

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CIVIL PART
MONMOUTH COUNTY
DOCKET NO. MON-L-189-25
APP. DIV. NO. _____

IN THE MATTER OF THE :
APPLICATION OF THE : TRANSCRIPT
TOWNSHIP OF MILLSTONE, :
COUNTY OF MONMOUTH : OF
: CASE MANAGEMENT CONFERENCE
:

Place: Monmouth County Courthouse
(Held via Zoom)

Date: May 12, 2026

BEFORE:

HONORABLE LINDA GRASSO JONES, J.S.C.

TRANSCRIPT ORDERED BY:

MORGAN OROZCO, PARALEGAL (Surenian, Edwards,
Buzak & Nolan, LLC)

APPEARANCES:

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Buzak & Nolan, LLC)
Attorney for Petitioner Township of Millstone

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KENDRA LELIE, PP/AICP, LLA
Special Adjudicator

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1 (Conference commenced at 9:08 a.m.)

2 MR. SURENIAN: Good morning, Judge.

3 THE COURT: Sorry. I had a meeting
4 downstairs that ran a couple of minutes late.

5 This is on Millstone. I issued an order on
6 the motion from last Friday, I think it probably got
7 filed in eCourts. What I really would like to -- and
8 just so you know, this is being recorded. Sometimes I
9 do things on Teams, this is on Zoom, and it is being
10 recorded.

11 I have a, as I see it, a -- somewhat of a --
12 Millstone is unhappy with some of the provisions that
13 the special master -- or the -- I'm sorry -- the
14 program member had recommended, they were put in the
15 final -- in the order that it was not a final order,
16 but the order that had to be issued so Millstone could
17 go ahead and do its thing, in terms of meeting with
18 the statutory deadlines.

19 I've got Millstone unhappy with certain
20 provisions, I have got a developer, Mr. Gianetti's
21 client, unhappy with certain provisions. As I
22 understand it, Millstone is indicating that they think
23 that certain of the provisions exceed the, really, what
24 was the authority or what was supposed to happen as
25 part of round four, the conditional compliance, in a

1 sense, but that adjunct approval was given to Mr.
2 Gianetti's client if certain things don't happen within
3 two years.

4 Mr. Gianetti's client is unhappy, because
5 they feel that the plan put forward by Millstone is not
6 constitutionally compliant and I don't think, at least
7 since it landed with me, I haven't heard anything
8 specific from Fair Share Housing Center.

9 So what I'll do is, since we are on the
10 record, I'll let you enter your appearances, and what
11 my feel -- I'll tell you what my feeling is, is we
12 need to have some sort of a hearing. That's what I
13 put in the order. Because the program is designed to
14 get to, hopefully, and agreed-upon resolution and so
15 you had settlement conferences and then you had a
16 session, which, you know, depending on the case, may
17 or may not have been recorded, but the session was
18 more like, you know, as I understand it, testimony
19 wasn't provided, it was sort of like a prerogative
20 writ case, oral argument -- the trial, if you can call
21 it, is oral argument.

22 So within the very narrow confines of what
23 can be presented here, what I want to do is give those
24 who are already participants the opportunity to have a
25 say. So it's probably -- I jumped the gun, so --

1 because I had -- for conferences I don't usually have
2 people enter an appearance, but if you'd like to do
3 so, you can do so now.

4 MR. SURENIAN: Jeff Surenian, and Surenian,
5 Edwards, Buzak and Nolan, for Millstone.

6 MR. GIANETTI: Good morning, Your Honor.
7 Craig Gianetti of the law firm Day Pitney on behalf of
8 challenger DENJ, Inc.

9 MS. RUTBECK-GOLDMAN: Good morning, Your
10 Honor. Ariela Rutbeck-Goldman, counsel with Fair Share
11 Housing Center.

12 THE COURT: Okay. We also have Kendra Lelie
13 with us, who is the special adjudicator who was working
14 on the case in the program and who I have, with the
15 consent of Millstone, have appointed to work as the
16 special adjudicator for this part of the process, as
17 well.

18 And, as indicated in my prior orders --
19 order, Ms. Lelie will be paid by Millstone, If
20 Millstone feels that it's appropriate for there to be
21 a fee sharing or it be that for someone else in the
22 process to be paying part of or all of her fee, they
23 could file a motion asking for that. But in terms of
24 a moving forward kind of way, we're not going to have
25 a fight about who's paying her while Ms. Lelie's

1 working. Basically you can -- Millstone can file a
2 motion on that if they'd like to.

3 So, what I have been doing in the cases
4 where we don't have a, you know, a full settlement or
5 a full resolution, my feeling is anyone who is sort of
6 already part of this -- what that means is, the
7 statute had a provision for when challenges needed to
8 be filed. So I'm not inviting new challengers. It's
9 not like anyone who, you know, wants to hire a planner
10 can come in and have a say. That was by the end of
11 last August, I think, or the beginning of September
12 needed to happen.

13 Now, when we have a hearing, if a member of
14 the public comes in and they want to be heard to tell
15 us how they don't want, you know, building to happen
16 in town or whatever it is, will I stop them from
17 speaking? No. Of course I will swear them in, I will
18 give them the floor, they'll have a couple of minutes
19 to speak. They're not bringing a planner with them,
20 they're not -- but I don't think it's -- I'm never
21 telling a member of the public that they can't be
22 heard, but we will not be having any late-coming
23 developers who say, hey, there's a hearing, you know,
24 there's a challenge, I want to be a part of this,
25 because I think they would have missed their

1 opportunity to do that.

2 So, what I want to find out from the
3 attorneys in this case -- I mean, this is my
4 expectation, that the -- as has been indicated in
5 prior orders I've done, in other cases, the few other
6 cases where I'm having a hearing, the confines of what
7 we're covering is very narrow, because it's supposed
8 to be factual issues.

9 Now, the testimony may come through a
10 planner, simply because who else are you going to put
11 on the stand. I don't know. I don't know, with the
12 developers actually, they've got the money, they're
13 doing the work, but I don't know that any developer
14 actually wants to put their client on the stand, so I
15 think it's probably going to be a planner that we're
16 hearing from.

17 The town needs to be given the opportunity
18 to present testimony, if they want to, as far as why
19 it's the fifth -- if the -- I think it's if the hundred
20 percent affordable projects have not been successful
21 at a certain point in time, that there's automatic
22 approval, they must be deemed automatic approval to
23 Mr. Gianetti's client's project. And, basically, some
24 of the testimony very well might be, where are you
25 with reference to these projects. I realize there is

1 the legal issue, but some of it, in my mind anyway, is
2 the necessity for that provision.

3 So the municipality will be given the
4 opportunity, if the municipality wants, to present
5 testimony. Mr. Gianetti's client -- and what's your
6 client's name again? I'm sorry, Mr. Gianetti.

7 MR. GIANETTI: DENJ, Your Honor.

8 THE COURT: DENJ had filed a challenge?
9 Right?

10 MR. GIANETTI: We did file a challenge, yes.

11 THE COURT: Yeah. So, basically, they filed
12 a challenge. As part of the sort of process, their
13 challenge is probably, you know, dismissed, but it
14 really, in real world terms, they're still out there.

15 So Mr. Gianetti's client can put someone on
16 the stand and talk about -- and, again, the testimony
17 shouldn't be about why we're a better choice, because
18 the program provisions -- I know that the town's
19 contention is that it is essentially what DENJ's claim
20 is, so if DENJ comes in and their witness just talks
21 about why they're the better choice, it falls into the
22 category of, you know, thanks for sharing, but the
23 statute and the administrative directive make clear
24 that's not -- it wasn't the appropriate basis for a
25 challenge and it really wouldn't be the appropriate

1 basis for me to be making any decision on this.

2 Does -- I'll ask counsel for Millstone, do
3 you have any other thoughts, in terms of what you would
4 want to present, if anything?

5 MR. SURENIAN: I think that the scope should
6 be narrow, as Your Honor indicated, but the issue here
7 is the conditions of approval. We contend those
8 conditions are inappropriate and excessive, and that
9 the adjudicator had the correct legal position, and we
10 would present our position on that.

11 And DENJ did not challenge the Court's
12 approval of the plan. DENJ challenged the language of
13 condition seven that says that if Nouvelle doesn't
14 start construction in two years, that that triggers an
15 automatic builder's remedy. DENJ wanted to widen that
16 to include -- and if the Shu Lee site affordable
17 housing alliance on Shu Lee, affordable housing
18 alliance on Stagecoach III doesn't commence
19 construction in two years, they wanted those to the
20 triggers for the automatic builder's remedy, as well.

21 So I do think that the scope is are these
22 conditions appropriate and -- and it should be narrow
23 to that. And we're past should the Court approve our
24 plan. The Court approved our plan. So here's the
25 standards, they approved it. The issue is -- the

1 issues in my mind are, well, here's this standard
2 about the basis to file an objection, did DENJ violate
3 that, did they even have a right to pursue their
4 objection. That's a legal issue and a factual issue.
5 There's the -- there's the -- the standard is clear in
6 the statute and the record is clear from what happened
7 before the program judge. The Court could look at
8 that and say we agree with Millstone or we disagree.

9 And then, on the conditions, you know, we
10 would present testimony as to why we think those
11 conditions are -- exceed the program member's
12 authority, why they're inappropriate, and the Court
13 could agree with that or disagree with that. Or the
14 Court could say, well, Craig is right, you know, that
15 condition seven, we're going to expand it.

16 But I think the focus is on the conditions,
17 the focus is not on the plan itself. We're past that.

18 THE COURT: Mm-hmm.

19 MR. GIANETTI: Your Honor, if I can be heard?

20 THE COURT: Sure.

21 MR. GIANETTI: So I agree, I think it should
22 be narrow. If he wants to raise this, you know,
23 challenge to be dismissed, because this my site is
24 better argument, I'll leave that up to Your Honor. To
25 me that's been addressed and, in fact, both my client

1 and Fair Share Housing Center were successful in our
2 challenge, because the original plan had Red Valley
3 Road in the plan as a hundred percent affordable
4 project and one of our challenges was that site is not
5 realistic, they don't even have slight control.

6 And the reason we know we were successful is
7 because everybody else, including the program special
8 adjudicator and the town, recognized we are right
9 during the process and had to modify their plan prior
10 to the session to address that fact and come up with a
11 new site. So that this notion that our challenge was
12 my site is better than others is just nonsensical and
13 I thought we addressed that during oral argument, and
14 I'll leave it up to the town if they want to raise it
15 again during the -- this hearing that's coming up.

16 What's somewhat unique with this one -- and
17 I agree with Your Honor, we don't -- we accepted the
18 decision, we just had -- wanted clarification as to
19 the sites covered by the condition, because there is a
20 lot of kind of changes to the plan and to the sites,
21 it was clear the program had a problem with the Shu
22 Lee site. The program judge talked about it at
23 multiple points in her recommendation, the concerns
24 and the problems she had with that site, so it seems
25 clear to us that site was meant to be included in the

1 condition.

2 Second -- and Mr. Surenian keeps
3 characterizing it as we got a builder's remedy --
4 there is no builder's remedy. Our site was required
5 to be included for inclusionary zoning if the plan
6 that the judge had a problem with didn't meet the
7 regulatory requirements for a hundred percent
8 affordable projects. If there was a builder's remedy,
9 believe me there would be a lot more units we'd be
10 proposing than what was included.

11 Unlike other ones -- for instance, like
12 Marlboro or a few other towns I know where submissions
13 were made by the town after the session hearing and/or
14 changes were made to the plan after the session
15 hearing, where no one had an opportunity to comment on
16 those changes, the scope in those instances will be a
17 little larger, because we're addressing things nobody
18 had an opportunity to address before the program.

19 Here, everybody had an opportunity to
20 address these issues before the program, everyone made
21 submissions, everyone included expert reports. So, in
22 my mind, those expert reports are of record and, if
23 Your Honor wants to take testimony from those experts
24 on the issues, in particular the condition, then that
25 would be appropriate, but we should not be expanding

1 it with new experts and new issues being raised that
2 were not raised before the program.

3 And then, lastly, I would just say yes, you
4 know, this notion of the plan has been approved,
5 therefore we don't have to go through that, it's been
6 approved with a condition and the town saying the
7 condition should be excised. The program clearly had
8 a problem with the plan and imposed that condition to,
9 in its mind, make it compliant. If the condition is
10 removed, we and Fair Share should have the opportunity
11 to say, if the condition is removed, the plan is not
12 compliant, and so that should be an issue before the
13 program and -- and the information of record that was
14 submitted by both parties, by their experts, can be
15 presented at the -- at a hearing.

16 THE COURT: Ms. Rutbeck-Goldman, do you want
17 to be heard?

18 MS. RUTBECK-GOLDMAN: Your Honor, I'll just
19 say this is -- just putting this in context of other
20 cases, this is a unique one. I think that Your Honor
21 now -- you know, we made it clear that we weren't
22 participating in the motion practice from last week.
23 I think that Your Honor now has an understanding from
24 both parties of what was at stake here, and this also
25 is a unique one, in terms of how, as -- as both

1 parties, I think, pointed out -- how the plan evolved
2 and how the conditions evolved, and how potential
3 compliance or non-compliance with those conditions
4 have evolved, and so now I think -- I mean, you know,
5 I keep returning to the adage that the best settlement
6 is where both parties are unhappy. I think both
7 parties here are unhappy, but they are unhappy about
8 narrow and somewhat -- somewhat related, but also
9 somewhat unrelated issues.

10 I ultimately think that a hearing is a good
11 idea and, frankly, I think that this one is one where
12 I don't think Your Honor -- I don't think Ms. Lelie,
13 despite her best efforts -- I don't think Ms. Lelie, I
14 don't think Your Honor is going to be able to come up
15 with something that everyone is happy with here. I'd
16 say Fair Share is fairly satisfied, because we do
17 think that through the program process this did move
18 certain actions on the part of the municipality faster
19 than it would have without the program process, and I
20 think that's pretty much beyond dispute.

21 So, as for the rest and whether the
22 conditions that were recommended by Judge Sapp-
23 Peterson, whether they were *ultra vires* or not, I'm
24 not taking a position on that right now, but I just
25 wanted Your Honor to have a little bit of a sense of

1 the universe here, which is different from that of
2 other towns and of other cases that went through the
3 program process.

4 THE COURT: The cases where I'm having some
5 form of hearing is because there wasn't a full
6 settlement and because it, just simply, as part of the
7 process and the program, has been, in my view anyway,
8 spectacularly successful, because I don't have 50 DJs
9 or, you know, builder remedy cases, you know, floating
10 around. Basically, it went through the program and a
11 vast number of the cases settled.

12 And my feeling is, when everyone who was
13 participating reached an agreement, I don't need to
14 have a hearing. And my -- the necessity for me to
15 spend time on the case -- not to make it all about me,
16 but, you know, my -- that my need to spend a whole lot
17 of time on a program case that resolved is pretty
18 minimal and I've been doing final orders on those
19 cases, but I recognize that that program process
20 didn't provide the opportunity, as far as I see it
21 anyway, to provide testimony.

22 And this case is a little bit different even
23 than some of the other cases I have, because here most
24 of the cases I have there was a settlement maybe with
25 the town and Fair Share, and I have one or two

1 developers who are unhappy, and so the hearing process
2 is really providing the developers an opportunity to
3 be heard, and the municipality is in a position of
4 saying, you know, we're good, we'll respond as needed,
5 but we're good with what we've got.

6 Here I've got the municipality unhappy with
7 some aspects and I've got a developer who is unhappy
8 with some aspects, and to me the whole -- you know,
9 the due process concept is, I think, here the
10 municipality and DENJ need to be given the opportunity,
11 if they want to, to provide testimony, because there
12 are legal issues. The municipality's issue of whether
13 the program member recommended something and the Court
14 ordered something that's outside the level of what we
15 can -- what can be ordered in this case is a legal
16 issue.

17 But also I think there's very much a factual
18 issue, which is, is there need for that thing.
19 Assuming it's not outside the scope of what the
20 program member and what the Court can do, is there a
21 need for it? And basically that's a factual issue in
22 terms of these, at least with reference to the one
23 project, and maybe, in terms of DENJ's claim, you
24 know, with reference to their three projects. I've
25 gotten, I think, briefing or correspondence from the

1 municipality saying we're moving ahead on these one
2 hundred percent projects.

3 So I think there are, like I said, legal
4 issues that can be briefed. I mean, the -- the
5 original housing element and fair share plan that was
6 submitted by the municipality was submitted probably
7 in June of 2025. Most of the municipalities, what
8 they ended up with as a housing element and fair share
9 plan as part of the program process was different.
10 And so the concept of having a chance to be heard,
11 other than with the program settlement conferences and
12 the session -- which is, again, sort of like oral
13 argument -- to me it's important to provide this
14 opportunity.

15 And as -- and that the process is a little
16 confusing, in terms of some of the towns, you know, we
17 had done our formal and semi-final orders, you know,
18 they're not really final orders, but we had to do
19 orders so they municipality knew to adopt a housing
20 element and fair share plan, but they weren't final
21 orders, so the appeals that have been filed from those
22 -- and I don't have one in Millstone, but I had some
23 in some other towns, and they're filed all over the
24 state -- the Appellate Division has indicated, at
25 least with reference to the two that I had, no, those

1 orders were not final, so we're still in the zone that
2 we're supposed to be in. We have jurisdiction, we can
3 do this.

4 So me looking at it, I think that there's
5 probably three aspects:

6 One is if the parties want to submit -- if
7 they say that there are factual issues, a list of
8 factual issues, and that way I know what I'm going to
9 be dealing with at the hearing, but also the other
10 side knows, the other participants know what they're
11 going to be dealing with.

12 The second aspect is a -- to the extent
13 there are legal issues, which there are in this case
14 that have been raised by the municipality, at least --
15 a limited briefing. And I say limited, because I
16 don't want something long, but I don't know that the
17 municipality -- and the municipality can probably just
18 resubmit the brief that they submitted on their
19 motion, unless there's something else they want to add
20 -- but the concept there is a legal issue here that
21 has been raised and, technically, while the hearing is
22 supposed to deal with factual issues, I think the
23 municipality needs to be given the opportunity -- and,
24 again, it might be just resubmission of the brief that
25 you did before, and I'm fine with that.

1 But the motion that I had in front of me
2 that was returnable last Friday, the municipality
3 asked for either schedule a hearing or just give us
4 what we want, and I said, I mean, there's no way I'm
5 just giving you what you want, which is to undo the
6 prior order, undo the program member's recommendation,
7 without a hearing.

8 So I'm not just giving you what you want,
9 but it's an argument that they want to make, which I
10 think is different than your usual legal argument that
11 would be raised in something like this, so I think
12 that it's a brief with the expert reports that are
13 already done, so I don't want a new expert report from
14 anyone.

15 I don't know that I got your planners'
16 reports that you've submitted to the program, so my
17 thought is -- and I'm sure, you know, it was part of
18 the motion packet -- but each party can submit their
19 planner's report that was already done, not a new
20 planner's report, and a hearing. So all I --

21 MR. SURENIAN: Your Honor, --

22 THE COURT: -- need to know is what the
23 factual issues are, a brief to the extent the
24 municipality has raised a legal issue, which I think
25 can be raised here, because they're arguing that the

1 program member's recommendation and the Court's order
2 adopting the program member's recommendation is
3 outside the scope of what they should have been doing
4 as part of the program, and that's something that I
5 think they municipality needs to be given a chance to
6 address.

7 So, Mr. -- I'm sorry, Mr. Surenian, did you
8 want to say something?

9 MR. SURENIAN: I've assumed, Your Honor, in
10 writing the brief, that you have access to everything
11 that has been submitted to the program, is that not a
12 safe assumption?

13 THE COURT: Oh, not a safe assumption at
14 all. I have the program member's recommendation,
15 which usually attaches and has Ms. Lelie's report
16 attached.

17 MR. SURENIAN: You don't have the records
18 then before the --

19 THE COURT: Oh, no. No.

20 MR. GIANETTI: I think it's on eCourts,
21 because everything was technically, I think, submitted
22 via eCourts. I know our opposition included our
23 expert reports submitted to the program.

24 THE COURT: Right, it would be in eCourts
25 because you guys submitted it on a motion.

1 MR. GIANETTI: Yeah, but even -- even there
2 in the program, I'm fairly certain I e-filed
3 everything. Obviously the --

4 THE COURT: Are you --

5 MR. GIANETTI: -- challenge we filed had two
6 expert reports and then we had a supplemental maybe in
7 November that we e-filed.

8 MR. SURENIAN: Let me make a suggestion.

9 THE COURT: Okay.

10 MR. SURENIAN: For the convenience of the
11 Court, why don't Craig and I work out to here's a
12 record. I mean, it's not -- we can fight about a lot
13 of things, but we're not going to fight about what was
14 submitted before the program. And that way we can
15 coordinate -- you know, make nice pretty notebooks and
16 give them to you, so we have the record. Okay?
17 Because that's pretty important.

18 And one of -- I had two concerns, and maybe
19 this will come up later, but, you know, if -- if -- I
20 don't think there should be a retrial about should the
21 Judge have approved the plan. The issue is conditions.

22 But if Craig is going to put on witnesses
23 that say, you know, this plan shouldn't have been
24 approved, the -- you know, that I think that their
25 reports don't address they legal -- they do, to a

1 limited extent, address the legal standard, but those
2 -- that those concerns were cured over the course of
3 the process, so -- but I might need rebuttal witnesses,
4 depending upon what he's going to say, and that's one
5 concern I have.

6 The other concern that I have is I have said
7 at least three times over the course of the session,
8 give me one example in the state where a court awarded
9 an automatic, what I call the builder's remedy, in the
10 event that a developer does not commence construction
11 in two years. And I haven't received anything.

12 And what I want to avoid is, I don't want to
13 show up at a hearing and say, oh, here's what I have
14 been asking for time and time again over the course of
15 the process, gotcha. You know, I have a right to see
16 that in advance and, if that's -- if you're going to
17 hit me with something --

18 THE COURT: This goes to your legal argument,
19 which is what the Court did was outside the scope of
20 what -- or what the program member did was outside the
21 scope of what a program member should do, and then the
22 Court's adoption of that is outside the scope of what
23 should have been done in this round four Mount Laurel
24 proceeding. And that's part of the, I'm going to say,
25 the brief.

1 Basically, you're going to submit a brief,
2 Mr. Gianetti is going to submit a brief, and I would
3 be -- have you ever seen my face when someone submits
4 something for the first time? You know what I'm
5 saying? An oral argument -- okay? -- on a motion, and
6 when someone says, Judge, this case isn't in my brief,
7 but I want to share it with you. My face is not I'm
8 so delighted to get this for the first time when your
9 adversary has not had an opportunity to see it or read
10 it.

11 So, instead of being able to make a decision
12 now, say on an oral argument on the motion, now I have
13 to read the case, give your adversary the chance to
14 read the case and give your adversary the chance to
15 brief the issue. So anyone who's thinking that it's
16 an excellent idea to raise something for the first
17 time at this hearing, let me disabuse you of that
18 notion, it is not an excellent idea. It is the last
19 thing from an excellent idea.

20 So if there is something that Mr. Gianetti
21 is relying on, I'm expecting it's going to be in his
22 brief. And, like I said, the concept -- I'm not real
23 excited about getting briefs from you guys. If you're
24 starting to, like, let's go back to the dawn of time,
25 please don't. You know, if we're -- just please don't.

1 This is -- I'm giving, quite frankly, the
2 municipality -- keep in mind the concept is supposed
3 to be let's focus on factual issues. I'm giving the
4 municipality this opportunity to brief. And, like I
5 said, it can be resubmission of the brief you did
6 already or it's -- rough it up or do whatever you want
7 -- but the opportunity to address the legal issue,
8 because this legal issue is a little bit different
9 than normally -- you know, don't -- don't start your
10 brief with let's go back to 1975 and the original
11 Mount Laurel case, like, I don't want --

12 (Indiscernible, overlapping voices.)

13 THE COURT: I don't want 45 pages, I just --
14 I'm not interested.

15 MR. GIANETTI: Your Honor, --

16 THE COURT: But the concept of allowing this
17 issue to be briefed, if someone's going to be raising
18 a case on -- you're describing as a builder's remedy
19 case, you know -- you know, a builder's remedy, and
20 Mr. Gianetti is describing it as not, basically the
21 concept is what conclusions should I reach based upon
22 the facts presented and from the --

23 I'm -- I'm looking in eCourts. You guys
24 have -- and maybe these are your submissions? There's
25 a bunch of things that are listed in eCourts as

1 general correspondence. Maybe that's what you, you
2 know, --

3 (Indiscernible, overlapping voices.)

4 MR. GIANETTI: -- put it on the -- because
5 there's no real -- I would say, like, general
6 correspondence was almost like a short letter brief
7 that included expert reports, but we can provide the
8 Court with the report -- the record, as Mr. Surenian
9 noted, that --

10 THE COURT: Yeah, I mean, you guys are --

11 MR. GIANETTI: -- the program --

12 THE COURT: -- absolutely welcome to do that
13 and give me one -- because I will tell you the thing
14 that also makes this kind of hard, you know, when
15 you're doing a motion. When you file something on a
16 motion, you have to link it to the motion or it just
17 floats around out there as something. So if sometimes
18 people will file, say, a reply brief and they won't
19 call it a reply brief, and they won't link it to the
20 motion, and then they are, like, all sad when I
21 haven't seen the reply brief, and it's like, well, I
22 haven't seen the reply brief, because you didn't link
23 it to the motion and I don't -- if I'm doing a motion,
24 you know, do I look at every document that's been
25 filed in the case? Yeah, I don't do that.

1 So, and you may have had been in a position
2 where there --

3 MR. GIANETTI: Yeah.

4 THE COURT: -- was no -- nothing to link it
5 to or nothing to call it, you're con -- your suggestion
6 of you guys putting together what you want me --

7 MR. SURENIAN: I just --

8 THE COURT: -- to see from the history, --

9 MR. SURENIAN: Yeah.

10 THE COURT: -- is an excellent one.

11 MR. SURENIAN: I'll put together -- I
12 volunteer. I'll put together a list of everything
13 that was submitted at the session, I'll run it by
14 Craig. If he says I missed something, I'll add it,
15 and we'll make sure -- we'll agree on --

16 THE COURT: And also Fair Share. I don't
17 know that Fair Share is, you know --

18 MR. SURENIAN: We'll make sure --

19 THE COURT: And I'm getting the feeling
20 like, you know, I don't know that she necessarily has
21 a dog in this fight, she's sort of like I'll hang out
22 and make sure you guys don't screw up, I think that's
23 -- that's Fair Share's position.

24 MS. RUTBECK-GOLDMAN: I'll definitely weigh
25 in and that our submissions are part of the record,

1 but I trust that -- I trust that Mr. Gianetti and Mr.
2 Surenian can take the first go around, the two of
3 them, of what should be included and then include me
4 at the end and I'll take a look at it.

5 THE COURT: Okay.

6 MR. SURENIAN: What we can do is, I'll
7 provide the list to both of you and, if I miss
8 something, you can tell me, and then we'll worry about
9 making sure it gets to the Judge.

10 THE COURT: Okay. So, basically, what I
11 need to do is just pick out some dates, which is
12 basically -- like, so this list of factual issues, I
13 think that's important so you know -- because this is
14 really supposed to be a factual issue thing -- so for
15 you guys to know what it is that's going to be --
16 you're -- it -- this is what is your person going to
17 be talking about, whatever witness you present, and
18 for Middletown -- Millstone, I think probably it's,
19 hey, look at what a great job we've done in the past,
20 look at what a great job we've done on these three
21 afford -- one hundred percent affordable units, this
22 is how far along we have, there's no reason, aside
23 from the argument that there's no -- it's not legally
24 appropriate for it to be -- or the relief to be
25 ordered with reference to DENJ, it's not necessary,

1 because we're doing a great job. And then I have a
2 feeling I'm going to hear something like that from
3 Millstone's person. So that would be a factual issue.

4 So the -- the -- your --

5 (Indiscernible, overlapping voices.)

6 MR. SURENIAN: -- a great job. I don't know
7 that I think we need to put all that out there, but --

8 THE COURT: Well, it's -- I'm holding a
9 hearing because Millstone is unhappy with the program
10 member's decision and Mr. Gianetti's client, DENJ, is
11 unhappy. If neither one of you guys want a hearing,
12 I'm okay with skipping it, but I'm --

13 MR. GIANETTI: I don't need a hearing, Your
14 Honor. We were just seeking clarification. We're not
15 opposed to the program recommendation, we just wanted
16 to make sure it would -- what the condition was, was
17 clear.

18 MR. SURENIAN: Yeah, I think we'll -- I
19 think I like the idea of we'll submit a brief and then
20 there will be whatever factual issues each of us has.

21 THE COURT: Okay. So this list of factual
22 issues and brief, when do you guys want to get it in
23 by?

24 MR. SURENIAN: Can you give us, like, three
25 weeks, four weeks?

1 THE COURT: Yeah, it's -- it's -- basically,
2 you're going to get a hearing -- the end of the Court
3 year is the end of June, so I'm probably not going to
4 be holding this until July. You know, probably -- the
5 end of June gets a little bit crazy around here, in
6 terms of trying to get rid of track two cases and
7 stuff, and they throw a lot of settlement conferences
8 on us, and other kinds of litigation, so I'm probably
9 going to -- I can schedule you guys -- you know, you
10 guys are going to tell me what your vacation schedule
11 is like in July, you know, if anyone is going on
12 vacation, and I'll give you a date in July and that
13 will --

14 MR. SURENIAN: My suggestion, Your Honor,
15 would be give us four weeks to make -- submit whatever
16 we're going to submit, and then let's have another
17 case management conference and at that case management
18 conference the Court can say maybe you want to resolve
19 the legal issues at that point, maybe you want to say,
20 well, I'll hear this factual dispute, I won't hear
21 that one, I -- you know, you'll -- you'll decide how
22 you want to shape this.

23 THE COURT: Okay. So today is May 12th. So
24 four weeks would be June 9th. Do you want them in by
25 June 12th?

1 MR. SURENIAN: That would be great.

2 THE COURT: Okay. And we'll do a conference
3 on June 26th, because that's a non-motion Friday? Does
4 that work?

5 MR. GIANETTI: Sure. Just so I'm -- just so
6 I'm clear, Your Honor, June 20 -- I'm sorry, what did
7 you say it was? June 12th?

8 THE COURT: June 12th --

9 MR. SURENIAN: Yes.

10 THE COURT: -- is when -- and just basically
11 -- and I'm going to do a case management order for
12 this. What you're going to do is just give me a list
13 of factual issues, and that basically lets the other
14 side know what -- if there's -- you know, what their
15 person should be prepared to talk about, in terms of
16 facts.

17 And, like I said, I think there's factual
18 issues. If there is no factual issues at all and you
19 guys -- if Manalapan -- if Millstone's position is
20 strictly legal, is strictly, as a matter of law, you
21 can't give DENJ what you gave them, then we don't need
22 to have a hearing. To me, the concept of the factual
23 basis for -- like, even if there's a legal issue
24 that's been raised by Millstone, but the factual basis
25 for why there is this backup approval, I would think

1 it's important and I would think Millstone would want
2 to address it.

3 If Millstone says I don't need a hearing
4 either, then unless Fair Share wants one, I wouldn't
5 be doing a hearing. But if someone is sufficiently
6 unhappy to want to go to the Appellate Division, just
7 so you know, you were offered the opportunity to
8 present testimony and you said you don't need it. And
9 I'm okay with that.

10 But the -- the -- this aspect of the program,
11 which I think is spectacular, but the one aspect of it,
12 when I get to a case like this, where I don't have a
13 full settlement, is, wow, there was no opportunity to
14 be heard providing testimony and that's why this is
15 what I provide to the litigants, the opportunity to
16 present testimony.

17 But DENJ says they don't need it, if
18 Millstone doesn't want it, I don't need to have a
19 hearing. You guys would basically just present some
20 briefs. But I'm not going to consider anything like a
21 certification from someone saying, hey, look how far
22 along we are on this, you know, we don't need that
23 DENJ backup. I would not be considering it by
24 certification.

25 MR. SURENIAN: All right. Okay.

1 THE COURT: So, is Millstone wanting a
2 hearing?

3 MR. SURENIAN: Yeah.

4 THE COURT: Okay. Okay. So, basically,
5 June 12th will be when the -- you're going to be
6 submitting a list of factual issues and limited
7 briefs. That can also be the day that you submit the
8 combined record.

9 I'll do a case management conference on June
10 26th. If my schedule is correct in the computer, I'll
11 be doing it at 9:30, and that'll be a Teams.

12 If you guys think there's the potential for
13 resolving this, I will bring you in here. Because
14 magical things happen in person that don't happen on a
15 Zoom or a Teams conference. Do you guys want to come
16 in, in person?

17 MR. SURENIAN: I think -- I think we can --
18 I mean, we'll -- we'll -- we're buying property. We
19 own two pieces, you know, we're -- we're scheduled to
20 close on a third, so we'll -- we'll -- we don't have
21 maneuverability. It's not like we're in a position to
22 change our plan.

23 THE COURT: I mean, I don't know if there is
24 any -- I don't know what it is that DENJ is really
25 looking to do with this property, in terms of number

1 of units, I don't know what the zoning is versus
2 zoning that they're looking for, I don't know -- my
3 suggestion is you guys think about having a
4 conversation about -- it sounds like Millstone's
5 position is we don't need DENJ to meet our affordable
6 housing component. And that's, of course, the big
7 club.

8 You know, I think about the Flintstones.
9 You know the big clubs they used to drag around with
10 them? Fred and Barney? You know, the big club that
11 the builder has is, hey, affordable housing, you need
12 it, we can provide it. Millstone's position is we
13 don't need you. I don't know if -- truly, if Millstone
14 doesn't need DENJ's property or development of that
15 property to meet its affordable housing component.

16 I don't know if there's something -- not
17 something that still can't be worked out between
18 Millstone and DENJ? You know, DENJ certainly isn't
19 going to get as much as it wants, because if you don't
20 -- if they're not needed for affordable housing, the
21 -- you don't have the big club, but is it zoned for
22 five acres and DENJ is like, yeah, we're good with
23 two, and Millstone says, yeah, we can live with that.
24 You know, it brings no affordable housing, but it's
25 still a conversation worth having if it's something

1 that both sides feel like something could be done.

2 So I would say to not discount that as a
3 potential part of a resolution on this, this -- like
4 Ms. Rutbeck-Goldman said, you know, we tell people all
5 the time the sign of a good settlement is everyone
6 walks away kind of unhappy.

7 So I'll do the conference June 26th. A
8 hearing -- does anyone have a scheduled vacation in
9 July?

10 MS. LELIE: Your Honor, at the end of July
11 I'll be away. The last week in July, first week in
12 August.

13 THE COURT: Okay. So is July 24th part of
14 the time you'll be away?

15 MS. LELIE: Yes, it is.

16 THE COURT: Okay.

17 MR. GIANETTI: And I have a conflict on the
18 22nd and 23rd, Your Honor.

19 MR. SURENIAN: Could it be before maybe?

20 THE COURT: Well, I'm trying -- it's -- you
21 know, it's hard to say, scheduling wise, what's -- I
22 mean, these are things, once I schedule them, I can't
23 really -- because I do want you to notice it on the
24 website, on the municipality's website, you know, in
25 advance.

1 And, like I said, that means members of the
2 public can come in if they want to, they can watch,
3 they can be heard if they want to.

4 MR. SURENIAN: I have a vacation the same
5 time as Ms. Lelie.

6 THE COURT: Okay. I will -- June 26th.

7 (Extended pause)

8 THE COURT: Okay. I'm going to give you a
9 non-Friday. Why don't we do the 16th at 9:00 a.m.?

10 MR. GIANETTI: July 16th?

11 THE COURT: July 16th.

12 MR. GIANETTI: Thursday, July 16th?

13 THE COURT: Yeah. And it's in person.

14 And 30 days, at least 30 days in advance --
15 this is not like a fairness hearing where you're
16 publishing and, you know, there's a certain number of
17 days after publication there's oppositions, there's
18 objections, and then there's a reply. And, you know,
19 basically what I'd like is members of the public to
20 know what's going on.

21 Like I said, there's no new challengers
22 coming in, no new developers coming in, this is a
23 hearing on the program member's recommendation and the
24 order that the Court entered, so it's not -- you're
25 not publishing any -- you know, you don't have to

1 publish in the newspaper and, like I said, it's not 30
2 days in advance.

3 I would like you to have the documents, you
4 know, those packets that you're putting together, you
5 know, that you're going to send to me, you have a copy
6 of that at the municipal building, you're going to
7 have the briefs, the factual statements that the
8 parties have submitted and, like I said, if a member
9 of the public, someone who lives in Millstone wanders
10 in and they're watching and they want to be heard and
11 tell me something, raise their hand, I will absolutely
12 hear them.

13 MR. SURENIAN: Okay. And just so I'm -- so
14 I'm --

15 THE COURT: Because that's --

16 MR. SURENIAN: So you want me to publish a
17 notice on the website?

18 THE COURT: Just the website.

19 MR. SURENIAN: Okay. All right.

20 THE COURT: Okay? And basically it's --
21 basically, what you can publish is the case management
22 order that I do. You know, I mean, it'll say a
23 hearing is going to be held on such -- you know, but
24 it's not -- I mean, members of the public never sub --
25 I shouldn't say never. Sometimes members of the

1 public will submit letters in advance, and then we may
2 come in to me, I publish them with a true fairness
3 hearing -- fairness compliance hearing, I publish
4 them, I put them on eCourts. But if I get a letter
5 from a member of the public, I put it on eCourts.

6 But if someone shows up at a fairness
7 hearing and has not submitted a letter, of course I
8 will hear from them. Of course they can speak. You
9 know, they can't bring a planner with them, you know,
10 and then provide expert testimony, but this is sort of
11 the not really a fairness hearing to me in the same
12 way that a round three fairness hearing would be,
13 because we've already had the submission of stuff.

14 You know, like a round three fairness
15 hearing, you do the order and you say anyone who is
16 objecting, you've got to get your reports in and all
17 that stuff in, say, ten days later. That's all --
18 that already happened last summer. DENJ has submitted
19 their -- you know, their letter, Fair Share submitted
20 their objection or their challenge, so I'm not
21 reopening that whole process, in terms of challenges.

22 But I would like, like I said, just notice
23 to be published on the website.

24 MR. SURENIAN: Okay.

25 THE COURT: And, like I said, you can do a

1 notice that indicates what's happening or you can just
2 publish the case management order on the website, but
3 not in the newspaper.

4 MR. SURENIAN: I like to be informative. I
5 don't want any member of the public ever coming and
6 saying I didn't know, you know, when the --

7 THE COURT: Yeah, that's -- that's why I
8 want you to put it on the website.

9 Like I said, but there's no -- there's no
10 rule book for this, as I -- as far as I see. There is
11 no -- the statute doesn't address it, the
12 administrative directive doesn't address it. And the
13 concept is really not to be starting from scratch, to
14 be addressing the issues that you guys have, but also
15 letting the members of the public know what's going
16 on.

17 Okay. Anything else I need to address?

18 MR. GIANETTI: No, Your Honor.

19 THE COURT: Nothing? Okay, good. I
20 appreciate you spending the time with me this morning.
21 I'll get the case management order out, and I will get
22 some stuff from you guys by June 12th, and I will see
23 you guys June 26th for -- via Teams for a case
24 management conference. Okay?

25 MR. SURENIAN: And in the next day or two

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I'll get out a list of the record before the program judge to Ariela and to Craig.

THE COURT: Okay. Perfect. Thank you so much.

MR. GIANETTI: Thank you, Judge.

MR. SURENIAN: Thank you, Your Honor.

THE COURT: Thank you for joining us, Ms. Lelie.

Okay. Have a good one.

(Conference concluded at 9:58 a.m.)

CERTIFICATION

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I, TERRY L. DeMARCO, the assigned transcriber, do hereby certify the foregoing transcript of proceedings recorded on CourtSmart, Index Nos. from 9:08:25 to 9:58:42, is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings, as recorded.

/s/ Terry L. DeMarco
Terry L. DeMarco

AD/T 566
AOC Number

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Agency Name

05/18/2026
Date