

SUPERIOR COURT OF NEW JERSEY  
MONMOUTH COUNTY  
HEARD VIA ZOOM  
LAW DIVISION, CIVIL PART  
DOCKET NO. MON-L-2483-15

IN THE MATTER OF THE )  
APPLICATION OF THE BOROUGH )  
OF RUMSON. )  
X-----X

TRANSCRIPT  
OF  
COMPLIANCE HEARING

Place: Monmouth County Courthouse  
71 Monmouth Park  
Freehold, N.J. 07728  
Heard via Zoom

Date: May 20, 2021

BEFORE:

THE HONORABLE LINDA GRASSO JONES, J.S.C.

TRANSCRIPT ORDERED BY:

REBECCA WINSTON  
(Surenian, Edwards & Nolan, LLC)

APPEARANCES:

ERIK NOLAN, ESQUIRE  
(Jeffrey R. Surenian And Associates, LLC)  
Attorney for The Borough of Rumson.

CRAIG M. GIANETTI, ESQUIRE  
(Day, Pitney, LLP)  
Attorney for Yellow Brook Property Co., LLC.

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(Fair Share Housing Center)  
Attorneys for Fair Share Housing Center.

STEVEN FIRKSER, ESQUIRE  
(Greenbaum, Rowe, Smith & Davis LLP)  
Attorneys for Stuart Sendell.

FRANCIS BANISCH, III, PP/AICP.  
Court Appointed Special Master.

I N D E X

<u>WITNESS</u>		<u>Direct</u>	<u>Cross</u>
Kendra Lelie			
By Mr. Nolan		16	
By Mr. Gergi			25
Frank Banisch			
By The Court		31	
 <u>EXHIBIT</u>			<u>Evid.</u>
P-16	Conditional Judgment of Compliance and Repose Order, 2/24/21		28
P-17	Borough Letter, 4/19/21		28
P-18	Nolan Certification and Exhibits, 4/19/21		28
P-19	Levin Certification and Exhibits, 4/19/21		28
P-20	Nolan Certification and Exhibits, 5/11/21		28
P-21	Borough Letter, 5/17/21		28
P-22	Levin Certification and Exhibits, 5/17/21		28
P-23	Court Master Report, 5/20/21		28
P-24	Consent Order		18
 <u>RULING</u>			
	By The Court.....		39

1 (The matter was called at 9:01 a.m.)

2 THE COURT: It is 9:01. This is In The Matter  
3 of The Borough of Rumson, County of Monmouth, Docket  
4 number MON-L-2483-15. This is the continuation of the  
5 Compliance Hearing for the Borough of Rumson, a  
6 Declaratory Judgment action filed by Rumson. The Court  
7 held a Fairness Hearing in this matter on July 29th,  
8 2020. We began day one of the Compliance Hearing. There  
9 was a number of outstanding issues, if I recall, and we  
10 scheduled the conclusion of the Compliance Hearing for  
11 today, May 20th, 2021.

12 My understanding from the documentation that  
13 I received -- correspondence that I recently received  
14 is that outstanding matters have been resolved. What  
15 I'm going to do is my Court Clerk tells me that you can  
16 hear us and that we are on the record. He sent me a  
17 little message. What I'm going to do is allow everyone  
18 to enter their appearance. I am going to ask counsel  
19 for Rumson to let me know where we are at this point in  
20 time in terms of public notice of this hearing and also  
21 I'm potentially going to take testimony from  
22 individuals. Any individuals providing testimony will  
23 be sworn in.

24 There may be members of the public who have  
25 joined in. I know for the Fairness Hearing we had a

1 large number of members of the public who wanted to be  
2 heard and we did, in fact, hear from them. Obviously,  
3 we're doing this via Zoom as we've pretty much  
4 everything via Zoom in the last fifteen months right  
5 now, fourteen months. If members of the public want to  
6 be heard on this, you absolutely will have the  
7 opportunity to do so. The order of things is I'm going  
8 to have everyone enter their appearance. That means the  
9 attorneys who are representing individuals or members  
10 of the public, you can now hang out, watch, and listen.  
11 I would ask for anyone who is not speaking that you  
12 mute yourself whether it's a member of the public or  
13 actually an attorney because -- I'm in the Courthouse  
14 right now sitting in my chambers. If I were home, I  
15 would have a dog barking in the background which is  
16 pretty much my way of life these days when I'm working  
17 from home, and if everyone else has a dog barking in  
18 the background it's going to be a pretty loud hearing  
19 without having any ability to hear what people have to  
20 say. So I'd ask that everyone mute themselves.

21 When we do the appearances we're going to be  
22 hearing from counsel from Rumson; we're going to be  
23 hearing any testimony on behalf of Rumson; we're going  
24 to hear from the attorney for Fair Share Housing  
25 Center. All the attorneys in this case will have the

1 opportunity to cross-examine individuals. So if Rumson  
2 has a witness testifying, then the other attorneys will  
3 have the opportunity to ask questions of that witness.  
4 If any members of the public have a question for a  
5 witness, let me know and you can ask the witness  
6 questions.

7 I'm going to be able to hear from Fair Share  
8 Housing Center. Even though they don't have a witness,  
9 basically Fair Share Housing Center's attorney, will  
10 you know, will put Fair Share Housing Center's position  
11 on the record. I know we have counsel here for the  
12 developer involved in the matter. After I've heard from  
13 the attorneys on these things, I'll hear from members  
14 of the public if they want to be heard.

15 What I do need at that point normally I have  
16 a second person helping with the management, and a  
17 second person, my Law Clerk. She is not in today. So,  
18 Mike, what I'm going to ask is when we get to the point  
19 after we've heard from the witnesses for the Borough  
20 but before we hear from Mr. Banisch, if there's any  
21 members of the public who want to be heard, I'm going  
22 to ask individuals, I'm going to tell you this is your  
23 chance to be heard. You're going to unmute yourself.  
24 There may be a couple of you talking at once and we'll  
25 keep track of who it is that wants to be heard, who

1 wants to say something, and basically you'll have your  
2 opportunity to do that one at a time.

3 So, Mike -- I'm speaking now to my Court  
4 Clerk Mike and telling him he's going to have to sort  
5 of be keeping track of that, as well.

6 So when I say, "Okay, this is the chance for  
7 members of the public to be heard on this," that would  
8 be your opportunity to unmute yourself, you're going to  
9 tell me your name -- there might be a couple of you  
10 talking at once. We'll sort it out, we'll get to you  
11 one by one, and you will have your opportunity to speak  
12 and let us know what your thoughts, or happiness, or  
13 concerns are, or if you have any questions for anyone  
14 who has testified as a witness in this case, we can  
15 address it at that point in time.

16 After that usually the last person I hear  
17 from is Mr. Banisch, who is the Special Master  
18 appointed by the Court, and we'll hear from Mr. Banisch  
19 with reference to everything that has gone on since the  
20 last Compliance Hearing date. My understanding is I've  
21 taken a look at what's been submitted and I do have a  
22 proposed form of Order that has to be submitted to me.  
23 So anyone is involved in the case can let me know, yes,  
24 that you want me to sign it, or not sign it. And after  
25 that I will render a decision on the record with

1 reference to the Compliance Hearing aspect.

2 For individuals who have not been part of  
3 this overall process and saying, you know, what is this  
4 all about, I'll tell you Rumson in 2015 -- the New  
5 Jersey Supreme Court had rendered a decision. It's  
6 found that 2:21 New Jersey 1 which is called Mount  
7 Laurel IV. Basically what the decision says is that  
8 COAH did not seem to be able to sort of pull it  
9 together -- COAH, the Council on Affordable Housing --  
10 did not seem to be able to get it together to make sure  
11 that Affordable Housing would happen in the State of  
12 New Jersey from a management perspective and basically  
13 turned the matters back over to the Court, and counsel  
14 were given the opportunity to file Declaratory Judgment  
15 actions saying, "We want to take care of this. We don't  
16 need anyone suing us, telling us what to do. We can  
17 take care of this. We're going to put together a plan  
18 and to make sure that an opportunity is presented  
19 within our town for the development of Affordable  
20 Housing." And that is what Rumson did, in fact, filed  
21 and has a 2015 docket number.

22 I know that Rumson and the developer parties  
23 worked very hard and I mentioned that with reference at  
24 the Fairness Hearing, worked very hard to reach an  
25 agreement that was acceptable to all parties. The Court

1 had the Compliance Hearing, as I indicated. The Order  
2 was signed at the Fairness Hearing on July 29th, 2020.  
3 The Fairness Hearing was held over a period of multiple  
4 dates that allowed members of the public who sent in  
5 letters -- there may have been seventy people may have  
6 even spoke at the Fairness Hearings, and the Court  
7 entered an Order approving the Settlement on July 29th,  
8 2020.

9 So this is what we call the last leg of the  
10 journey. This is the Compliance Hearing. The purpose of  
11 this is for the Court to receive information indicating  
12 that the things that the Court said in the prior Order  
13 needed to be done, the Borough is letting the Court  
14 know, in fact, it has done the things that it needs to  
15 do.

16 So what I'm going to do is ask for the  
17 attorneys who are making an appearance in this case,  
18 I'm asking you all to enter your appearance in the  
19 case. For the individual members of the public, you  
20 don't need to speak at this point in time. At this  
21 point in time you're absolutely welcomed to be here.  
22 You can hang out. We will get to you, as I indicated, a  
23 little bit later in the proceeding.

24 So, Counsel, would you like to begin?

25 MR. NOLAN: Erik Nolan, Your Honor, on behalf

1 of the Borough of Rumson. Good morning.

2 THE COURT: Good morning.

3 MR. GERGI: Good morning, Judge. This is  
4 Bassam Gergi, counsel for Fair Share Housing Center.

5 MR. FIRKSER: Good morning, Your Honor. Steven  
6 Firkser from Greenbaum, Rowe, Smith & Davis, attorney  
7 for interested party Stuart Sendell.

8 MR. GIANETTI: Good morning, Your Honor. Craig  
9 Gianetti of the law firm of Day, Pitney on behalf of  
10 Yellow Brook Property, intervener defendant.

11 THE COURT: And is there anyone else?

12 Okay. And we also have Mr. Banisch, Frank  
13 Banisch, who is present being the Court's Special  
14 Master --

15 MR. BANISCH: Good morning, Your Honor.

16 THE COURT: Good morning -- who is the planner  
17 who provides information to the Court and also assists  
18 in mediating differences between the parties to see if  
19 the parties can reach an agreed upon resolution on any  
20 outstanding issues.

21 Mr. Nolan, would you like to proceed?

22 MR. NOLAN: I'll go through -- you went  
23 through some of the procedural history quickly to  
24 bring us up to where we've reached our Compliance  
25 Hearing where we are. I can talk about the satisfaction

1 of the conditions.

2 So going back in time, as you stated earlier,  
3 you know, we had a Court decision in 2015. We entered  
4 into a Settlement with Fair Share Housing Center in  
5 January of 2020. So the Borough's DJ action globally  
6 and we also reached a Settlement with the developer  
7 Yellow Brook intervener during that same month. A  
8 properly notice Fairness Hearing was held on June 15th,  
9 June 22nd, July 9th, July 15th, and July 20th of 2020  
10 during which testimony was presented, exhibits were  
11 marked into evidence. The Court approved also an  
12 agreement as between the Borough and Fair Share Housing  
13 Center, and the Borough and Yellow Brook. The Court  
14 entered an Order on July 29th, 2020 which memorialized  
15 the decision from the Fairness Hearing. The Borough and  
16 Fair Share Housing Center entered an amendment of the  
17 Fair Share Housing Center Settlement Agreement in the  
18 late fall of 2020 to implement the Settlement with Fair  
19 Share Housing Center as amended. The Housing Element  
20 and Fair Share Plan was adopted by the Borough's  
21 Planning Board on December 7th, 2020 and endorsed by  
22 the Borough Council on December 15th, 2020.

23 A properly noticed Compliance Hearing, the  
24 first part of the Compliance Hearing was held on  
25 February 9th, 2021 to include the Borough's Housing and

1 Fair Share Plan. Testimony was given by the Borough's  
2 planner Kendra Lelie. Comments from counsel and  
3 objectors were entertained by the Court. The Court  
4 entered a conditional settlement of Compliance on  
5 February 24th, 2021 which included Paragraph 9 showing  
6 current conditions that needed to be satisfied by the  
7 Borough and the Court Master discovery date 2021  
8 report. Paragraph 9 required the Borough to submit a  
9 status update report regarding the satisfaction of the  
10 conditions by April 19th to the Court. The Court Master  
11 sent it off to the parties.

12 In Paragraph 11 of the JOR set a date of  
13 today to proceed (indiscernible) whether or not the  
14 Borough had satisfied those conditions. The Borough  
15 submitted the required status update report April 19th,  
16 2021 which included a letter, supporting certifications  
17 that I handed in, and Dan Levin was the first  
18 (indiscernible) to grant planning and housing which is  
19 the Borough's administrative agent, and (indiscernible)  
20 Compliance Hearing we've also provided a second round  
21 of public notice to (indiscernible) papers and direct  
22 notice of the Borough's service list, and also posted  
23 the JOR which ordered a schedule hearing on the  
24 Borough's website.

25 On May 10th, 2021 Fair Share Housing Center

1 filed what a letter of comment and the Borough  
2 submitted (indiscernible) on behalf of (indiscernible)  
3 -- to Mr. Sendell. Mr. Levin also filed a spreadsheet  
4 regarding the (indiscernible) May 10th, 2021.

5 On May 17th, 2021 the Borough filed a second  
6 letter that provided a second certification of the  
7 administrative agent Mr. Levin and Mr. Levin's  
8 additional information.

9 On May 18th, 2021 the Borough sent a letter  
10 and exhibits that will be marked into evidence on  
11 behalf of the Borough during today's Compliance  
12 Hearing.

13 On May 19th, 2021 Bassam Gergi on behalf of  
14 Fair Share Housing Center (indiscernible) Mr. Sendell,  
15 myself and the Court Master all signed the Consent  
16 Order that discussed and addressed the objections that  
17 were raised by Mr. Sendell, and hopefully puts those to  
18 bed.

19 On May 20th, this morning the Court Master  
20 issued his follow-up report.

21 At this point I will list the exhibits that  
22 we want to mark into evidence on a continuing nature  
23 where we left off at the first date of the Compliance  
24 Hearing.

25 So exhibit P-16 is the conditional Judgment

1 of Compliance and Repose Order that was entered by the  
2 Court February 24th, 2021.

3 Exhibit P-17 is April 19th, 2021 is April  
4 19th, 2021 short term condition satisfaction letter  
5 that I submitted to the Court.

6 Exhibit P-18 is the April 19th certification  
7 with attached exhibits that I submitted to the Court.

8 P-19 is the April 19th, 2021 certification of  
9 Dan Levin with attached exhibits.

10 Exhibit P-20 is the notice certification of  
11 that I did on May 11th, 2021 which shows that proper  
12 public notice and service list was done for this second  
13 day of the hearing.

14 Exhibit P-21 is the May 17th, 2021 letter I  
15 submitted responding to the objection letters.

16 Exhibit P-22 is the May 17th, 2021  
17 supplemental certification of Dan Levin submitted with  
18 attached exhibits.

19 I think we should mark the Court Master's  
20 report as Exhibit P-23, May 20th, which was just  
21 submitted to the Court this morning.

22 And then we have a Consent Order, Your Honor.  
23 So I don't know if that would be exhibit P-24. We'd  
24 make that the final exhibit.

25 THE COURT: (indiscernible) be a Consent

1 Order. I will certainly hear if someone objects to it,  
2 but I wouldn't exactly expect that I'm going to get  
3 vehement objections from anyone except perhaps, you  
4 know, one of the members of the public. So we will mark  
5 the Consent Order as P-24.

6 MR. NOLAN: That's it as far as the exhibits  
7 go, Your Honor. At this point I'm going to call Kendra  
8 Lelie with regard to the Borough's planner to testify.

9 THE COURT: Okay. Is it Lilly or Lelie? I want  
10 to make sure -- I have a feeling that I've probably  
11 mispronounced Mr. Gergi's name a whole lot. (Chuckle)  
12 He's always very pleasant to not tell me. So when he  
13 starts talking today, he can remind me of that.

14 K E N D R A L E L I E, THE BOROUGH'S WITNESS, SWORN

15 THE COURT: Please state your name, spelling  
16 your last name for the record.

17 THE WITNESS: Kendra, Lelie, L-E-L-I-E.

18 THE COURT: Counsel, I know that Ms. Lelie's  
19 qualifications have previously been set forth on the  
20 record in this matter. I do find as I have found before  
21 that she is an expert in the area of planning  
22 specifically with reference to Affordable Housing.  
23 You're welcomed to put as much or little on the record  
24 with reference to her qualifications since this is a  
25 continuation of prior hearings and I have previously



1 found that she's an expert.

2 Has anything happened, you haven't lost your  
3 license between last time you testified and now; have  
4 you, Ms. Lelie?

5 THE WITNESS: No. No, Your Honor, my license  
6 is still active and in good standing.

7 THE COURT: Okay. So that basically that  
8 satisfies she's still an expert in the area that I've  
9 previously said she's an expert in. But like I said,  
10 you're welcomed to address it or not address. I find  
11 that she's an expert.

12 MR. NOLAN: If Your Honor is satisfied that  
13 she's an expert, then I won't have to do that and we  
14 can go right into her testimony.

15 DIRECT EXAMINATION BY MR. NOLAN:

16 Q Ms. Lelie, during the first date of the  
17 Compliance Hearing on February 9th, 2021 you testified  
18 about the Borough adopted the Housing Element and Fair  
19 Share Plan. It was marked into evidence as P-1.  
20 Although they're not attached (indiscernible) for the  
21 time period of the Borough's Plan B, (indiscernible) is  
22 that correct?

23 A Yes.

24 Q And the Court held that subject to the  
25 satisfaction of the (indiscernible) conditions in D,

1 the Court Master (indiscernible) report which was  
2 marked into as P-15, the Borough's Housing Element and  
3 Fair Share Plan did create a realistic opportunity for  
4 the production of Affordable Housing and  
5 (indiscernible) conditionally approve that plan; is  
6 that correct?

7 A That's correct.

8 Q And the Court also entered a conditional  
9 Judgment of Compliance and Repose Order on February  
10 24th, 2021 which has been marked into evidence today as  
11 P-16; is that correct?

12 A Yes.

13 Q And you've reviewed the JOR?

14 A I have.

15 Q And Paragraph 9 of the JOR Order established  
16 conditions being the Court's Master's position in  
17 (indiscernible) of the report for the Borough to  
18 address; right?

19 A Yes.

20 Q Paragraph 9 set a deadline of April 19th, 2021  
21 for the Borough to submit a report with supporting  
22 documentation to Court, the Court Master, Fair Share  
23 Housing Center, and all interested parties regarding  
24 the satisfaction of those conditions; correct?

25 A It did.

1 Q And the Borough submitted a status updated  
2 report along with supporting certifications of  
3 additional documentation in 2021?

4 A Yes, they have.

5 Q And the Borough also submitted supplemental  
6 certifications on May 17th; correct?

7 A Yes.

8 Q And you reviewed and are familiar with all  
9 these documents?

10 A I am.

11 Q Let's discuss satisfaction of conditions in  
12 Paragraph 9 of the JOR that involved affordable units  
13 in the Borough will create will satisfy the  
14 (indiscernible)

15 A Yes.

16 Q As is required in conditions 9E, 9F, 9G, and  
17 9H the Borough (indiscernible) BC UW to construct  
18 Affordable Housing project on 62 Carton Street, 6  
19 Maplewood Avenue, 15 Maplewood Avenue, and 61 South  
20 Ward Street; is that correct?

21 A That's correct.

22 Q The April 13th, 2021 agreement between BC UW  
23 and the Borough which was attached to my certification  
24 was marked into evidence as exhibit P-18 today; is that  
25 correct?

1 A Yes.

2 Q And did you help us negotiate that BC UW  
3 agreement?

4 A I did.

5 Q And a few changes were made to the proposed  
6 BC UW project since the February 9th, 2021 Compliance  
7 Hearing; is that right?

8 A That's correct.

9 Q And can you go through those changes that were  
10 made on a project by project basis?

11 A Sure. So while the overall number of Affordable  
12 Housing units has not changed, there were some changes  
13 with regard to bedrooms and various income  
14 distributions amongst the units. BC UW is going to be  
15 managing the building. We worked with Fair Share  
16 Housing on the agreement before we finalized it to make  
17 sure that the agreement complied with the Settlement  
18 Agreement. I can go through the individual projects  
19 that have changed that the BC UW will again build and  
20 manage.

21 So the first is 62 Carton Street. This is also  
22 known as the hundred percent site. That will be part  
23 and parcel of the Yellow Brook development. This  
24 project will consist of ten affordable family non-age  
25 restricted rental units and six affordable special

1 needs bedroom units. Eight of the ten family units will  
2 be two bedrooms and at least three of those two-  
3 bedrooms will be low income and one of those two-  
4 bedroom will be very low income. The remaining four  
5 two-bedroom units will look like maybe moderate income  
6 and two of the ten Affordable Housing units of the  
7 remaining ten -- I'm sorry -- two will be one-bedroom  
8 units, and one of those units will be a low income unit  
9 and the other will be moderate income unit. There will  
10 also six, as I said, six special needs bedrooms which  
11 will look like they'll all be very low income units. So  
12 that's -- it's a slight change to 62 Carton Street. The  
13 project at golf will be built and be open to present  
14 Affordable Housing managed by BC UW.

15 The second project known as 15 Maplewood -- this  
16 is actually one lot which will be subdivided into two  
17 lots. The first lot will have a family non-age  
18 restricted rental unit, and that will be renovated  
19 existing home. On the other lot a new building will be  
20 built that will support or house four affordable  
21 supportive special needs bedrooms. The affordable  
22 family rental unit will be a three-bedroom. That's an  
23 existing two-bedroom house and it will be a moderate  
24 income unit, and the deed restriction will specify that  
25 the 15 Maplewood project will also be restricted for

1 the special needs residents. Again, most likely, all  
2 very low income units. That, I don't believe has  
3 changed drastically. The income distribution changed a  
4 bit from the original testimony that we had.

5 61 South Ward project is the third project that  
6 BC UW will be in charge of and constructing and/or  
7 renovating. This will be a two -- right now it's an  
8 existing home on 61 South Ward. And the way that the  
9 Settlement Agreement and the developers agreement is  
10 worded is that there's a chance that it either will be  
11 renovated in kind, meaning that the building will stay  
12 and there will be internal renovations and potentially  
13 an addition, or the option is to also tear down and  
14 build new is provided. And that really has everything  
15 to do with whether State funding is available for the  
16 construction of a new home. So (indiscernible) pro  
17 forma. We've looked at the funding source from the  
18 State to help with the construction of a new building  
19 on that site. If that does not come to fruition we  
20 would probably have to take a look at the funding  
21 source -- obviously, the Borough has adopted an  
22 Ordinance to cover any shortage of the hundred percent  
23 project, but the decision as to whether it will be  
24 rebuilt or renovated, that really has everything to do  
25 with State funding. So the composition of the 61 South

1 Ward project would be two family rental units. They  
2 would both be three bedrooms and they would both be  
3 very low. They've entered into a Settlement Agreement  
4 between the Borough and Fair Share, and the Borough  
5 adopted an Housing Element and Fair Share Plan both  
6 require these units are rental units and not for sale  
7 units. It's very important to understand that we do not  
8 have the ability to change that for sale unit because  
9 of what I call micro requirements that are in the  
10 agreement with Fair Share Housing that a certain number  
11 of units must be rental, family rental units.

12 And then the last project that BC UW is 6 Maplewood  
13 Avenue. This is an existing house that will get some  
14 minor renovations. This will be a for sale unit and it  
15 will be a multi-bedroom moderate income unit.

16 Q Now that you've discussed the changes made to  
17 the various projects and the requirement that the  
18 (indiscernible) stream hasn't entered into a BC UW  
19 project, let's discuss the remaining.

20 A Okay.

21 Q Did the BC UW put together a pro forma as is  
22 required by positions 9E, 9F, 9G, 9H of the Order?

23 A They did.

24 Q And the finances for each of these projects is  
25 broken in the pro forma; is that correct?

1 A Yes, that is correct.

2 Q What about the construction schedule?

3 A They all have particular construction schedules  
4 which is the requirement of a hundred percent job,  
5 project, and they are separate construction schedules  
6 for each of the projects (indiscernible) previously.  
7 That's part, I believe, of exhibit P-18, and all the  
8 end dates for the completion of each of the different  
9 locations, different projects, line up with the  
10 amendment to the Settlement Agreement with Fair Share  
11 Housing. So the conditions requiring a production of a  
12 construction schedule as well as the pro forma have  
13 been satisfied.

14 Q So in your opinion the production of documents  
15 attached to the two certifications are conditions 9E,  
16 9F, 9G, and 9H are satisfied?

17 A Yes.

18 Q Let's go to the existing (indiscernible)  
19 credit for five existing affordable units in the  
20 Borough; is that correct?

21 A That's correct. Quickly, I'll go through those  
22 units that are occupied today. 19 North Street, this is  
23 a constructed occupied. This is a low income family for  
24 sale unit.

25 68 Black Point Road, again this is an existing

1 occupied low income family for sale unit.

2 16B Washington Street, this is also a constructed  
3 occupied for low income family rental unit.

4 And then 7 Lafayette Street, I think there are two  
5 units; Unit A is a moderate income unit; Unit B would  
6 be a low income unit.

7 Q And has the Borough satisfied all the  
8 conditions in the February 21st, 2021 Order for  
9 existing affordable units?

10 A They have.

11 Q And GMR already found that the unit at 68  
12 Black Point Road was (indiscernible); is that correct?

13 A That's correct.

14 Q And the Borough worked with its administrative  
15 agent to provide documentation for submissions that  
16 showed that the 19 North Street affordable units and 16  
17 Washington Street affordable units have the two  
18 affordable units located on 7 Lafayette Street are  
19 (indiscernible) is included putting deed restrictions  
20 in all units; is that correct?

21 A Yes.

22 Q So based on your experience as a Mount Laurel  
23 planner and your knowledge of COAH regulations included  
24 in two certifications provided, do you believe that all  
25 the projects listed are credit worthy that the Borough

1 should receive five credits for the existing units  
2 towards the satisfaction of (indiscernible)?

3 A Yes, I believe all five existing units are credit  
4 worthy based upon my review of the documents and  
5 experience as a planner and a Court Master.

6 Q Were you able to read the Court Master's  
7 report that was filed today?

8 A I did, yes.

9 Q Do you agree with the Court Master's  
10 recommendations?

11 A Yes, I do.

12 MR. NOLAN: I have no further questions, Your  
13 Honor.

14 THE COURT: Mr. Gergi, do you have any  
15 questions for Ms. Lelie?

16 MR. GERGI: Thank you, just two very quick  
17 questions.

18 CROSS-EXAMINATION BY MR. GERGI:

19 Q Good morning, Ms. Lelie.

20 A Good morning, Mr. Gergi.

21 Q In your testimony a minute ago you noted that  
22 as part of the hundred percent affordable development  
23 the Borough has submitted a construction schedule and a  
24 developers agreement with BC UW; correct?

25 A Yes.

1 Q In the construction schedule and the  
2 developers agreement were there certain deadlines for  
3 the start and completion of the hundred percent  
4 affordable projects?

5 A There are, yes.

6 Q And is it your understanding that those  
7 deadlines match what was in the first amendment in the  
8 prior Settlement Agreement with Fair Share Housing  
9 Center and the Borough of Rumson?

10 A Yes. To my knowledge, I believe that the  
11 construction schedules match with the Fair Share  
12 Housing Settlement Agreement.

13 Q Thank you. And then in terms of the existing  
14 affordable units, have you reviewed the Consent Order  
15 that was signed by the Borough, counsel for Mr.  
16 Sendell, Fair Share Housing Center, and the Special  
17 Master yesterday?

18 A I did.

19 Q And to your knowledge, that Consent Order  
20 would extend or continue the controls on units 9A and  
21 9B (indiscernible) for thirty years after the current  
22 occupants departed; is that your understanding?

23 A That is my understanding.

24 Q And do you have any concerns about that  
25 Consent Order or do you have any concerns

1 (indiscernible) producing the (indiscernible)?

2 A I have no concerns.

3 Q Thank you. And then the last question, Ms.  
4 Lelie, in the Settlement Agreement, the January, 2020  
5 Settlement Agreement between Fair Share and Rumson  
6 there was reference to 142 Bingham Avenue and the  
7 realistic development potential. Are you aware of that  
8 site and what the agreement states?

9 A I am.

10 Q And to your knowledge, does the agreement  
11 require the Borough within sixteen months of an Order  
12 of fairness to show that the site was owned, leased, or  
13 licensed in any manner operated by a County,  
14 Municipality, or non-profit pursuant to  
15 N.J.A.C. 5:93-4.2?

16 A Yes, that's my understanding.

17 Q And so the deadline, you know, for the Borough  
18 to show that it's been restricted for some sort of open  
19 space would be the end of November, 2021; is that your  
20 understanding?

21 A That's correct.

22 Q Okay. And would the Borough, to your  
23 knowledge, have any concern with that being one of the  
24 ongoing conditions in a Final Judgment?

25 A Not at all.

1           Q       Thank you very much, Ms. Lelie.  
2                   MR. GERGI: Your Honor, no further questions  
3           from Fair Share Housing Center.  
4                   THE COURT: Okay. Thank you very much.  
5                   Mr. Gianetti, do you have any questions for  
6           Ms. Lelie?  
7                   MR. GIANETTI: No questions, Your Honor.  
8                   THE COURT: Okay. Mr. Firkser, technically  
9           your client is not a party to this, but you're hanging  
10          out with us. So it would be fair to ask you, do you  
11          have any questions of Ms. Lelie?  
12                  MR. FIRKSER: Thank you. Thank you for  
13          allowing us to participate. No questions, Your Honor.  
14                  THE COURT: Okay. Mr. Nolan, do you have any  
15          follow-up that you need to ask Ms. Lelie?  
16                  MR. NOLAN: No follow-up, Your Honor.  
17                  THE COURT: Okay. And by the way, the  
18          additional documents that have been marked as P-16  
19          through P-24; does anyone have any objection to those  
20          documents being moved into evidence?  
21                  UNIDENTIFIED ATTORNEY: No objection.  
22                  UNIDENTIFIED ATTORNEY: Nothing.  
23                  THE COURT: Okay. P-16 through P-24 are in  
24          evidence. I didn't cover that before.  
25                          (P-16 through P-24 in evidence.)

1                   THE COURT: Mr. Nolan, do you have any other  
2          witnesses or any other evidence that you want to  
3          present?  
4                   MR. NOLAN: We were originally going to call  
5          Dan Levin, but because of the Consent Order, I don't  
6          think it's necessary to go into all the details as Ms.  
7          Lelie has already covered it. So we are not going to  
8          call any further witnesses.  
9                   THE COURT: Thank you very much, Mr. Nolan.  
10                  Mr. Gergi, do you have any witnesses you'd  
11          like to call or anything you'd like to address?  
12                  MR. GERGI: No, Your Honor, no witnesses. The  
13          Borough did a great job. So there's no further  
14          comments.  
15                  THE COURT: Mr. Gianetti? Unmute yourself.  
16                  MR. GIANETTI: Sorry. Nothing further, Your  
17          Honor.  
18                  THE COURT: Thank you. And, Mr. Firkser, I  
19          know that your client had great concern with reference  
20          to certain aspects of the Settlement that was reached.  
21          My understanding is that the concerns (indiscernible)  
22          through a regular participant and (indiscernible) My  
23          understanding is a Consent Order has been submitted  
24          which includes exhibits which address the concern that  
25          your client had raised, but it doesn't preclude you

1 from speaking or participating. Is there anything that  
2 you'd like to add to the proceeding?

3 MR. FIRKSER: No, thank you, Your Honor. Our  
4 concerns have been addressed through the Consent Order.  
5 We would request the Court to enter it, and that  
6 addresses the remaining concerns Mr. Sendell had. Thank  
7 you.

8 THE COURT: So at this point in time I think  
9 I've heard everything that I'm going to hear from the  
10 participants in the case which would be the Borough of  
11 Rumson, Fair Share Housing Center, and Yellow Brook  
12 which is the developer. I haven't heard yet from Mr.  
13 Banisch. As I indicated before, I intended to basically  
14 open this up to members of the public and give members  
15 of the public the opportunity to be heard. So I note  
16 that there's 22 participants. Some of them are doubled  
17 up right now because Mr. Banisch is on the screen and I  
18 have his telephone and there are a couple other people  
19 participating.

20 With reference to members of the public, what  
21 I'm going to ask at this point in time is do you, if  
22 you want to be heard, basically if you want to say  
23 something with reference to this whether it's positive  
24 or negative, I'm going to ask you to unmute yourself. I  
25 think you can do that.

1 Mike, send me a message if they can't unmute  
2 themselves, but I think they can unmute themselves. If  
3 they can't, Mike, you need to unmute everyone.

4 But before unmuting yourself, wave at me --  
5 if you have the video and you can't unmute yourself.  
6 What I would like is if someone wants to be heard, this  
7 is your opportunity to do so.

8 (After a pause)

9 THE COURT: Mike tells me that you can unmute  
10 yourselves. So is there anyone from the members of the  
11 public who would like to be heard with reference to  
12 this proceeding?

13 (After a pause)

14 THE COURT: Okay. No one is responding. So  
15 that sounds to me that everyone wanted to step in and  
16 hear what was going on but they did not want to address  
17 the Court.

18 At this point in time what I'd like to do  
19 turn to Mr. Banisch, the Special Master. We'll swear  
20 Mr. Banisch in and he can tell me where we are at in  
21 terms of this final leg of the journey.

22 F R A N C I S B A N I S C H, THE COURT SPECIAL  
23 MASTER, SWORN

24 THE COURT: Please state your name, spelling  
25 your last name for the record.



1 THE WITNESS: Francis J. Banisch,  
2 B-A-N-I-S-C-H.

3 THE COURT: And as Ms. Lelie, Mr. Banisch  
4 testified in day one of the Compliance Hearing and  
5 provided his qualifications at that point in time, and  
6 I did find that he's expert professional planner, he's  
7 an expert in the area of Affordable Housing. So I'm  
8 going to continue my findings that he is an expert in  
9 that area. My intention isn't to ask him any further  
10 questions with reference to his expertise in this area.

11 So, Mr. Banisch, I know you've been working  
12 very hard up until yesterday in terms of resolving the  
13 outstanding differences between the parties in this  
14 matter. I got a letter from you, your report indicating  
15 -- that report has been marked as an exhibit, as it  
16 always is, as P-23. Would you like to tell me for  
17 purposes of the record where are the parties as of  
18 today. At the Compliance Hearing there were certain  
19 things that were supposed to be addressed by the  
20 Borough prior to a final Judgment of Compliance being  
21 entered. How has the Borough done?

22 THE WITNESS: The Borough -- I really have to  
23 report that the Borough has done exceptionally well  
24 considering what it took for us to get here over some  
25 of the bumps in the road. I think you might have given

1 me more credit than I deserve with regard to some late  
2 breaking developments that made this application clean  
3 and clear in terms of its meritoriousness. My work  
4 essentially mimics what we've heard from Ms. Lelie and,  
5 in fact, finds that every one of those items in  
6 paragraph 9 of the conditional JOR has been fully  
7 satisfied. The provisions required in the conditional  
8 JOR being fully satisfied.

9 We only need at this point to address one  
10 item which came to us by way of comments that Your  
11 Honor permitted into the record from Rabbi Harry Levin.  
12 He lives at 62 Ward Avenue. He wrote to you on May 6th  
13 of this year and he expressed concerns about the  
14 project at 61 South Ward. Generally speaking, because  
15 his letter -- it's about ten pages and covered a  
16 variety of subjects with regard to this specific  
17 project -- he expressed a desire to see the building  
18 currently existing to be razed and replaced with a new  
19 building. I think you heard Ms. Lelie say that that's  
20 one of the options of repairing and rebuilding the  
21 building that's on the site now. It's also option, and  
22 the final choice has not yet been made.

23 To the extent that the comments don't relate  
24 to whether or not the agreement is fair or to whether  
25 or not the town is entitled to a Judgment of

1 Compliance, there are no signs that there's something  
2 flawed in the proposed Compliance Judgment of this  
3 Court. I respectfully acknowledge the comments that  
4 he's made on the record, but I don't find that they  
5 rise to the level that applies to (indiscernible) as I  
6 recommended in my summary. I acknowledge that all the  
7 conditions of the conditional JOR are satisfied and  
8 it's appropriate to enter a Final Judgment.

9 I hope that the record in summary by me not  
10 repeating everything we heard from Ms. Lelie. She did  
11 a very thorough job on all parts, and I'm basically  
12 confirming that what she said is all true.

13 THE COURT: All right. Now, on oral argument  
14 on motions I usually tell attorneys, you know, I've got  
15 briefing and I tell them, "Please don't read to your  
16 brief to me because I got your brief and I read it." So  
17 I'm fine with not, you know, repeating something or  
18 reading something into the record for the purpose of  
19 reading it. It's one of the reasons that we mark the  
20 report that we get from the Special Master into  
21 evidence because then it's part of the record. And I  
22 did have an opportunity to review it, as did all of the  
23 attorneys and participants in this case.

24 THE WITNESS: Your Honor, one thing. Just for  
25 the record, I'd like to apologize to everybody for the

1 late arrival of that report. Ordinarily I would do it a  
2 lot better than the day of the hearing. I think the  
3 late breaking developments that made this a cleaner  
4 case -- and I thank Mr. Gergi for taking the labor of  
5 pulling all that together -- but I'll use that as my  
6 excuse for this one. I'll try and make sure you never  
7 have to see all of these the same day.

8 THE COURT: Well, Mr. Banisch, I would much  
9 rather get a later report that says --

10 THE WITNESS: (indiscernible - simultaneous  
11 speech)

12 THE COURT: -- than a report a week ago that  
13 says, "Boy, do we have problems." It's one of the  
14 reasons that I schedule conferences in certain types of  
15 cases, schedule regular conferences, is -- and it's  
16 sort of a range of that having an upcoming conference  
17 or hear a Compliance Hearing date really makes everyone  
18 pause. So, you know, you might look and say, well, why  
19 is it that everything is being discussed the day before  
20 or two days before? It's the nature of things. That is,  
21 knowing that you're coming in today and do you want a  
22 proceeding today that's not agreed to or everyone is  
23 fighting, or do you want, you know, a proceeding where  
24 the different parties have reached an agreement? You  
25 know, what I would really want is that you've reached

1 an agreement, and sometimes it happens later than you'd  
 2 like. So I have no problem with timing on it because I  
 3 know what the parties were doing is working on reaching  
 4 an agreement as opposed to presenting a contested  
 5 issue. When I used to sit in Family, I used to say to  
 6 people, "You really want me to decide when you get to  
 7 see your kids?" And the thing, you know, with Mount  
 8 Laurel is that do you really want me to decide these  
 9 issues as opposed to you guys reaching an agreement?  
 10 And usually reaching an agreement is what works.

11 Mr. Nolan, do you have any questions of Mr.  
 12 Banisch?

13 MR. NOLAN: I have no questions, Your Honor.

14 THE COURT: Mr. Gergi, do you have any  
 15 questions of Mr. Banisch?

16 MR. GERGI: No, Judge. Just to thank him for  
 17 his time in helping us get to this point.

18 THE COURT: Okay. Mr. Gianetti, any questions?

19 MR. GIANETTI: No questions, Your Honor.

20 THE COURT: Okay. Mr. Firkser, any questions?

21 MR. FIRKSER: No questions, Your Honor.

22 THE COURT: Okay. I did receive a letter dated  
 23 May 5th from Rabbi Harry Levin. He lives at 62 South  
 24 Ward Avenue which is next to the 61 South Ward Avenue  
 25 site. I note that Rabbi Levin does cover a variety of

1 issues in his letter. He expressed his concern,  
 2 evidently there was a prior occupation of 61 South Ward  
 3 that he felt goes against the neighborhood community  
 4 feeling. He expressed a concern that he felt the town  
 5 wasn't really working with him and with other  
 6 individuals who lived around the property, around the  
 7 neighborhood. He indicated that what he'd really like  
 8 to see is that 61 South Ward be developed as an  
 9 affordable housing that's purchased rather than rented.  
 10 He indicated he wanted to see it torn down and  
 11 something new built rather than renovated.

12 Neither one of those issues is something that  
 13 for me I would be able to not enter a Judgment of  
 14 Compliance on, and there are a couple reasons. Number  
 15 one, the issue of renovation versus new development, I  
 16 think as Ms. Lelie indicated, might come down to a  
 17 matter funding, but nothing is going to be built there  
 18 and occupied that doesn't meet construction and  
 19 development requirements. So whether it is renovated or  
 20 built brand new in no way will -- and I don't mean to  
 21 suggest that the Borough is trying to build substandard  
 22 -- in no way would the Borough be able to use that as  
 23 Affordable Housing if it were not, in fact, acceptable  
 24 housing. So it's not for me to say whether it should be  
 25 new construction, tearing down and new construction, or

1 renovated construction.

2 In terms of rental property versus purchased,  
3 there is -- the Borough worked very closely with Fair  
4 Share Housing Center to determine the appropriate mix  
5 of rental versus purchased owned property. I know that  
6 there's a substantial benefit to rental properties  
7 which is our Courts -- it's difficult for low and  
8 moderate income, certainly very low income households  
9 to afford to buy a house or to buy a condo. Coming up  
10 with a down payment is extremely difficult and having -  
11 - the town worked very closely with Fair Share Housing  
12 Center and any other participants to come up with an  
13 appropriate mix. Rental properties are favored under  
14 the Affordable Housing context because that provides a  
15 very real opportunity for households to move into town,  
16 for households to live in Affordable Housing. So I  
17 certainly would not be in a position to require that  
18 the units be purchased as opposed to be rentals.

19 So I do appreciate the input from Rabbi Levin  
20 through the information that has been provided and I'm  
21 sorry he feels that the town has not been working with  
22 him. I will say since I've been involved in this case  
23 what has happened has been a process and when he's  
24 meeting with town officials he may be expressing a  
25 thought or concern on his part although the town may

1 not be able to tell him what he wants to hear. But,  
2 number one, the town may not at that point in time have  
3 been a position to give him any assurances one way or  
4 another because the town really doesn't know what it's  
5 doing until an agreement is reached.

6 And I think there was one other individual  
7 who was allowed into the proceeding by my Court Clerk  
8 when I asked the members of the public, "Did you want  
9 to be heard?" No? Hearing nothing.

10 Is there anything else that anyone would like  
11 to present with reference to Mr. Banisch?

12 MR. NOLAN: I would just say, Your Honor, that  
13 I will put together an Order for you that will finalize  
14 the JOR and I'll circulate it to everybody.

15 THE COURT: In terms of -- I'm pleased to  
16 report that I feel completely comfortable entering a  
17 Final Judgment of Compliance in this matter. There were  
18 a lot of outstanding issues, little things maybe, but  
19 when we had the first day for the Judgment of  
20 Compliance I felt that it was better to carry this  
21 forward and do a final day, like what we did today.

22 I want to thank all the participants who  
23 worked so hard to take care of all of the outstanding  
24 issues. And in terms of the members of the public who  
25 came in to listen in, I appreciate the fact that they

1 are here because this is your town. Mr. Sendell, who is  
2 represented by counsel, he's -- I know I always have  
3 Fair Share Housing Center who the New Jersey Supreme  
4 Court has represented speaks for low and moderate  
5 income households, but it's always nice to hear from a  
6 member of the public who, quite frankly, isn't  
7 complaining that, you know, we shouldn't allow  
8 Affordable Housing in the town. Mr. Sendell is an  
9 active voice indicating that he wants to insure that  
10 the Borough did what it needed to do to provide for low  
11 and moderate income housing which is kind of  
12 refreshing. I want to thank him for, you know,  
13 expressing an interest in participating.

14 I'm satisfied that all of the necessary  
15 notices even above and beyond were provided for today's  
16 proceeding. I've been since the Covid Pandemic started,  
17 I've been requiring to publish notice of these meetings  
18 on their website which isn't something that the Supreme  
19 Court ever really talked about or COAH ever talked  
20 about, but it seems to be the way that people get  
21 information these days, and I want to thank the Borough  
22 of Rumson for doing such a great job in terms of  
23 keeping the public notified in terms of these  
24 proceedings. The obvious fact that it's working is that  
25 we have members of the public -- I think it was 22

1 participants listed in this and even if there's a  
2 couple of extras, there were probably about 15 members  
3 of the public who were here listening, which I think is  
4 nice.

5 Like we did with the Settlement, I previously  
6 handled the first Compliance Hearing who approved a lot  
7 of the matters that advocate care.

8 I find that based upon the evidence presented  
9 that the Housing Element and Fair Share Plan and all of  
10 the Resolutions and the agreements that the Borough has  
11 introduced, everything fulfills the Borough's  
12 obligation to provide a realistic opportunity for the  
13 creation of Affordable Housing which is the Borough's  
14 obligation to provide a reasonable opportunity for the  
15 creation of Affordable Housing. The Borough has done  
16 everything that it is required to do under the original  
17 Order approving the Fairness Hearings (indiscernible)  
18 that needed to be done at the prior date of the  
19 Compliance Hearings. And having heard from Ms. Lelie  
20 and our Special Master, I'm satisfied that all of the  
21 outstanding issues have been taken care of, as well.  
22 And having fulfilled its obligation, the Borough of  
23 Rumson is entitled to a Judgment of Compliance and  
24 Repose, a Final Judgment of the conditional that was  
25 entered previously, and now a Final Judgment of

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Compliance and Repose for the balance of the third round which is through I think July or maybe the beginning of July of 2025 during which time the Borough will be immune from any builder's remedy or Constitutional compliance lawsuits claiming that non-compliance with the Borough's Affordable Housing obligation.

I ask that, Mr. Nolan, if you can prepare a form of Order and the report received Mr. Banisch will be attached to that form of Order.

If there's nothing else, we'll conclude today's proceedings.

I do want to thank everyone for everything you've done. I think you've done a great job for the Affordable Housing Council, for residents of the Borough of Rumson, the Borough, for everyone involved.

Thank you very much. You guys have a great night.

(The matter concluded at 9:57 a.m.)

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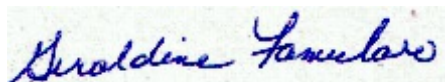
TRANSCRIBER'S NOTE

This transcript contains "indiscernibles," due to the quality of the audio provided to the transcriber.

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CERTIFICATION

I, Geraldine Famularo, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on Courtsmart 5/20/21, index 9:02:12 to 9:57:59 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: May 23, 2021