

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

Date: February 9, 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 FOR RUMSON</u>	<u>Voir Dire</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>
Kendra Lelie				
By Mr. Nolan	32	34		92
By Mr. Gergi			68	
By Mr. Gianetti			88	
By Mr. Firkser			90	
<u>WITNESS MEMBER OF PUBLIC</u>				
Alexandra Smith		97		
<u>WITNESS FOR YELLOW BROOK</u>				
Roger Mumford				
By Mr. Gianetti		117		
Arthur Bernard				
By Mr. Gianetti	131	133		
By Mr. Nolan	132			
<u>WITNESS FOR THE COURT</u>				
Francis Banisch				
By The Court	163	164		
By Mr. Gianetti			174	

I N D E X (continued)

EXHIBIT

P-1	Housing Element and Fair Share Plan
P-2	Appendix to Housing Element and Fair Share Plan
P-3	Planning Board Resolution, 12/7/20
P-4	Borough Council Resolution, 12/15/20
P-5	Amended Settlement Agreement
P-6	Borough Council Resolution
P-7	Court Order, 7/29/20
P-8	Borough Council Resolution, 12/15/20
P-9	Memo of Understanding, 2/2/21
P-10	Borough Council Resolution, 2/2/21
P-11	Affidavit of Units in Borough
P-12	Borough of Rumson Response to Objections, 2/3/21
P-13	Notice Certification
P-14	Updated Operating Manual
P-15	Special Master Report, 2/8/21
YB-1	Concept Plan
YB-2	Revised Concept Plan
YB-3	Yellow Brook Application Letter
YB-4	Yellow Brook Submissions Letter
YB-5	Concept Plan
OBJ-1	Objection Letters
YB-6	Letter of Interpretation, 10/1/20
YB-7	Order

1 (The matter was called at 9:11 a.m.)
 2 THE COURT: This is the matter of the
 3 application of the Borough of Rumson, County of
 4 Monmouth, Docket number MON-L-2483-15.
 5 I'm going to -- before we get started on
 6 having people identify themselves, I'm going to ask
 7 Peter who is doing the Court Clerk duties today if you
 8 can hear me and we are on the record. And so, Peter, do
 9 me a favor, just send me a message to let me know that
 10 you can hear me and that we are on the record.
 11 (After a pause)
 12 THE COURT: Okay. Great. He just let me know
 13 he can hear me clearly and we are on the record. Thank
 14 you.
 15 Okay. This is essentially the Rumson -- it's
 16 an amended Fairness Hearing, advertised as an amendment
 17 to the Fairness Hearing and Compliance Hearing. My
 18 understanding is that the agreement between Fair Share
 19 Housing Center and the Borough of Rumson was amended, I
 20 think it was in December of 2020. I had previously held
 21 the Fairness Hearing and I found that the agreement
 22 between Fair Share and Rumson was, in fact, fair to
 23 Affordable Housing households. There's also an
 24 agreement, I understand, between Yellow Brook
 25 Properties and the Borough of Rumson. That was the

1 discussion at the Fairness Hearing which I think
2 extended over a number of days. So what we're going to
3 have today is I'm going to have everyone enter their
4 appearance in a moment. What I'm expecting is that
5 we're going to be hearing from representatives of the
6 parties. At the end I'll be hearing from Frank Banisch
7 who is the Court's Special Master, and my understanding
8 is Rumson is going to be asking and Fair Share is going
9 to be asking to have the amendment approved by way of
10 fairness and they're also asking, at least as I
11 understand it, that conditional compliance be granted
12 because my understanding is that there's some
13 outstanding items that I think I'm going to be hearing
14 about today.

15 We have -- at the Fairness Hearing there was
16 a lot of interest by individuals who live within the
17 community and it looks to me from the number of people
18 we have involved is sort of like an expanded Brady
19 Bunch in terms of the number of faces I have in front
20 of me on Zoom -- Brady Bunch meaning that opening, you
21 know, where the nine openings on the initial opening of
22 the show. What I'm anticipating is we probably have
23 some residents who have joined us because -- and I
24 think I'm going to be hearing about this later from Mr.
25 Nolan telling you about the publication and the notice

1 that Rumson has provided. He's provided the notice of
2 publication and members of the public today who I think
3 I'm going to join. Individuals who are members of the
4 public are welcomed to just watch and listen along.
5 They're also welcomed to speak, but they're going to be
6 speaking after I hear from the Town attorney and the
7 Town's planner. We're going to be hearing from Fair
8 Share, from Yellow Brook Properties before I hear from
9 Mr. Banisch who is the Special Master.

10 So with reference to the individuals who are
11 involved, those individuals who I anticipate are
12 potentially going to be speaking as part of the before
13 opened to the public, they are self muting. So probably
14 Mr. Nolan, say, might mute himself if he knows there's
15 a marching band going, you know, past his office or his
16 house, you know, if there's too much noise going on
17 because if everyone has their mike open what we hear is
18 little bits and pieces of everything in the background
19 from everyone's place. The individuals who are invited
20 in this case are members of the public who might want
21 to be heard. When it's your turn to speak what will
22 happen is my Law Clerk is going to open your mike one
23 by one and we're going to say you're so and so, would
24 you like to be heard. Now, maybe you're just here
25 because you want to hear what's going on and you don't

1 want to speak. That's fine. But if you want to say
2 something, if you want to be heard, then you can say,
3 "Yes, this is what's on my mind and this is what I'd
4 like to add to the proceeding." I would swear you in
5 before you do that. Technically it's not going to be
6 testimony like at a trial, but I'll swear you in
7 depending on what you would be sharing and you would be
8 able to be heard. So when your mike is opened by my Law
9 Clerk, you could tell us, "No, I don't want to say
10 anything. I'm just here to watch," and then we'll re-
11 mute you, or you can let us know that you want to be
12 heard. So if you're sitting there anxiously saying, "I
13 want to talk," you will get a chance to talk, but it's
14 not first thing because what I do is hear first from
15 the Town, and from Fair Share, and from the developer
16 Yellow Brook Properties. In terms of the individuals
17 who are joining us because they have an interest but
18 have not entered an appearance, when we open your mike
19 we will likely ask you for your name. So your name
20 might show up as initials now or a nickname or
21 something, but we'll be asking you to provide your full
22 name to us.

23 In terms of the individuals who are on right
24 now, I know that there's a person who is disconnecting
25 to audio, and that was Gail Meldeson. (Phonetic) I'm

1 going to ask -- I know you're not an attorney who has
2 entered an appearance in this case. So I'm going to ask
3 my Law Clerk to do me a favor -- and I mean this in the
4 kindest way possible, ma'am -- I'm going to ask him to
5 mute you because you don't get a chance to talk right
6 now but if you want to speak, you'll be able to speak
7 later. But I think looking at the screen in front of
8 me, I think you are someone who would be speaking later
9 if you choose to do so.

10 So I'm going to ask you to mute Ms.
11 Meldeson's mike. It looks to me like everyone else who
12 -- and I didn't mean to make you go away, ma'am. I
13 don't know if she just disappeared on me. That wasn't
14 my intention. I'm not kicking anyone off. Ms. Meldeson,
15 Allie is telling me that it won't let her mute for some
16 reason. So that means you're not allowed to just shout
17 out. You're basically not allowed to tell me thoughts
18 at any random moment. You'll just have to wait until
19 it's your opportunity to speak.

20 With reference to everyone else, I'm going to
21 ask everyone to look around and say -- is there someone
22 missing? It's now 9:13. Is there someone missing who
23 you say, "Gosh, I'm really wondering why so and so is
24 not here"?

25 No one is raising their hand. So what I'm

1 going to do is I'm going to ask the attorneys who are
2 involved in this case to enter their appearances which
3 basically means you're going to tell me who you are and
4 who you represent.

5 MR. NOLAN: Erik Nolan on behalf of the
6 Borough of Rumson, Your Honor. Good morning.

7 THE COURT: Good morning.

8 MR. GERGI: Good morning, Judge. This is
9 Bassam Gergi, attorney for Fair Share Housing Center.

10 MR. GIANETTI: Good morning, Your Honor. Craig
11 Gianetti of the law firm of Day, Pitney of behalf of
12 Yellow Brook Properties, LLC.

13 MR. FIRKSER: Steven Firkser, F-I-R-K-S-E-R
14 from Greenbaum, Rowe, Smith & Davis, attorneys for
15 Stuart Sendell.

16 THE COURT: Okay. And I see we also have Mr.
17 Firkser's client Mr. Sendell who is on; Mr. Mumford is
18 also with us.

19 MR. MUMFORD: Yes, good morning, Your Honor.

20 THE COURT: Good morning.

21 Kendra Lelie is with us, who is the planner
22 for Rumson; correct?

23 MS. LELIE: Good morning, Your Honor. Yes.

24 THE COURT: And Mr. Banisch is with us, who is
25 the Court's Special Master in this matter.

1 UNIDENTIFIED ATTORNEY: We also have Arthur
2 (indiscernible) who is our planning expert.

3 THE COURT: All right. Okay. As I indicated,
4 we had a Fairness Hearing. It was in June and July is
5 my recollection and it was, we had a couple days where
6 we were trying to do it on the State Court website
7 which was, you know, a little bit problematic. So
8 basically we had everyone who had an interest in
9 hearing what was going on join us on the Zoom. It was,
10 I think it was two days of -- a little bit of a slow
11 start but then three days of hearing where we heard
12 testimony. At the end I determined that the agreements
13 presented, the plan, was, in fact, fair. It was a
14 Fairness Hearing and it was fair. As part of the
15 process the Borough of Rumson was granted temporary
16 immunity from Constitutional compliance claims and
17 builder's remedy litigation.

18 In terms of where we are now, my
19 understanding is that the Borough has worked to satisfy
20 -- at the end of the Fairness Hearing I entered an
21 Order and I said, "Okay, you do the things that you
22 need to do to get a Final Judgment of Compliance." My
23 understanding is that at this point in time that the
24 Borough has accomplished a substantial amount, but
25 there are some items outstanding.

1 I had a telephone conference last week with
2 counsel, and basically what I asked them to do was,
3 both the Special Master, reach an agreement on what it
4 is that's outstanding because the last thing I want to
5 do is take everyone's time today on a discussion of,
6 "No, this is outstanding. Oh, no, it's really not
7 outstanding. Okay, we did it." That's the kind of stuff
8 we do not do at the Compliance Hearing or at the
9 amended Fairness Hearing. And everyone did that, and I
10 got a report from Mr. Banisch yesterday describing
11 where the Borough is at this point in time. What these
12 hearings are is certainly for the public interest and
13 public importance, and whatever it is to this date
14 happening is that basically we're going to hear what
15 are the circumstances. I would hear from the attorneys
16 for the Town, I'm going to hear witnesses for the Town.
17 Now, after a witness testifies the other attorneys have
18 the opportunity to cross-examine or ask questions of
19 that witness, and the opportunity to do that will be
20 obviously provided. And then I start with the Town
21 because this is the Town's application. Basically I'll
22 move on and I'll hear from Fair Share Housing Center
23 and any witnesses that they want to present, any
24 arguments that they want to present. I would then turn
25 to Mr. Gianetti and ask Mr. Gianetti if he has any

1 witnesses he wants or any arguments he wants to
2 present. And also Mr. Firkser represent Mr. Sendell who
3 is not an intervener in this case; he's an interested
4 party, but I know Mr. Sendell has been hanging out with
5 us on this case for a long time. He's truly an
6 interested party and basically Mr. Firkser will also,
7 you know, be given the opportunity to speak and present
8 whatever argument. I don't think that there's any
9 parties or attorneys who have entered an appearance in
10 this case other than those that I've mentioned.

11 So I'll turn the matter over to Mr. Nolan.

12 MR. NOLAN: Thank you, Your Honor. The primary
13 purpose of the Compliance Hearing is as to whether or
14 not the Borough's Housing Element and Fair Share Plan
15 creates a realistic opportunity for the production of
16 Affordable Housing and for the Court to conditional
17 approve the Housing Element and Fair Share Plan,
18 granting the Borough a Judgment -- Conditional Judgment
19 of Compliance and Repose which will give this Borough
20 immunity until July of 2025.

21 In addition, the Borough and the Fair Share
22 Housing Center entered into a Settlement Agreement in
23 January of 2020 which was already approved at a
24 Fairness Hearing, as the Court just mentioned. But an
25 amendment to that Settlement Agreement was agreed into

1 December of 2020 and then the Court also needs to
 2 decide whether or not the amendment to the Settlement
 3 Agreement is fair and reasonable to low and moderate
 4 income households. Through the testimony and exhibits
 5 that will be marked into evidence here today the
 6 Borough will show that the Borough's Housing Element
 7 and Fair Share Plan creates a realistic opportunity for
 8 the production of Affordable Housing and that the East
 9 West Venture analysis has been satisfied by the
 10 amendment to the Fair Share Housing Center's Settlement
 11 Agreement and that the amendments to the Fair Share
 12 Housing Center's Settlement Agreement is fair and
 13 reasonable to low and moderate income households, and
 14 that the Housing Element and Fair Share Plan should,
 15 therefore, be conditionally approved by the Court and
 16 the amendment should be approved by the Court.

17 Just a quick procedural history to bring us
 18 up to speed, as the Court indicated, there's been
 19 already five days of the Fairness Hearing and we're
 20 continuing on with that process. So now we are now on
 21 the final phase which would be the -- we're also still
 22 to determine the Settlement Agreement, but we're also
 23 the main, the primary purpose is to get the Housing
 24 Element approved.

25 So in response to the Supreme Court's March

1 10, 2015 Mount Laurel IV decision, Rumson filed a
 2 timely Declaratory Judgment action on July 2nd, 2015,
 3 and that was to have the Housing Element and Fair Share
 4 Plan approved by the Court as may be amended. The
 5 Borough also simultaneously filed a motion for
 6 temporary immunity from all Mount Laurel lawsuits which
 7 includes builder's remedy lawsuits which was granted by
 8 the Court and has been continued by the Court through a
 9 series of subsequent Orders, and that immunity is still
 10 in full force and effect today. The Court appointed
 11 Frank Banisch as the Court Master to oversee matters on
 12 behalf of the Court. Between 2015 and early 2017 the
 13 Court in Monmouth County focused on handling all of the
 14 Mount Laurel IV Declaratory Judgment actions globally
 15 including the Rumson case, and that was in an attempt
 16 to establish Fair Share numbers and standards. This
 17 continued until Judge (indiscernible) in Mercer County
 18 held a full Fair Share numbers trial and issued an
 19 opinion on full Fair Share numbers on March 8th, 2018.
 20 Once this decision was rendered the Monmouth County
 21 Court turned its focus from determining global Fair
 22 Share numbers (indiscernible) in Monmouth County Mount
 23 Laurel IV Declaratory Judgment in municipalities and
 24 that included Rumson.

25 The first of the mediation sessions were to

1 try to get all municipalities to settle their cases
2 globally with Fair Share Housing Center and also tried
3 to settle with individual interveners or interested
4 party developers. The developer Yellow Brook filed a
5 motion in this case to intervene in the DJ action in
6 August of 2017. That was opposed by the Borough and the
7 Court denied that motion in September of 2017. But
8 nevertheless Yellow Brook became an interested party
9 developer in the Borough's DJ action at that point in
10 time.

11 In September 20, 2017 the Court held its
12 first required confidential mediation session defended
13 by Township professionals to represent them as well as
14 -- well, Fair Share Housing Center and Yellow Brook.
15 Yellow Brook filed a second motion to intervene in
16 November of 2018 which was opposed by the Borough but
17 was thereafter granted by the Court in July of 2019. At
18 this point Yellow Brook became an intervener in the
19 Borough's DJ action. Rumson's professionals and
20 representatives continued to participate in a series of
21 Court required confidential mediation sessions with
22 both Fair Share Housing Center and Yellow Brook to the
23 end of the 2019 and eventually the Borough
24 professionals and representatives settlements with both
25 Fair Share Housing Center and Yellow Brook in early

1 January of 2020.

2 The Settlement Agreements were executed by
3 Fair Share Housing Center and Yellow Brook, and after
4 there was a properly noticed public presentation held
5 on January 14th, 2020. Questions and comments from the
6 public were considered and the Borough Council voted a
7 Resolution to authorize the Mayor to execute both
8 agreements and that was done. After that objections to
9 the Settlement Agreements were filed by individual
10 residents of Rumson and also by Rumson Open Space and
11 Affordable Housing or ROSAH. ROSAH also filed a
12 separate lawsuit against the Borough, and the Borough,
13 Yellow Brook, and Fair Share all filed a motion to
14 dismiss that lawsuit.

15 A properly noticed contested Fairness Hearing
16 was held on June 15th, June 22nd, July 9th, July 15th,
17 and July 20th of 2020 during which testimony was
18 presented, exhibits were marked into evidence, and the
19 Court approved both Settlement Agreements between the
20 Borough and Fair Share Housing Center, and the Borough
21 and Yellow Brook. The Court entered an Order on July
22 29th, 2020 which memorialized the decision from the
23 Fairness Hearing. ROSAH subsequently dismissed its
24 separate lawsuit and has not filed any additional
25 objections.

1 A Compliance Hearing to approve the Borough's
2 Housing Element and Fair Share Plan was initially
3 scheduled to be held on December 1st, 2020 but was
4 adjourned to today, February 9th, 2021 to allow the
5 Borough to have additional time to amend its Settlement
6 Agreement with Fair Share Housing Center and to address
7 various compliance issues. The Borough's professionals
8 and representative of Fair Share Housing Center agreed
9 upon terms of an amendment to the Fair Share Housing
10 Center Settlement Agreement in the late fall of 2020.
11 The Borough's professionals drafted a Housing Element
12 and Fair Share Plan in accordance with Fair Share
13 Housing Center's Settlement Agreement as amended and
14 the recommendations of the Court Master, and the
15 Housing Element and Fair Share Plan was put on file for
16 public review on the Borough's website on November
17 24th, 2020. The Housing Element and Fair Share Plan was
18 then adopted by the Borough Planning Board December
19 7th, 2020 and endorsed by the Borough Council during a
20 public meeting held on December 15th, 2020.

21 The amendments to the Fair Share Housing
22 Center's Settlement Agreement was entered into by Fair
23 Share Housing Center and the Borough, and was put on
24 file for public review on the Borough's website in mid
25 December of 2020. The Housing Element and Fair Share

1 Plan be amended to the Fair Share Housing Center
2 Settlement Agreement, supporting crediting
3 documentation in the form of an appendix
4 (indiscernible) supporting Resolutions and Ordinances
5 were all submitted and all interested parties on
6 December 22nd, 2020.

7 In addition to endorsing the Borough's
8 Housing Element and Fair Share Plan the Borough Council
9 also adopted all of the Resolutions required by the
10 Fair Share Housing Center Settlement Agreement and the
11 Yellow Brook Settlement Agreement for today's combined
12 Fairness and Compliance Hearing. The Borough provided
13 public notice in the two local newspapers and direct
14 notice to the Borough's service list. It also posted on
15 the Borough's website the Court's December 22nd, 2020
16 Order with instructions on how to participate in
17 today's hearing. And despite all this notice that was
18 given, only two (indiscernible) actually proceed from
19 the Borough, a resident Alexandra Smith on January
20 25th, 2021 and Steven Firkser, Esquire on behalf of
21 Stuart Sendell on January 29th, 2021.

22 Fair Share Housing Center submitted a letter
23 on January 28th, 2021 in which it set procedural to
24 follow in today's hearing. The Borough's responded to
25 Fair Share Housing Center's letter and two written

1 objections on February 3rd, 2021. On February 4th, 2021
2 Craig Gianetti, Esquire submitted a letter on behalf of
3 Yellow Brook. Yellow Brook also submitted a second
4 letter on February 5th with attachments to be submitted
5 into evidence on behalf of Yellow Brook. On February
6 4th the Borough sent a letter to the Court attaching
7 exhibits that will be be marked into evidence on
8 behalf of the Borough for today's hearing. The Borough
9 submitted a follow-up letter yesterday on February 8th
10 with additional exhibits to be marked into evidence.
11 Yellow Brook also submitted a follow-up letter
12 yesterday with one additional exhibit to be marked into
13 evidence. And then finally the Court Master issued his
14 Master's report yesterday on February 8th, 2021.

15 I'll go briefly through the exhibits so that
16 we know all the exhibits that have been identified to
17 be marked into evidence. I'll do the plaintiff's
18 exhibits first and then we can do town exhibits.
19 Exhibit P-1 is the Housing Element and Fair Share Plan
20 which was adopted by the Planning Board for the Borough
21 of Rumson on December 7th, 2020 and endorsed by the
22 Rumson Borough Council on December 15th, 2020.

23 Exhibit P-2 is the appendix to the Housing
24 Element and Fair Share Plan which contains crediting
25 documentation, Resolutions, Ordinances, agreements,

1 operating manuals, etcetera.

2 Exhibit P-3 is the December 7, 2020 Rumson
3 Borough Planning Board Resolution adopting the
4 Borough's Housing Element and Fair Share Plan.

5 Exhibit P-4 is the December 15th, 2020 Rumson
6 Borough Council Resolution endorsing the Borough's
7 Housing Element and Fair Share Plan.

8 Exhibit P-5 is the December 15th, 2020 first
9 amended January 16th, 2020 Settlement Agreement between
10 the Borough and Fair Share Housing Center. The exhibit
11 (indiscernible) copy of the original agreement of
12 January 16th, 2020 agreement.

13 Exhibit P-6 is the Borough Council Resolution
14 authorizing them execution of the first amendment to
15 the January 16th, 2020 Settlement Agreement between the
16 Borough and Fair Share Housing Center which was adopted
17 on December 15th, 2020.

18 Exhibit P-7 is the Order approving the
19 Settlement Agreement between the Borough and Fair Share
20 Housing Center and the Borough and Yellow Brook which
21 was entered by the Court on July 29th, 2020 after the
22 Fairness Hearing was held.

23 Exhibit P-8 is the Borough Council Resolution
24 adopting the Borough's spending plan dated December
25 15th, 2020.

1 Exhibit P-9 is a memorandum of understanding
 2 entered into between the Borough and BTU, Matawan
 3 Housing Partners, LLC on February 2nd, 2021.

4 Exhibit P-10 is the Rumson Borough Council
 5 Resolution authorizing the Mayor of the Borough of
 6 Rumson to execute the memorandum of understanding
 7 between the Borough of Rumson and BTU, the Matawan
 8 Housing Partners, LLC dated February 2nd, 2021.

9 Exhibit P-11 is additional documentation
 10 (indiscernible) existing affordable units in the
 11 Borough.

12 Exhibit P-12 is the Borough's February 3rd,
 13 2021 response to objections.

14 Exhibit P-13 is the February 3rd, 2021 notice
 15 certification that I put together with exhibits to show
 16 the proper notice of the hearing.

17 Exhibit P-14 is the updated operating manual
 18 with new language agreed to with Fair Share Housing
 19 Center.

20 Exhibit P-15 is the Court Master's report.
 21 Exhibit P-15 I've marked as the Court Master's report
 22 even though I did not send that to the Court. The Court
 23 Master sent the report in yesterday, but that's Exhibit
 24 P-15 identified. That's dated February 8, 2021.

25 Yellow Brook submitted five exhibits. They

1 submitted YB-1 which is the Settlement Agreement
 2 concept plan for Rumson Road for 16 units.

3 They submitted YB-2 which is the revised
 4 concept plan for Rumson Road for 14 units.

5 They submitted YB-3 which is Yellow Brook
 6 Rumson Road Planning Board submission letter with
 7 application.

8 They submitted YB-4 which is Yellow Brook
 9 Bingham Avenue Planning Board submission letter with
 10 (indiscernible)

11 And YB-5 which is the second Rumson Road
 12 concept plan, another concept plan for Rumson Road.
 13 That was submitted yesterday.

14 There's also two objections that were
 15 submitted January 25th, 2021, Alexandra Smith's
 16 exhibit, and January 29th, Steven Firkser, Esquire
 17 letter along with a certification. Those were two
 18 objections that were filed.

19 I think that covers all the exhibits. So at
 20 this point we're ready to start with our case. We'd
 21 like to call Kendra Lelie who is our planner for the
 22 Borough to testify on behalf of the Borough.

23 MR. GIANETTI: If I may, Your Honor, this is
 24 Craig Gianetti on behalf of Yellow Brook. I also
 25 submitted two additional exhibit YB-6 which is an

1 NJ DEP letter of interpretation dated October 1st, 2020
 2 and YB-7 which is the Town's Ordinance. (indiscernible)
 3 our portion of the hearing we may or may not use all
 4 the exhibits.

5 In addition, (indiscernible) copy me on the
 6 Master's report. They did that this morning and I'll
 7 start reviewing it as the presentation goes on going on
 8 forward.

9 MR. FIRKSER: And, Your Honor, Steven Firkser.
 10 I would just want to note an objection to exhibit
 11 P-14. It was submitted late yesterday afternoon. It
 12 goes to the compliance aspect of the hearing and I
 13 think it's part of the argument that the Judgment of
 14 Compliance is premature and should await a further
 15 review. Thank you.

16 MR. NOLAN: Your Honor, it's just a manual for
 17 the (indiscernible) We're going to have another hearing
 18 in ninety days, so there's no reason not to submit the
 19 manual for everyone to look at before that time.

20 MR. FIRKSER: We note our concern with respect
 21 to the language.

22 MR. NOLAN: Okay. So if there's nothing else--

23 THE COURT: In terms of the P-14, it's the
 24 Borough of Rumson Affordable Housing Administrative
 25 agent policy and procedures manual adopted February,

1 2021. This is hearing. It's not like a trial. It's not
 2 a slip and fall and looking for money damages, but it's
 3 still a hearing in Court and basically my follow-up
 4 questions are going to be, you know, what are we moving
 5 into evidence. With reference to this document, sir, is
 6 there any foundational objection to it or simply you
 7 don't think it's relevant to this proceeding?

8 MR. FIRKSER: It's not a foundational issue.
 9 It's the nature of it. Our entire position is that the
 10 Fairness Hearing should proceed with respect to
 11 implementation of compliance, and this is a document
 12 related to my client's limitation.

13 MR. GERGI: Judge, may weigh in?

14 THE COURT: Sure.

15 MR. GERGI: Your Honor, there's been back and
 16 forth between Fair Share and the Borough about this
 17 document. Particularly there was a section that we
 18 raised concerns about. From Fair Share's perspective we
 19 think those concerns were addressed, but I think Mr.
 20 Firkser raises a good point. If Mr. Nolan and the
 21 Borough don't object, I think the tentative agreement
 22 was that there would be a follow-up hearing in ninety
 23 days to button everything up once the final conditions
 24 were satisfied. Fair Share would be fine giving Mr.
 25 Firkser and his client until that date to have this

1 particular document approved as part of the compliance
2 and I don't see any prejudice.

3 MR. NOLAN: (indiscernible) No issues there.

4 THE COURT: Ultimately, and basically I've
5 looked at everything that came in. The concept is
6 there's two pieces to Rumson's plan. One is the two
7 vacations of property that Yellow Brook is planning to
8 develop that are providing a monetary contribution
9 toward the development of Affordable Housing, but on
10 the properties themselves will not have Affordable
11 Housing.

12 And the second piece is this stuff generally
13 is the downtown area that will be Affordable Housing
14 and there's also the overlay zones and things like that
15 which is, you know, potential future what happens.

16 But with reference to what I have in front of
17 me, originally there's a disagreement between Fair
18 Share and the Town and Yellow Brook in terms of what we
19 should be doing today; should this just be Fairness,
20 take a look at the amendments to the agreement; should
21 it be Compliance. And what I am considering is the
22 issue of compliance. I made no secret of the fact I
23 don't love Compliance Hearings that end with a
24 conditional Judgment of Compliance, but there's too
25 much going on out there, you know, there's too many

1 things that need to be taken care of. But sometimes
2 there are good reasons to do that. So because I am
3 considering at the end of the hearing it is possible I
4 could say you know what, I'm not comfortable granting a
5 Judgment of conditional compliance. But that's what's
6 on the table. So I'm not going to bar Rumson from
7 submitting anything unless it's not appropriate to be
8 admitted. It's sort of like what goes first, the cart
9 or the horse. Basically I have an application in front
10 of me to approve the sort of the amendments to the
11 Fairness Hearing, amendment to the agreement. So it's a
12 reopening, in a sense, of the Fairness Hearing just as
13 to that issue, the amendment that was entered into in
14 December of 2020, but I also have the issue of
15 compliance and basically I'm going to be hearing about
16 compliance issues which is what have you done with
17 reference to the pieces of property that Yellow Brook
18 wants to develop because they weren't zoned when you
19 came in front of me last summer for the stuff that
20 Yellow Brook wants to do with them, and I'm going to be
21 hearing about all of that. So to me it's appropriate to
22 allow it unless there's a foundational problem.

23 So I am going to -- and, Mr. Nolan, you
24 talked about these various documents. My understanding
25 is the application is made to move these documents into

1 evidence, P-1 through P-14. Is there any -- other than
2 what Mr. Firkser has mentioned, is there any objection
3 to P-1 through P-14 going into evidence?

4 UNIDENTIFIED ATTORNEY: No objection, Your
5 Honor.

6 THE COURT: Okay. And like I said, it may be
7 that ultimately at the end of this it may be that a
8 Judgment of conditional compliance is entered. It may
9 be that it's not. I'll hear testimony on it and make
10 the determination, but I wouldn't bar Rumson from
11 submitting something into evidence without a proper
12 foundation and then say, like, well, I can't grant a
13 conditional Judgment of Compliance because I don't have
14 stuff in front of me that I need to see. Certainly that
15 was one of the things.

16 I was going to address P-15 because
17 essentially P-15 is my document. If I were in a jury,
18 kind of a jury, I would be careful to mark stuff, you
19 know, the jury never sees something that's marked as a
20 C. But like when I finish up with the jury verdict,
21 there's C-1 which is really the verdict sheet that the
22 foreman gave me. I always mark it as C-1, a Court
23 document. There's no need to be marking something with
24 a C now in this proceeding. And P-15 is the Master's
25 report. I would always want to mark the Master's

1 report.

2 And I apologize, Mr. Gianetti, that you
3 didn't get it, but it came in yesterday late. And I'm
4 not faulting the Special Master in any way. There's
5 been a lot of moving parts in this and I know he's been
6 working really hard to put this thing together and meet
7 with, you know, talk with the attorneys, etcetera. So
8 P-15 is something that I would absolutely mark. It's
9 something that gets attached to the final -- the Order
10 that's done from today's proceeding. So you can tell
11 me, someone, if you have an objection to P-15, but it's
12 going in.

13 UNIDENTIFIED ATTORNEY: No objection.

14 (P-1 through P-15 in evidence.)

15 THE COURT: Okay. Yellow Brook 1 through 7;
16 does anyone have any objection to Yellow Brook 1
17 through 7?

18 MR. NOLAN: No objection, Your Honor.

19 THE COURT: Okay.

20 (YB-1 through YB-7 in evidence.)

21 THE COURT: Basically, the submission from
22 Smith and Firkser, the submission from Smith is about
23 75 or 77 pages long. It doesn't go -- and the Court has
24 received it. I would imagine that -- and it's something
25 that, well, everyone has had the opportunity to review.

1 It came in late in January. It's technically testimony.
2 Ms. Smith is one of the individuals who is, you know,
3 one of the boxes in front of me and she'll be given the
4 opportunity to present. It may be an attachment to her
5 document would go into evidence. We'll wait and see,
6 but it wouldn't exactly go into evidence the same way
7 because it's her testimony that she will be providing
8 in terms of her concerns or her objections.

9 With reference to the submission from Mr.
10 Firkser, same thing, it's marked for I guess we call it
11 identification. Basically Ms. Smith can be Objector 1,
12 Firkser would be Objector 2. And again if there's an
13 attachment to it, Mr. Firkser can ask for the
14 attachment to be moved into evidence, but the letter
15 that he sent in, technically he's here and he's going
16 to be proceeding on behalf of his client. There was a
17 certification, I think. I don't know if there's
18 anything else. If it was just a certification, Mr.
19 Sendell has agreed and Mr. Firkser can ask him to
20 testify and he can provide whatever information he
21 would like to.

22 So those are slightly different types of
23 documents. So the Smith submission would be as Objector
24 1, the Firkser submission would be marked as Objector
25 2, but it's not like what Mr. Sendell can testify, it's

1 not like someone -- a certification is hearsay and an
2 out of Court statement going to the truth of the matter
3 asserted. So in any event, that's what's going to
4 happen with reference to the document.

5 (O-1 and O-2 marked for identification.)

6 MR. GIANETTI: Your Honor, just for
7 clarification, Yellow Brook submitted a letter on
8 February 4th. Does that need to be marked as YE-8 or
9 (indiscernible)

10 THE COURT: Things that come into the Court --
11 I mean, technically Mr. Firkser's letter doesn't need
12 to be marked, but he's here and he sent it in, and so,
13 you know, we're marking it for identification. Mr.
14 Nolan had indicated everything that was submitted and
15 it's part of the eCourt filing system. So a letter from
16 counsel generally wouldn't need to be. The stuff that's
17 been marked, you know, for Rumson is the Resolution
18 that they documented, the framework that holds this
19 thing together. But generally I wouldn't be marking a
20 letter from Mr. Nolan. I don't mark the cover letter.
21 It's a submission to the Court. So a letter that was
22 sent in would not need to be marked. In terms of
23 technically the submission from Ms. Smith is an
24 objection. It's a little bit different. So we're
25 marking it for identification, so the Court is clear

1 the Court got it, the Court reviewed it, and everyone
 2 else got it. The same thing from Mr. Firkser. He's an
 3 attorney, he knows, basically he's going to be making
 4 his argument on the record. Mr. Sendell is with us. Mr.
 5 Sendell can be placed under oath and he can testify if
 6 Mr. Firkser would like him to. So those are different
 7 kinds of documents. The stuff that needs to be marked
 8 and moved into evidence is the stuff that Mr. Nolan,
 9 for example, that the Borough of Rumson is relying on
 10 and saying, "Look, you told us to do this. We did it.
 11 This is what we did," and that's why that goes into
 12 evidence, you know, as far as I'm concerned in terms of
 13 this proceeding.

14 Mr. Nolan, would you like to proceed?

15 Oh, I'm sorry, Ms. Lelie -- you want Ms.
 16 Lelie to testify; correct?

17 MR. NOLAN: Yes.

18 THE COURT: Okay. So, Ms. Lelie, I'm going to
 19 place you under oath.

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

21 THE COURT: Can you please state your name and
 22 spell your last name -- actually, your first and last
 23 name for the record.

24 THE WITNESS: Kendra Lelie, K-E-N-D-R-A,
 25 L-E-L-I-E.

1 THE COURT: Thank you.

2 Mr. Nolan, you can proceed.

3 VOIR DIRE EXAMINATION BY MR. NOLAN:

4 Q Ms. Lelie, before you testify could you please
 5 answer a few questions to qualify you as an expert?
 6 What is your educational background?

7 A I have a Bachelor's in environmental design
 8 planning and a Master's degree in city and regional
 9 planning, both from Rutgers University.

10 Q Do you hold any licenses?

11 A I am certified by the American Institute of
 12 Certified Planners which is a national certification.
 13 I'm also licensed by the New Jersey State Professional
 14 Planning organization, a PP license. And I'm also
 15 licensed as a landscape architect in the State of New
 16 Jersey. All of the licenses are active and in good
 17 standing.

18 Q And what is your work experience as it relates
 19 to being qualified as an expert as a Mount Laurel
 20 planner as well as your experience as (indiscernible)

21 A I've worked since 1994, a little over 25 years now,
 22 on municipal Affordable Housing plans, representing
 23 dozens of municipalities in the capacity of an
 24 Affordable Housing planner. I've also been a Court
 25 Master for the past three years and I've represented --

1 or I've provided services to the Court for about a
2 dozen municipalities.

3 Q And how many years have you been a Mount
4 Laurel planner for the Borough of Rumson specifically?

5 A I was hired in January of 2018. So a little over
6 three years.

7 MR. NOLAN: I'd ask the Court to accept Ms.
8 Lelie as an expert Mount Laurel planner at this time.

9 THE COURT: Does anyone have any voir dire
10 they want to, any follow-up questions they want to ask
11 Ms. Lelie?

12 MR. GERGI: Your Honor, Fair Share has no
13 objection to her being admitted as an expert.

14 UNIDENTIFIED ATTORNEY: No objection, Your
15 Honor.

16 THE COURT: So no one has any voir dire and no
17 one has any objections; is that correct? Okay. The
18 Court finds that Ms. Lelie is an expert in professional
19 planning and specifically in the area of Affordable
20 Housing and Mount Laurel planning.

21 DIRECT EXAMINATION BY MR. NOLAN:

22 Q Ms. Lelie, before we discuss the Borough's
23 Housing Element and Fair Share Plan let's briefly
24 discuss the first amendment to the Settlement Agreement
25 between the Borough and Fair Share Housing Center which

1 is P-5. Without getting into too much detail in the
2 Housing Element, what changes were made between the
3 original Settlement and the first amendment?

4 A So the first Settlement Agreement included a
5 project known as the North Street project which was a
6 ten-unit age-restricted municipally sponsored project.
7 The Borough does not currently have site control,
8 although we've been working diligently to try to get
9 that since the Fairness Hearing. And while negotiations
10 are definitely ongoing there are some environmental
11 issues that we are trying to work through with the
12 owner of this property so the Affordable Housing on the
13 site may continue in the future and be able to work
14 that out. However, currently because we don't have site
15 control we felt that it was necessary that there be
16 other projects that the Town was able to secure since
17 the Fairness Hearing and I think it was probably right
18 before the Fairness Hearing several properties that the
19 Borough was able to purchase and pull into their
20 municipally sponsored program.

21 The Carton Street project was also slightly
22 modified from 14 units to 15 units which will now still
23 consist of ten family rental units which was in the
24 original Settlement Agreement, but the special needs
25 aspect of that project have increased from four special

1 needs bedrooms to five special needs bedrooms.

2 As you indicated, Mr. Nolan, we'll get into more
3 detail with regards to the other ones that we'll talk
4 about. But we've added a couple of additional
5 properties. 51 South Ward Street is being added; Urban
6 County, (indiscernible) all the ones that I'm
7 mentioning will be managed and constructed and/or
8 renovated by Bergen County United Way which is a
9 partnership with (indiscernible) Partners. 51 South
10 Ward, which is Block 141, Lot 19 will be two Affordable
11 Housing rental units.

12 And then we also have 6 Maplewood Avenue. The Town
13 owns that currently, which is Block 51, Lot 17. This
14 will be renovated. This is an existing single-family
15 house in really pretty good condition at this point.
16 Bergen County United Way will renovate it and it will
17 be a two-bedroom family for sale unit.

18 And then the Borough was also successful in
19 starting a contract -- I don't think it's fully on this
20 property yet -- 15 Maplewood, but very soon it will be
21 closed, Block 15 Lot 7. This lot is what I would call a
22 double lot. It will be subdivided. The existing home on
23 what I would call parcel A will be renovated by Bergen
24 County United Way and it will be a one-family rental
25 unit. And then there will be an additional single-

1 family -- I'm sorry -- there will be an additional
2 dwelling unit built on what I'm calling parcel B of the
3 subdivided lot, and this will be a five-bedroom special
4 needs facility that will also be constructed and
5 managed by Bergen County United Way.

6 And then finally the other item that was revised
7 in the Settlement Agreement, the number of family units
8 have increased from 19 to 26 as a result of the changes
9 to the Settlement Agreement as well as the Housing
10 Element, and the total number of family rental units
11 have increased from 13 to 19.

12 Q In your opinion, were the changes made --

13 THE COURT: Mr. Nolan, I apologize for
14 interrupting you. My Court Clerk is telling me that
15 your voice is coming in sort of low, that you need to
16 speak up. I don't know if anyone has ever told you that
17 before, but if you can --

18 MR. NOLAN: I'll speak louder.

19 THE COURT: Thank you.

20 Q Ms. Lelie, in your expert opinion, with the
21 changes made to the first amendment to the Settlement
22 Agreement between the Borough and Fair Share Housing
23 Center satisfy the East West Venture and is the first
24 amendment fair and reasonable to low and moderate
25 income households?

1 A Yes. I have the opinion that the first amendment
2 satisfies the East West Venture test, certainly edifies
3 through the Master's report, and that it is fair and
4 reasonable to low and moderate income households, and,
5 therefore, should be approved by the Court today.

6 Q Let's turn our attention to the Settlement
7 Agreement and goes to the Housing Element and Fair
8 Share Plan, and whether or not it's (indiscernible)
9 Exhibit P-1 is the Borough's Housing Element and Fair
10 Share Plan that you prepared and signed; correct?

11 A Correct.

12 Q Let's walk through it. First let's look at the
13 Fair Share obligations and Housing Element. These
14 obligations were already approved by the Court at the
15 Fairness Hearing held in June and July of 2020 when it
16 approved the Settlement Agreement between the Borough
17 and Fair Share Housing Center; is that correct?

18 A Yes.

19 Q What are the Borough's Fair Share obligations
20 as agreed upon in the Fair Share Settlement Agreement
21 as amended which is P-5 and as described in the
22 Borough's Housing Element and Fair Share Plan, P-1?

23 A So just so the Court is aware, if I'm looking off
24 to the left-hand side, I have my Housing Element on my
25 other screen. So I just wanted to let you know that I

1 will be referring to that as necessary. But to answer
2 your question, Mr. Nolan, the rehab obligation or
3 present need obligation of 29, the prior round
4 obligation is 268, and the Rumson third round which
5 includes the gap period from 1999 to 2015 as well as
6 the prospective need period from 2015 to 2025 is 335.

7 Q You indicated the Borough's rehab obligation
8 is 29. How does the Borough intend to satisfy that
9 obligation?

10 A So the rehab obligation is being satisfied through
11 a local run program that will cover both rental as well
12 as for sale rehab units. The Borough has hired and
13 adopted -- excuse me -- hired CGP&H which is Community
14 Grant Planning and Housing. I may refer to them further
15 into my testimony as CG. Sometimes I get mixed up on
16 the acronym. But CGP&H which is a very well known and
17 well respected administrative agency has -- it's
18 providing administrative agent services for the Town
19 based on higher bonus rehab program the Town also
20 adopted a rehab manual, and we also included a spending
21 plan that has the line item allocating a minimum of
22 \$10,000 per unit, for \$290,000, from the Affordable
23 Housing trust fund on the rehab program.

24 Q Did the Borough perform what's called a vacant
25 land analysis as part of P-5; is that correct?

1 A Yes.

2 Q What is the purpose of a vacant land analysis?

3 A So in a vacant land analysis there's an
4 understanding that a municipality has a resource of a
5 lack of land or lack of land is not available to
6 support the third and prior round numbers which are on
7 the order of a little over 600. In this particular
8 instance COAH rules and regulations from the prior
9 round allow the Town to make that vacant land analysis
10 that basically shows what a realistic development
11 potential would be based upon the vacant land that's
12 available as well as sites that as a coordination with
13 the Master and Fair Share Housing would felt that would
14 tend to rebuild within the near future by 2025. We take
15 a look at those vacant parcels. We determine based upon
16 presumptive density that's agreed upon amongst all
17 parties that that presumptive density would equal a
18 certain number of units, and then there's a set aside
19 of 20 percent that was associated with that. And we
20 have a number that was agreed upon at the Fairness
21 Hearing. So the RDP, the realistic development
22 potential is 51.

23 Q And what's the remaining on that unmet need on
24 that basis?

25 A So because 51 is what the realistic development

1 potential is, there is a subtraction from the overall
2 number, we have an unmet need number of 552.

3 Q And this RDP is combined prior (indiscernible)
4 in round three RDP; is that correct?

5 A That's correct, yes.

6 Q And the RDP of 51, that was approved during
7 the Fairness Hearing and memorialized by the Court
8 Order which is exhibit P-7, the July 29th Court Order;
9 correct?

10 A Yes.

11 Q Let's discuss -- let's turn to the RDP as
12 described and how the Borough intends to satisfy that.
13 Let's first start with the Borough's market to
14 affordable program. I'd like to talk about
15 (indiscernible) which did not (indiscernible) units in
16 existence in the Borough (indiscernible) program.

17 A The market to affordable program has two
18 components. One is the existing units that have been
19 created by the Borough, and the second part is a
20 proposed number of units that will be had over the next
21 five years -- four years at this point. And the one
22 thing I do want to impress upon the Court is that while
23 there are existing units in the market to affordable,
24 the municipality actually has five total existing units
25 that are occupied by low and moderate income households

1 currently today. And I think it's important that the
2 Court understands that when the municipality adopted
3 their original plan, their third round plan in 2009, it
4 was submitted to the Court -- sorry -- it was submitted
5 to COAH at that period of time when their RDP was four.
6 And the relevancy of that is that while they never
7 received a certification from COAH, this municipality
8 continued forward in purchasing -- sorry -- in
9 approving and working with Habitat for Humanity as well
10 as other folks through Zoning Board applications and
11 approvals to have these units constructed and occupied
12 by low and moderate income households. So I really see
13 a good faith effort in not only meeting their RDP at
14 the time -- which it certainly has changed and rules
15 have changed -- but they've forward with having these
16 units occupied by low and moderate income households
17 for a period of several years. So the first of the five
18 units is to construct and occupy market to affordable
19 units, one located at 19 North Street. (Phonetic) This
20 is a two-bedroom unit that was a for sale unit and it
21 was a moderate income unit, Block 46, Lot 15. I want to
22 make sure the record is clear that a document in the
23 appendix -- and this is my fault -- was not copied
24 correctly. I tried to redact some information, personal
25 information from what's known as the income eligibility

1 document, and when I redacted it, unfortunately, my
2 technical skills are not what they should be, it
3 incorrectly states that six people live in the unit,
4 when it was really only two. I've since provided the
5 original documentation to the attorney, to Mr. Nolan,
6 and the corrected form that there's only two people
7 living in this unit which was submitted as, I believe,
8 exhibit P-11. So that information has been corrected
9 and it's in the Court record. We also have recently
10 received documentation from CD indicating that the
11 original occupants are still currently living there,
12 and now that will be provided as future information for
13 all parties to review.

14 The exhibit P-11 also included the original
15 marketing flyer for this project. The unit was
16 affirmatively marketed by the Borough's administrative
17 agent at the time. Affordable Housing alliance was the
18 original administrative agent. They're no longer
19 providing that service to the municipality. But we have
20 received and the CD has received as much information
21 from them as possible at this particular juncture to
22 show that these units were affirmatively marketed. In
23 fact, there was a lottery that was held at Borough Hall
24 and an Affordable Housing wait list was created from
25 that lottery, and that information is not provided in

1 P-11 but will be provided to the Court. We think that
2 long remaining outstanding condition that we've seen
3 with not only this purchase, but probably three more
4 that I'm going to talk about is that deed restrictions
5 were not actually placed on the units and this is
6 something that the Borough has been working hard to --
7 work with each of the individual property owners to
8 insure that we get deed restrictions on them and that
9 would look like it would be a condition of any JOR as
10 indicated in the Court Master's report. So that's 19
11 North Street. That's one of the two that's deemed
12 market to affordable units.

13 68 Black Point Road is the other market to
14 affordable unit that is existing. It is a low income
15 for sale unit. It was constructed and occupied by
16 Habitat for Humanity -- well, it was constructed by
17 Habitat and through their organization they had an
18 occupant that obviously was for low income for sale
19 unit. A deed restriction was placed on this particular
20 unit. That is in the appendix which is exhibit P-2. And
21 again just so the record is clear, the previous
22 administrative agent in the statement we checked the
23 moderate income box on one of the forms which is the
24 eligibility determination form which is part of the
25 appendix when it really should have checked low income

1 box. And we verified that it was just a typographical
2 error because in the information, it's clear that the
3 income was 42 percent, median income, which is clearly
4 a low income family. So we're sure that this is a low
5 income family that resides in this particular unit and
6 it will remain as a low income Affordable Housing unit.
7 The marketing flyer for the affirmative marketing on
8 this unit was also included in P-11 and we believe that
9 this is a fully creditworthy unit.

10 Those are the two existing market to affordables.
11 With regard to the proposed market to affordable
12 program, the Borough has agreed that nine units will be
13 had in the market to affordable program. We will be
14 using development fees to acquire properties as they
15 come on the market. The Borough has already started
16 this process and certainly is looking for units that
17 would be able to bought down. There's a buy-down
18 program with the market to affordable program, and have
19 agreed that five units will be produced before July of
20 2022 and four units, additional four units before July
21 of 2024. The Borough has adopted and is recently
22 pending a market to affordable manual to insure that
23 the marketing of this program meets the requirements of
24 the Settlement Agreement.

25 Q How about the existing Washington Street

1 inclusion in the process?

2 A So as I mentioned, there are an additional three
3 existing units that are occupied currently by low and
4 moderate income households within the Borough. Part of
5 the second subsection of mechanisms that the Borough
6 has used in the past and will be using obviously
7 currently is what's known as an inclusionary project.
8 So the next three units that I'm going to be talking
9 about are considered units that have come from
10 inclusionary projects. The Washington Street project
11 was constructed and occupied on 15 Washington which is
12 Block 8, Lot 5, and it was part of the Zoning Board
13 approval that allowed two market rate units which was a
14 duplex with one affordable unit that was to be
15 constructed on the site. Again to make sure that the
16 record is clear, the administrative agents have checked
17 off the income certification form showing it was a
18 moderate income, when it was actually a low income, and
19 we have verification that it is a low income unit
20 within the 16 Washington Street project. The Zoning
21 Board approval actually requires it to be a low income
22 unit. It's been confirmed by our current CD
23 administrative agent that it is a low income family
24 living in there.

25 We've also received confirmation that the

1 originally certified low income household is still
2 currently there. So it has not been turnover of this
3 particular unit. And the one outstanding item that we
4 are working on is again getting a deed restriction for
5 this property, and we'll continue to work and get that
6 deed restriction if the Court provides a JOR within
7 ninety days if that's the time frame that Your Honor
8 decides makes sense. I think that's recommended by the
9 Master.

10 So the other two units of existing out of the five
11 existing units that have low and moderate income
12 families currently living in these units in the Borough
13 is something known as the Lafayette Street inclusionary
14 project. Two affordable rental units were constructed
15 as part of this overall project which was a seven-unit
16 townhouse project and it was approved by the Zoning
17 Board of Adjustment. 7 Lafayette Street is also known
18 as Block 8, Lot 4. The project has one low income unit
19 as well as one moderate income unit.

20 The initial and subsequent applicant of these
21 units have been income qualified. That information is
22 in the appendix, and that was provided by the previous
23 administrative agent. The Borough is working to insure
24 that the proper deed restrictions will be placed on
25 these two units which it currently does not, and as

1 part of the Court Master's recommendation this will
2 also be provided within that 90-day time frame.

3 Additional income documentation that wasn't
4 included in the appendix that was provided as part of
5 the Housing Element and Fair Share Plan is in an income
6 certification sheet for the current occupants of unit
7 9B and the original affirmative marketing plan. So
8 these two items that were originally not part of the
9 appendix were included in exhibit P-11.

10 So I really think at this point that all the
11 documentation other than the deed restrictions on four
12 of the five units are the items that are outstanding
13 for the existing projects.

14 Q And then we've also agreed with Fair Share
15 Housing Center (indiscernible) a certification of our
16 (indiscernible) bearing the 90-day time period. That's
17 what will exist if the Court recommends to document all
18 these documents that we have and show that they are
19 credible RDP; is that correct?

20 A Yes, that's my understanding that you will certify
21 that the information that they have meets the required
22 affirmative marketing income eligibility and then
23 eventually a deed restriction, correct.

24 Q Okay. Let's turn our attention to the Carton
25 Street project that's part of the Fair Share Housing

1 Center Settlement Agreement and the amended Yellow
2 Brook Settlement Agreement. Can you describe the Carton
3 Street generally?

4 A Carton Street is known as Block 59, Lot 10. It will
5 be constructed and run by Bergen County United Way
6 utilizing -- this is what I will refer to as the
7 municipally sponsored program, but it actually comes
8 from the Yellow Brook site which is an inclusionary off
9 site program. So the off site requirement for the
10 Yellow Brook sites, 91 Rumson and 132 Bingham, create a
11 need for nine Affordable Housing units. Carton Street
12 will take a portion of those nine and will be built as
13 a municipally funded program. So hand in hand, Bergen
14 County United Way and the municipality will use not
15 only the funds from Yellow Brook as well as the
16 dedication of Carton Street that Yellow Brook currently
17 owns but also money from the Affordable Housing trust
18 fund, as can be seen in the spending plan, will go
19 towards the construction of units within Carton Street.

20 As was indicated, the Borough has entered into a
21 Settlement Agreement with Yellow Brook, as I've
22 indicated, that there are two properties, 132 Bingham
23 and 91 Rumson Road. At 132 Bingham 18 market rate units
24 will be created. At 91 Rumson Road as part of the
25 Settlement Agreement 16 units were to be created. In

1 exchange for providing Affordable Housing on those
 2 sites there is a payment in lieu and the dedication of
 3 the sites that will come from the developer. And all
 4 three sites, 91, 132, and Carton Street, as I talked
 5 about, are available, approvable, developable, and
 6 suitable under COAH's prior round range.

7 With regards to specifically Carton Street, this
 8 is located in the downtown, what I would call the
 9 downtown of the Borough, the more densely populated
 10 area. This particular site is very close to shops,
 11 services, transit, bus service, parks, schools. So it's
 12 an excellent place for family rentals as well as for
 13 special needs. The project itself, as I think I said in
 14 the very beginning, is a combination of what I would
 15 call in cell site to some degree. There's an existing
 16 non-residential structure on the property that will be
 17 demolished and its place the Bergen County United Way
 18 will build a combination of ten family rental units and
 19 five special needs bedrooms. So for a total of fifteen
 20 units or credits because special needs housing provides
 21 one bedroom to get the credit. So fifteen credits will
 22 be coming from this project and I believe that that
 23 provides the majority of information with regards to
 24 Carton Street.

25 Q How appropriate is the Carton Street site?

1 A As indicated, the site will be dedicated from
 2 Yellow Brook, the owner of the site. Carton Street
 3 currently is owned by the owner of -- I'm sorry -- the
 4 developer of 91 Rumson Road and 132 Bingham. So as part
 5 of the contributions if there is a dedication of Carton
 6 Street which has been equal to \$1.7 million and our
 7 main contribution to build Affordable Housing will be
 8 in the form of a cash contribution.

9 Q And will the apartment units be phased for the
 10 project?

11 A I'm sorry?

12 Q Will the units be phased for this project?

13 A Yes. As you will see in the Settlement Agreement,
 14 the phasing will follow COAH's phasing schedule which
 15 is N.J.A.C. 5:93-5.6(b).

16 Q Let's discuss the RDP for the site and let's
 17 discuss whether or not the site is available,
 18 approvable, developable, and suitable for the record.
 19 Would you go through the definition for available,
 20 approvable, developable, and suitable for the record?

21 A Sure. So as part of the compliance plan and part of
 22 the Housing Element, one of the main components of the
 23 Fair Share's piece of it is that each site needs to
 24 meet the idea that it is available, approvable,
 25 developable, and suitable per N.J.A.C. 5:93-1.3 where

1 those particular words are defined. An available site
2 means that it has a clear title, it's free from
3 incumbrances that would preclude it from development of
4 low and moderate income housing.

5 An approvable site means that it can be developed
6 for low and moderate income housing consistent with the
7 rules and regs that not only does the Borough have
8 jurisdiction over but also any outside agencies have
9 jurisdiction over. And it's important to note, although
10 it's not the case here, that a site might be approvable
11 but not necessarily zoned for low and moderate income
12 housing. But in our instance we have -- the Town has
13 adopted all the necessary Ordinances to permit low and
14 moderate income housing at the density that was
15 described in the Settlement Agreement.

16 A developable site means that the site has access
17 to water and sewer infrastructure, is consistent with
18 what we're calling management plan or it will be
19 included in an amendment to all the sites that I will
20 mention are in sewer and water areas.

21 And a suitable site means that it's compatible
22 with the land uses. It has access to streets and it is
23 consistent with the environmental policies as indicated
24 in N.J.A.C. 5:93.4.

25 So those are the definitions that we use when we

1 look and we take into the sites and we compare them to
2 answer the question does each site match these
3 definitions and could we say that it is available,
4 approvable, developable, and suitable.

5 Q Is the Carton Street site available,
6 approvable, developable, and suitable?

7 A It is. To my understanding, the site is available.
8 We don't have any known incumbrances that would
9 prohibit the development of Affordable Housing. We know
10 that Yellow Brook owns the site and will convey it to
11 the Borough. The site is approvable and certainly may
12 be developed, have Affordable Housing developed on this
13 site in accordance with rules and regs of not only the
14 Borough but more specifically DEP. We understand that
15 there are no wetlands on the property, flood plains.
16 Category one streams are within -- on the site are
17 within 50 feet of the site. It's not in the hundred
18 year flood plains. It is in CAFRA's jurisdiction. So
19 obviously it would have to be developed under CAFRA
20 regs. There are no known endangered species on the
21 site. We are aware of environmental cleanup
22 requirements on the site which was included in pretty
23 good length in the Settlement Agreement as to what's
24 required of the developer before it can engage the
25 property and what's going to be required of the Borough

1 and the developer to insure that it meets the New
2 Jersey DEP regulations.

3 It is a developable site. As I indicated, there's
4 a sewer service area. It has access to water and sewer
5 infrastructure. It sits right on one of the Borough
6 roads. So it has access to the local streets. And I
7 think as part of the appendix not only for this site
8 but all the other sites the Borough engineer has
9 confirmed that it is in a sewer and water service area.

10 It is a suitable site. There are no steep slopes.
11 As I indicated, it's next to a Borough street, has
12 access to a Borough street. It is adjacent to
13 compatible land uses, a park, single-family homes,
14 commercial uses. The site can be certainly developed in
15 accordance with RSIS. It's definitely within a quarter
16 mile of the bus line and transit opportunities which
17 will benefit the folks that will be living there. And
18 the site is in the State planning area, one which is
19 the most preferred location for Affordable Housing.

20 Q What are some of the requirements that are
21 involved with the project?

22 A So we will -- the administrative agent that has
23 been hired by the municipality will give you
24 affirmative marketing -- well, let me back up. The
25 developer will do the affirmative marketing. Our

1 administrative agent will oversee that and make sure
2 that it is in compliance with COAH rules and
3 regulations. Deed restrictions will be placed on these
4 units for a minimum of thirty years. We will meet the
5 split and bedroom distribution requirements. At the
6 current time we have an MLU with Bergen County United
7 Way which goes through in somewhat detail to what units
8 will be built, what they're agreeing to and the Borough
9 is agreeing to. What will follow is a more complete pro
10 forma and developer's agreement with a construction
11 schedule that complies with the Settlement Agreement
12 time lines. This information currently is in the
13 process of talking with the Bergen County United Way,
14 and we believe that within ninety days we will have all
15 these items to the Court and to the interveners and
16 interested parties for their review. But it's a
17 complicated municipally sponsored program because
18 (indiscernible) has a way of taking several different
19 properties. And so we want to make sure that their pro
20 forma has the detail in them, and we all know the cost
21 of it to provide Affordable Housing. So that deals
22 with, I believe, the Carton Street property. I think we
23 can move on. Unless you have any other questions I can
24 move onto the next property that Bergen County United
25 Way will work on.

1 Q Yes. Let's move to the Maplewood project. Can
2 you describe that project for the record?

3 A Yes. Maplewood is an existing single-family home.
4 It is the one that needs the least amount of renovation
5 at this point, the most move-in ready. It's located at
6 Block 51, Lot 17. The Borough currently owns the site
7 having an existing two-bedroom unit, and it will be
8 sold as a moderate income household -- to a moderate
9 income household. So it's a for sale unit at the
10 moderate level and the Borough would transfer this
11 property to Bergen County United Way. They will do the
12 improvements that are necessary. As per exhibit P-9,
13 this unit will produced before December 31st, 2021,
14 meaning somebody will be occupying that before that
15 date.

16 Q How about the 61 South Ward?

17 A So this project is an existing home, an existing
18 structure located at 61 South Ward. It will be
19 renovated. It's some significant renovations are
20 necessary to turn this into a two-family family rental
21 unit. One of the units will be low income and one unit
22 will be moderate. We may have one of the units,
23 depending upon -- but because they're (indiscernible)
24 we're also working on 15 Maplewood, the very low units
25 that's going to be required as part of the municipally

1 sponsored program may occur on this project or may
2 occur on the Maplewood project. That will kind of be
3 flushed out in a developer's agreement a bit more, but
4 we are aware that the very low unit will have to occur
5 here or at 15 Maplewood. So these are going to be two
6 affordable family rental units. The very low affordable
7 low unit will be a three bedroom and the moderate units
8 will be a two bedroom, be a one two-bedroom and one
9 three-bedroom units in this structure. The Borough
10 currently owns the site and will transfer it to Bergen
11 County United Way and again, as I indicated with all
12 the Bergen County United Way properties that the
13 Borough is going to be working with, a developer's
14 agreement, pro forma, and construction schedule will be
15 provided within the next ninety days from the Judgment
16 of Compliance and Repose.

17 Q How about the 15 Maplewood project?

18 A So 15 Maplewood is the one I mentioned in the
19 beginning that is what I called a double lot. This will
20 be subdivided. Currently there's an existing home, a
21 single-family home on this property. The Borough is
22 currently under contract to purchase this site, Block
23 50, Lot 7. Because it's a double lot, as I indicated,
24 will be subdivided. The mother lot, what I would call
25 the single-family existing home, will continue to be a

1 single-family home, but this one then become a rental
 2 unit, a family rental unit to either low or very low
 3 income three-bedroom unit, as I indicated, depending
 4 upon what happens with 61 South Ward. The Borough will
 5 also construct -- sorry -- (indiscernible) in
 6 partnership with the Borough will construct a second
 7 house on Lot B so the lot is going to be subdivided
 8 from the mother lot, and that will have a five-bedroom
 9 supportive and special needs home which will be managed
 10 by Bergen County United Way. This information is
 11 certainly all within the P-9 exhibit which is the MLU,
 12 but this one in particular from a tiny perspective
 13 we're clear that it will be completed by July 31st,
 14 2022 and that we will have a developer's agreement, pro
 15 forma, and construction schedule perhaps a bit more
 16 again in the next ninety days.

17 Q Are the sites of 6 Maplewood, 15 Maplewood,
 18 61 South Ward projects available, approvable,
 19 developable, and suitable under COAH regulations?

20 A Yes, they are all available. They are all under
 21 Borough control currently, site control. Whether they
 22 purchase it outright or whether they're under contract,
 23 nothing that we are aware of would preclude the
 24 development of Affordable Housing on these sites. They
 25 are approvable. Several are within CAFRA jurisdiction,

1 if not all of them are in CAFRA jurisdiction, as
 2 indicated before, to follow CAFRA rules and
 3 regulations. A few of the existing units are in the
 4 flood plain, that's an existing condition. Anything
 5 that will be built in the flood plain in the future
 6 will meet the necessary elevation requirements and FEMA
 7 requirements to insure that any construction that areas
 8 are outside of any flood plain. We're not aware of any
 9 endangered species on the property. And so, yes, they
 10 are all suitable, site developable. All of them are
 11 within a sewer service area, they have access to water
 12 and sewer infrastructure as indicated by the Borough
 13 engineer in his letter included in the appendix, and
 14 they are all suitable. These are all units that are
 15 again existing and/or will be built in areas that are,
 16 I would say, have access to services, shop, park,
 17 schools, you know, via pedestrian ways, definitely
 18 within a quarter mile of all existing bus lines, within
 19 the State planning area one which again is the most
 20 preferred location for Affordable Housing. So, yes,
 21 they meet -- all of them meet the available,
 22 approvable, developable, and suitable criteria.

23 Q How many total rental bonus credits for the
 24 Borough be (indiscernible)

25 A We are permitted a maximum of 13 and we are taking

1 the maximum of 13 units for the family rental units
2 that are being provided.

3 Q (indiscernible) plans that have a realistic
4 opportunity for the production Affordable Housing; is
5 that correct?

6 A That's correct.

7 Q In your opinion, do the project mechanisms
8 that the Borough is relying on to address the RDP at
9 this point create a realistic opportunity for the
10 production of Affordable Housing?

11 A They do.

12 Q As to the Borough's unmet need, the Borough is
13 not required to fully satisfy every unit
14 (indiscernible) of 20, 25; is that correct?

15 A That's correct. There has to be certain agreed upon
16 efforts to address the unmet need which was pretty
17 clear in the Settlement Agreement as to what those
18 mechanisms are to address the unmet need.

19 Q Let's go through those. What is the basis of
20 an overlay zone?

21 A So all the overlay zones I'm going to talk about
22 have been adopted by the Borough. There was significant
23 public, I would say, input -- yeah, I would say input.
24 We held several webinars with the Borough through their
25 Zoom or their online platform where we were able to

1 answer questions about the overlay zone. This was prior
2 to the introduction -- or I think it was between
3 introduction and the adoption of the Ordinances. So
4 there's been a lot of public notification and public
5 input on these Ordinances. Overlay zones are a
6 mechanism that allows for the base zoning to remain and
7 then this zoning mechanism overlays on top of the base
8 zoning. It is basically the ability to have an
9 incentive to provide Affordable Housing. So you allow
10 for an increase in density and maybe some other
11 mechanisms that would provide an incentive to build at
12 a higher density but also then require a 20 percent set
13 aside for Affordable Housing within certain sections of
14 a municipality, the first of which is what you
15 mentioned being the overlay zone. All the Ordinances, I
16 believe, are included in the appendix which is Exhibit
17 P-2. All of them require a 20 percent set aside. The
18 overlay deals with three specific properties, Holy
19 Cross Church, First Presbyterian Church, and
20 Congregation B'Naia Israel. These are all sites that
21 have overlay districts. The Holy Cross site is a 7.6
22 acre site in the R2 district. The overlay allows for
23 six dwelling units an acre. The First Presbyterian
24 Church is a two-acre site. It's located in the R4
25 district. It allows for eight one-unit per acre with a

1 20 percent set aside. And Congregation B'Naia Israel is
2 a 5.5 acre site located in the R1 district. It allows
3 for six dwelling units per acre density with a 20
4 percent set aside.

5 Q And what about the downtown GBNBPOB overlay
6 zone.

7 A So this is what I would refer to the business
8 district, the GB, general business, neighborhood
9 business, and POB is professional office business
10 overlay zone. This was again another overlay zone that
11 has been adopted by the Borough. This overlay zone
12 actually wasn't in existence to some degree before we,
13 you know, we went into the third round, what I'll call
14 third round negotiations. The Borough -- this is one of
15 the other things that the Borough has adopted as part
16 of their planning efforts for Affordable Housing
17 initially with the 2009 plan. The updated version of
18 this zone does a couple additional things by additional
19 incentives for Affordable Housing. One, it allows for a
20 third story to be had in these zones whereas two
21 stories was in the original Ordinance. There are
22 certain design requirements to insure that the
23 character with the community, that was included in the
24 overlay zone. The overlay zone also now permits multi-
25 family residential dwellings as a permitted use. That

1 was not permitted originally in the overlay zone. And
2 that multi-family dwelling is allowed at 12 units an
3 acre. The overlay zone was also, as indicated in the
4 Housing Element, to include additional Block and Lot to
5 expand the area to areas where it made sense to capture
6 spaces that hadn't overlays before. So that's the
7 downtown district overlay information.

8 Q How about the R2 overlay zone?

9 A The R2 -- so there are three R's, I believe. The
10 first one is the R2 zone overlay. This is over the R2,
11 that's a portion of the R2 district. It permits
12 townhouses, duplexes, triplexes, and quads at a density
13 of three units an acre. At a minimum lot size of three
14 acres, it includes a couple of lots that are close to
15 the downtown, have access to transit areas, but would
16 require a minimum lot of size of three acres and the
17 minimum, as I said, a density of three units per acre.
18 But the set aside would be equal to required at six
19 dwelling units per acre. There's an interesting
20 Ordinance that we put together, the Borough has agreed
21 that as long as there is money available to subsidize
22 the developer to create the number of units at six
23 dwelling units per acre density, three more units will
24 be actually be had on the site. So, in essence, the
25 Borough is subsidizing the ability to provide the

1 necessary number of Affordable Housing units, but
 2 actually as constructed on the site will look like
 3 three units an acre and it will be three units an acre.

4 The second R overlay zone is the R4 overlay zone.
 5 Again, the Borough adopted this particular Ordinance.
 6 It is overlaid on a portion of the R4 underlying
 7 district and also allows multi-family housing units in
 8 the form of townhouses, duplexes, triplexes, and quads
 9 at a density of eight units an acre. Again this is a
 10 minimum requirement of one acre lot size in order to
 11 build at this density, and the set aside is 20 percent.

12 And finally there is an R5 overlay zone which sits
 13 very close or adjacent to the downtown district. This
 14 has been an Ordinance that was adopted and permits
 15 multi-family housing at a density of twelve units an
 16 acre in the form of multi-family housing again in
 17 townhouses, duplexes, triplexes, and quads with a
 18 minimum lot size of one acre again with a 20 percent
 19 set aside. Those are the overlay districts.

20 Q How about the Borough's accessory apartment
 21 program?

22 A This is an existing program also that was
 23 implemented back in the late 2000's, early 2010. We
 24 increased or we provided additional incentives to the
 25 program in 2019. The accessory apartment program allows

1 up to ten units towards the unmet need. We've adopted
 2 an accessory apartment manual that was part of the
 3 requirements of the Settlement Agreement. That is in
 4 the appendix. The accessory apartment program is what I
 5 would call an in-fill type of project, so that people
 6 who want to either build an accessory structure or have
 7 an existing accessory structure that they would like to
 8 deed restrict for a minimum of ten years, then the
 9 Borough would subsidize the ability to provide those
 10 units. The 2019 increase incentive was an increase in
 11 financial subsidy. So it is above and beyond what the
 12 COAH rules say the minimum has to be. The Borough will
 13 subsidize a moderate income unit at \$25,000, a low
 14 income unit at \$35,000, and a very low income unit at
 15 \$50,000.

16 Q Would you describe the mandatory set aside
 17 Ordinance that the Borough adopted and how that helped
 18 to (indiscernible) the need?

19 A So the mandatory set aside Ordinance specifically
 20 is adopted in those towns that have vacant land, are
 21 subject to a vacant land analysis and adjustment. The
 22 mandatory set aside Ordinance requires a 20 percent set
 23 aside for Affordable Housing for any residential
 24 development anywhere within the municipality that are
 25 comprised of five or more dwelling units within that

1 project. This is not a buy rate for a developer to come
2 in to provide for those number of units, but just by
3 redevelopment, or rezoning, or a variance this
4 particular Ordinance will kick in and then require a
5 set aside of Affordable Housing.

6 Q And did the Borough update a development fee
7 Ordinance?

8 A Yes. So the development fee Ordinance was updated.
9 They had an existing one, but updated it to current --
10 what's being the current requirements for a zone and
11 fee Ordinance.

12 Q Let's go through a few general questions.
13 What's the standard for the Fairness Hearing portion of
14 this hearing?

15 A Does the -- specifically the question, does the
16 Housing Element and Fair Share Plan create a realistic
17 opportunity to provide for Affordable Housing.

18 Q And in your opinion, does it create a
19 realistic opportunity for Affordable Housing subject to
20 the conditions being met?

21 A Yes.

22 Q And as far as this document and the Borough's
23 housing and Fair Share Plan, specifically all the sites
24 the planner has referenced are available, approvable,
25 developable, and suitable as defined in the COAH

1 regulations; correct?

2 A Correct.

3 Q And does it also make it clear how the Borough
4 has satisfied all the micro requirements of the
5 Settlement Agreement between the Borough and Fair
6 Share? Do you want to talk a little bit about the micro
7 requirements for the record?

8 A Sure. So in the Housing Element and Fair Share Plan
9 there are specific requirements -- and it indicates, I
10 believe, on page 26 that the Borough is meeting the
11 very low income requirement of 13 percent Borough-wide,
12 the low income requirement that 15 percent of the units
13 will be low income which includes the 13 percent very
14 low. The rental requirement is being satisfied at a
15 minimum of 25 percent. We're seeing that in the family
16 unit requirement of 15 percent. And it also indicates
17 that we are not (indiscernible) the 25 percent age
18 restricted cap that's required.

19 Q And you've reviewed the Court Master's report
20 dated February 8th, 2021 which has now been identified
21 and marked into evidence as P-15?

22 A I have.

23 Q Are you confident the Borough will be able to
24 satisfy all the conditions that have been appended to
25 the report in ninety days the Court Master has

1 indicated that the Borough should have to satisfy those
2 conditions?

3 A Yes, I'm confident that we can meet those
4 conditions.

5 MR. NOLAN: I have no further questions but
6 reserve the right to ask additional questions on
7 redirect or rebuttal.

8 THE COURT: Okay. Mr. Gergi, do you have any
9 questions for Ms. Lelie?

10 MR. GERGI: I do, Your Honor. Thank you,
11 Judge.

12 THE COURT: Proceed.

13 CROSS-EXAMINATION BY MR. GERGI:

14 Q Good morning, Ms. Lelie.

15 A Good morning.

16 Q I'm going to start with existing affordable
17 units, move to propose affordable units and then
18 address unmet somewhat in the way that Mr. Nolan just
19 did, but I'm going to focus on questions he didn't ask.

20 A Okay.

21 Q So to start off, it's your understanding that
22 we're not -- the Borough and the amended agreement as
23 well as its Fair Share Plan seeking credits for
24 (indiscernible) affordable units; is that correct?

25 A That's correct.

1 Q And two of these are for sale affordable units
2 and three are family rental affordable units; is that
3 your understanding?

4 A That's my understanding.

5 Q So let's just go through each one. On 19 North
6 Street, it's your understanding this is a two-bedroom
7 for sale moderate income unit?

8 A Yes.

9 Q Okay. And your understanding is that as of
10 today there is not a deed restriction on that
11 affordable unit; is that correct?

12 A That's my understanding.

13 Q Could you explain what a deed restriction is,
14 your understanding of what a deed restriction is and
15 why it's important?

16 A A deed restriction is the legal mechanism to insure
17 that the property has a restriction on the deed that
18 indicates that it will be available for low and
19 moderate income families for a period of a minimum of
20 thirty years.

21 Q And so it's the legal instrument that says
22 this is an affordable unit and they may only be sold or
23 rented to a household of a certain income; is that
24 correct?

25 A Correct.

1 Q And is your understanding acquired by deed or
2 Affordable Housing affordability controls as a
3 necessary item to insure any unit is affordable?

4 A Yes.

5 Q And you testified that the Borough is in the
6 process of securing a deed restriction for 19 North
7 Street; is that correct?

8 A That's correct.

9 Q And this will say that, you know, from this
10 date on this unit shall remain affordable to a moderate
11 income household for a thirty-year period requiring it
12 to be credit worthy; is that correct?

13 A When you say, "from this date on," you mean from
14 today's date or do you mean from the original asking
15 date?

16 Q Well, you tell me. Is the deed restriction
17 going to be retroactive or is it going to be
18 prospective? Do you know the answer to that question?

19 A My understanding is that it will be retroactive to
20 the original date of occupancy provided we can show
21 that the original tenant and/or owner was income
22 qualified and affirmatively marketed which we believe
23 we can. And if there has been a transfer -- and I think
24 there's only been one unit that's been transferred from
25 a tenancy or ownership perspective -- that that tenant

1 and/or owner was taken from the waiting list. So as
2 long as we can indicate that it those tenants currently
3 in there and/or owners went through the eligibility
4 process, even though the eligibility process as well as
5 the affirmative marketing were under the auspices of
6 that, it will be retroactive.

7 Q So let me just zero in on what you said. So
8 the Borough is going to be deed restriction on this
9 affordable unit on 19 North Street and it's going to be
10 retroactive to the date where the initial household
11 moved in; is that correct?

12 A That's correct.

13 Q And in order to, you know, I guess insure that
14 the unit was affordable for the years when there was no
15 deed restriction, it's going to provide evidence that
16 each household that was in the unit was properly income
17 and a household size certified as well as the unit was
18 affirmatively marketed when it was either sold or
19 rented; is that correct?

20 A Yes.

21 Q And that will be in a certification, I
22 believe, I heard Mr. Nolan that the Borough will submit
23 any follow-up; is that correct?

24 A That's my understanding that CD has agreed to
25 attach certifications providing all that information

1 that they've reviewed.

2 Q Thank you. Then let's move to the next, for 68
3 Black Point Road, I believe you testified that there is
4 a deed restriction and that it was affirmatively
5 marketed; is that correct?

6 A That's correct.

7 Q And this is a low income two-bedroom unit; is
8 that your understanding?

9 A That's my understanding.

10 Q And this was built by Habitat for Humanity and
11 sold by Habitat for Humanity; is that correct?

12 A Correct.

13 Q Okay. Thank you. And then there are two more
14 projects, I believe. The first is 16 Washington Street.
15 Is that a low income one-bedroom rental unit; is that
16 your understanding?

17 A Yes.

18 Q And I heard you testify that in different
19 documents in the record there may be a reference that
20 it is a moderate income unit, that it's your
21 understanding that that was contingent as a low income
22 unit; is that correct?

23 A That's correct.

24 Q And that was in a Zoning Board approval for
25 that site; is that correct?

1 A Yes.

2 Q And is it your understanding that there is a
3 deed restriction as of today on that -- on 16
4 Washington Street?

5 A To my understanding, that is one of the items that
6 we have to provide as part of any condition of
7 approval.

8 Q And I suspect -- not I suspect -- do you know
9 if the deed restriction that's going to be put onto 16
10 Washington Street is going to be retroactive like the
11 one for 19 North Street?

12 A Yes.

13 Q And so the Borough will provide a
14 certification with evidence that each household that
15 was elected to live in the unit was the proper income
16 and household size as well as that unit was
17 affirmatively marketed before any tenant was elected to
18 rent that unit; is that correct?

19 A That's correct.

20 Q I guess, you know, I asked about the
21 importance of deed restriction. What's the -- could you
22 testify as to what's the importance of affirmative
23 marketing, as well, necessary to prove that it is
24 credit worthy?

25 A That we followed -- we have rules when it comes to

1 opening it up to a variety of folks within the region,
2 that it wasn't necessarily looked at that we pointed to
3 once before a family and put them in there. It's meant
4 to be open to all families, anybody that wants to look
5 at the unit, anybody that would obviously be income
6 qualified. So it's really this idea that you're passing
7 people that would be interested in the unit and not
8 necessarily focused on one thing in other populations.

9 Q And is it your understanding that in towns
10 like Rumson and others that have a prospective need
11 obligation, they're not allowed to just select people,
12 for example, who live in Rumson or who live in areas,
13 and that they've got to affirmatively market it to
14 people who don't live there because that's one of the
15 goals of the Mount Laurel doctrine?

16 A Right. My understanding of the reasons is that it's
17 more encompassing of a total area, not just a very
18 specific closed in area.

19 Q Finally, for (indiscernible) is it your
20 understanding that there are two units there, low
21 income two-bedroom rental unit and a moderate income
22 three-bedroom rental unit?

23 A Yes.

24 Q And is there a deed restriction on those two
25 affordable units as of today?

1 A Not that I'm aware of.

2 Q And it's your understanding that the Borough
3 is going to secure and place deed restrictions for
4 those two affordable units?

5 A Yes.

6 Q And when it does so, it's going to provide
7 certification of the tenants who live in the units,
8 whether when they were selected they had the proper
9 income and household size, and that the units were
10 affirmatively marketed at each turnover; is that your
11 understanding?

12 A Correct.

13 Q Okay. And then I guess just to summarize,
14 there's five units in the affordable units, four of
15 which the Borough is going to have deed restrictions
16 for and supply certifications with the information that
17 we've just discussed?

18 A Yes. In accordance with I think Mr. Banisch laid it
19 out pretty clear as to what those requirements are to
20 be in the certification. But, yes, that's my
21 understanding.

22 Q Thank you very much. So I'm going to move now
23 from existing affordable units to proposed affordable
24 units. I heard you testify about the market to
25 affordable program. How many units is Rumson committed

1 to creating before 2025 as part of this market to
2 affordable program?

3 A Nine.

4 Q And in the amended agreement that was entered
5 into between Fair Share and the Borough of Rumson, does
6 it specify the number of those units that have to be
7 low income units?

8 A It probably does, Mr. Gergi. I'd have to take a
9 look at it if you're going to ask me more information
10 about that.

11 Q Of course. It's on the top of page three.

12 (After a pause)

13 A So it means five of the nine units will be low
14 income; no more than three of the nine units may be
15 one-bedroom. This is probably going beyond your
16 question, but I figured you're going to ask me, anyway.
17 So that's the requirement with regards to the market to
18 affordable.

19 Q And so at least five low income and no more
20 than three one-bedroom units as part of those nine
21 market to affordable units; is that correct?

22 A That's correct.

23 Q And then the Borough, I think you've
24 testified, has committed to create five affordable
25 units as part of the market to affordable program by

1 July of 2022; is that correct?

2 A Yes.

3 Q And it doesn't say -- does it have to contact
4 Fair Share in writing to notify it and, you know,
5 consider other mechanisms to meet that affordable unit
6 requirement?

7 A It does, and it was part of the original Settlement
8 Agreement which also is within the first amendment to
9 the Settlement Agreement that if we aren't able to
10 secure market to affordable units, that we would then
11 let Fair Share know, let the Court Master know, the
12 Court know, and that we would look to replace that with
13 an alternate project, a municipally sponsored type
14 project, a hundred percent Affordable Housing.

15 Q As part of the annual reporting will the
16 Borough be informing Fair Share and the public about
17 the number of affordable units created as part of the
18 market to affordable program in that year?

19 A Absolutely.

20 Q And then now to specific projects. I think you
21 testified as to a 15-unit 100 percent affordable
22 purchase on Carton Street; is that correct?

23 A That's correct.

24 Q Do you know how many of those units are going
25 to be family rental units and how many of those units

1 will be special needs units?

2 A Ten family units, five special needs bedrooms.

3 Q And then of the family rental, do you know how
4 many are going to be three bedrooms, two bedrooms, and
5 one bedroom?

6 A I do, and I have to get to that information. Hold
7 on one minute.

8 (After a pause)

9 A Eight of the ten family units will be two bedrooms.

10 Q And of those eight two-bedroom units, do you
11 know how many will be low income and how many will be
12 very low income?

13 A Four will be low and two will be very low.

14 Q So the two very low will be in addition to
15 those four lows or as part of the four lows?

16 A With two of those -- at least four will be very low
17 with two of those two-bedroom units will be very low.

18 Q So out of the eight two-bedrooms, four will be
19 low income with two of those four being very low?

20 A Correct. Yes.

21 Q And then there will be two one-bedroom which
22 will be the typical 50-50 split, is that your
23 understanding?

24 A Yes.

25 Q And under UHAC most projects have to meet

1 certain three-bedroom, two-bedroom, one-bedroom
2 (indiscernible); is that correct?

3 A That's correct.

4 Q And the Borough compensated for no three
5 bedrooms on Carton Street by providing three bedrooms
6 elsewhere?

7 A Right. So because BCUW is pretty much the developer
8 for all municipally sponsored projects, both Carton
9 Street and then Maplewood, South Ward Street, we were
10 able to work out an agreement with Fair Share Housing,
11 with you, that three bedrooms would be on the existing
12 single-family home that already has three bedrooms as
13 well as a three-bedroom in the 61 South Ward project.
14 So we kind of looked at the BCUW municipally sponsored
15 program, while they're scattered sites, as almost one
16 comprehensive project and being able to do the bedroom
17 distribution amongst all the sites.

18 Q Okay. And then I believe I heard you testify
19 that as of today there's an MLU that's on the site of
20 BCUW but there is just the developer's agreement,
21 construction schedule, and pro forma; is that correct?

22 A Correct. While we do have an initial pro forma that
23 was provided by BCUW, there's some additional pencil
24 sharpening that needs to be on BCUW's side, and we
25 recognize that that is something that will be done

1 within the next ninety days. In fact, we've set up
 2 weekly meetings with BC UW to insure that we have a
 3 final developer's agreement that can go through the
 4 Borough approval process within the next probably at
 5 this point sixty days so we can get it on the agenda.

6 Q Thank you. And the developer's agreement and
 7 construction schedule will include the time lines for
 8 the beginning of construction, the construction that
 9 are in the Settlement Agreement?

10 A It will, yes.

11 Q And will it also specify the time line for --
 12 I think I heard you testify that there's some
 13 remediation that needs to be done for the site and
 14 other things for vertical construction that it's your
 15 understanding as well that will be incorporated into
 16 the developer's agreement and construction schedule?

17 A Absolutely. That's to the Carton Street site, yes.

18 Q And then for 6 Maplewood, I believe you
 19 mentioned the agreement and condition that Habitat for
 20 Humanity would be pursuing the project. You're
 21 testifying that BC UW is now going to be the entity
 22 responsible for that project; is that correct?

23 A That's correct. I think in the MLU it was added as
 24 another project that they will be responsible for.

25 Q And this is going to be a two-bedroom for sale

1 unit that's moderate income; is that correct?

2 A That's correct.

3 Q And BC UW is going to insure that it's
 4 available for occupancy (indiscernible) is that
 5 correct?

6 A I think you broke up a little bit. So I'll just
 7 repeat that. Yes, by December 31st, 2021 it will be
 8 occupied.

9 Q Thank you. And I apologize. If I'm breaking
 10 up, let me know.

11 And then for 61 South Ward, this is also
 12 going to be a project pursued by BC UW; is

13 A Yes.

14 Q And it will have two affordable residences; is
 15 that your understanding?

16 A Yes.

17 Q A low or very low three-bedroom; is that
 18 correct?

19 A Hmm-hmm. Yes.

20 Q A moderate income two-bedroom?

21 A Correct.

22 Q And this will be ready for occupancy by
 23 December 31st, 2022; is that your understanding?

24 A Yes.

25 Q And there will be a developer's agreement,

1 construction schedule, and pro forma provided, as well,
2 for this site?

3 A Absolutely.

4 Q And then finally, for 15 Maplewood, I believe
5 it will be a one-family rental; is that correct? And
6 then five special needs units?

7 A Correct.

8 Q The family rental will be an existing three-
9 bedroom low or very low income; is that correct?

10 A Yes, depending upon what happens with 51 South
11 Ward.

12 Q And then the five special needs units are
13 going to be constructed. It will be a new building
14 constructed adjacent to 15A Maplewood; is that correct?

15 A That's right.

16 Q And that has to be completed by July 31st,
17 2022; is that your understanding?

18 A That is my understanding.

19 Q Okay. And then for each of these projects,
20 obviously you've testified (indiscernible) Is there
21 also a requirement in the amended agreement that by the
22 date set in the amended agreement that the Borough has
23 to inform Fair Share and the Court about whether
24 they've been completed and are ready for occupancy?

25 A Yes.

1 Q Thank you. And then finally, I know you
2 testified about the arrangement, but 61 South Ward and
3 15 Maplewood are both going to have a three-bedroom
4 affordable unit; correct? There will be two three-
5 bedrooms?

6 A Correct.

7 Q And then the way that agreement is structured,
8 one of those two have to be one, one has to be very
9 low; is that correct?

10 A That is correct.

11 Q So if 61 South Ward is low, 15 Maplewood has
12 to be very low, and vice versa; is that correct?

13 A That's correct. And my assumption is that we would
14 have detailed in the developer's agreement as to which
15 one.

16 Q Thank you. And so that covers, I believe, the
17 proposed realistic development potential. And it
18 sounded like for (indiscernible) the unit at
19 (indiscernible) two units at 61 South Ward and then the
20 six units at 15 Maplewood, that there will be
21 developer's agreements and all that documentation for a
22 realistic opportunity provided within ninety days; is
23 that correct?

24 A That's correct.

25 Q And this is required by the amended agreement

1 between the Borough and Fair Share, but it's also
2 required by COAH's rules; is that your understanding?

3 A For municipally sponsored projects, yes.

4 Q So not inclusionary. You've got to provide
5 effectively site control, that you've got the money for
6 it, that it's going to be constructed in a certain
7 amount of time, and you've picked someone who's going
8 to build it and make sure they abide by, you know, the
9 time frames; is that correct?

10 A That's correct.

11 Q Thank you very much. And then I'm going to
12 turn to the unmet need. You testified, I think,
13 essentially as to the different mechanisms. But I just
14 wanted to confirm one thing. One of the Ordinances
15 adopted by the Borough, an Ordinance that sets a
16 maximum of lots and building coverage for the unmet
17 need.

18 A Yes.

19 Q And do you have -- was that Ordinance 20-016
20 in your understanding?

21 A I don't have it in front of me. So I can't confirm
22 that that's the actual number, but the Ordinance
23 includes coverage limits and FAR limits and impervious
24 coverage limits.

25 Q And this in two schedules, schedule 5-4 and

1 schedule 5-5?

2 A That's correct.

3 Q And these were needed because the existing
4 schedules for maximum building lot coverage didn't
5 allow for (indiscernible) then envisioned in the
6 (indiscernible) building; is that your understanding?

7 A Yeah. So the Borough has a way of determining
8 building coverage, FAR, and impervious coverage. It's a
9 formulation, it's a calculation, and they wanted to
10 continue with that particular calculation for the
11 overlay zone, and so a new schedule for the Affordable
12 Housing overlay zone was created to insure that those
13 coverage limits didn't necessarily limit the number of
14 Affordable Housing units that could be -- or just a
15 total number of units that could be built on site. So
16 as you know, we work together pretty heavily as to what
17 those appropriate limits were and the new schedules
18 were adopted.

19 Q Would you agree that those schedules are
20 effectively part of the unmet need mechanism, that
21 those are part of the overlay zones, that they go hand
22 in hand if you were to schedule the overlay zones
23 perhaps --

24 A Yes. They are part -- oh, I'm sorry. Go ahead.

25 Q No, I'm sorry. I was done with my question.

1 A I was just going to say they're part and parcel of
 2 the overlay zone. They basically are both requirements
 3 such as that you referred to the schedule to get the
 4 bulk requirement.

5 Q And then my final question. As a planner, is
 6 it your understanding that the schedules of the lot
 7 coverage and building coverages that they permit, that
 8 they will allow development as density envisioned by
 9 the different overlay zones that have been adopted by
 10 the Borough that they will allow, for example, for
 11 twelve units per acre in the mixed uses like family
 12 overlay?

13 A Yes, I believe that they provide significant
 14 incentives to permit the development at those
 15 densities.

16 Q And then just finally, on the R2 overlay, you
 17 testified that it permits three units an acre but an
 18 Affordable Housing set aside of six units an acre that
 19 will be subsidized by the Borough; is that correct?

20 A That's correct.

21 Q And does the amended agreement say that if the
 22 Borough doesn't provide the subsidies that the
 23 developer would then be able to build (indiscernible)

24 A It does, yes.

25 Q Thank you. And then just finally, the Borough,

1 all new affordable units that come on line in the
 2 Borough, they'll be deed restricted for thirty years;
 3 is that your understanding? And they'll have deed
 4 restrictions put them in accordance with UHAC?

5 A Yes, a minimum of thirty years in accordance with
 6 UHAC.

7 Q And they'll all be affirmatively marketed
 8 including being posted on the New Jersey
 9 (indiscernible) Resource Center; is that your
 10 understanding?

11 A That is my understanding. I believe it's in the
 12 operating manual as well now.

13 Q And the Borough has annual reporting
 14 requirements and is aware of those requirements and
 15 will comply with them moving forward; is that correct?

16 A Yes.

17 Q Okay. Thank you, Ms. Lelie.

18 MR. GERGI: Your Honor, those are all the
 19 questions Fair Share Housing Center has.

20 THE COURT: Thank you, Mr. Gergi.

21 Mr. Gianetti, do you have any questions for
 22 Ms. Lelie?

23 MR. GIANETTI: Yes, a few questions, Your
 24 Honor. Thank you.

25 THE COURT: Go ahead.

1 CROSS-EXAMINATION BY MR. GIANETTI:

2 Q Good morning, Ms. Lelie.

3 A Good morning.

4 Q I want to focus on the Yellow Brook project,
5 the two market rate projects on Rumson Road and Bingham
6 Avenue as well as the Carton Street projects. You
7 mentioned a few times during your testimony that Carton
8 Street would be dedicated by Yellow Brook to the
9 Borough with the use of credits for that
10 (indiscernible) is that correct?

11 A That's correct.

12 Q And under the Settlement Agreement isn't it
13 true that dedication of the Carton Street does not
14 happen until after Yellow Brook receives final site
15 plan approval for both the Rumson Road project and the
16 Bingham Avenue project?

17 A That's my understanding, yes.

18 Q All right. So without the approval the Carton
19 Street doesn't get dedicated; is that correct?

20 A Correct, with regard to the Settlement Agreement
21 requirements, yes.

22 Q Now, I want to touch base on the Rumson Road
23 site and I'm going to share my screen to show you a few
24 exhibits that have been marked. I'm going to show you
25 on the screen what is marked YB-1 and I'm going to flip

1 it around so it's more of a landscape view as opposed
2 to a portrait view. So this is the 15-unit concept plan
3 for Rumson Road. Does that look familiar?

4 A Yes.

5 Q And the 15-unit plan is what is attached as an
6 exhibit to the Settlement Agreement for Yellow Brook
7 and the Borough; correct?

8 A Correct.

9 Q Now I'm going to show you what is -- I'm going
10 to ask you, since the Fairness Hearing Yellow Brook has
11 provided an updated concept plan for the site; is that
12 correct?

13 A Yes, I believe that we have viewed a concept plan
14 in sometime in November that was an alternate to the
15 15-unit plan.

16 Q I'm going to show you what's marked as YB-5.
17 Does this look familiar?

18 A Yes.

19 Q And is this that alternate concept plan?

20 A It appears to be, yes.

21 Q And this plan shows 14 market rate units as
22 opposed to 16 market rate units; is that correct?

23 A Yes.

24 Q And we'll get into during Yellow Brook's
25 portion as to the reasons for the changes. But you

1 testified earlier as to the Rumson Road site, the 15-
 2 unit processing available, approvable, developable, and
 3 suitable. With respect to this 14-unit concept plan and
 4 provided there's any changes to the zoning to address
 5 any ambiguities that there may be, is this plan
 6 available, approvable, developable, and suitable in
 7 your mind?

8 A Yes. I mean, I think available, approvable,
 9 developable, and suitable criteria would apply to this
 10 plan, as well. I'm going to say the site generally, but
 11 this plan doesn't appear to warrant any opinion for me
 12 to say that they're not, that they don't meet that
 13 criteria.

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

15 THE COURT: Okay. Mr. Firkser, do you have any
 16 questions for Ms. Lelie?

17 MR. FIRKSER: Yes, Your Honor, just a few.

18 CROSS-EXAMINATION BY MR. FIRKSER:

19 Q Ms. Lelie, with respect to your exhibit P-11,
 20 that's a documentation with respect to unit 9B, I
 21 believe.

22 A Yes.

23 Q Documentation with respect to unit 9A.

24 THE COURT: I'm sorry, was there a question?

25 MR. FIRKSER: Yes.

1 Q Is there documentation with respect to unit
 2 9A. I see in P-11 there's documentation on unit 9B.

3 A Oh, the 9A documentation is located in the appendix
 4 which I believe is -- I'm not sure what -- I don't have
 5 it off the top of my head what the exhibit number is.

6 Q Okay. This documentation just relates to the
 7 initial occupants of the unit; correct?

8 A That's my understanding, yes.

9 Q All right. So how do we know that the units
 10 have been continually occupied by qualified residents
 11 since then?

12 A As part of the certifications from our current
 13 administrative agent, they are going to provide the
 14 necessary documentation if it's not been provided
 15 already, which I think it has been, that those folks
 16 that were initially certified are currently in those
 17 units. I believe there are updated lease agreements
 18 that they are working on to secure from the owner of
 19 that property, and I believe they secured maybe one of
 20 them at this point or possibly two. But this is the
 21 information that the administrative agent will
 22 certainly be able to provide a certification on.

23 Q But that information is still incorrect?

24 A That's correct.

25 Q All right. And you agree with the Special

1 Master's report attachment -- Mr. Gergi went over them
2 -- but you agree that there all these items
3 (indiscernible) still remain to be satisfied; correct?
4 A Yeah, between the thirty-year deed restriction for
5 four of the units and then the certification on those
6 units, as well. Those would be for the existing units
7 and then the other information would be for the
8 proposed units municipally sponsored projects which
9 includes developer's agreement, pro forma, and
10 construction schedule.

11 Q Thank you. That's all have.

12 THE COURT: Mr. Nolan, is there anything that
13 you want to address on redirect with Ms. Lelie?

14 MR. NOLAN: Just one question.

15 REDIRECT EXAMINATION BY MR. NOLAN:

16 Q Ms. Lelie, as far as satisfying conditions of
17 the JOR, isn't it pretty much standard in all the cases
18 you've worked on as a Court Master and as a planner
19 that there are sometimes issues and that you,
20 therefore, address those after you receive the JOR, a
21 conditional JOR? You do that and then afterwards that
22 is finalized at a later date after an additional
23 hearing or through documentation?

24 MR. FIRKSER: Your Honor, a limited
25 objection. I have no problem with Ms. Lelie testifying

1 as to her personal experience, but as to the larger
2 legal question about an appropriate process for a JOR,
3 I would object to that.

4 THE COURT: I'm going to understand the focus
5 of question and let Ms. Lelie respond as to what she
6 has personally observed due to her involvement with it.

7 A Yes. So, Mr. Nolan, in my experience it is not
8 unusual to have conditions on a Judgment of Repose.
9 There are things that outstanding and that, you know,
10 more than anything for efficiency purposes that we can
11 move forward with the project, they'll have the items
12 that are outstanding but, yes, it's not unusual that
13 there are always little pieces that need to be shored
14 up and more time given.

15 MR. NOLAN: I have no other questions.

16 THE COURT: Okay. I apologize to everyone. We
17 ran a little bit long this morning in terms of not
18 taking a break because I wanted to see if we could
19 finish up with Ms. Lelie. I don't think she's going
20 anywhere, but we wanted to finish up with the
21 questioning with her before we moved on. It's 11:08.
22 We're going to take a 15 minute break. We'll pick it up
23 at 11:25. We'll then run through to 12:30. So everyone
24 should be back at 11:25.

25 What I am going to ask is if you could do me

1 a favor, don't leave; just mute yourself, turn off your
2 camera so you can eat your sandwich, do whatever
3 personal business you'd like to that you don't want us
4 watching. Keep in mind that if you don't mute yourself,
5 then we can hear you. Turn off your video, so we don't
6 see you. So if we can, 11:25 we'll pick up again, we'll
7 come back on the screen, we'll pick up with the
8 presentation by the Borough. Thank you.

9 (Recess from 11:09 a.m. to 11:27 a.m.)

10 THE COURT: Mr. Nolan, do you have any further
11 witnesses you'd like to call?

12 MR. NOLAN: No further witnesses, Your Honor.
13 We rest.

14 THE COURT: Okay. Thank you.

15 Mr. Gergi, do you have any witnesses you'd
16 like to call?

17 MR. GERGI: No witnesses on behalf of Fair
18 Share Housing Center, Your Honor.

19 THE COURT: Okay. Mr. Gianetti, do you have
20 any witnesses you'd like to call?

21 MR. GIANETTI: I have two witnesses, Your
22 Honor, but I think as last time, members of the public,
23 Mr. Sendell wants to go first and then we can go after
24 that.

25 THE COURT: Okay. So you're saying it would be

1 better if Mr. Firkser went first?

2 MR. GIANETTI: Yes, and if there's any other
3 public comments that we would respond to.

4 THE COURT: Okay. Mr. Firkser, do you have any
5 witnesses you'd like to call?

6 MR. FIRKSER: We do not have a witness. We
7 have an argument. I don't know when that comes in.
8 Mr. Sendell would be able to answer questions, but he's
9 not going to be presented as a witness. I do have an
10 argument to make. So I don't know what the order of the
11 Court is.

12 THE COURT: What I'll do is hear from the
13 attorneys. I will ask Mr. Sendell (indiscernible) and
14 we can bring the individuals in one by one. At that
15 point in time if you want to present something, you
16 can, and then I can hear from Mr. Gianetti after you
17 are heard, and then I'll hear from Mr. Banisch. We'll
18 give Mr. Banisch the opportunity to respond to anything
19 you have.

20 I received a submission -- I think there's a
21 number of people on and they may want to be heard or
22 they may just be watching. Either one is fine. I did
23 get a submission from an Alexandra Smith. So what I'm
24 going to do is I'll -- I know she's here.

25 Ali, can you do me a favor? Unmute Ms. Smith,

1 if you would.

2 THE CLERK: I'm asking Ms. Alexandra Smith to
3 unmute. It seems that I cannot unmute her myself.

4 THE COURT: So, Ms. Smith, if you can do me a
5 favor, and either you can speak or you can just tell me
6 that you don't want to be heard. But if you'd unmute
7 yourself so we can hear about it.

8 (After a pause)

9 THE COURT: Ms. Smith, do you want to be
10 heard?

11 (After a pause)

12 THE COURT: Okay. I'm going to ask you, Ali,
13 if you could unmute people one by one --

14 MS. SMITH: Hello.

15 THE COURT: Ms. Smith?

16 MS. SMITH: Yes. Hi. Sorry.

17 THE COURT: What I'm going to do is you
18 submitted a lengthy submission to the Court. I'm going
19 to -- I don't know how much of what you're presenting
20 as argument. If there's any factual information, you
21 are presenting, what I'm going to do is place you under
22 oath. So if you provide factual information, you're
23 under oath. Okay?

24 MS. SMITH: Sure.

25 THE COURT: Okay.

1 A L E X A N D R A S M I T H, MEMBER OF THE PUBLIC,
2 SWORN

3 THE COURT: And can you please state your name
4 and spell your last name for the record.

5 MS. SMITH: Alexandra Smith, S-M-I-T-H.

6 THE COURT: Okay. And you can just please
7 provide us with your address?

8 MS. SMITH: 35 Allen Street, Rumson.

9 THE COURT: Okay. Thanks. Now, you had
10 submitted a lengthy document to the Court. Do you want
11 to be heard? Do you want to place something on the
12 record with reference to a position, either information
13 that you have or a position that you're taking?

14 MS. SMITH: So additional clarification as to
15 how that document I provided would be entered or not
16 entered, or considered or not considered?

17 THE COURT: Well, I've read it. Okay. These
18 documents contain some argument, and considering I
19 don't usually mark into evidence argument that's
20 submitted by someone, I think that there may have been
21 some attachments to the document. If you're asking me
22 to move it into evidence, I will ask the attorneys what
23 their position is on it. But just keep in mind
24 generally a submission is marked for identification so
25 we can say, yes, we got it, everyone knows what it is.

1 In terms of a submission from someone objecting to or
2 in support of an application wouldn't be marked into
3 evidence. Now, what that means is I've read it, the
4 attorneys have had an opportunity to read it. If you
5 want to state your argument or your position on the
6 record, you can do so.

7 MS. SMITH: Okay. So I'm not an attorney. I'm
8 not a forensic accountant. But I did get a lot of
9 information from public records and I am speaking for
10 myself but what I'm representing is somewhat a class of
11 people that I've spoken to directly and have
12 communication with. A large number of people who own
13 smaller, older homes in Rumson who feel aggrieved by
14 what appears to be an effort to make a reasonable
15 opportunity that our five zones could somehow fulfill
16 the unmet need by kind of forcing us out with
17 unprecedented double digit property tax assessment that
18 have really affected many, many moderate -- and I don't
19 know if they're low income -- but low, moderate people
20 including myself who would have qualified for
21 Affordable Housing this year, but now I don't,
22 thankfully, qualify. However --

23 THE COURT: Ms. Smith, just to interrupt you
24 for one second because I have to tell you that you're
25 not an attorney. So you're not allowed to represent

1 other people. You're not allowed to --

2 MS. SMITH: Okay. So that's why I put --

3 THE COURT: Okay. Just a couple things. So
4 you're not allowed to represent the interest of someone
5 else because your attorney will speak to that. You're
6 allowed to speak to the Court about your experiences
7 and your position. You're also not allowed to tell me
8 generally what other property owners have told you
9 because that would be hearsay.

10 MS. SMITH: Okay.

11 THE COURT: So with that understanding, please
12 continue.

13 MS. SMITH: Thank you. Yes. So I experienced a
14 26 percent increase in one year. That has never
15 happened. I did speak to the assessor by email, and I
16 want to state my own experience which is that I worked
17 in a bank for fourteen years. I handled Rumson accounts
18 as an assistant vice president, worked with the CEO,
19 and I worked as a data manager for a land trust for
20 land preservation, data and financial record keeping.
21 And so I was, you know, after receiving that incredible
22 increase I did look into it and I've also successfully
23 made an appeal on behalf of high network individuals
24 that have been successful. So I am familiar with this
25 process and I was very concerned with the egregious

1 knowledge that I did see in the data that I could
2 present from the public records.

3 So if you've read it, Judge, you know, and if
4 the Town has read it, great. That information has been
5 provided to many residents. So let the chips -- I have
6 no objection to building Affordable Housing, but I
7 found that also having been a realtor, the reasonable
8 opportunity that someone could buy eight homes that my
9 home is assessed at, at around six hundred and
10 something, and my neighbor's home, and six other of
11 those homes to make one acre minimum lot requirement
12 does not sound like a reasonable opportunity for the
13 R5 zone. So I object.

14 And I also object to the process, this so-
15 called open meeting process, whatever, that Mr. Rogers,
16 the person who moderated the public statements did not
17 state all of my objections during the hearing in
18 December.

19 So other than that, what I've already
20 provided speaks for itself. Thank you for giving me an
21 opportunity to speak.

22 THE COURT: All right. Thank you, ma'am.

23 I just wanted to note -- and I'll give
24 counsel the opportunity to ask you any questions they
25 may have -- the issue of property taxes, specifically

1 what your house is assessed at, isn't something that I
2 would be able to address as part of this proceeding.
3 Anyone who has a disagreement with the assessment on
4 their home would need to address it, I think the first
5 level is an appeal to the Tax Board, and then you can
6 deal with it at the Tax Court, but it's not something
7 that I would be able to address here. And similarly,
8 the overall tax structure in the town most of the
9 assessment process is governed the Statute but it's not
10 something that I would be able to address here.

11 And finally, in terms of the process that the
12 Town went through -- and you're saying it was the
13 December hearing -- that would be something that I
14 could address here. What I have in front of me here is
15 whether -- and the last thing that you talked about or
16 one of the things that you talked about is, is it --
17 does the Town's plan with reference to the overlay zone
18 provide an appropriate opportunity for the development
19 of Affordable Housing. That is what I address here. So
20 you've mentioned that you were concerned that the way
21 that you perceive the Town going about addressing the
22 Affordable Housing obligation by way of overlay zone,
23 that's something that would be part of this proceeding,
24 but a lot of the other stuff isn't something that I
25 would be able to address. So I don't want you to think

1 I'm ignoring your concerns with reference to the
2 property taxes or tax structure or a separate hearing,
3 but this is not something that would be part of this
4 proceeding.

5 So I'm going to ask, Mr. Nolan, do you have
6 any questions for Ms. Smith?

7 MR. NOLAN: No, Your Honor.

8 THE COURT: Okay. I just need you to speak
9 louder.

10 MR. NOLAN: No questions. No questions, Your
11 Honor.

12 THE COURT: Okay. Mr. Gergi, do you have any
13 questions for Ms. Smith?

14 MR. GERGI: Just one question, Your Honor.

15 Ms. Smith, are you saying that your tax
16 increases were somehow tied to Affordable Housing, or
17 are they unrelated?

18 MS. SMITH: No, I do see a direct correlation
19 with the Mayor and Council and the zoning overlays that
20 they are trying to force the lower income, smaller,
21 older homes force them to sell out quicker than they
22 would if they hadn't had double digit increases. So I
23 see a direct line there, yes, and that's reasonable
24 from listening to this hearing.

25 MR. GERGI: But you're not saying your taxes

1 went up because of the overlay zone; correct?

2 MS. SMITH: I think that the taxes went up in
3 order to facilitate the reasonable opportunity that R5
4 and R4 and its relevant homes would come up for sale
5 and would possibly be available for fulfilling the
6 unmet needs because people aren't turning them over as
7 fast as the town would like in order to fulfill the
8 unmet needs, yes, that's what I'm saying --

9 MR. GERGI: Do you have any --

10 MS. SMITH: Yeah, I have put evidence into
11 that objection showing that the assessor has singled
12 out and even admits in his writing that he has singled
13 out single -- the older, smaller homes because they're
14 the ones that are easiest to sell and it's a hot
15 market. Meanwhile my neighbor's home has been sitting
16 on the market for several months with a new assessment
17 and it hasn't sold. So, yeah, that's why all the
18 elaborate research is that I do, and there were three
19 farm assessments granted on West River Road in the
20 first year that it came in. So it's not about money
21 because there was a surplus in the budget. So this is a
22 fig leaf for them to try to push out the tear down --
23 and it's still called tear down because the older,
24 smaller homes in order to potentially make more
25 reasonable opportunity for avoiding the builder's

1 remedy suits. That's what I think and that's what I'm
2 stating, yes. That's through my experience personally.
3 MR. GERGI: Ms. Smith, have you reviewed the
4 Settlement Agreement between Rumson and Fair Share
5 Housing Center?
6 MS. SMITH: I sat through the explanations --
7 MR. GERGI: Ms. Smith, if you could just
8 answer the question, I'd appreciate it. I know you've
9 got other things to say, but just have you reviewed the
10 Settlement Agreement between Fair Share Housing Center
11 and the Borough of Rumson?
12 MS. SMITH: No. I'm speaking to my personal
13 experience and how it relates to whether it's fair or
14 not, this agreement.
15 MR. GERGI: But I asked, Ms. Smith -- and I
16 apologize -- but have you read the Settlement Agreement
17 between the Borough of Rumson and Fair Share Housing
18 Center?
19 MS. SMITH: I haven't read that particular
20 document, no.
21 MR. GERGI: So you couldn't say if there's
22 anything in those agreements that says anything about
23 taxes?
24 MS. SMITH: About what?
25 MR. GERGI: About taxes or about property tax

1 increases, or anything like that.
2 MS. SMITH: I'm sure there is not because I'm
3 sure this is not -- well, I just find it ironic, and I
4 am a resident of --
5 MR. GERGI: Your Honor, I hate to do it, but
6 if you could direct the witness to answer the
7 questions. I apologize. I'd like to keep it on point if
8 at all possible.
9 THE COURT: Ms. Smith, you've not read the
10 document, specifically the Settlement Agreement; is
11 that correct?
12 MS. SMITH: Yes, and that's what I did, yes.
13 MR. GERGI: So you haven't read them, so you
14 don't know if any reference in there, anything about
15 property taxes; correct?
16 MS. SMITH: I don't know.
17 MR. GERGI: Okay. And so you've heard that as
18 part of its obligation the Borough adopted overlay
19 zoning over several, the MER2, the R5, the R4, you
20 know, the mixed use overlay zoning; is that your
21 understanding?
22 MS. SMITH: Yes. And I'm not allowed to
23 testify -- I'm in R5 -- so I'm talking about my
24 experience in R5 with the taxes that I believe are
25 directly correlated to the agreement that was made.

1 MR. GERGI: But you haven't even read the
2 agreement. But I guess my question is today we're
3 examining the Ordinances that have been adopted. The
4 Ordinances themselves don't have anything to do with
5 your property taxes; right?

6 MS. SMITH: No, I don't agree because I don't
7 think it's a reasonable opportunity that eight of these
8 one-eighth of an acre R5 properties will become
9 available to satisfy the unmet need which is directly
10 correlated. So I did listen to the presentation by Ms.
11 Kendra and I also sat through the public hearings, you
12 know, the December meeting where I was supposedly going
13 to be able to put some input, and I did put some input
14 and then I was pretty much shut down by Mr. Rogers. The
15 process should be a part of the discussion in my
16 opinion as a resident who is affected directly.

17 MR. GERGI: That's fair.

18 Your Honor, I have no further questions.

19 And, thank you, Ms. Smith.

20 THE COURT: Okay. Mr. Gianetti, do you have
21 any questions for Ms. Smith?

22 MR. GIANETTI: No questions, Your Honor.

23 THE COURT: And, Mr. Firkser, technically your
24 client is not a party to the litigation but you're
25 here.

1 MR. FIRKSER: No questions, Your Honor.

2 THE COURT: So I will -- when I turn to you,
3 it's sort of you're in that in between zone. But one of
4 the things I do is I think I allow for a lot of
5 participation in the hearings that are Mount Laurel
6 matters. So you started rolling out things that you had
7 not submitted in advance report, documents, charts, and
8 you have a problem. But, you know, I'll certainly
9 return to you and ask you if you have anything.

10 MR. FIRKSER: Thank you.

11 THE COURT: Okay. Ms. Smith, thank you very
12 much for the information that you provided. If there's
13 something that you have attached to the submissions
14 that you provided that you want in evidence. Like I
15 said, I think everyone has gotten it and everyone has
16 reviewed it. It really is sort of a formality in terms
17 of a hearing like this. But if there's something that
18 you have attached to the submission that you provided
19 that you want to move into evidence, you can ask me and
20 I'll take a look at whatever it is in terms of moving
21 it into evidence. I have looked at everything, though.
22 Is there something that you wanted moved into evidence
23 that was attached to your letter?

24 MS. SMITH: At this point I'm not going to.
25 Thank you, Your Honor, I appreciate it.

1 THE COURT: Okay. Thank you, Ms. Smith.
2 Okay. In terms of -- I have 27 participants
3 which includes the attorneys, the planner, everyone who
4 is representing someone or testifying for someone. I
5 have a list of other individuals who are referred to by
6 their iPhone or their initials. What I'm going to do is
7 I'm going to go down the list and it's really at this
8 point -- I don't think it's huge -- I'm going to call
9 whatever, either your name, or so and so's iPhone, or
10 if you called in on a number, it may be I'll say the
11 last four digits of your phone number and ask you if
12 you want to be heard. If you do, you need to unmute
13 yourself or I'll ask Ali, my Law Clerk -- Ali, do me a
14 favor. When I call the person's name, unmute them. And
15 I would ask you -- Ali tells me she doesn't have any
16 ability to unmute. Okay. So we have to ask you to
17 unmute. We're operating a little bit differently than
18 it did last July when we had the Fairness Hearing. So
19 basically I will call your name or your identifying
20 information one by one, and I'm just going to ask you
21 to tell me -- please unmute yourself and tell me if you
22 want to be heard. If the answer is no, that's okay. If
23 I don't hear anything from you, I'm going to presume
24 that you don't want to be heard. If you do want to be
25 heard, whether you submitted something in advance or

1 not, I'd be glad to hear from you. And if I get to the
2 end of the list and I haven't -- if I've missed you in
3 some way, please feel free to jump in and tell me that
4 I have missed you. I'm going through my participant's
5 list which does things alphabetically. So I'm going to
6 go down the list excluding obviously people like Mr.
7 Nolan who is an attorney in this matter. But I'm going
8 down the list to pick out the people who I think are
9 not participants in this and ask if they want to be
10 heard. The list is compiled by Zoom alphabetically.
11 So Martin Barger, (phonetic) would you like
12 to be heard?
13 MR. BARGER: No, thank you, Your Honor.
14 THE COURT: Thank you.
15 David Marks.
16 MR. MARKS: No, thank you, Your Honor.
17 THE COURT: Okay. My list is changing as we
18 speak. Okay. H. Graves, would you like to be heard?
19 (No response heard)
20 THE COURT: I will take that as a no.
21 J. Kemp, (phonetic) would you like to be
22 heard?
23 MR. KEMP: No, thank you, Your Honor.
24 THE COURT: Okay. Thank you.
25 John Conklin, (phonetic) would you like to be

1 heard?
2 (No response heard)
3 THE COURT: I'll take that as a no.
4 K. McKay, (phonetic) would you like to be
5 heard?
6 (No response heard)
7 THE COURT: Lauren Atwell, (phonetic) would
8 you like to be heard?
9 (No response heard)
10 THE COURT: Nancy's iPhone, would you like to
11 be heard?
12 (No response heard)
13 THE COURT: P. Quigley, would you like to be
14 heard?
15 MR. QUIGLEY: No, thank you, Your Honor.
16 THE COURT: Tyler Osborn, (phonetic) would you
17 like to be heard?
18 MR. OSBORN: No, thank you.
19 THE COURT: The number that ends in 38 --
20 phone number that ends in 381, starts with 732, would
21 you like to be heard?
22 (No response heard)
23 THE COURT: Okay. Gail Melkison, (phonetic)
24 would you like to be heard?
25 (No response heard)

1 THE COURT: Okay. I don't see listed on the
2 side but I'm looking at the screen in front of me.
3 There's someone called Tom. I'm not sure who that is.
4 Would you like to be heard?
5 (No response heard)
6 THE COURT: Okay. And there's someone -- I'm
7 not sure if I might have called this already -- Laura
8 Atwell. I'm not sure if I called that name already.
9 (No response heard)
10 THE COURT: Okay. So I think that -- now, if
11 there's anyone out there who I didn't see your name on
12 the side or you wanted to be heard with reference to
13 this matter, if you can unmute yourself and say, "Hey,
14 I'm so and so. I'd like to be heard."
15 (No response heard)
16 THE COURT: Okay. I hear no one. So at this
17 point in time Mr. Firkser I think wants to present an
18 argument.
19 Ray, put Mr. Sendell on.
20 Mr. Gianetti, I know you had wanted to go
21 sort of after Mr. Firkser. Do you want to hear his
22 argument first or do you want to present your witnesses
23 first?
24 MR. GIANETTI: Well, I think I can respond to
25 that. I don't think I need to respond to his arguments.

1 I can respond to it if I need to. If he was going to be
2 presenting a witness, I preferred to go after him. But
3 if he's not going to be presenting a witness and
4 there's no more comments, I can present my witnesses.

5 THE COURT: Okay. As far as I see, Rumson has
6 presented its witnesses. Fair Share has presented
7 witnesses -- didn't have any witnesses. Mr. Firkser has
8 been given the opportunity. He doesn't have any
9 witnesses. He's not presenting a witness.

10 So at this point in time the only party that
11 would be presenting witnesses would be you. We have
12 also heard from members of the public in terms of any
13 comments they may have. If someone wants to jump in and
14 make a comment after Mr. Gianetti, you can let me know,
15 but keep in mind that Mr. Gianetti's materials that
16 he's presented have been filed, have been made
17 available to the public. So I kind of think that
18 everyone would have been able to respond to him before.
19 But if Mr. Gianetti's witnesses say something that is
20 surprising or something that a member of the public
21 wants to respond to, they can do so. They just need to
22 let me know.

23 So, Mr. Gianetti, why don't you go forward?

24 MR. GIANETTI: Great. Thank you, Your Honor.
25 I just wanted to address some -- I've had some

1 conversations with the attorney for the Borough and we
2 might be able to short circuit some of what we wanted
3 to present testimony on. As I noted in my letter to
4 Your Honor, Yellow Brook has provided and will present
5 testimony, I submit, on the concept plan, the revised
6 concept plan for the Rumson Road site. That reduced the
7 total number units from 60 market rate units to 14
8 market rate units. There's another slight adjustment to
9 the concept.

10 Now, another -- so in connection with that
11 Yellow Brook is also submitting live testimony that
12 pertains to the site plan applications for both Bingham
13 Avenue and Rumson Road with the Borough of Rumson
14 Planning Board. (indiscernible) why 394 was
15 (indiscernible).

16 And earlier in my letter to the Court, one of
17 the issues -- it's not critical to this. I didn't use
18 strong wording in anything -- regulations and there is
19 a provision in the regulation as I said, we submitted
20 an application to the Town prior -- submitted
21 applications in all forms prior to March 2nd, 2021
22 which would be grandfathered.

23 So I think what we were looking for is a
24 realistic opportunity for the site that accompanies an
25 Order, whether it's a Consent Order or in the Order of

1 additional compliance that includes any of the
2 conditions that the Town amends the RR zones to address
3 any ambiguity they perceive between our 15-unit plan
4 and our 14-unit plan. But to avoid any ambiguity, to
5 amend the RR zone to address any ambiguity they see.

6 In addition to presenting our witnesses and
7 our exhibits, that any Order contain the provision
8 noting that the accessory storm water management
9 regulations we had submitted an application in all
10 forms for the site of both Rumson Road and Bingham
11 Avenue. So if we could do that by Consent Order and Mr.
12 Nolan can identify what the Town is agreeable to, that
13 may short circuit some of what I may plan to present.

14 THE COURT: Mr. Nolan, does the RR zone need
15 to be amended, does the documentation on the RR zone
16 need to be amended to provide for the 14-unit plan as
17 opposed to the 15-unit plan?

18 MR. NOLAN: Yes. In speaking to Kendra Lelie,
19 we went over this. We do feel it needs to be amended.
20 So we are willing to do that and we'd just request that
21 that -- I mean, I think the easiest way to do it is
22 just make it a condition in the JOR with the other
23 conditions that we'll amend the zone within ninety days
24 along with the other conditions.

25 THE COURT: Now, Mr. Gianetti, is something

1 that would be within ninety days or is that something
2 that needs to be done by this cutoff date that you have
3 referenced in the storm water plan?

4 MR. GIANETTI: I think it could be done within
5 -- I'm not sure -- sorry about the sixty days period of
6 time. It's ninety days. Honestly, the sooner, the
7 better. You know, at the end I think the Ordinance
8 amendments of March, 2020 just needs to remove any
9 ambiguity in the words. From my standpoint we submitted
10 site plan applications both Bingham Avenue and Rumson
11 Road, that both, you know, begin the application for an
12 engineered plan, and all the forms, and checklists by
13 the Town. So we believe -- I have it in the Order, you
14 know, referenced to the exhibit and acknowledging that
15 we submitted those documents. That will protect us and
16 grandfather us under regulations.

17 THE COURT: So this is not something that
18 needs to be done by that cutoff date. It can be within
19 -- if a provisional Judgment of Compliance were
20 granted, it would be able to be done before we
21 returned.

22 MR. GIANETTI: That is my opinion, yes.

23 THE COURT: Okay. With reference to the second
24 item asking for an Order containing certain language,
25 and the language you're looking for is that -- I saw in

1 your papers you were asking for (indiscernible). That's
 2 sort of like two things. One was -- and the one I don't
 3 think I can do, you know, I don't know that I can say
 4 that this property is grandfathered because I think
 5 that's a DEP determination. But the issue is have the
 6 applications for both properties been submitted to the
 7 Borough in full. I would ask, Mr. Nolan, are you
 8 satisfied on behalf of Rumson that the applications for
 9 both properties have been submitted to Rumson in their
 10 entirety or is there something outstanding?

11 MR. NOLAN: Well, they submitted their
 12 application with all their documents but there hasn't
 13 been a completeness review done yet. But that, I don't
 14 think would -- it's a separate issue. We will
 15 acknowledge, I don't think there's any problem putting
 16 in the Order that the application was submitted with
 17 all documents.

18 MR. GIANETTI: And I think that's fine, Your
 19 Honor. (indiscernible) at this point (indiscernible)
 20 regulations. Just acknowledging that we submitted the
 21 application and all forms and our exhibit has, you
 22 know, the list of the documents that were submitted
 23 along with the Town's checklist and checking off
 24 everything that was submitted.

25 THE COURT: Okay. And like I said, the other

1 aspect of it really is not something that I think I
 2 would be permitted to rule on.

3 So, Mr. Gianetti, do you have any witnesses
 4 you'd like to call?

5 MR. GIANETTI: Yes. At this time I'd like to
 6 call Robert Mumford.

7 THE COURT: Okay. Mr. Mumford, you can unmute
 8 yourself and I'll place you under oath.

9 R O G E R M U M F O R D, YELLOW BROOK'S WITNESS,
 10 SWORN

11 THE COURT: And can you please state your name
 12 and spelling your last name for the record.

13 THE WITNESS: My name is Roger Mumford,
 14 R-O-G-E-R, M-U-M-F-O-R-D.

15 THE COURT: Thank you, sir.

16 Mr. Gianetti, you may continue.

17 MR. GIANETTI: Sure. Thank you.

18 DIRECT EXAMINATION BY MR. GIANETTI:

19 Q Mr. Mumford, if you can, would you identify
 20 your relationship to Yellow Brook Property, LLC?

21 A Yes. I am the managing member and sole member, 100
 22 percent owner of Yellow Brook Company, LLC.

23 Q Can you briefly describe for the Court your
 24 background in the field of residential real estate
 25 development?

1 A I've designed a land plan, marketed, build out,
2 sold, and maintain over three and a half thousand homes
3 in communities in the State of New Jersey and a number
4 of large new income producing properties.

5 Q And you've been involved in --

6 THE COURT: I apologize, Mr. Gianetti. And I
7 don't have a problem with Mr. Nolan being turned
8 around. It looked to me like his screen was frozen and
9 so I think Mr. Nolan, since he represents Rumson, it
10 would be a good thing if he could hear you. I apologize
11 for interrupting.

12 MR. GIANETTI: No problem, Your Honor. I
13 appreciate that.

14 Q So, Mr. Mumford, you've been involved with
15 what we'll call the Rumson properties regarding Yellow
16 Brook which is the Rumson Road site, and Bingham Avenue
17 site, and the Carton Street site for a few years now?

18 A That's correct.

19 Q Now, with respect to -- I'm going to show you
20 what's been marked as exhibit P -- I'm sorry -- YB-1.
21 I'll share my screen. Do you recognize this concept
22 plan?

23 A Yes, I do.

24 Q And this is the 15-unit concept plan that was
25 attached to the Settlement Agreement with the Borough?

1 A Yes, it was.

2 Q And since that time have we made adjustments
3 to the concept plan?

4 A Yes, we have. In the fall we received a formal
5 letter of interpretation -- that's known as an LOI --
6 from the Department of Environmental Protection. You
7 can see in the plan that's shown on the screen that to
8 the lower part of the screen there is a large irregular
9 area that is regarded as wetlands and to the top of the
10 screen by Osprey there's a small area, a little bit
11 triangular in shape that was also considered to be
12 freshwater wetlands. It was anticipated at the time of
13 submission and with the Fairness Hearing that the
14 smaller property, the wetlands area of Osprey would be
15 determined to be isolated, in which case it wouldn't be
16 terribly difficult to obtain a general permit -- this
17 is roughly a third of an acre -- to build the wetlands.
18 I should add that these wetlands are considered
19 intermediate resource wetlands. They're not accessible
20 resource wetlands. With intermediate resource wetlands
21 the buffers of 50 feet, and that's shown.

22 Q I'll show you exhibit YB-6. This is the
23 October, 2020 wetlands LOI that you referred to?

24 A Yes, it is.

25 Q And on page two of that wetlands LOI

1 identifies the wetlands as intermediate with a wetlands
2 buffer?

3 A That is correct.

4 Q Moving back to YB-1, could you identify this
5 portion up here as part of the wetlands that was
6 thought to be isolated that would be (indiscernible);
7 is that correct?

8 A Yes, that is correct.

9 Q And it's your testimony that based upon that
10 LOI it was determined that they were not isolated
11 (indiscernible) respect to whether (indiscernible)

12 A Well, really a couple things. First of all, we --
13 as someone who does a lot of planning with regards to
14 how (indiscernible) is number one. The letter of
15 interpretation was clear that by eliminating one --
16 these buildings are designed as single-family homes.
17 But by eliminating the first (indiscernible) that is
18 located as you drive south on Osprey Lane and just
19 simply eliminating that building, it would obviate a
20 need to fill in wetlands or seek such a permit.
21 Secondly --

22 Q Mr. Mumford, just so it's clear for the
23 record, when you say on the south side of Osprey Lane,
24 I guess you're referring to the triplex on the far left
25 side, the furthest left that my cursor is over right

1 now?

2 A Yes, that's exactly correct. So the thought again
3 by eliminating that building the first thing we
4 accomplish is that we're not filling any wetlands on
5 this entire site, and that was a source of considerable
6 consternation for neighbors and others. So it seems --

7 Q By neighbors are you referring to the Fairness
8 Hearing --

9 A Yes, I am. That's exactly right. At the Fairness
10 Hearing it was made clear that there was concern about
11 wetlands, and there are considerable wetlands in that
12 neighborhood that the homes were built prior to modern
13 freshwater wetlands rulings, regulations, and so forth.
14 So the thought was again to remove the triplex that you
15 just highlighted with the cursor which would leave two
16 triplexes left fronting on Osprey Lane and then to take
17 the triplex that is located to the bottom of the
18 screen, which you can highlight with the cursor, and to
19 replace that with two duplex homes that are effectively
20 the triplex eliminating the middle unit. So what this
21 is was it's accomplished not filling any wetlands. It
22 did result in a reduction in two homes in terms of
23 density. So this is the 14-unit plan instead of 16. The
24 primary infrastructure with the exception of the road
25 that's next to that top triplex that you highlighted on

1 the left remains largely intact. It's the same frame-
2 work of infrastructure. So --
3 Q I'm going to --
4 A Go ahead.
5 Q -- show you what's been marked as exhibit
6 YB-5. (indiscernible)
7 A I'm sorry, your question, please?
8 Q If you can describe what this plan shows?
9 A This plan is the residual plan that was created by
10 eliminating the triplex that in the previous screen you
11 highlighted. And, furthermore, the triplex that was
12 located to the lower part of the screen, you can now
13 see is separated into two duplex homes. So --
14 Q You mentioned duplex homes. You're referring
15 to homes that have two units attached to it?
16 A That is correct.
17 Q What I'm showing you is the two middle units
18 in between the triplex (indiscernible) in the rear. Are
19 those two units attached?
20 A Yes, they are.
21 Q Was this plan provided to the Borough in
22 sometime in October of 2020?
23 A Yes, it was.
24 Q And since that time have you proceeded with
25 preparing a detailed engineering site plan for both

1 this site and the Bingham Avenue site?
2 A We have, fully engineered.
3 Q And have you submitted site plan applications
4 for both the Bingham Avenue site and the Rumson Road
5 sites?
6 A Yes, we have.
7 Q I'm going to show you what's marked as exhibit
8 YB-3. Does this letter look familiar?
9 A It does.
10 Q What is this letter?
11 A This letter is a cover letter accompanying all the
12 documents required for submitted for preliminary and
13 final site plan application. I personally hand
14 delivered the different boxes relying on materials with
15 multiple copies that were required on the 4th along
16 with a checklist of items that highlight that our
17 submission is at least complete in terms of documents.
18 Q So this letter with one, two, three, four,
19 five, six, seven, eight, nine, ten, eleven, twelve,
20 thirteen, fourteen, fifteen items, sixteen, seventeen
21 items, that was submitted to the Borough as part of
22 your site plan application?
23 A That's correct. Along with accompanying checks for
24 the application, as well as the escrow deposit, as well
25 as the Excel spreadsheet that comes after these pages.

1 Q So on the next page, is this is the
2 application form?

3 A Yes, it is.

4 Q For the site plan on Rumson Road?

5 A It is.

6 Q And this is project proposal on the next page,
7 on page, well, I guess it's (indiscernible) the site
8 proposals that were required to be submitted?

9 A That's correct.

10 Q And then starting on page seven there's -- can
11 you identify what this is?

12 A Starting on page seven are a number of pages of
13 documents required to be submitted for the minor and
14 major applications so that it would be really clear as
15 to the fact that everything that's requested has, in
16 fact, been presented as part of our submissions so that
17 it would be easier for Rumson and its officials to be
18 able to navigate this information. We see literally
19 everything that has been requested for the submission
20 has, in fact, been delivered.

21 Q On the far right of this checklist requirement
22 is that major site plan application and underneath it,
23 it says, "site plan, preliminary, final." Is that the
24 application you were submitting?

25 A Yes, it is.

1 Q And so the X's that are in the boxes represent
2 any items that has to be submitted as part of the site
3 plan application and required by the Borough; is that
4 correct?

5 A That is correct.

6 Q And then an X on the outside of the documents
7 are either or your professionals marking what has been
8 included with the application; is that correct?

9 A That is correct.

10 Q And so anywhere where there is an X as
11 required, there's an X identifying that these documents
12 have been submitted as part of the application process;
13 is that correct?

14 A That is correct.

15 Q Now I'm going to show you what's marked as --
16 I'm sorry -- this is for YB-3 -- this is the
17 application for the Rumson Road site plan; is that
18 correct?

19 A That is correct.

20 Q And how many units were proposed as part of
21 this engineered site plan?

22 A Fourteen.

23 Q And that was based on the 14-unit concept plan
24 I just showed as YB-5?

25 A That's correct.

1 Q And we now move to YB-4. Can you identify what
2 this is?

3 A This is the cover letter to Rumson, the Planning
4 Board secretary, with regard to the submission for
5 preliminary and final major subdivision approval.

6 Q Site plan approval?

7 A Site plan approval.

8 Q (indiscernible) correct?

9 A Yes, that's correct.

10 Q (indiscernible) the testimony, can you confirm
11 identified for the Rumson Road, that all forms that are
12 listed in this document were hand delivered by you to
13 the Borough?

14 A Yes, I can confirm that. I may have misspoken
15 before this application for Bingham Avenue was 18
16 homes. It was 14 for Rumson Road. If I said anything
17 different, I apologize.

18 Q You're correct, I was asking you about Rumson
19 Road. And I guess while you mentioned that, with
20 respect to Bingham Avenue, has there been any change to
21 the concept plan related as part of the Settlement
22 Agreement with the Borough?

23 A No.

24 Q And drawing your attention to page four of
25 YB-4, what is this?

1 A This is the application cover sheet for the
2 subdivision for site plan approval.

3 Q (indiscernible)

4 A No, this site plan approval (indiscernible)

5 Q And then drawing your attention to page six of
6 YB-4, this is the same (indiscernible) as the Bingham
7 Avenue site?

8 A That is correct.

9 Q And then drawing your attention to page seven,
10 regulations; can you describe what that is?

11 A Again this is an Excel spreadsheet that highlights
12 that everything that is required in order to submit a
13 full application for site plan approval has been
14 addressed and is part of the package that I hand
15 delivered on the 4th of February and the checks on the
16 right side of the page, the X's highlighted by my
17 professionals that, in fact, the requested
18 documentation is included.

19 Q And now I'm going to scroll down to page
20 seven, page eight, page nine, page ten, page eleven,
21 page twelve. So everywhere where there's an X on the
22 checklist of documents that you submitted, you have
23 identified showing that that document was, in fact,
24 submitted as part of your application; is that correct?

25 A That's exactly correct.

1 Q And the corporate ownership (indiscernible)

2 A Yes, it was.

3 Q So again just to be clear, the Rumson Road
4 site plan that was submitted, your 14-unit plan that
5 addresses the change from the 15-unit plan to the 14-
6 unit plan based upon (indiscernible)

7 A Yes.

8 Q And you're aware of the NJ DEP storm water
9 regulations?

10 A I am.

11 Q And what is your understanding of those
12 regulations?

13 A Well, my --

14 MR. NOLAN: I would object. Mr. Mumford is not
15 an expert witness. So I don't know why we have to go
16 through his opinion on the regulations. Shouldn't that
17 be from the planner, from Mr. Bernard?

18 MR. GIANETTI: We're going to have Mr. Bernard
19 testify, too. Mr. Mumford -- we're not having him
20 testify as an expert on the regulations, but rather --
21 so I'll strike that.

22 I have nothing further to present with Mr.
23 Mumford.

24 THE COURT: Okay. It's 12:20. Do you want to
25 take a lunch break at this point or do you want to put

1 Mr. Bernard on to testify now?

2 MR. GIANETTI: Well, I guess if there's any
3 cross-examination of Mr. Mumford, we can do that and
4 then --

5 THE COURT: I apologize. I'm sorry. Why do we
6 see if there's any follow-up with Mr. Mumford. Okay.

7 Mr. Nolan, do you have any questions for Mr.
8 Mumford?

9 MR. NOLAN: I don't have any questions, Your
10 Honor.

11 THE COURT: Mr. Gergi?

12 MR. GERGI: No, Your Honor, thank you.

13 THE COURT: Okay. Mr. Firkser?

14 MR. FIRKSER: No, Your Honor.

15 THE COURT: Okay. Well, that didn't take long.
16 So I don't know how long -- and I'm not trying to cut
17 Mr. Bernard short in any way, but it's 12:21 now. I can
18 do the lunch break and we can pick up at 1:30 unless
19 Mr. Bernard is going to be on for three minutes and you
20 want to get him done before lunch.

21 MR. GIANETTI: I suspect Mr. Bernard will be
22 short. I don't know it will be three minutes, but, you
23 know, figuring to get his testimony in and cross-
24 examination, I'm fine picking that up at 1:30.

25 THE COURT: Okay. So why don't we do that.

1 We're going to take our lunch break. We'll pick up at
 2 1:30. I'm going to ask you all to do the same thing
 3 which is don't leave us, just mute your mike, turn off
 4 your video so you can do your own thing, and then at
 5 1:30 you'll just have to open them up. If everyone gets
 6 off, we have to let everyone back in and it takes a lot
 7 longer.

8 MR. GIANETTI: Your Honor, just a housekeeping
 9 matter. Just for internal issues, I may have to sign
 10 off and sign back in.

11 THE COURT: That's fine. You know, if you have
 12 some competition at home in terms of a kid needs to be
 13 on or whatever, that's fine. It's just time consuming
 14 if everyone leaves and everyone comes back in. So that
 15 would be fine. Okay. Thank you. I'll see you back here
 16 at 1:30.

17 (Luncheon recess from 12:22 p.m. to 1:46 p.m.)

18 AFTERNOON SESSION

19 A R T B E R N A R D, YELLOW BROOK'S WITNESS, SWORN

20 THE COURT: Can you please state your name and
 21 spell your last name for the record.

22 THE WITNESS: My name is Art Bernard, and I
 23 spell my last name B-E-R-N-A-R-D.

24 THE COURT: Thank you.

25 You can go ahead, sir.

1 VOIR DIRE EXAMINATION BY MR. GIANETTI:

2 Q Mr. Bernard, if you could provide your
 3 experience, credentials, licenses in the field of
 4 professional planning and Affordable Housing.

5 A Sure. I have a Master's in simulational planning
 6 from Rutgers University. I'm the managing member of my
 7 own firm. I'm a licensed professional planner with over
 8 45 years of experience in land use planning and
 9 Affordable Housing. Half of those years I served on the
 10 New Jersey Council on Affordable Housing and wrote the
 11 regulations that the Court is using, as I understand,
 12 to determine compliance with the housing obligation. I
 13 guess I've worked for some 27 different municipalities
 14 and between my work with municipalities in the private
 15 sector and the Courts, I guess I've been involved in 70
 16 of these Declaratory Judgment motions. I was an expert
 17 witness in the Middlesex County and Mercer County Fair
 18 Share trials.

19 Q And you testified at the Fairness Hearing on
 20 this Rumson Declaratory Judgment action?

21 A I did.

22 Q And you were accepted as an expert in the
 23 field of professional planning and Affordable Housing?

24 A Yes.

25 MR. GIANETTI: That's all I have for the

1 credentials of the witness. I'd ask he be accepted as
2 an expert in the field of professional planning and
3 Affordable Housing.

4 THE COURT: Mr. Nolan, do you have any voir
5 dire or any objections?

6 MR. NOLAN: I have one question on voir dire.
7 VOIR DIRE EXAMINATION BY MR. NOLAN:

8 Q Mr. Bernard, do you have any engineering
9 licenses or not?

10 A No.

11 MR. NOLAN: That was my only question.

12 THE COURT: Okay. Any objection to Mr. Bernard
13 being qualified as an expert in the area of
14 professional planning and Affordable Housing?

15 MR. NOLAN: No.

16 THE COURT: Mr. Gergi, do you have any voir
17 dire, any objection?

18 MR. GERGI: Thank you, Your Honor. No voir
19 dire, no objection.

20 THE COURT: Okay. Mr. Firkser?

21 MR. FIRKSER: No voir dire, no objection.

22 THE COURT: Okay. Thank you, sir.

23 The Court does find that Mr. Bernard is an
24 expert in the field of professional planning and a
25 really serious expert in the area of Affordable

1 Housing. Thank you, sir.

2 MR. GIANETTI: Thank you.

3 DIRECT EXAMINATION BY MR. GIANETTI:

4 Q And so, Mr. Bernard, are you familiar with the
5 Settlement Agreement between the Borough of Rumson and
6 Fair Share Housing Center?

7 A Yes.

8 Q And are you familiar with the Settlement
9 Agreement between the Borough of Rumson and Yellow
10 Brook Properties?

11 A Yes.

12 Q And are you familiar with the concept plan and
13 drawings that were attached to the Settlement Agreement
14 between Yellow Brook Properties and the Borough of
15 Rumson?

16 A Yes.

17 Q And focusing your attention on the Rumson Road
18 -- actually, strike that. Can you describe briefly the
19 Rumson Road site and the Bingham Avenue site and its
20 relation to the development of Affordable Housing on
21 Carton Avenue generally?

22 A Well, there's a lynchpin to the transfer of the
23 Carton Street site to the Borough, and as I said during
24 the Fairness Hearing, I guess the lynchpin to the
25 entire -- to both Settlements. I guess from what I

1 heard from Ms. Lelie's testimony this morning, Carton
2 Street has become even more important given that I
3 guess it's going to have another affordable unit on it.
4 The Carton Street site doesn't go to the Borough until
5 Bingham Avenue site and the Rumson Road site have their
6 approvals and then the appeals or settlements.

7 Q And so effectively for Carton Street to be a
8 realistic opportunity, the Rumson Road and Bingham
9 Avenue sites have to be realistic and approved?

10 A Yes.

11 Q Now, at the Fairness Hearing part of your
12 testimony related to approvability, suitability,
13 developability, and availability; do you recall that?

14 A Yes.

15 Q And what was your opinion with respect to the
16 -- and I'll show you on my screen what's been marked as
17 YB-1 -- do you see what's on the screen marked as
18 YB-1?

19 A I do.

20 Q And does that plan look familiar to you?

21 A Yes. That was the plan that was attached to the,
22 what is it, that's the plan that was the subject of the
23 Settlement Agreement for Rumson Avenue -- Rumson Road.

24 Q And what was your opinion as to the four
25 ables, the approvability, suitability, developability,

1 and availability of the site?

2 A Well, the site was suitable, all four of those
3 criteria.

4 Q Now I'm going to show you what's been marked
5 as YB-5. Does this plan look familiar to you? Can you
6 see what's been marked as YB-5 on your screen?

7 A Yes.

8 Q Can you describe what this is?

9 A Well, this is the amended plan that Mr. Mumford and
10 Ms. Lelie were talking about this morning. This is the
11 plan that the Borough has had for some time. This is
12 the plan that's formed the basis of the engineered site
13 plans that were submitted to the Borough over the last
14 week or two.

15 Q And do you have an opinion as to the
16 approvability, suitability, developability, and
17 availability of the property as it relates to this
18 concept plan?

19 A Well, the site is still suitable based on the
20 criteria, and the site plan probably is even more so
21 given that it's been refined based on the letter of
22 interpretation that DEP submitted, gave to Mr. Mumford
23 recently.

24 Q Now, with respect to the Zoning Board -- this
25 is for Rumson Road and Bingham Avenue. Do you recall if

1 those were attached to the Settlement Agreement or if
2 drafts of them were attached to the Settlement
3 Agreement between Yellow Brook and Rumson?

4 A I don't.

5 Q But do you recall the Ordinances themselves
6 for Rumson Road and Bingham Avenue?

7 A Yes.

8 Q And how would you described -- well, you've
9 been involved in a number of Affordable Housing cases;
10 is that correct?

11 A Yes.

12 Q And as part of that you worked on drafting
13 Ordinances to match up to concept plans that were part
14 of either settlements or agreements between developers
15 and towns?

16 A Yes.

17 Q And in some of those instances, are they, I
18 would say, maybe tailored to it or do they provide
19 wiggle and flexibility? What is your experience
20 generally?

21 A Well, they're certainly tailored to what's been
22 agreed upon and they generally provide some wiggle
23 room, recognizing that the sites are going to have to
24 go and get outside agency approval and haven't been
25 engineered yet. So there's usually some wiggle room.

1 Q With respect to this Ordinance and this
2 concept plan, would you classify the Ordinance as being
3 pretty tailored to the concept plan or providing a lot
4 of wiggle room?

5 A Well, I think it was tailored. I mean, there was --
6 I haven't gone through and gone through each dimension,
7 but I mean, there was so much work that went into doing
8 the concept plan from the elevations and the views that
9 went into all of this, my sense is that it was pretty
10 tailored.

11 Q And you're aware and I think you testified
12 earlier that Mr. Mumford, the developments that you
13 submitted site plan applications for both Bingham
14 Avenue site and the Rumson Road site?

15 A Yes.

16 Q And those were marked as YB-3 and YB-4.

17 A I don't remember the markings.

18 Q Well, you saw them during the testimony of Mr.
19 Mumford?

20 A Yes.

21 Q And have you had discussions with the project
22 engineer concerning the design, the site, and the site
23 plan?

24 A Yes.

25 Q Are you aware of the new NJ DEP storm water

1 management regulations?

2 A Yes.

3 Q And have you had discussions with the project
4 engineer about those regulations?

5 A Yes.

6 Q Without getting into detail as to, you know,
7 what's in those regulations, any discussions with the
8 engineer, strict compliance with those regulations, the
9 new ones require a redesign of the project?

10 A It would, according to the engineer, both Rumson
11 Road and Bingham Avenue had redesigned.

12 Q Now, have you reviewed those regulations?

13 A No.

14 Q Have you reviewed any of the grandfathering
15 provisions of those regulations?

16 A I have, yes.

17 Q And I know I cited it in one of my letters to
18 the Court, but is that one section concerning
19 grandfathering Section N.J.A.C. 7:8-1.6?

20 A Yes. I have it right in front of me.

21 Q And setting aside anything involving DEP
22 permits with respect to municipal approval, but site
23 plan, does it have a grandfathering provision?

24 A The regulation that you cited 7:8-1.6(b) (1)
25 provides for grandfathering if the applicant has

1 submitted an application that includes both the
2 application form and all accompanying documents --

3 MR. NOLAN: Your Honor, I'd have to object. I
4 have to object to this because Mr. Bernard, as stated,
5 is not an engineer, him saying what the engineer said
6 and regulations. I don't know why Mr. Bernard is going
7 to testify about what the engineer said to him and what
8 the regulations are.

9 MR. GIANETTI: Well, Your Honor, I think the
10 planners necessarily form their opinions in consulting
11 with other professionals on the team and what they rely
12 upon as to, you know, a redesign of the project. He's
13 not testifying as to, you know, engineering-wise what
14 are the storm water management requirements. He's just
15 testifying as to a grandfathering provision. He's just
16 reading what the regulation says so we all understand
17 what that regulation says.

18 THE COURT: If you wanted to simply indicate
19 what the regulation said, I guess he can read it into
20 the record. However, just so you know, (indiscernible)
21 is not a party to this. So I'm not reaching any
22 conclusion about whether something has been
23 grandfathered or not because there are two February 4th
24 letters that we've looked at that say a whole bunch of
25 stuff and I think what you're going to get from Rumson

1 is an agreement in whatever Order comes out from today
2 that documents have been submitted by Yellow Brook. Mr.
3 Nolan probably can agree to whether it was -- that they
4 had some review of this, completeness review, but I
5 think you're going to get certain language from Mr.
6 Nolan in terms of what's in it. I'm not touching the
7 issue of whether it's grandfathered or not because,
8 number one, I think the DEP would have to be involved
9 in that proceeding. If DEP tells you they don't think
10 it was grandfathered, then you're going to have a
11 discussion with DEP and potentially litigation or
12 something down the line, but they have to be part of
13 the process which they're not right now. So if you want
14 Mr. Bernard to read the regulation, but I'm not going
15 to the is it grandfathered or not.

16 MR. GIANETTI: I understand that, Your Honor,
17 and even as to the test earlier we understood that
18 there wouldn't be a specific finding of grandfathering
19 one way or the other in any Order nor are we going to
20 request that as part of this.

21 THE COURT: So if Mr. Bernard is going to
22 provide an opinion about this grandfathering or not,
23 that wouldn't be something that would need to be put
24 here. And certainly if he's relying on someone else's
25 information, it probably wouldn't be helpful. His

1 expert opinion on that isn't part of this proceeding.
2 But if he wanted to read the regulation -- if it's not
3 too long -- I guess he can.

4 MR. GIANETTI: Well, I think he did. I don't
5 think it would need repeating. That's all we were going
6 with, Your Honor, is what the regulation says.

7 Q Mr. Bernard, would you just read that
8 1.6(b)(1) part again?

9 A Well, it talks about grandfathering. "When the
10 applicant has submitted an application that includes
11 both the application form and all accompanying
12 documents requested by Ordinance for one of the
13 approvals for Municipal Land Use Law prior to March
14 2nd, 2001 and" --

15 Q 2021?

16 A -- "2021" -- thank you -- "and the first type of
17 approval is listed as preliminary or final site plan
18 approval.

19 Q Now, thank you. Moving on, you heard, I guess,
20 a discussion between myself and Mr. Nolan -- I can't
21 recall if Ms. Lelie was part of that -- earlier in this
22 hearing about amending the Zoning Ordinance for Rumson
23 Road to comply with the concept plan to make sure the
24 concept plan is conforming. If you could just elaborate
25 more on the need for that and then kind of comment to

1 that.

2 A Well, I think it's fair to say that there's some
3 differences of opinion in terms of the interpretation
4 of some fairly minor -- some fairly -- I think there's
5 a difference of opinion in terms of what the Ordinance
6 means. I don't think there's a difference of opinion as
7 to the Ordinance should permit the site that was
8 submitted to the Borough. So I think it's technical
9 rather than substantive, and I think the discussions
10 that we've had thus far I think it's fair to say that
11 they could be accomplished very quickly. And it seems
12 to me that since this application is so important to
13 the overall limitation of the plan in that the
14 approvals and things that happen to Rumson Road are
15 prerequisites of getting control with (indiscernible)
16 that we could just be moving it along as fast as we
17 can. And when I heard that we would be done with it in
18 ninety days, I thought, I really think it could be done
19 in a month if we all got together and agreed what the
20 Ordinance should say, and just proposed it and adopted
21 it. So that was my main thought to what I listened to
22 this morning is that, you know, I think we're all on
23 the same page that this application for Rumson Road is
24 a positive thing for the Borough and that we wanted to
25 go -- there's no reason to wait ninety days. We can get

1 it done much quicker.

2 Q And in your opinion would any adoption of the
3 rezoning that would remove any ambiguity to the
4 Ordinance further make the Rumson Road site realistic?

5 A It would help expedite the application. It would
6 clarify things before the Planning Board and would
7 create a more realistic opportunity to get that housing
8 approved and built.

9 MR. GIANETTI: That's all I have on direct
10 examination, Your Honor.

11 THE COURT: Mr. Nolan, do you have any cross-
12 examination for Mr. Bernard?

13 MR. NOLAN: I don't have any questions, Your
14 Honor.

15 THE COURT: Mr. Gergi?

16 MR. GERGI: I have nothing, Your Honor. Thank
17 you.

18 THE COURT: Mr. Firkser?

19 MR. FIRKSER: Nothing, Your Honor. Thank you.

20 (The witness was excused.)

21 THE COURT: Mr. Gianetti, do you have any
22 further witnesses?

23 MR. GIANETTI: No further witnesses, Your
24 Honor.

25 THE COURT: Okay. So at this point in time

1 I've heard the witnesses if any from Rumson, Fair Share
2 Housing Center, Yellow Brook, and interested party
3 represented by Mr. Firkser. In terms of my expectation
4 is generally the last person I'm going to hear from is
5 the Special Master. Basically he gets to comment on
6 anything that came in. So in terms of I know, Mr.
7 Firkser, you mentioned you wanted to make a statement
8 or an argument. What I would suggest is we move forward
9 with Mr. Firkser can make his argument and I would go
10 backwards. Basically Rumson gets the last word. So, Mr.
11 Nolan, I would end with you. You'd be last person to
12 speak before I hear from Mr. Bernard. So my intention
13 would be hear to Mr. Firkser, I'll hear from Mr.
14 Gianetti, I'll hear from Mr. Gergi, I'll hear from Mr.
15 Nolan, and then I will hear from Mr. Bernard. And along
16 the way if anything has come out from Yellow Brook,
17 something where I've already heard from the members of
18 the public, if someone feels that there is something
19 that they want to add or respond to since they
20 previously spoke, they can let me know that that's what
21 they'd like to do.

22 So, Mr. Firkser.

23 MR. FIRKSER: Thank you, Your Honor. My name
24 is Steven Firkser. I represent Stewart Sendell, a
25 resident of the Borough of Rumson who has -- I have

1 fifty years advocating for Affordable Housing in New
2 Jersey to make sure Affordable Housing is built and to
3 see that the housing gets qualified residents.

4 We support the Settlement Agreement and its
5 approval at this Fairness Hearing. We have no problem
6 in granting the relief for the Rumson Road project
7 presented by Mr. Gianetti. We do have issues with
8 respect to an Order, a Judgment of Compliance being
9 issued and have concerns with when the Judgment is
10 entered, the implementation of the relief set forth in
11 the Fair Share Plan.

12 MR. NOLAN: Your Honor, I'm going to object
13 immediately because their objection didn't say anything
14 about them objecting to a Judgment of Compliance and
15 Repose. It only talked about implementing
16 (indiscernible) There's not anything in there that says
17 there's an issue with an Order saying the Judgment,
18 even a conditional Judgment of Compliance and Repose.

19 MR. FIRKSER: Well, as a result of the
20 (indiscernible) last week it became apparent that it,
21 you know, is flux in terms of what the Court is
22 granting. My concern is that with respect to the
23 compliance plan and the implementation of it is what
24 has been done thus far with respect to the existing
25 units and what's proposed for the proposed units.

1 THE COURT: Mr. Firkser -- Mr. Nolan, I'll
2 allow basically Mr. Firkser to continue his argument as
3 to what he thinks should happen here and will take it
4 under advisement.

5 MR. FIRKSER: Thank you. With respect to the
6 existing units, our concern is that the residents that
7 are in the units are qualified residents. The Special
8 Master has recognized that information is missing with
9 respect to deed restrictions on the units and
10 confirmation that the units are occupied by income
11 eligible residents. We need to insure that there has
12 been compliance with the Borough with an independent
13 review to review the application for the residents in
14 those units to see that it's properly conducted with
15 lottery, residents were properly qualified. One of the
16 residents in one of the units is a Rumson resident, so
17 they should make sure that the lottery and the
18 randomness was complied with.

19 THE COURT: Aren't all the people in those
20 units Rumson residents?

21 MR. FIRKSER: Well, currently. Before they
22 were qualified to be in the unit they were not all
23 Rumson residents. If they're living there now, they're
24 now Rumson residents. For example, 9B of the
25 application, the applicant from a different town was

1 from Matawan. Right now four out of the five units,
2 there are eight residents, and not one single school
3 aged child in there, and that should be reviewed to
4 make sure what Rumson has done and the Court should see
5 the results of that review, and that can impact what
6 relief wishes to grant. It may not be appropriate to
7 have a deed restriction start from today or it may not
8 be appropriate to have the deed restriction be
9 retroactive if for the past five years they're not
10 qualified residents taking the units. It may be that
11 the deed restriction should start now so that there's a
12 full thirty years of enforceability. With respect to
13 the future proposed units, the Special Master
14 (indiscernible) a great deal of information that has to
15 be provided.

16 With respect to Bergen County United Way, we
17 know it's not a local organization. We don't have an
18 issue with them. We think they're the proper
19 organization. We know their organization and we know
20 the principles, but we want to make sure they have the
21 resources to provide the housing for families. It seems
22 to be over-extended and --

23 THE COURT: Mr. Firkser --

24 MR. FIRKSER: Yes?

25 THE COURT: -- I didn't hear any evidence

1 about them being over extended.

2 MR. FIRKSER: We presented our letter.

3 THE COURT: Well, Mr. Firkser, this is what
4 you did. You submitted a lawyer letter that has Mr.
5 Sendell's certification.

6 MR. FIRKSER: Right.

7 THE COURT: So basically I am not making a
8 finding and I'm not going to allow to argue that
9 they're over extended. That's sounds like something
10 that would come out of the Kardashians or something.
11 I heard -- someone told me that's not happening.

12 MR. FIRKSER: We have concerns and the Special
13 Master has concerns to make sure that the proper
14 agreements, pro forma, construction schedules are
15 provided to insure that the housing is built and that
16 qualified families are in the housing. You know, there
17 are many loose ends that are provided in the Special
18 Master's report and --

19 THE COURT: The loose ends would have to be;
20 correct, sir?

21 MR. FIRKSER: Would have to be, yes. And we
22 believe the Court should await the provision of this
23 information so the Court can determine if there's any
24 issue with respect to, any open issues, so that the
25 Court can grant appropriate relief in a Compliance

1 Hearing and once that's done that we'd definitely like
2 to make sure that the plan is properly implemented so
3 that Affordable Housing is built and the proper
4 residents provided housing. Thank you.

5 THE COURT: Thank you, sir.

6 Okay. Mr. Gianetti, anything you want to add?

7 MR. GIANETTI: Yes, just briefly, Your Honor.
8 Yellow Brook supports the Town's Settlement Agreement,
9 or amended Settlement Agreement with Fair Share Housing
10 Center and approves it as part of the Fairness Hearing.
11 And as to the Judgment of Compliance a partial or
12 conditional Judgment of Compliance, whatever is
13 actively being sought by the Town and the relief to
14 specifically the Yellow Brook project and anything else
15 that Your Honor deems appropriate.

16 We understand from the Special Master's
17 report and in the Fair Share Housing Center letter that
18 there's a number of outstanding items that they have
19 raised and I can't really comment on those. I think
20 Fair Share can. But really from our standpoint the
21 issues relate to the Yellow Brook site which is Rumson
22 Road, Bingham Avenue, and Carton Street. As Mr. Bernard
23 noted, those three projects are kind of the lynchpin to
24 the Town's overall plan to address its realistic
25 development potential, especially with Carton Street

1 now being amended to include even more units. From our
2 standpoint, Yellow Brook is ready to proceed and file
3 the site plan application for both Rumson Road and
4 Bingham Avenue. As testified, the Settlement Agreement
5 provides that the Carton Street property does not get
6 dedicated until Yellow Brook has site plan approval for
7 both those sites with conditions satisfied and no
8 appeal having been filed of its approval. You know, any
9 delay in those being able to move forward, whether it's
10 not having the compliance as to our specific sites,
11 really negatively impact the ability to develop
12 Affordable Housing. One thing, doing this took a long
13 time in New Jersey, you know, the delay in waiting,
14 development get easier; it only gets harder. And so the
15 sooner the Rumson Road and Bingham Avenue can move
16 forward, the sooner the Carton Street site can get
17 dedicated, the sooner that construction of Affordable
18 Housing can be developed.

19 We talked earlier with counsel as to what we
20 would like to see in an Order, and my understanding is
21 the Town has agreed to it with respect to a period of
22 time for the Town to adopt amended zoning for the
23 Rumson Road site to address any ambiguities they have
24 between the existing Ordinance and provide site plan
25 which is YB-5. As Mr. Bernard noted, I don't know if we

1 need to wait ninety days for that to happen. I think
2 Mr. Bernard suggested thirty days. I'm going to be a
3 little kinder, it might take 45 days, but it's
4 something that I think can easily be done. You know,
5 it's not a graphic change to the plan.

6 And then also, too, the agreement as to the
7 finding that we submitted, you know, these
8 applications, YB-3 and 4, we submitted application
9 forms and all accompanying documents required by their
10 checklist on February 4th. There hasn't been a finding
11 in that Order as to that.

12 And then leaving for another point, what does
13 that mean? At least having some conformation and
14 comfort level that, you know, there's at least a
15 finding that this has been submitted and we have the
16 exhibits referenced in the Order.

17 So with that, we do support the amended
18 Settlement Agreement and any Judgment applying
19 conditional or otherwise, we would support pushing --
20 and I understand there's a lot of -- but pushing any
21 finding on compliance would further delay the Yellow
22 Brook projects which further delay Carton Street and
23 this can only negatively impact those projects going
24 forward. Thank you.

25 THE COURT: Mr. Gergi.

1 MR. GERGI: Thank you, Judge. I think I've got
 2 open with this because I don't want it to get lost. The
 3 Borough has done a lot of work to get here today. They
 4 adopted the overlay zoning, adopted a Housing Element,
 5 they adopted Affordable Housing Ordinance, amended the
 6 set aside Ordinance. A lot of work has been put in to
 7 get us to this point. And as Your Honor knows, Fair
 8 Share Housing Center has pointed out some items that
 9 still need to be completed, items that we think are
 10 significant before we would support and final and
 11 conditional Judgment of Compliance and Repose. On the
 12 compliance components on the fairness, the amended
 13 agreements that Fair Share and the Borough entered into
 14 in early December, we support that. We wouldn't have
 15 entered into it otherwise. In terms of the obligations,
 16 the Fair Share obligations, they remain unchanged. In
 17 the prior agreement Your Honor approved really the
 18 significant changes were as to site and different
 19 mechanisms that are going into the Borough's plan and
 20 one of the results of the amended agreement, is it
 21 actually going to be more family affordable housing in
 22 Rumson as a result of the agreement. And in Mount
 23 Laurel II the Supreme Court has repeatedly said one of
 24 the aims of the Mount Laurel doctrine is to give, you
 25 know, families, and particularly young families, an

1 opportunity to live that will give their children
 2 opportunities to thrive. And so we think the agreement
 3 is fair and we support Your Honor entering an Order
 4 approving the agreement.

5 However, we have concerns about
 6 (indiscernible) The Borough is claiming credits for
 7 five existing affordable units. One of the affordable
 8 units, the unit at I believe Black Point Road, we
 9 believe they've provided sufficient documentation to
 10 evidence that it's creditworthy. They've provided a
 11 deed restriction, they provided evidence that the
 12 household living in the unit which was selected by
 13 Habitat for Humanity is a, I believe, low income
 14 household and that they're of the appropriate income
 15 level and household size. There are four affordable
 16 units on (indiscernible)

17 THE COURT: You're breaking up.

18 MR. GERGI: I apologize, Your Honor. Can you
 19 hear me now, Your Honor?

20 THE COURT: Yes, we can.

21 MR. GERGI: There are four affordable units
 22 that we continue, you know, have open questions about.
 23 (indiscernible) on the units, on four of the five of
 24 the affordable units. And, you know, because there were
 25 not deed restrictions in place previously, we believe

1 it's important that the Borough provide documentation
2 evidencing that the tenants who were selected or the
3 homeowners who are at the property income level and
4 household size.

5 THE COURT: You muted yourself.

6 MR. GERGI: I didn't touch anything. So I
7 think someone else muted me. The wonders of technology.
8 But I'll keep my hands up here.

9 We have concerns to make sure there's
10 adequate documentation that the existing affordable
11 units that didn't have deed restrictions, that the
12 tenants and the purchasers of the affordable homes,
13 that they were the proper income level and household
14 size and that they were affirmatively marketed, and
15 that when turnover was done this was done according to
16 COAH and Uniform Housing Affordability Control
17 regulations.

18 And so, you know, one of the recommendations
19 in the Special Master's report which we believe is for
20 the Borough to submit a certification that would
21 effectively chronologically -- provide acknowledging
22 that when flipping units that they eventually -- since
23 they first came on line and then evidence documentary
24 evidence that they were affirmatively marketed as well
25 as the applicants were proper income level and

1 household size and everything was done according to
2 regulations. I believe the Borough has agreed to that,
3 which we appreciate.

4 The other (indiscernible) concerning the
5 Borough has pursued a Fair Share Plan that's composed
6 on the Affordable Housing sites almost exclusively of
7 non-inclusionary project. The project that the Borough
8 is offering and going to be pursuing a 15-unit
9 (indiscernible) affordable development at 15 Carton
10 Street an affordable for sale unit at 6 Maplewood, six
11 affordable units at 15 Maplewood and two affordable
12 units at 51 South Ward, under COAH's regs and under the
13 agreement that the Borough and Fair Share entered into
14 the Borough needs to find developer's agreements, they
15 need to provide construction schedule, they need to
16 provide a pro forma which is really essential to
17 knowing that this is realistic, that the money is
18 there, that the time table is there, and that the
19 elements that are going to make these units come on
20 line within the time lines in the agreement are going
21 to be met. We wouldn't support a Final Judgment unless
22 they're provided, and I believe that the Borough has
23 said that in the next ninety days they're going to work
24 -- and I believe they're going to have weekly meetings
25 with Bergen County United Way in order to get that

1 documentation in place.

2 And so really from our perspective, those are
3 the two big issues; verifying eligibility for credits
4 for existing affordable units and then insuring that
5 there's a realistic opportunity and documentation is
6 provided for the affordable units.

7 Before the hearing took place, as I think Mr.
8 Nolan noted at the top, Fair Share Housing Center sent
9 a letter highlighting that these are we do with the
10 open items that needed resolved. We thought, you know,
11 today's hearing should proceed as an amended Fairness
12 Hearing with testimony but that the Compliance Judgment
13 (indiscernible) significant but these open items, how
14 many units were replaced in relation to the overall
15 number of units being produced by the Borough in its
16 Fair Share Plan, that perhaps a conditional Judgment
17 shouldn't be entered and a compliance component should
18 be adjourned sixty days and then a Judgment entered. I
19 think sixty days was not sufficient (indiscernible)

20 We had conversations last week with the
21 Special Master and with the Borough, and I think Fair
22 Share today would be comfortable with a conditional
23 Judgment that spells out these conditions that are in
24 the Special Master's report and items discussed subject
25 to the understanding that there would have to be a

1 follow-up hearing in ninety days once the documentation
2 has been provided in order to, you know, confirm on the
3 record that everything has been done appropriately, and
4 if there are open issues still remaining, to evaluate
5 how we proceed from there. We think it's important from
6 a procedural standpoint but also from a substantive
7 standpoint procedurally, you know, we believe that Fair
8 Share, interested parties such as Mr. Sendell is
9 represented by Firkser, and others, they deserve an
10 opportunity to see the documentation and to verify for
11 themselves that they believe everything has been done
12 appropriately and the Borough is entitled to credits.
13 And if they have objections, they must raise, such as
14 Mr. Firkser discussed earlier, you know, that they have
15 an opportunity to present to it the Court. Fair Share
16 also with considerations that arise within the ninety
17 days, we would want an opportunity to be able to return
18 to the Court and present our comments just as we would
19 have the opportunity to provide in advance of today's
20 hearing.

21 And so if Your Honor decides that before she
22 wants to pursue with a conditional Judgment, Fair Share
23 would just ask that that conditional Judgment, it's
24 clear that (indiscernible) and that's a schedule so
25 that everyone could essentially return to the Court and

1 provide and objections essentially if there are open
2 items that remain at that point.

3 Other than that, Your Honor, like I said, the
4 Borough has done a lot of hard work to get here today.
5 We appreciate the effort on the municipal side both on
6 behalf of their professionals. There are issues we
7 believe remain, but hopefully in the next ninety days
8 we can get those sorted out and we can try to get this
9 matter to a conclusion.

10 THE COURT: Thank you, sir.

11 Mr. Nolan.

12 (After a pause)

13 THE COURT: You're muted.

14 MR. NOLAN: I'll just say that I agree with
15 Mr. Gergi. I mean, we've all worked together, as far as
16 the Borough and Fair Share and Yellow Brook, we've
17 tried to keep things moving along. I really think the
18 Borough has done a lot of hard work here, all the
19 professionals in the Borough, the governing body, the
20 administrator have all done a considerable amount of
21 work to really push this along and get everything done
22 that needs to be done. We adopted the Housing Element
23 and Fair Share Plan. We also adopted every implementing
24 Resolution, every amended Ordinance we were supposed to
25 do. We provided (indiscernible) to have the most

1 crediting documentation that we had. Everything was
2 supplied. We noticed the hearing, we noticed the
3 Planning Board hearing. We had everything on line and
4 the Borough has, you know, everything up on line so you
5 can actually see the history as everything has been
6 submitted. People can constantly review and look at all
7 the documents. The Borough has beyond transparent and
8 it also had sessions where they allowed the public to
9 participate, just informational type of events. Ms.
10 Lelie provided to the public so they could be kept
11 apprised of what was going on, and I think that helped
12 move the process along and that's why there are very
13 few objectors here today compared to what happened over
14 the summer. I think the entire town has now been
15 educated in Affordable Housing a lot more than they
16 were initially and I think that's made this process
17 move along to a point where we're in good shape now.
18 There are a couple of outstanding issues that still
19 have to be done. We just entered the Settlement
20 Agreement with Fair Share in mid December, so as far as
21 the one agreement with BC UW, there just wasn't quite
22 enough time to get it done, but we agree with Fair
23 Share and we think we did absolutely satisfy what's in
24 the Court Master's report. As long as we get those
25 conditions done, then we're entitled to a final JOR. So

1 we're not asking for a final JOR today, just a
2 conditional JOR with the conditions that are in the
3 Court Master's report and in addition to the two
4 conditions, the two Yellow Brook conditions, and then
5 we will, you know, make sure we get all that done and
6 we will come back. We're okay with a second hearing.
7 And then we'll come back and show we did all that.

8 I would also add as far as Yellow Brook goes,
9 the only thing I want to say about the one condition I
10 think we don't (indiscernible) 45 days, Your Honor. I
11 mean, I'm glad that Yellow Brook thinks we can do
12 everything that quickly, from my experience it takes --
13 first we have to draft the Ordinance and then the
14 Ordinance, we have to agree upon it, then it has to be
15 introduced by the Borough, then it has to go back to
16 the Planning Board for a consistency review, and then
17 it has to come back to the Borough again to get
18 adopted. So to try to crush all that in, in 45 days
19 with the current schedule of the Borough and everything
20 that's going on with Covid and everything, I really
21 think that if there's ninety days for everything -- and
22 everything should be ninety days. We will move as fast
23 as we can. We might actually adopt it earlier than
24 that, but to try to limit the time that we have to
25 adopt that Ordinance, if we run into a problem and we

1 don't want to blow a deadline because we just didn't
2 have enough time to get it done because of the way the
3 meetings were scheduled or whatever happens. So I think
4 there's no harm in giving a little extra time. I don't
5 think in the grand scheme of things it's really make a
6 huge difference as far as the transfer of the land and
7 all the Affordable Housing.

8 So I would ask that all the conditions be set
9 for ninety days and that we get a conditional Judgment
10 of Compliance and Repose.

11 THE COURT: Thank you, sir.

12 Okay. Mr. Bernard, you've been patiently
13 listening to everything that's going on here. You've
14 been working awfully hard on this.

15 Mr. Bernard is the Court's Special Master. He
16 provided a report to the Court yesterday. I got it
17 yesterday because there were some -- I got some letters
18 -- and all the letters the Court gets on this matter
19 are posted on eCourt -- I got letters from the Town, I
20 got letters from Fair Share Housing Center. It seemed
21 that there was a disagreement in terms of really how
22 close Rumson was to being able to move forward with
23 reference to a Compliance Hearing. So we set up a
24 conference (indiscernible) Mr. Gianetti, Mr. Gergi, Mr.
25 Firkser was invited and participated with Mr. Bernard,

1 and basically what I said was, "What's going on?" The
 2 letter I got from Fair Share told me all that stuff
 3 that hadn't been done yet. The following letter I got
 4 from Rumson told me it had been. I said, "Did you guys
 5 talk to Mr. Bernard and see if you can reach an
 6 agreement faster as to what is outstanding and I would
 7 take a look at the issue," today in terms of I wasn't
 8 going to in advance -- because I was satisfied there
 9 was no way they could do a Compliance Hearing or then
 10 they'll get an application or a request from the Town
 11 to adjourn the Compliance Hearing or the compliance
 12 part. I said, "Why don't we hear everything today," but
 13 what I did say was to talk to Mr. Bernard and see if
 14 you can reach an agreement in terms of what it is
 15 that's outstanding because this isn't the kind of
 16 situation where -- you know, in a personal injury case
 17 when there's a dispute of facts, did the person slip
 18 and fall on the sidewalk or did the person slip and
 19 fall on the grass area. There's no factual issues here,
 20 I don't think. It's not like the Town is saying, "Oh,
 21 we did that deed restriction," and Fair Share saying,
 22 "No, you didn't." So I said to come together and please
 23 reach an agreement in terms of what it is that's
 24 outstanding, and they, in fact, did that. So I think
 25 Mr. Bernard I think probably didn't have the most

1 restful weekend that he would otherwise had because I
 2 know he was working on this so he could get it to us
 3 yesterday, and I appreciate that.
 4 So what I'd like to do is I'm going to swear
 5 in Mr. Bernard. I'm familiar with his qualifications
 6 and everyone who is on the list is fully familiar with
 7 his qualifications. So what I'll ask him to do, if he
 8 can, after he's sworn in, put his qualifications on the
 9 record and then basically let us know what his thoughts
 10 are with reference to this matter which is at this
 11 point the amended Fairness Hearing and the request that
 12 a conditional Judgment of Compliance be entered.
 13 F R A N C I S B A N I S C H, SPECIAL MASTER, SWORN
 14 THE COURT: Can you please state your name and
 15 spell your last name for the record.
 16 THE WITNESS: Francis J. Banisch,
 17 B-A-N-I-S-C-H.
 18 VOIR DIRE EXAMINATION BY THE COURT:
 19 Q Go ahead with -- let us know what your
 20 qualifications are.
 21 A Sure.
 22 Q I'm not going to ask you questions. Basically
 23 can you just in terms of highlighting things, go
 24 through the things that you did.
 25 A Sure. I'm going to do that quickly, yes. I have a

1 Bachelor of Arts in architecture and urban planning
2 from Princeton University. I'm the President of Banisch
3 Associates and have been since 1976. We are principally
4 municipal planning consultants, although I have for the
5 last ten years or so have done a substantial amount of
6 Mount Laurel Master work.

7 I'm a member of the American Institute of
8 Certified Planners. I'm a licensed professional planner
9 in New Jersey, my number is 1686.

10 I can tell you more if you'd like.

11 THE COURT: Does anyone -- would anyone like
12 to voir dire Mr. Banisch or does anyone have any
13 objection to his qualifications as an expert in the
14 field of professional planning and also in Affordable
15 Housing?

16 MR. NOLAN: No objection.

17 MR. GERGI: No objection.

18 MR. FIRKSER: No objection.

19 THE COURT: I find that you're an expert in
20 those fields, sir, and the Court's Special Master in
21 this matter. Thank you.

22 THE WITNESS: Thank you, Your Honor.

23 DIRECT EXAMINATION BY THE COURT:

24 Q Go ahead.

25 A If I might, I'd like, number one, to apologize for

1 the lateness of this report and --

2 Q No apologies necessary, sir. We put your back
3 up against the wall.

4 A I do have to apologize a little bit because
5 (indiscernible) said a couple things that should have
6 been in the report --

7 Q (Chuckle)

8 A -- but I'm going to make up for that by simplifying
9 my review of the report for the Court, not in summary
10 fashion but in a reduced form of detail.

11 So the first thing I'd like to say, like any good
12 book, if you turn to the back you can find out how it
13 ends.

14 Q Hmm-hmm.

15 A So what you see in looking at attachment A element
16 which came from my earlier February report and which
17 has corresponding items that have been provided to meet
18 those obligations, that's the list of all compliance
19 stuff that needed to be done.

20 If you look at attachment B, it recites in
21 sufficient detail to establish by both the Borough and
22 Fair Share what will still be required for those
23 remaining items. And I think that when we think about
24 the commentary that's been received about whether the
25 existing units are creditworthy, I never want to tell a

1 town their units are creditworthy that aren't because
2 the protective class gets gypped that way.

3 So I think that what has been suggested here
4 effectively provides a mechanism for me, for the Court,
5 and I believe Fair Share, and the observers to
6 recognize that these units either are creditworthy and
7 have been or if there's something other than that we
8 find out, that we will deal with that as part of the
9 problem. But the representation has been made that they
10 will deliver up the things that are needed and attach
11 their fees.

12 So having said that, let me just go back briefly
13 through the report, and I say briefly for two reasons.
14 We had a wonderful detailed presentation from Kendra
15 Lelie as to what the plans and how they work. I don't
16 need to tell you all about all of that again. I have
17 identified just a second ago how those items that have
18 provided are found in the body of my report as well as
19 the attachments. So all I really want to do is go back
20 through the fair evaluations of the fairness. My
21 conclusions about compliance and the recommendations as
22 to where we go from here, I think I can do that
23 relatively straightforward, so I thought maybe
24 everybody would appreciate that at this time. But
25 always having to go back into further detail

1 (indiscernible) As you recall, we're looking at the
2 Settlement Agreement that was amended and modified. I
3 highlighted the fact that a swap of the North Street
4 hundred percent affordable development project was done
5 on other multi-site sites was an amendment that was a
6 change in this amendment. (indiscernible) as Ms. Lelie
7 did that there was also that one special
8 (indiscernible) amendment to the Carton Street project,
9 and that has been changed in the agreement. Other
10 provisions including all of the obligation numbers
11 remain the same from the original Settlement.

12 Because this is basically a combined RDP for all
13 prior rounds that 51-unit credit that the Borough gets
14 comes from 38 actual unit and 13 bonus units. That's
15 been revised a few times. The 15 Carton Street units
16 are a pretty substantial portion of the 38 total units.
17 So that all the comments we've heard about the
18 administrative nature of moving that project forward I
19 think are important. But I'm not going to run through
20 all the details of the various methods that the Town is
21 meeting the obligation. You've heard them in real
22 detail and I think they've been sufficiently outlined
23 for the Court. If anyone has any questions about my
24 interpretation of that, I'm happy to address those, but
25 I think right now for the sake of moving this forward

1 I'm going to review the comments that we've received.

2 Mr. Firkser's comments on behalf of Mr. Sendell
3 were described by him I think sufficiently. There was a
4 response from Rumson where they were responding in part
5 that Fair Share has the same concerns about proving the
6 credibility of each unit as an affordable unit and that
7 that was being addressed. And I think you'll see that
8 my report does address that in detail so that Fair
9 Share will ultimately be satisfied.

10 There was a suggestion that to the extent that
11 Rumson's performance might be suspect and that the
12 Court might need to weigh in a heavier way with regard
13 to a couple of things, monitoring the conformance,
14 having a special Hearing Officer at the hearings to
15 make things go the way they should go, and there were
16 some questions about whether Bergen County United Way
17 would be the appropriate agency. (indiscernible) But I
18 do believe that the conditions that are raised here are
19 aggressive and attached in my report, and I thank both
20 Mr. Firkser and Mr. Sendell for sending in those
21 comments and participating in this process.

22 In reviewing Mrs. Smith's letter, as the Judge
23 noted earlier, there are issues that are the primary
24 focus of that discussion that don't relate to the
25 fairness of this agreement to the beneficiary of a

1 Mount Laurel plan. There are several comments in her
2 correspondence that talk about how this is not fair and
3 some of her comments today about what taxation has done
4 to certain people. Certainly that's the feeling of
5 unfair because I don't know any of those facts because
6 they're not presented and I'm not an arbiter of that at
7 all, but I sympathize with the sense that there may be
8 less of a focus on fairness to others than the
9 beneficiary class as she would like. The problem is
10 that the subject of this is, is that agreement fair to
11 low and moderate income households. And my conclusion
12 is she has not commented, respectfully, that it is not.
13 Although her arguments with regard to the overlay zone
14 and the need to collect small lots to create a larger
15 parcel is a real issue. The nature of overlay zones are
16 so that they don't compel anyone to do anything. To the
17 extent that if a user of an existing property wants to
18 use that way, they can indefinitely. So to that extent
19 it's not -- I wouldn't perceive as though the Borough
20 is trying to force people out of their houses. There
21 may be a (indiscernible) come along with having
22 Affordable Housing built that induce some people to
23 leave their homes. The market for (indiscernible) With
24 regard to challenging the fairness of the agreement, I
25 appreciate her concern about fairness to all, but it's

1 essentially to assume the agreement is fair to the
 2 protected class. The reason why I say that is because
 3 when I go through the East West Venture evaluation that
 4 the Court is very well familiar with in the last five
 5 years and I look at all five of those factors that need
 6 to be evaluated, I believe that there is a substantive
 7 benefit to the protected class that makes this fair and
 8 reasonable to the people on whose behalf it has been
 9 provided.

10 So those five issues include a consideration of
 11 the number of affordable units being constructed.
 12 There's no dispute that the RDP that was calculated and
 13 accepted in the agreement, 51-unit RDP, and that the
 14 Borough is fully satisfying that RDP.

15 (indiscernible) by which the number of affordable
 16 units provided is (indiscernible) also follows the
 17 methodology recommended by Fair Share and
 18 (indiscernible) by the Borough.

19 The other contributions by the developer. In this
 20 instance this is not a review of the Yellow Brook
 21 Property Settlement Agreement which Fair Share stated
 22 -- Fair Share is not the developer here, but they do
 23 include under item three on page eight (indiscernible)
 24 a series of micro requirements that assure that the
 25 units are not only delivered in the overall number

1 required but they meet the needs of low and moderate
 2 income people in more direct ways in terms of the
 3 income levels, bedroom distribution, and the like.

4 The first item in the East West Venture, other
 5 components of the agreement that contribute to satisfy
 6 a Constitutional obligation. And here we are here
 7 because the Court --

8 THE COURT: I think you're muted, Mr. Bernard.
 9 A -- the overall Fair Share Plan --

10 THE COURT: Okay. Hang on one second, Mr.
 11 Bernard. If you could just back up two sentences.

12 A Absolutely. Did I say number four already?

13 THE COURT: I can hear you now.

14 A Number four are the other components that
 15 contribute to satisfying the Constitutional obligation.
 16 This core process (indiscernible) the document as
 17 received from Fair Share (indiscernible) organization
 18 willing to enter this agreement and the conditions that
 19 are contained in the supplement will be contained in
 20 any Judgment by the Court will assure that the Town is
 21 able to meet their Constitutional obligation.

22 There's also a requirement that within 120 days of
 23 the Court's approval the Borough -- already adopted the
 24 Housing Element and Fair Share Plan.

25 And then finally number five, there are other

1 factors that may be relevant to the fairness of the
2 settlement, and I'm suggesting that this will insure
3 the interest of low and moderate income households will
4 be advanced in part because of the continuing
5 monitoring program throughout its duration includes one
6 of the concerns that we heard expressed. The agreement
7 also requires any (indiscernible) by the Court must be
8 extended within four years (indiscernible) the Final
9 Judgment. We (indiscernible) that these funds
10 (indiscernible) where they're supposed to go. It also
11 provides a three-year status report regarding the
12 (indiscernible) of the very low income requirement and
13 annual updates of regional income limits and
14 establishing sale price.

15 So with regard to my conclusion about compliance I
16 guess my problem in the beginning was that I have a
17 conclusion about compliance that never says that site
18 suitability was demonstrated for all the Borough sites
19 and that they meet that requirement, and that those
20 micro requirements that come from the agreement and
21 from regulations are all satisfied. So part of the
22 reason that I was saying I recommend that
23 (indiscernible) compliance subject to a fee is because
24 they did all those things which I did not mention in
25 that paragraph.

1 My final conclusions are pretty much obvious. I
2 don't think I need to read through all of them except
3 to say that any time an Affordable Housing advocacy
4 (indiscernible) is in a position to enter an agreement
5 like this -- and the Courts have established in the
6 past, acknowledged in the past it would be against
7 their interest to enter an agreement that's not in the
8 interest of the people (indiscernible). So on its face
9 an agreement like this should always appear to be fair.
10 When the (indiscernible) of that agreement goes to the
11 lengths that are being gone through now to assure that
12 all fees (indiscernible), I think everybody can feel
13 comfortable that the intent of Mount Laurel Doctrine is
14 being borne out in the process.

15 I can stop there an answer any questions.

16 THE COURT: Mr. Nolan, do you have any
17 questions of Mr. Bernard?

18 MR. NOLAN: No, Your Honor.

19 THE COURT: Mr. Gergi, do you have any
20 questions for Mr. Bernard?

21 MR. GERGI: No, Your Honor, thank you.

22 THE COURT: Mr. Gianetti, do you have any
23 questions for Mr. Bernard?

24 MR. GIANETTI: Yes, just briefly.

25 CROSS-EXAMINATION BY MR. GIANETTI:

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.

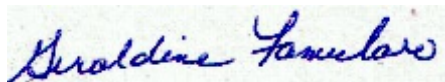
25 ***** (The matter concluded at 3:14 p.m.) *****

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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