



March 4, 2020

Hon. Linda Grasso Jones, J.S.C.
Superior Court of New Jersey
Monmouth County Courthouse
71 Monmouth Park
Freehold, New Jersey 07728

Re: Objection to Settlement Agreements
Rumson Borough, Monmouth County, New Jersey

Dear Judge Jones:

I am a professional planner licensed in the State of New Jersey and a member of the American Institute of Certified Planners (AICP) and I have been retained by Rumson Open Space and Affordable Housing, Inc. ("ROSAH"), to provide planning advice and assistance in this matter. I submit this letter in support of ROSAH's objection to the Court's approval of the proposed Settlement Agreements between the Borough of Rumson and Fair Share Housing Center and the Borough of Rumson and Yellow Brook Property Co., LLC with regard to satisfaction of the Borough's *Mount Laurel* obligations. I agreed to work with ROSAH only after reviewing the proposed Settlement Agreements and other available planning documents and after visiting the area to gain an understanding of the compliance proposals. After reviewing the proposed Settlements and the relevant planning factors, I have concluded that the Fair Share Settlements are inconsistent with the intent of the *Mount Laurel* doctrine, the Borough's Master Plan documents, and sound planning principles. Accordingly, the Settlements should be rejected as unfair to low- and moderate-income households.

To establish a foundation for my opinion, I have reviewed the Borough's Settlement Agreement with Fair Share Housing Center ("FSHC") dated January 16, 2020, the Borough's Settlement Agreement with Yellow Brook Property Co., LLC dated January 16, 2020, the Borough's 1988 Master Plan and subsequent Reexaminations and Amendments prepared in 1997, 2002, 2012, and 2015, the Borough's 2008 Housing Element and Fair Share Plan, the Rumson Historic Preservation Commission's website, and the relevant materials posted on the Borough's website including the "Affordable Housing Overview" and the "Borough of Rumson Affordable Housing and Settlement Agreements" PowerPoint presentation dated January 14, 2020. Both the Yellow Brook Settlement Agreement and Borough's PowerPoint presentation include the concept plans for 91 Rumson Road and 132 Bingham Road. Additionally, I have visited the sites listed in the proposed Settlement Agreements.

In this report I provide the basis for my opinion about the proposals contained in the Settlement Agreements. First, I have looked at and analyzed the properties specifically involved in the Yellow Brook Settlement and considered whether the proposal is consistent with the intent of the *Mount Laurel* doctrine and sound planning principles. Second, I have looked at the Borough's vacant land assessment and the overall compliance plan and have considered whether the proposals present realistic opportunities for the development of the needed affordable housing and whether there may be other viable compliance opportunities.

1. There is almost always more than one reasonable way to solve land use planning problems. The challenge is to find solutions that are on balance most beneficial to both the public and to the particular private entities or properties involved; or at a minimum to find solutions that do the least harm to the least possible number of properties or individuals. In land use planning everything is interconnected. It would be short sighted to assume that a municipality can solve for its fair share housing obligation, creating new zones and housing program proposals, without consideration for the many interconnected variables and issues that impact upon the implementation and operation of the housing plan. The preparation of a fair share plan, completely divorced from a public planning process and devoid of public understanding and support, will create more problems than it will solve.
2. There is no rational or planning basis for the inclusion of the properties located at 91 Rumson Road (Block 124 Lot 31) and 132 Bingham Road (Block 94 Lot 5) in the Fair Share compliance plan. The zoning proposed for these two properties appears to be reactionary and inconsistent with the Borough's history of thoughtful, participatory, comprehensive planning. Both properties contain single family dwellings and are located within the R-1 single family residential zoning district; which permits single family homes on lots a minimum of 1.5 acres.
3. Except for the fact that Yellow Brook has proposed to develop these two properties, there is nothing to distinguish the lots from hundreds of other similarly situated properties in the Borough. The R-1 zoning district has an established land development pattern and character that has evolved over the course of Rumson's history, but it has not drastically changed over the last several decades. Just as it would not be consistent with the Borough's land use planning goals and objectives to rezone all of the land within the R-1 zone for attached housing, the rezoning of these two lots is inconsistent with the character of the area and the Borough's Master Plan.
4. Typically, when the use or zoning of land is changed, it is done as part of a larger shift in consumer preferences, neighborhood characteristics, environmental factors, and/or economic trends. Sometimes land is considered for rezoning to correct for an abundance of land in a zoning category or a dearth of land in a zoning category. When corrections are made, they are typically explained in a Master Plan reexamination or amendment and they are most often near a zone boundary. In this case the proposed zoning change

appears to be the result only of interference by an opportunistic developer and a housing advocacy group. This is not the solution that would be proposed if the fair share planning process were viewed in the overall planning context, and is not consistent with sound planning principles. The *Mount Laurel* doctrine has always put primacy on the municipality retaining its power to zone, and protecting its ability to make zoning determinations based on sound planning principles. From an overall planning perspective, it is agreed that the provision of a variety of housing types at a variety of price points to meet the needs of New Jersey's citizens is an important and worthwhile objective. However, housing objectives must be viewed concurrent with other important goals and objectives. Planning for affordable housing should not and need not take place in isolation from other important policy priorities such as preservation of established neighborhood character, consideration of environmental constraints, the protection of historic landmarks, maintenance of a participatory planning process, and the creation of lasting value in both the private and public realm.

5. The Borough's Master Plans include planning goals, objectives and policies. The 1988 Master Plan included the following objectives and policy statements that are relevant to this planning analysis:
 - a. Objective 2- Encourage the most appropriate use of land consistent with neighborhood character and its suitability for development.
 - b. Objective 9- Provide sufficient space in appropriate locations for residential, recreational, commercial and open space use.
 - c. Objective 12- Conserve historic sites and districts.
 - d. Objective 13- Prevent urban sprawl and degradation of the environment through improper land use.
 - e. Objective 14- Expand housing opportunities in the Borough compatible with neighborhood character and the needs of present and future residents.
 - f. Objective 16 – Protect the natural resources and qualities of the Borough including freshwater and saltwater wetlands, floodplains, stream corridors, open space, steep slopes, and areas with scenic, cultural, and recreational values.
 - g. Policy 3- The Borough will fully satisfy its obligation to allow for the production of low- and moderate-income housing. The Master plan will be the basis for providing realistic opportunities for low- and moderate-income housing consistent with sound land use planning principles and environmental constraints. Given the community's developed character and a limited supply of vacant land, the Borough will utilize and rehabilitate the existing housing stock to create low- and moderate-income housing opportunities.
 - h. Policy 4- The conservation of historic sites and districts is a public purpose essential to promoting a desirable visual environment, good civic design, and establishing neighborhood and community well-being. Sites of historical, archaeological, cultural, scenic or architectural significance should be identified, maintained and conserved.

Each of these objectives and policy statements were reviewed and reinforced each time the Master Plan was reexamined or amended. The objectives and policy statements provide guidance for decision making. The proposal to permit a substantial increase in residential development capacity on two isolated residential lots in exchange for a payment that may be used for the construction of affordable housing units elsewhere in the Borough is inconsistent with the Master Plan objectives and policies listed above. Further, the Master Plan repeatedly recommends that the Borough should allow for companion apartments on single family residential lots in order to accommodate and integrate affordable housing units. The most recent Master Plan reexamination in 2015 reinforces the Borough's long standing directives; which include: encouraging land use that is consistent with neighborhood character and suitability for development, establishing appropriate population densities and limiting the intensity of development to both preserve the natural environment and to ensure neighborhood, community and regional well-being, and expand housing opportunities within the Borough compatible with neighborhood character and the needs of present and future residents.

6. The *Mount Laurel* doctrine requires that each municipality in New Jersey plan for its fair share of the regional need for affordable housing. As set forth in the Borough's Settlement Agreement with Fair Share Housing Center, Rumson's total Fair Share obligation is as follows:

Rehabilitation (present need) obligation	29
Prior Round obligation	268
Third Round Gap and Prospective Need obligation	335

7. The COAH regulations at N.J.A.C. 5:93-4.1 recognize that there may be instances where a municipality can exhaust an entire resource (land, water or sewer) and still not be able to provide a realistic opportunity for addressing the affordable housing need. The regulations outline standards and procedures for municipalities to demonstrate that the municipal response to its housing obligation is limited by the lack of land, water or sewer. Where a municipality demonstrates that it does not have the capacity to address the housing obligation calculated by COAH, the municipality shall identify sites that are realistic for inclusionary development in order to calculate the realistic development potential (RDP) of the community. Where the RDP is less than the prior round and third round obligation, the municipality must still provide a response toward the "unmet need".
 - a. The procedures for requesting a vacant land adjustment and for establishing the RDP are set forth in N.J.A.C. 5:93-4.2. Municipalities that request an adjustment due to available land capacity are required to submit an existing land use map to display the land uses of each parcel within the municipality and an inventory of vacant parcels by lot and block that includes the acreage and owner of each lot.

Municipalities may seek to eliminate properties from the inventory of developable properties based on the criteria at N.J.A.C.5:93-4.2(e).

- b. With the concept of RDP, COAH recognized that some sites are more realistic and/or appropriate than others for the location of inclusionary development. For example, some sites may lack infrastructure or be surrounded by incompatible land uses. However, these sites and others have the potential to develop or redevelop over time and, as such development takes place, COAH determined that such sites shall contribute toward the housing obligation.
- c. Rumson prepared a Vacant Land Analysis (VLA) to calculate its Realistic Development Potential (RDP) in July 2018 and included the two lots at 91 Rumson Road (Block 124 Lot 31) and 132 Bingham Road (Block 94 Lot 5) in the Vacant Land Inventory. It is unclear how these properties were included in the RDP calculation. These lots do not appear to be chosen as a result of changing neighborhood conditions, housing preferences or as part of a comprehensive look at the existing zoning, but only because a developer had put them under contract and offered them for development with luxury duplex and triplex residential units. There are potentially hundreds of other properties that could have been included in the vacant land inventory if the only criteria were that the lot be large enough to be developed with attached housing if the existing home were demolished. This approach, including well maintained and developed lots in established neighborhoods for a significant increase in zoning density, undermines sound planning principles, the value of comprehensive planning efforts, and the public planning process.
- d. Further, N.J.A.C. 5:93-4.2(e)(3)(i) provides that historic and architecturally important sites shall be excluded from the vacant land inventory if such sites are listed on the State Register of Historic Places. The existing house located at 91 Rumson Road, known as “Lauriston”, is listed on the State and National Register. Despite the developed nature of the property and despite the historic listing, the Borough included the property in the vacant land inventory, estimated that the site could be developed with 34 residential units, and attributed an RDP of 6 affordable units to the site. The Settlement Agreements do not mention the historic nature of the property. While the COAH regulation says that a municipality “may” exclude historic sites, the regulation is clear that properties on the State Register of Historic Places “shall” be excluded. Further, it seems that, even if the COAH regulation were simply permissive, such a dialogue about whether to include or exclude the site should at a minimum include consideration and documentation of the costs and benefits of inclusion versus exclusion of the site.
- e. The Borough’s Vacant Land Analysis and Realistic Development Potential report dated July 2018 indicates that “densities were assigned to be cognizant of the Borough’s obligation as well as keeping the context/character of their surroundings and sound planning principles in mind”. It is inconceivable that the Borough found that assigning 6 unit per acre densities on the property at 132 Bingham Avenue is consistent with the context and character of their surroundings. The density

proposed for the property at 91 Rumson Road is similarly disconnected from the surrounding community character, and is contrary to sound planning principles.

8. The COAH regulations at N.J.A.C 5:93-5.6 provide that when zoning for inclusionary housing and receiving a vacant land adjustment, municipalities are required to zone at a minimum gross density of 6 dwelling units per acre and to include a 20% set aside. Though Yellow Brook apparently proposed higher densities when negotiations with the Borough began, the proposed development does not satisfy the criteria that would enable it to be considered as an “inclusionary” development. The Settlement Agreement ultimately proposes to enable the properties at 91 Rumson Road and 132 Bingham Avenue to be developed at 2.75 and 3.5 dwelling units per acre and also proposes to allow a payment in lieu of providing affordable units as part of the development. The Yellow Brook Agreement increases the Borough’s RDP by 14 units, but only provides a payment in lieu of construction for 9 units. This is contrary to the purposes of inclusionary zoning, and the agreement to increase the residential density will not even directly result in the production of affordable housing.
9. 91 Rumson Road and 132 Bingham Avenue are two isolated lots within the R-1 zoning district that are proposed to be rezoned to permit higher density attached housing. The Borough has separately proposed overlay zoning districts to respond to the “unmet need” that may provide opportunities for inclusionary housing at some point in the future. The identified areas are adjacent to institutional properties and/or non-residential zoning districts. The Borough did not identify any areas of the R-1 zoning district for the overlay zones. This further reinforces that the Borough recognizes that the R-1 zones are not appropriate areas for higher density housing and that there is not a rational or logical place within the R-1 zone to draw an overlay zoning boundary. By extension, if the R-1 zone is inappropriate for an overlay, it is similarly incompatible with the proposed rezoning for these two properties.
10. There are in fact areas of the municipality where the development pattern is more compact and denser than in the R-1 zoning district, which would be more conducive to assimilating development at three or four residential units per acre. This is further indication that this proposed rezoning is simply reactive, rather than consistent with a long-term planning approach to the development of Rumson.
11. For the proposed Market to Affordable program, the Borough indicates that nine (9) affordable units will be produced. The Borough has demonstrated that this is a viable approach, as two (2) units have already been made affordable using this compliance mechanism. In order to assess the potential for this compliance mechanism it is recommended that the Borough provide a list of current real estate listings together with an analysis of the necessary per unit subsidy to make a unit affordable to a low- or moderate-income household. Contributions to the Affordable Housing Trust Fund resulting from increased assessments from single family residential teardowns/rebuilds and residential additions should be estimated. This estimate is needed to determine whether additional funding is needed for the program; which will enable a larger number of low- and moderate-income households to live in Rumson’s existing neighborhoods.

12. The Borough has proposed zoning overlays to satisfy the 552 unit “unmet need” obligation. A calculation has not been provided to estimate the number of affordable housing units that could be anticipated if development occurred consistent with the proposed overlays. While the Borough is not obligated to demonstrate that the overlays will result in full satisfaction of the unmet need, it would be informative to have an estimate of the yield.
13. The overlay districts, much like the remainder of the Settlement Agreements, seem to be negotiated in a vacuum without the benefit of consideration of long-term planning principles, and are simply reactive to the role played by an opportunistic developer in this matter. For instance, I note the following inconsistencies among the overlay districts, which are only indicative of a larger concern for sound comprehensive planning:
 - a. It appears that the “Faith Institution Overlay” was proposed in order to provide reasonable alternative redevelopment opportunities in the event that the existing institutions close or vacate the properties. It is noted that St. George's-by-the-River Episcopal Church, located at 7 Lincoln Avenue was not included in the overlay. The property is listed on the State and National Historic Register, but it appears that there may be potential for the existing structures to be converted for residential use in the event that the church ever ceases operation. It is also notable that The First Presbyterian Church is also listed on the State and National Historic Register, but is included in the proposed Faith Institution Overlay.
 - b. The existing non-residential zoning districts (POB, GB, NB) are also included in an overlay to provide enhanced opportunities for mixed-use and multi-family inclusionary housing. In addition, some limited properties within the R-2, R-4, and R-5 residential zones have been proposed for addition to an inclusionary overlay. The properties proposed for inclusion are generally adjacent to either faith institutions, public institutions, or business districts and are reasonably proximate to a NJ Transit bus route. However, it does not appear that the presence of historic landmarks, challenging traffic and circulation conditions, or potential yield were taken into consideration in drawing the overlay boundaries. Whereas historic faith institution buildings could, at least potentially, be converted for an inclusionary residential use, historic residential structures would most likely need to be demolished in order to implement the inclusionary residential development permitted by the overlay.
 - c. The proposed R-4 Overlay area at the intersection of Avenue of Two Rivers and Ridge Road contains four properties that are included on the Rumson Historic Preservation Commission's list of historic homes and landmark sites. These include 21 and 25 Ridge Road and 111 and 121 Avenue of Two Rivers. Since the R-4 Overlay would require a minimum lot size of one acre in order to utilize the overlay standards, lot consolidation would be required. Development of the R-4 overlay without demolition of historic assets does not seem feasible. Similarly, the R-2 overlay area adjacent to the Holy Cross Church and School contains the

Seabright Lawn Tennis and Cricket Club; which is a private club owned by its members and is on the State and National Historic Register.

- d. In sum, these various items are only further indicia of an inconsistency with sound planning principles, and inconsistent with the Master Plan and zoning objectives that have been reiterated by the Borough for over thirty years.

The rezoning of 91 Rumson Road and 132 Bingham Avenue appears to be a sacrifice being made by the Borough in order to settle the fair share case, and is reactive to Yellow Brook's opportunistic appearance in this matter. From a land use planning perspective, I have significant concerns regarding the proposed developments as being fundamentally inconsistent with the Master Plan and the *Mount Laurel* doctrine.

ROSAH would like to work with the Borough to come up with alternatives for Fair Share compliance that will make Rumson a more inclusionary community while maintaining the historic character, small town charm, environmental quality, and architectural value that make it unique. There are opportunities to capture units through infill and redevelopment, the market to affordable program, supportive and special needs housing, and small scale 100% affordable developments without the Yellow Brook proposals or the payment-in-lieu. It is not necessary to usurp the Borough's ability to plan for and determine how and where affordable housing can be accommodated, and the result of approving these settlements would effectively permit such usurpation.

It my professional planning opinion, therefore, that these settlements are not consistent with sound planning principles, COAH regulations, or the objectives of the *Mount Laurel* doctrine.

Respectfully yours,



Leah Furey Bruder, PP, AICP