judgment of Compliance
4 is going to indicate that it's conditioned upon these
5 attachment B items, but the additional -- and in the
6 closing comments suggested you and Mr. Gianetti talk
7 and come up with language that you can agree to that
8 doesn't say, "And the Judge said that this is
9 grandfathered in," because I'm not going that far.

10 We need to pick up -- we need to decide on a
11 next date. What I'd like to do is pick the date and,
12 like I said, it is a process to send letters and I'm
13 going to go on the record and say everything looks
14 great. Hopefully it's going to be pretty quick. So
15 anyone who wants to be involved in it, don't show up
16 at, you know, 10:15 and think we're still going to be
17 talking. Hopefully we're not.

18 I know the concerns by Mr. Sendell and Mr.
19 Firkser needing someone to be keeping an eye on this. I
20 have someone keeping an eye on this. Basically it's Mr.
21 Banisch. Now, after the final Judgment of Compliance is
22 entered, basically I'm not at this point in time
23 anticipating that I'm going to be assigning someone to
24 be, you know, for Rumson to be reporting to them every
25 month kind of thing. Basically they are supposed to

1 report once a year to the Special Master and I haven't
2 seen anything that says something has to be different.
3 I'm not anticipating that. I think that Mr. Banisch is
4 going to stay involved and keep doing what he does
5 which is help bring this to an agreed upon resolution.

6 So what kind of a date are we looking for,
7 Counsel?

8 (After a pause)

9 THE COURT: I'm looking at the week of the
10 10th.

11 UNIDENTIFIED ATTORNEY: I guess in May. Yes,
12 May.

13 THE COURT: May. That would be ninety days.
14 Today is the 9th. So we do the week of the 10th if you
15 want. If you want a little more time than that, we can
16 do the week of the 17th. If you want a little less
17 time, we can do the week of the 3rd.

18 UNIDENTIFIED ATTORNEY: The 17th through the
19 21st.

20 UNIDENTIFIED ATTORNEY: I have a couple
21 Compliance Hearings, Your Honor, the week of the 17th.
22 The week of the 10th I'm pretty open.

23 THE COURT: Okay.

24 MS. LELIE: So, Your Honor, this is Kendra
25 Lelie from the Borough. I'm just kind of looking at

1 Borough meetings, and it looks like the last meeting
2 that we'd able to have a public hearing on the
3 Ordinance for Yellow Brook would be like 4/13. I'm
4 assuming it would be thirty days to submit to the
5 Court. So I think it would be prudent to look after the
6 13th or the 14th.

7 I'm not sure, Erik, if you could get that in,
8 you know, to meet that deadline, but I think it would
9 either have to be the 14th or the week of the 17th.

10 THE COURT: The 14th is a motion day. So you
11 don't get the 14th unless it happens to be a week when
12 I have no motions which never happens. It's usually a
13 full motion day. So basically the 14th wouldn't be
14 good. I can do the the 20th.

15 UNIDENTIFIED ATTORNEY: Your Honor, the 20th
16 is fine, but I also wanted to note that in the past
17 (indiscernible) even if it hasn't been formally adopted
18 as long as it's been introduced (indiscernible).

19 THE COURT: I truly cannot believe that it's
20 not -- if it's been introduced, I can't imagine at that
21 point someone is going to say -- sort of like the
22 Supreme's song Stop, stop, there's a problem with it.
23 But I have no problem with doing the week of the 17th
24 to 20th. We can do Thursday. I can do the week before
25 if you want. Tell me what works.

1 UNIDENTIFIED ATTORNEY: The 20th is good.

2 THE COURT: Does the 20th work for everyone?

3 MR. GERGI: Your Honor, that works for Fair
4 Share.

5 UNIDENTIFIED ATTORNEY: But Mr. Gianetti said
6 he had Compliance Hearings.

7 UNIDENTIFIED ATTORNEY: I can do the 20th. It
8 will be a busy week that week.

9 THE COURT: At that point in time if
10 everything is done and you can just listen and say,
11 yes, everything has been done.

12 MS. LELIE: Additionally, Judge, the real
13 outstanding issues probably aren't having to do with
14 Yellow Brook. If there are any outstanding issues, they
15 have to do with those other properties, I would think,
16 since the attachment B list, the only thing -- and it's
17 not on attachment B -- the (indiscernible). The only
18 thing has to do with the one issue having to do with
19 Yellow Brook. So it shouldn't be the heavy lifting date
20 for you.

21 THE COURT: So the 20th, May 20th at nine a.m.
22 Does that work for everyone?

23 UNIDENTIFIED ATTORNEY: It does.

24 UNIDENTIFIED ATTORNEY: Yes, Your Honor.

25 THE COURT: Is there anything else that we

1 need to address?

2 UNIDENTIFIED ATTORNEY: I think that's it,
3 Your Honor.

4 THE COURT: Okay. It's been a long day. As far
5 as I'm concerned it takes what it takes. I'll list it
6 until no one is talking anymore.

7 UNIDENTIFIED ATTORNEY: Your Honor, I'm sorry,
8 the time again on the 20th?

9 THE COURT: Nine a.m.

10 Okay. Thank you very much. And I want to
11 thank everyone who called in who are listening, if they
12 contributed, Ms. Smith, I think it was, Mr. Sendell
13 through his counsel Mr. Firkser. Having people keep an
14 eye on stuff is always a good thing. Thank you very
15 much. So I'm ending the Compliance Hearing.

16 Mr. Nolan, you're going to be circulating the
17 form of Order and the Judgment of Compliance
18 conditional. And I will hang on it under the five day
19 rule and as long as the language contained therein is
20 acceptable, I will be signing it. Okay?

21 MR. NOLAN: Thank you, Your Honor.

22 THE COURT: Thank you so much. Have a great
23 day.

24 THE COURT: Okay. Bye-bye.

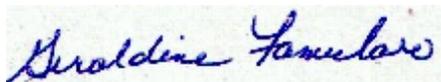
25 ***** (The matter concluded at 3:14 p.m.) *****

1 TRANSCRIBER'S NOTE

2 Due to the poor quality of the audio provided to
3 the transcriber this transcript contains many
4 "indiscernible."

CERTIFICATION

I, Geraldine Famularo, the assigned transcriber, do hereby certify the foregoing transcript of proceedings Courtsmart 2/09/21, index 9:11:29 to 12:22:53 and 1:46:57 to 3:14:32 is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.



GERALDINE FAMULARO

#154
AOC NUMBER

Dated: February 18, 2021

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