

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	:	TRANSCRIPT
APPLICATION OF THE	:	
TOWNSHIP OF MILLSTONE,	:	OF
COUNTY OF MONMOUTH	:	MOTION HEARING
	:	

Place: Monmouth County Courthouse
71 Monument Park
Freehold, NJ 07728

Date: May 8, 2026

BEFORE:

HONORABLE LINDA GRASSO JONES, J.S.C.

TRANSCRIPT ORDERED BY:

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

APPEARANCES (Via Zoom):

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

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I N D E X

<u>DECLARATORY PLAINTIFF'S MOTION FOR APPLICATION OF A SUMMARY PROCEEDING:</u>	<u>PAGE</u>
Preliminary Remarks by The Court.	3
Argument by Mr. Surenian.	13, 30
Argument by Mr. Gianetti.	24
Decision of The Court	30

1 (Hearing commenced at 1:37 p.m.)

2 THE CLERK: -- Linda Grasso Jones presiding.

3 THE COURT: Okay. Okay. This is the matter
4 of the Application of The Township of Millstone. It
5 is Docket Number L-189-25.

6 Counsel, can I have your appearances, please?

7 MR. SURENIAN: Jeffrey Surenian, Surenian,
8 Edwards, Buzak and Nolan, LLC, for Millstone.

9 MR. GIANETTI: Good afternoon, Your Honor.
10 Craig Gianetti of the law firm Day Pitney on behalf of
11 DENJ, Inc.

12 (Extended pause; no audible responses.)

13 THE COURT: Do I have anyone else who wants
14 to enter an appearance? No? Okay.

15 Okay. This is an application by Millstone.
16 This is in Millstone's Round IV Mount Laurel
17 Declaratory Judgment Action.

18 The township asks for two -- one of two
19 alternate things. First is that the Court shall
20 implement a summary proceeding to resolve the issues
21 that were in dispute at the conclusion of mediation
22 and that the Court appoint Kendra Lelie, who is a
23 special adjudicator for the program, for the Millstone
24 declaratory judgment action.

25 In the alternative, the township is seeking

1 an order from me to reject the program member's
2 recommendation about the DENJ site, reject program
3 member's requirement requiring Nouvelle to secure site
4 plan approval within one year of the issuance of a
5 certificate of approval and the court dismiss the DENJ
6 objection, the Court rejects with a requirement to
7 conduct a fairness and/or compliance hearing, and that
8 the Court appoint Kendra Lelie to serve as a special
9 adjudicator.

10 So, as the -- with the individuals who are
11 on this action, they're extraordinarily familiar with
12 the Mount Laurel round four process, which was
13 legislatively directed. There's an amendment to the
14 Fair Housing Act that provided that a time-sensitive
15 process for certain things to happen in -- with
16 reference -- and Millstone could have chosen to not
17 participate at all.

18 Basically, municipalities -- the Department
19 of Consumer Affairs Issue Numbers -- I think it was in
20 -- we're in '26, so I guess October of 2024 -- saying
21 this is what we think the required numbers should be
22 for municipalities with reference to providing the
23 opportunity for affordable housing for the fourth
24 round. Which, in the fourth round, is July 1st, 2025
25 through, I guess, June 30th, 2034.

1 And having received those numbers, a
2 municipality could say, that's nice, thanks for
3 sharing, we don't really want to get involved. A
4 municipality could have filed a declaratory judgment
5 action saying yes, we do want to be involved in this
6 process. Which is essentially an effort to reach a
7 resolution in a mediation process. That had to be
8 filed by, I think it was the end of January, the
9 beginning of February 2025, saying we think the
10 numbers should actually be -- either saying we think
11 the numbers are great or -- that the DCA set -- chose
12 or we think the numbers should be different.

13 The participating towns engaged generally in
14 mediation and the Court entered orders -- mine were
15 mostly on, I think, April 1st or April 14th of 2025 --
16 with reference to agreements that were generally
17 reached between the municipality and usually Fair Share
18 Housing Center.

19 As far as wanting to build the numbers, the
20 municipality needed to file a housing element and fair
21 share plan by, I think it was the -- at the end of
22 June, providing for where those -- where development
23 would be accommodated with reference to that agreed-
24 upon obligation.

25 If there were objections -- they called them

1 challenges -- to the municipality's housing element
2 and fair share plan it had to be filed by either, I
3 think it was the end of Oct -- August or the beginning
4 of September, and -- of 2025. Then the municipality
5 -- generally, Fair Share Housing Center -- and any
6 challengers would engage in mediation to see if they
7 could reach a resolution as to issues that were raised
8 in the challenges.

9 And in this matter -- and then they would
10 have these mediation sessions. They would also have,
11 potentially, a -- or mediation settlement conferences,
12 and also potentially a mediation session, some of
13 which were recorded, some of which I think were not
14 recorded, and a program member -- which was a retired
15 judge -- would make a recommendation that was provided
16 to this Court.

17 In this -- in the Millstone matter, the
18 Court received a recommendation from -- we received a
19 copy of the special adjudicator's report, which was
20 dated December 29th, 2025, and we received the March
21 2nd, 2026 recommendation -- program decision
22 recommendation and housing element -- for housing
23 element and fair share plan reached by Part --
24 Pauline [sic] M. Sapp-Peterson, a retired and
25 temporarily on recall presiding Appellate Division

1 judge.

2 So -- and, again, she's retired. It -- the
3 program members were generally retired judges who
4 worked on trying to help municipalities reach
5 resolutions in the case.

6 And the program member recommended -- made
7 certain recommendations in that the municipality amend
8 its housing element and fair share plan, adopt a
9 housing element and fair share plan in accordance with
10 the recommendations, that the Court schedule a
11 fairness and/or compliance hearing to consider
12 approval of the township's amended housing element and
13 fair share plan and the issuance of a certification of
14 compliance and repose, and grant the municipality
15 continued immunity from exclusionary zoning
16 litigation.

17 There are certain aspects of the
18 recommendation that Millstone does not agree with.

19 (Extended pause; reviewing papers.)

20 THE COURT: And the -- I think it was noticed
21 in there that a settlement -- that an overall
22 settlement on all issues was not reached.

23 So -- and I should note that Fair Share
24 Housing Center is not here today. I know that Fair
25 Share Housing Center didn't file papers with reference

1 to Millstone's motion. I do know that the attorney
2 representing Fair Share Housing Center is in transit
3 today and I had indicated it would be no problem if
4 she did not appear, because technically you engage in
5 oral argument -- anyone is welcome to be here, but you
6 engage in oral argument only if you've filed papers on
7 the motion.

8 So, with reference to the two aspects of
9 Millstone's motion --

10 Oh and -- and, basically, after the program
11 member issued a recommendation, this Court needed to,
12 rather quickly, do an order, because Millstone had to,
13 in order to continue its immunity from builder's
14 remedy litigation, needed to adopt resolutions and
15 ordinances by March 16th, 2026. So this Court was
16 tasked, with reference to all of the towns that had
17 filed declaratory judgment actions, was tasked with
18 entering orders very quickly which would provide
19 guidance to the municipality, in terms of what the
20 actions that they should take.

21 So the municipality had adopted a housing
22 element and fair share plan in June of 2025, they
23 engaged in the program process, they had presumably --
24 I see there's a number of ordinances, resolutions in
25 the -- in my file -- they adopted stuff that was

1 probably different than what was adopted in June of
2 2025, because that was the whole sort of point of the
3 process. Before adopting, they would have had public
4 meetings and public notice. And what I've got is a
5 situation where Millstone is unhappy with certain of
6 the recommendations that were made by the program
7 member and which were incorporated in the court's
8 order.

9 In terms of -- and I will, you know, hear
10 oral argument from the attorneys.

11 In terms of the proposed -- I have had an
12 opportunity, by the way, to read all the motion papers
13 that were filed by counsel for Millstone and also
14 counsel for DENJ.

15 In terms of the concept of me, on a hearing,
16 such as -- or an oral argument, such as we're having
17 now on a motion, the concept of me rejecting the
18 program member's recommendations? You can argue that,
19 counsel, but, yeah, that's not happening on a motion.
20 But there's no way in the world I would be making a
21 decision about essentially changing a housing element
22 and fair share plan on a motion.

23 Now the issues, to me, would be where it
24 says the Court rejects the requirement to conduct a
25 fairness and/or compliance hearing? I absolutely need

1 to have a hearing, in my view, because I would need to
2 -- if, basically, anyone is making an argument to me
3 that the program member's recommendations do not
4 comply with the constitutional obligations of
5 Millstone, I'm not making that decision on oral
6 argument by attorneys talking to me.

7 So, in terms of me rejecting program member's
8 recommendations and making a decision that they don't
9 have to be included, and that I don't have to have a
10 fairness hearing, and I can enter an order saying that
11 the housing element and fair share plan can be
12 different, the concept of me doing that on a motion,
13 I'm certainly willing to hear argument on it, but I do
14 not foresee that happening.

15 In terms of -- but as to the alternative
16 relief that's sought, that relief that's sought
17 initially is that the Court shall implement a summary
18 proceeding to resolve the issues that were in dispute
19 at the conclusion of mediation and that I appoint
20 Kendra Lelie to serve as the special adjudicator in
21 this matter.

22 And my practice is, on the cases that --
23 from round four, where there were remaining issues
24 that had to be addressed, I did ask for the
25 municipality's approval, in terms of having the

1 special adjudicator continue in that role. I don't
2 think -- it looks to me like I don't need to ask
3 counsel for Millstone if that's okay, because
4 Millstone's asking me to do that.

5 So I will continue Ms. Lelie's role as the
6 special adjudicator in this matter. She's familiar
7 with the town, she's familiar with the arguments that
8 have been made, and it is a good idea to have the same
9 person, if there's no reason not to, and counsel for
10 Millstone speaks very highly of Ms. Lelie's abilities
11 in the motion papers, so I will appoint Ms. Lelie, so
12 I don't think I need a whole lot of argument on that.

13 What I've been doing is appointing the
14 special adjudicator to continue in, I set the rate of
15 \$350 per hour, which was the program rate that was
16 being paid to the special adjudicators. I am requiring
17 the municipality to pay, but the municipality has the
18 option or the opportunity, they can file a motion
19 asking me to share or shift the obligation to pay the
20 special adjudicator on other participants.

21 But, on an up-front basis, this is
22 Millstone's application, it started as a Millstone
23 declaratory judgment action and it continues as a
24 Millstone DJ action, so my intention is to appoint
25 Ms. Lelie to continue on in the case.

1 So really what we're talking about -- in my
2 view, anyway -- is the Court shall implement a summary
3 proceeding to resolve the issues that were in dispute
4 at the conclusion of mediation.

5 I don't know how that -- I don't know what
6 else you'd call that summary proceeding other than a
7 fairness hearing. And, basically, it's -- but I'll
8 listen to counsel for Millstone, in terms of what
9 their -- it's not really clear to me what it is that
10 they want to happen as a summary proceeding.

11 The concept of -- it really comes down to
12 what is supposed to be in Millstone's housing element
13 and fair share plan. And under round three and still
14 under round four, if need be, the contest -- the
15 concept of a fairness hearing is, is this plan fair to
16 households who are in need of affordable housing,
17 low- and moderate-income households.

18 So I'm not really sure, but I'll hear from
19 counsel from Millstone, in terms of what it is that
20 he's really looking for as a summary proceeding that
21 isn't a fairness hearing, because he's, I think, at
22 least -- or maybe it's he's okay with a fairness
23 hearing, he just didn't want a fairness hearing in the
24 alternative relief.

25 So the motion was filed by counsel for

1 Millstone, so, counsel, I'll hear from you and then
2 I'll hear from counsel for DENJ.

3 MR. SURENIAN: I make a few prefatory
4 comments before getting into the argument and I just
5 want to reserve time at the end to respond to any
6 arguments of DENJ.

7 But I think that the legislature didn't
8 speak about fairness and compliance hearings, they
9 spoke about summary proceedings, and I think they're
10 fundamentally different. The purpose of a summary
11 proceeding, if that's the direction the Court wishes
12 to go, would be to make a determination on the dispute
13 that the parties have with the recommendations of the
14 program member. That's separate and apart from is this
15 plan fair and reasonable to low- and moderate-income
16 households.

17 And I think that it -- you know, once a
18 court resolves a dispute, I think it's fairly easy for
19 the Court to move forward. Some judges have been
20 having confirmation hearings as opposed to fairness
21 and compliance hearings, and was a subsequent letter
22 issued by Judge Blake where he said that was
23 inadvertent and it's up to the judge what the judge
24 wants to do.

25 But so, you know, I would just make that

1 prefatory remark.

2 The -- and the courts -- and I would also
3 note that the Court already had a case management
4 conference where it appointed Ms. Lelie --

5 THE COURT: Okay.

6 MR. SURENIAN: -- to be the adjudicator,
7 entered an order memorializing that, and the Court was
8 quite clear at that case management conference, hey,
9 I'm not making any changes without a hearing. So the
10 Court's essentially agreed with one of the forms of
11 relief we requested, you know, give us a summary
12 proceeding and you might as well have the same
13 adjudicator continue.

14 THE COURT: Whatever we call it -- and, yes,
15 I had -- like, I've had, like, five cases I think
16 where I'm continuing the special adjudicator. And
17 whatever you call it, I think fundamentally there was
18 an initial housing element and fair share plan, there's
19 now a changed housing element and fair share plan, and
20 assuming what was -- or what I have been doing was
21 sending letters out or sending -- or putting notices
22 in -- and I'm not sure if one went in Millstone --
23 asking -- and it's essentially asking Fair Share
24 Housing Center did the municipality adopt everything
25 it was supposed to, and is everything that they adopted

1 consistent with the plan.

2 Because essentially Millstone has probably
3 adopted something that they don't love, but they
4 adopted --

5 MR. SURENIAN: No. No.

6 THE COURT: -- what they were supposed to and
7 they're saying, like, okay, we can change it later if
8 the Judge agrees with us. I mean, that's what the
9 municipalities that are disagreeing have been doing, I
10 think. So --

11 MR. SURENIAN: Well, just to be clear, we did
12 what we promised to do. Okay? Over the course of
13 mediation we cited, you know, this is how we're going
14 to amend our plan, --

15 THE COURT: Mm-hmm.

16 MR. SURENIAN: -- and even though we got the
17 decision or the recommendation by the program member on
18 March 2nd, we couldn't wait until March 2nd to meet a
19 March 15th deadline. So we had the wheels in motion
20 before then and by March 15th were able to adopt the
21 ordinances that would be necessary to implement our
22 plan and adopt all the resolutions.

23 We agree with the program member's
24 recommendation to approve the plan. We think she had
25 to, she had no choice. There was an expert report by

1 Heyer that was presented in the session that laid out
2 the standard and demonstrated we satisfied the
3 standard. Our dispute is with the recommendations for
4 conditions that the program member entered, and that
5 is the gravamen of our dispute.

6 I'm hearing the Judge that, you know, that
7 you don't want to decide it by way of motion, but both
8 sides argued it and we might as well present our case.
9 It might impact on how the Court proceeds with it past
10 this case management conference that it structured for
11 15th -- sometime soon, but --

12 THE COURT: I have -- we have a conference
13 scheduled for Tuesday. Tuesday morning, I think.

14 MR. SURENIAN: Tuesday. Okay.

15 THE COURT: So, basically, at Tuesday morning
16 my -- my feeling is Tuesday morning, basically you
17 guys are going to tell me what the issues are and
18 we're going to figure out how are they presented. Does
19 someone have to submit additional paperwork? Are you
20 submitting something listing out what the issues are
21 and basically what's going to be presented? Are you
22 figuring out, you know, who your witnesses are going
23 to be kind of thing?

24 It's -- the concept is, as I see it, the
25 program member felt that the housing element and fair

1 share plan was fair to low- and moderate-income
2 households with the conditions that the program member
3 recommended. And muni -- Millstone is saying, no,
4 it's fair to low- and moderate-income households
5 without the conditions, we don't think the conditions
6 should be there.

7 So the concept is -- that's why you say it,
8 like, it sounds like a fairness hearing to me.
9 Basically, Millstone's asking me to except the housing
10 element and fair share plan without the conditions, so
11 that's a different situation. So, like I said, in
12 terms of calling it a fairness hearing, I mean, it's a
13 little bit different, in terms of structured.

14 I will tell you that it's, you know, on a
15 round three fairness hearing, it was, you know,
16 production of a whole lot of paperwork, and it was 30
17 days prior, you know stuff was available for review of
18 the -- by the municipality, and people filed
19 oppositions afterwards. I've heard -- you know, the
20 challengers had a chance to file a challenge to the
21 plan, so it's not, like, another opportunity for
22 someone to file a challenge.

23 Now, I've told attorneys if I have -- I'm
24 expecting that there's public notice of this thing on
25 the municipality website. If some member of the public

1 comes in and says, hey, I -- you know, just on the off
2 chance they say we -- there's too much development
3 going on and we don't think development is good, am I
4 going to not let them speak? Of course I'm going to
5 let them speak.

6 If someone comes in with a planner and says,
7 you know, oh, by the way, I just happened to have this
8 guy, you know, I found wandering around in the
9 hallways, he's a planner and he's going to provide
10 expert testimony on this issue, no. Am I going to
11 allow new challengers? No.

12 The concept is threshing out -- and whatever
13 you call it, this summary proceeding, you know, it's
14 threshing out the issues why Millstone says this stuff
15 shouldn't be part of the plan or part of the agreement,
16 and why Fair Share takes whatever position Fair Share
17 is going to take, and any challenger who participated
18 can be heard as well.

19 And what Tuesday's conference will be is,
20 okay, how are we going to do this so everyone gets
21 what I consider to be an appropriate opportunity to be
22 heard and we get a final compliance certification
23 issued one way or another.

24 MR. SURENIAN: Your Honor, I'd like to
25 address my arguments that may impact on the Court's

1 thinking on this.

2 THE COURT: Okay. I will tell you -- and
3 it's -- I've got the papers, I've read the papers. You
4 guys have 15 minutes between you. My next motion --
5 or oral argument is at 2:15, so you have 15 minutes
6 between you to present your arguments.

7 MR. GIANETTI: Will that be split evenly
8 amongst us, Your Honor?

9 THE COURT: I guess it's seven, seven, and
10 one.

11 MR. SURENIAN: Yeah.

12 MR. GIANETTI: Yeah, yeah.

13 MR. SURENIAN: Hey, Laura, could you come in
14 here? You've got to tell me when I hit seven minutes.

15 THE COURT: Mr. Gianetti will tell you when
16 you hit seven minutes.

17 MR. SURENIAN: All right. So let me cut to
18 the chase.

19 In every case, the threshold issue is what's
20 the applicable standard. Okay? And the Fair Housing
21 Act establishes a very clear standard for objections.
22 And the precise language of the statute is that when
23 the developer objects, such allegations shall not
24 include a claim that a site on real property proposed
25 by the interested party is a better site than the site

1 in the plan. That's what the statute says.

2 THE COURT: And that goes in the form of
3 order that I issue, counsel.

4 MR. SURENIAN: And my point is --

5 THE COURT: That specific language.

6 MR. SURENIAN: Well, my point is we gave the
7 Court the transcript of the mediation session and
8 explicitly and implicitly there is a clear and
9 inescapable violation of that prohibition. Okay?

10 So our position is that the program members
11 should have recommended dismissal when we brought it
12 to her attention, she did not do so. So we're before
13 this Court and we contend we have a right to dismiss
14 this objection by the adjudicator -- or by the -- by
15 the interested party, by DENJ.

16 The other standard that's relevant in this
17 case is the language in the Fair Housing Act that gave
18 the program member options. One option was to
19 recommend approval of the plan, the other option was
20 discretionary, to extend or not extend immunity. If
21 the Judge found that there was no pro -- that
22 determines that the municipality is determined not to
23 come into compliance at any point in time, the program
24 member had the authority to dismiss the lawsuit.

25 Alternatively, the program member had the

1 authority to extend immunity into round four. That's
2 what was discretionary. But the statute envisioned
3 that if there are still objections, that -- and still
4 disputes, that the county judge, that you would have
5 the power and should exercise that power to resolve
6 disputes.

7 In fact, the definition of a program -- of
8 county judge, in the legislation, the function of the
9 county judge is to resolve disputes. The purpose of
10 the legislation is to have a mediation and review
11 process. If there's no review process, if the Court
12 can't review the recommendations of the program
13 member, then there's no -- then we skip you and you be
14 -- and your opinion irrelevant, and that's not what
15 the legislature intended. The legislature intended
16 you to perform a function, and that function is to
17 resolve disputes. And then the final -- where the --
18 where the comp -- the summary proceedings is noted in
19 the statute, the act directs the program judge to
20 handle that.

21 So, for all of those reasons, I think our
22 interpretation of the statute is correct and that you
23 do not have to sit on your hands if you see that the
24 program member made a recommendation with which you
25 disagree after hearing our arguments. Regardless

1 whether you agree or disagree with our interpretation
2 of the statute, clearly the March 4th order is
3 interlocutory and you have the power, in the interest
4 of justice, to get it right. And so that's the
5 standard.

6 Our position is, clearly and inescapably,
7 the developer violated the prohibition of extending of
8 a -- of a -- not objecting on the -- on the -- of not
9 including in the objection my site is better than
10 yours. And our position is the program member had an
11 obligation to apply an eject -- an objective standard.
12 She correctly applied the objective standard in finding
13 that our plan complied. She had to. The Heyer report
14 laid out the standard and demonstrated how the rep --
15 how the standard was satisfied.

16 The program member violated the standard in
17 how she crafted the conditions of approval. She did
18 not have the authority under the Fair Housing Act to
19 award a builder's remedy. She did not have the
20 authority to secure -- to require a site plan approval
21 within a year. She did not have the authority to
22 require that we enter into a developer's agreement
23 before we get a compliance certification. She did not
24 have the authority to take away our rights. All of
25 those conditions violate the objective standard. She

1 had an obligation to follow the objective standard, not
2 violate it.

3 And as to this two-year rule, the language
4 of the -- of the reg that is hyperbolized by DENJ is
5 it says the construction schedule shall provide for
6 construction to begin within two years of substantive
7 certification. Okay? It doesn't say that if the
8 schedule is not met there's a builder's remedy awarded
9 at the end of that.

10 And, in practice, the courts have seen the
11 forest for the trees. This Court has, on multiple
12 examples. In the case of millstone, we had two
13 projects in round three, construct -- for a hundred
14 percent project, construction didn't commence within
15 two years, but the projects are -- one's built, one's
16 under construction. We've succeeded. We've done what
17 the point of this process is all about.

18 And while we think that the program member
19 violated the objective standard, the recommendations
20 of Ms. Lelie of the adjudicator, seasoned adjudicator,
21 complied with them. Her recommendation was, if you
22 need more time, ask for it. That would give you the
23 chance to make your record as to why you think you're
24 entitled to it and your adversary is to say, well,
25 you're not entitled to it and you can make a call as

1 to whether we get an extension or not.

2 In the alternative, she recognized the right
3 of municipalities in this process. You get the right
4 to decide how you comply. She did not say you must
5 have a builder's remedy for DENJ. You decide how
6 you're going to -- you tell us how you're going to
7 comply and we'll evaluate that.

8 So, I still have more time. okay.

9 MR. GIANETTI: I don't think you have more
10 time. I think we're over seven minutes.

11 UNIDENTIFIED FEMALE: Was it seven or ten?

12 MR. SURENIAN: Okay. But I'll -- I'll rest.

13 THE COURT: Mr. Gianetti?

14 MR. GIANETTI: I'm sorry, I didn't hear you,
15 Your Honor.

16 THE COURT: I said Mr. Gianetti. I said
17 your name.

18 MR. GIANETTI: Oh, sure.

19 THE COURT: It's your turn.

20 MR. GIANETTI: Thank you, Your Honor. I'll
21 be as brief as I can.

22 So this application should be denied,
23 because it's -- for a straightforward reason. The
24 town is asking for a do-over of the program process
25 that already occurred, that resulted in a detailed

1 recommendation that was adopted by this Court on the
2 March 4th order. The township disagrees with the
3 program recommendation and the Fair Housing Act has a
4 process for that.

5 You know, there is a distinction in how, you
6 know, the township characterized the act. The act
7 basically provides, if you disagree with the program
8 decision, there's an appeal process, and there's a
9 right to appeal eventually to the Appellate Division.
10 The whole proceeding process deals with, if the
11 program was unable to resolve an issue, it basically
12 punts it to the county-level judge, who would then
13 have a summary proceeding to resolve it. That's not
14 what happened here.

15 The program was able to resolve the disputes,
16 was able to find compliance only with the addition of
17 that condition that --

18 THE COURT: Well, that -- but so that's not
19 a resolution of the disputes, because the program
20 member recommended something that the township was not
21 in agreement with. Right?

22 MR. GIANETTI: The program recommended
23 approval of the housing element fair share plan with a
24 condition about the rezoning of the DENJ site. But
25 the summary proceeding is not meant to be a whole new

1 process.

2 For instance, the town is trying to treat
3 this like a whole new process. They've submitted a
4 certification from a planner that did not participate
5 at all in the program process. In fact, submitted two
6 certifications as part of this motion that were never
7 submitted to the program and that planner never
8 participated before the program on this matter.

9 The hearing, as Your Honor was talking
10 about, is a compliance hearing. Did -- did the -- is
11 there a housing and fair share plan in compliance with
12 the program recommendation in the Fair Housing Act?
13 That's what the hearing should be. It shouldn't be
14 whether you should vacate the program recommendation.
15 And it was clear the program was skeptical of this
16 plan. She walked through it.

17 And the notion of, well, we submitted -- our
18 planner submitted a certification saying it's
19 compliant. Well, we submitted a certification from
20 Art Bernard saying this plan is not compliant, both
21 for at the time they didn't have site control for a
22 number of the sites and they had to replace a site
23 because of that, and because of the funding -- you
24 know, the issue of the timing and of funding.

25 We also submitted a certification of Barbara

1 Schoor, a very experienced one hundred percent
2 affordable housing developer, who also highlighted the
3 funding. And as the program judge noted -- and we
4 have no issue with one hundred percent affordable
5 housing developments. I represent a number of one
6 hundred percent affordable housing developments. But,
7 as we note in our papers, one hundred percent
8 affordable housing is a component of the plan, it's
9 not the entirety of the plan.

10 If the town had a 500-unit obligation and
11 their plan was we're going to do 50 -- or ten 50-unit
12 one hundred percent affordable developments, no planner
13 would approve it, Fair Share Housing Center would [sic]
14 approve it, and I would suspect no court would approve
15 it. But their one hundred percent affordable housing,
16 under the township's argument, the Court would have to
17 approve that type of plan.

18 And this was not a my site is better than
19 your site argument. Our site highlighted that the
20 plan is not realistic, as proposed. And, in fact, we
21 were right, because they had to replace a site and
22 they had to scramble to get a new developer and try
23 and condemn property.

24 And our whole argument, when we offered,
25 during the settlement discussions, a portion of our

1 site, is we said, look, your plan is not realistic in
2 part because you're doing three one hundred percent
3 affordable housing developments -- technically four --
4 that require four separate LIHTC applications and also
5 require four separate on-site treatment plants.

6 So we said you can acquire our property for
7 fair market value, it would be one project, one LIHTC
8 application, one on-site treatment plant. Which is an
9 extremely reasonable proposal and all parties -- well,
10 not all parties -- most involved recognize that was a
11 reasonable proposal, but the town rejected it.

12 The program judge highlighted that they are
13 unreasonably cemented in this concept of doing an
14 entirely one hundred percent affordable housing
15 development. And appropriately attached a condition,
16 because there's an opportunity cost.

17 You know, Mr. -- the township argues there's
18 these objective standards, we meet the objective
19 standards. Well, one of the standards is you start
20 construction within two years. That one they say,
21 well, no, we -- you know, we shouldn't have to comply
22 with that. So that they're picking and choosing of
23 what they have to comply with.

24 Plus there is a history, particularly with
25 the Shu Lee site, that has -- the town has owned since

1 2010, it has been part of their plan in the third
2 round, has been part of the plan in the fourth round,
3 and has yet to be built. So the program judge was
4 appropriately skeptical of the plan and, frankly, I
5 felt did a favor to the town.

6 The program judge could have found this plan
7 is not realistic and I'm recommending it not be
8 certified as compliant. Instead, she said I'm going
9 to recommend approval, but with this condition, so we
10 don't lose this opportunity of the only inclusion of
11 -- inclusionary affordable housing development being
12 offered.

13 And now the town -- and we've addressed it
14 in our papers, but the town makes note of the fact
15 that, well, this same developer in the third round
16 that sued the town for a builder's remedy and got
17 zoning hasn't even started construction yet. But, as
18 outlined in the certification, the developer had to go
19 through a painstaking process before the town, several
20 hearings on a fully-conforming application, four years
21 from the date of submitting the application an
22 approval, to then say --

23 THE COURT: Okay.

24 MR. GIANETTI: -- it was the developer's
25 fault, --

1 THE COURT: Mr. Gianetti, you've got to wrap
2 it up. Mr. --

3 MR. SURENIAN: Yes.

4 THE COURT: Sorry. Mr. Surenian, you get
5 one minute.

6 MR. SURENIAN: Okay. Shu Lee was an example
7 of what the judge -- what the program member got
8 wrong. Shu Lee was never a con -- a part of the plan
9 that we were committed to create affordable housing
10 with in round three in order to meet our number. It
11 was extra. Everyone knew that. There's a record of
12 that.

13 We are not asking the Court to -- for a
14 do-over, we're asking the Court -- we -- our -- our
15 issue is not with the recommendation of approval, our
16 recommendation [sic] is with the judge's attempt to
17 rewrite our plan and award a builder's remedy. She
18 did not have --

19 THE COURT: Okay.

20 MR. SURENIAN: -- the authority to do that
21 under the --

22 THE COURT: Okay. And so --

23 MR. SURENIAN: -- Fair Housing --

24 THE COURT: -- I'm going to have you stop.
25 Basically, so what I'm hearing is arguments

1 that she got the law wrong, arguments that she got the
2 facts wrong, and I can't imagine how it was -- like
3 you say, you can call it a summary proceeding, it's
4 certainly not a summary proceeding like a prerogative
5 writ case, because you've already had conferences, you
6 already had a, in a sense, a summary proceeding which
7 was argument in front of the program member, and if
8 you're asking me to decide these issues, which is I've
9 got Millstone unhappy with this decision and wanting
10 something different, I need to have -- basically be
11 hearing from -- not necessarily on the issues on the
12 law, but certainly on the factual issues.

13 The statute and the administrative directive
14 make clear it's -- what will not be presented are not
15 arguments on my property is better and what -- what's
16 supposed to be presented are factual issues, and I
17 hear that there are factual issues that need to be
18 resolved.

19 So I'm going to enter an order. It grants
20 the motion in part, denies the motion in part.

21 I'll be seeing you guys on Tuesday at 9:00
22 a.m. for a case management conference. I think Fair
23 Share will probably be on that conference, I think
24 that the special adjudicator will probably be on that
25 conference, and we'll figure out where we're going to

1 go, in terms of who presents what and time frames, and
2 I will see you then. Okay?

3 Thank you very much.

4 MR. SURENIAN: Your Honor, is that going to
5 be virtual or do we need to come to court?

6 THE COURT: Let's see. I think it's virtual.
7 Let me take a look.

8 MR. SURENIAN: Okay.

9 (Extended pause)

10 THE COURT: It's -- I put it on Zoom.

11 MR. SURENIAN: Okay.

12 THE COURT: Okay?

13 MR. GIANETTI: Okay.

14 THE COURT: Okay. Thank you --

15 MR. GIANETTI: Thank you, Your Honor.

16 THE COURT: Thank you very much.

17 MR. SURENIAN: Thank you, Your Honor.

18 THE COURT: You guys have a great weekend.

19 (Hearing concluded at 2:19 p.m.)
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CERTIFICATION

I, TERRY L. DeMARCO, the assigned transcriber, do hereby certify the foregoing transcript of proceedings recorded on CourtSmart, Index Nos. from 1:37:12 to 2:19:33, 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

Lisa A. Mullen
Agency Name

05/12/2026
Date