

FACTS THE COURT SHOULD ASSUME FOR PURPOSES OF SUMMARY JUDGMENT

Plaintiff has gone to such lengths to obfuscate the facts to avoid summary judgment that the Borough recognized that the need to cut through the confusion and create clarity is inescapable. Accordingly, we have analyzed the allegations in our Statement of Material Facts and plaintiff's response, and created a document that identifies the minimum the facts that we contend this Court should regard as uncontested for purposes of deciding the defendants' summary judgment motion. If plaintiff admitted a fact, we have so stated. If a fact should be "deemed admitted" because plaintiff failed to properly deny in accordance with Rule 4:46-2, we have so indicated. Finally, if plaintiff's denial is so incredible as to warrant this Court's disregarding of the denial, we have asked this Court to deem the fact admitted in accordance with the principles embodied in Liberty Surplus Ins. Corp. v. Amoroso, 189 N.J. 436 (2007). If plaintiff denied because of a specific word or phrase, we have generally removed the word or phrase rather than quibble over semantics. Finally, in instances where plaintiff has offered a similar fact to the one we have proffered, we have in several instances used the plaintiff's rendition. In this way, we have sought to create clarity in place of the cloud of confusion plaintiff has so diligently and skillfully sought to create.

While the analysis below omits many facts set forth in our Statement of Material Facts, this does not mean that the omitted allegations are anything less than factual.

ANALYSIS OF THE FACTS

Paragraph 1: The Romerovski site consists of two parcels which total 4.68 acres identified as Block 213 Lot 1 and Block 314, Lot 1 on the official tax map of the Borough of Roselle Park. See Certification of Charles Latini, P.P., dated June 27, 2007, Exhibit B, at page 9.

Plaintiff admits this fact.

Paragraph 2: The two lots are connected via a tunnel under the Gordon Street right-of-way. Ibid.

Plaintiff admits this fact.

Paragraph 3: Block 213, Lot 1 contains a surface parking lot and loading-dock facility on Westfield Avenue. Ibid. The Primary Buildings in this parcel include a large three-story industrial building of approximately 75,000 square feet in size, with administrative offices, production space, and warehouse space within the structure, portions of which were constructed nearly 100 years ago by Guglielmo Marconi. Id. at page 10.

Plaintiff admits this fact.

Paragraph 4: Block 314, Lot 1 contains a surface parking lot and loading dock facility on Westfield Avenue. Id. at 11.

Plaintiff admits this fact.

Paragraph 5: The Romerovski Site has a long and involved history in Roselle Park, including being the location of Guglielmo Marconi's (inventor of the radio) manufacturing company and the first American radio broadcast. Id. at pages 6 through 11 (for a detailed history of the site).

Plaintiff admits this fact.

Paragraph 6: Isreal Braunstein (hereinafter “Braunstein”) is a principal of the current owner of the site, 450 West Westfield Realty LLC. He has controlled and operated the Romerovski site for decades. Certification of Joseph DeIorio, dated August 20, 2007, at para. 4.

Plaintiff’s admits that Israel Braunstein is the managing member of the current owner of the site, 450 West Westfield Realty, LLC, and admits that he has controlled or owned the site since at least 1996.

Paragraph 7: On October 31, 2006, 450 West Westfield Realty LLC and Avalon Bay formed a new entity--Roselle Park VP, LLC, the plaintiff in the above referenced matter.¹

Plaintiff admits Braunstein and Ladell’s companies formed this “partnership” to be “effective” on November 8, 2006. The document provided at Exhibit 49 of the Jedziniak Certification, however, shows the effective date to be October 31, 2006. Either way, the partnership was formed by Braunstein and Ladell before the Borough even had a chance to finalize its draft Redevelopment Plan.

Paragraph 9: Braunstein operates a textile recycling facility on site. However, for many years, Mr. Braunstein has expressed an interest in making wholesale changes to his company’s property by either changing the permitted use of the site or selling his property to a developer who could then do what was necessary to revitalize the property and to make it economically viable. DeIorio Cert. at para. 5.

Plaintiff admits these facts.

¹ Although the Borough initially thought that the owner of the site and plaintiff were separate entities, plaintiff informed the Borough recently that they were one in the same. See Certification of Michael A. Jedziniak, Esq., dated July 27, 2007, at Exhibit 49 (plaintiff’s “Statement of Undisputed Material Facts Regarding Its Motion For Partial Summary Judgment For Counts Two and Three.”)

Paragraph 10: Over the years, Braunstein failed to sell the property, despite his efforts to do so. Id. at para. 6.

Plaintiff admits that, as of 2004, Mr. Braunstein unsuccessfully tried to sell his property. Braunstein cert. at para. 20.

Paragraph 11: Braunstein complained to the Borough for many years that, due to the condition and design of his buildings, he could not find a suitable use for the site, and that, therefore, he was losing money. Id. at para. 7.

Braunstein denies that he was “losing money”, but admits that his business was “not doing well” (Braunstein at para. 19) and that Braunstein was interested in “making wholesale changes to his company’s property.” See Plaintiff’s response to Paragraph 9.

Paragraph 14: Braunstein successfully decreased the assessed value of the Romerovski property a total of \$495,000, or 22 percent over these 14 years through a series of tax appeals. Id. at para. 28.

Braunstein admits that he decreased the assessed value of his property nearly 20 percent through tax appeals. Braunstein at para. 18.

Paragraph 18. [Relative to his tax appeals,] Braunstein argued that the buildings on the Romerovski site actually had a negative value because they would have to be demolished and replaced by some new building or buildings that were not obsolete. Id. at para. 20.

Plaintiff admits this fact, to the extent that it pertains to tax appeals after 1996, which is the relevant period in this case.

Paragraph 19: In an attempt to demonstrate the alleged negative value of the properties, Braunstein provided the Tax Assessor with an estimate of the cost to demolish the Romerovski factory complex and to remove the debris. Id. at para. 21, Exhibit B.

Plaintiff admits this fact, to the extent that it pertains to tax appeals after 1996, which is the relevant period in this case.

Paragraph 20: The estimate was submitted by Peter Juzefyk Excavating Company, Inc. on June 3, 2002, and totaled \$922,000.00 for the demolition of the Romerovski site. Id. at para. 23.

Plaintiff admits this fact, to the extent that it pertains to tax appeals after 1996, which is the relevant period in this case.

Paragraph 21. These decreases in assessed value occurred notwithstanding the significant increase in property values throughout the State during the same period.

Plaintiff admits this fact, to the extent that it pertains to tax appeals after 1996, which is the relevant period in this case.

Paragraph 22: During 2004, Mr. Braunstein again placed the Romerovski site on the market.

Plaintiff admits that he placed the property for sale in 2004.

Paragraph 23. He told Borough representatives that he placed the site on the market due to the continued lack of profitability of his textile recycling facility. Ibid.

Plaintiff admits this fact.

Paragraph 24. Braunstein failed to sell the property as of 2006.

Plaintiff admits this fact.

Paragraph 25. On or around February 9, 2006, Mr. Braunstein scheduled a meeting with Borough representatives and presented architectural depictions of an apartment complex. Id. at para. 12.

Plaintiff admits this fact.

Paragraph 26. At that informal meeting, Mr. Braunstein stated that he “wanted to get out of the textile recycling business” because he felt that his labor costs were too high and he was having trouble making ends meet in that business.

Plaintiff admits this fact.

Paragraph 27. Mr. Braunstein also asked the Mayor for guidance on how to go about redeveloping his property.

Plaintiff admits this fact.

Paragraph 28. The Borough representatives expressed interest in revitalizing the Romerovski site and in Mr. Braunstein’s development plans.

Plaintiff admits this fact.

Paragraph 29: In response to Mr. Braunstein’s request for guidance on his plans for an apartment complex, the Mayor informed Mr. Braunstein that the community had encountered problems with apartment complexes, and encouraged Mr. Braunstein to consider senior housing, condominiums, and mixed use development on the site.

Plaintiff admits that Mayor DeIorio “asked whether [Braunstein] would consider an age-restricted or a mixed use development” and that “[h]e did not mention that apartments had been a problem”. Plaintiff denies that the Mayor suggested condominiums. Braunstein Cert., para. 25.

Paragraph 31: Indeed, at the many public meetings, the Borough never foreclosed the possibility that it might seek a developer of rental housing as the redeveloper for the site.

Plaintiff broadly points to the Borough’s March 1, 2007 Redevelopment Plan in denying the fact. However, the fact alleged spoke of “the many public meetings” prior to

plaintiff's lawsuit and the eventual adoption of the Redevelopment Plan. Therefore, the denial is unresponsive the fact alleged and it should therefore be deemed admitted.

Paragraph 32. The exchange at the meeting on February 9, 2006 was part of a cooperative effort of the community and Mr. Braunstein to achieve their joint goals.

Plaintiff admits this fact.

Paragraph 33. At this conference and indeed regularly, Mr. Braunstein pledged to do “what was best for the community,” to “work together” and to create a partnership.

Plaintiff admits this fact.

Paragraph 35. The Borough retained Heyer, Gruel and Associates (hereinafter “HGA”).

Plaintiff admits this fact.

Paragraph 36. As a result of these conversations in early 2006, Mr. Braunstein and the Borough decided that it would be mutually-beneficial to work together and take the steps necessary to designate the Romerovski site as a “redevelopment area” to help the Borough attract and locate developers interested in redeveloping the site. Id. at 24-25.

Plaintiff admits that Mr. Braunstein and Mayor DeIorio agreed to work together for Mr. Braunstein to redevelop his property.

Paragraph 37. In view of Mr. Braunstein's strong interest in revitalizing his site, and the Borough's desire to turn the site from a worn-down eyesore into a thriving municipal gateway, the Borough made a commitment to hire an experienced planning firm to help guide us through the redevelopment process.

Plaintiff admits this fact.

Paragraph 38. Consistent with the statements to Mr. Braunstein, the Mayor and the Planner from HGA, Charles Latini, repeatedly promised the public that the process that would

determine the ultimate use of the site would be open and indeed sincerely urged the public to express its views so that the plan that evolved from the process would best serve the interests of the community.

Plaintiff admits this fact.

Paragraph 40: The Borough made clear at this meeting and at subsequent meetings that it wanted to make the site as attractive for redevelopment as possible and to encourage proposals in the hope that this process would generate multiple choices from which the Borough could choose.

Although plaintiff denies this fact, a sophisticated land use attorney such as Ronald Ladell could not have conceivably believed that the Borough would relinquish its ability to make the site as attractive as possible for redevelopment; and to encourage multiple proposals in the hope that this process would generate multiple choices from which the Borough could choose what was best for the public. Pursuant to the Liberty Surplus Ins. Corp. v. Amoroso, 189 N.J. 436 (2007) opinion, this fact should be deemed admitted.

Paragraph 42. The dialogue between Braunstein and the Borough in early 2006 culminated in an agreement, albeit an informal one, to work together to facilitate the redevelopment of the Romerovski site.

Plaintiff admits this fact.

Paragraph 43. The parties reached an understanding that first the Borough would take the steps necessary to designate the Romerovski site as an area in need of redevelopment.

Plaintiff admits that the parties agreed to work together.

Paragraph 44. In view of Mr. Braunstein's keen interest in revitalizing his site and his pledge of cooperation, the Borough made a commitment to hire an experienced planning firm to help guide it through the redevelopment process.

Plaintiff admits this fact.

Paragraph 45. In this way, the Borough took the first steps to realize a goal that advanced the economic interests of the developer and the Borough's interest in turning the site from a worn-down eyesore into a thriving municipal gateway.

Plaintiff does not deny the factual allegation, but instead denies that "Braunstein would benefit from the Borough's RFP process." This is not a credible denial because, at a minimum, Mr. Braunstein would have reaped the financial benefits of the increase in value of the zoning created in the Borough's adopted Redevelopment Plan, even if the Borough exercised its right to condemn the site. Given his association with Ladell since August of 3006, Braunstein would have or should have known this. Consequently, pursuant to the principles of Liberty Surplus, this fact should be deemed admitted.

Paragraph 48. On March 29, 2006, after some preliminary meetings and preparatory work, Mayor DeIorio met again with Mr. Braunstein and the Mr. Latini, to discuss the various possibilities of redeveloping the Romerovski site.

Plaintiff admits this fact.

Paragraph 49. The Mayor, its Planner, and Mr. Braunstein discussed the legal process associated with creating a redevelopment zone.

Plaintiff admits this fact.

Paragraph 51: Despite Mr. Braunstein's interest in *dabbling* in the redevelopment business, the Mayor made clear that the Borough was committed to an open process. Towards

that end, (a) the Borough conducted a series of public outreach meetings to allow its residents to state their opinions about how the site should be redeveloped, and (b) the Borough, as the redevelopment entity, sought multiple proposals via a “Request For Proposals” (RFP) from experienced redevelopers to allow the Borough to make the best decision possible with regard to the long-term planning issues it faced.

Although plaintiff denies this fact, a sophisticated land use attorney such as Ronald Ladell could not have conceivably believed that the Borough would relinquish its ability to make the site as attractive as possible for redevelopment; and to encourage multiple proposals in the hope that this process would generate multiple choices from which the Borough could choose what was best for the public. Pursuant to the Liberty Surplus Ins. Corp. v. Amoroso, 189 N.J. 436 (2007) opinion, this fact should be deemed admitted.

Paragraph 53. At that time, as now, the Borough has always sought to facilitate Mr. Braunstein’s ability to find an economically-feasible use for his property through a process designed to foster public participation and public acceptance of the project the process produced. Id. at para. 35.

Plaintiff incredibly denies this fact, and cites Braunstein’s certification at para. 6-7, which discusses how Braunstein felt he was “taken advantage of” and that he would “receive no benefit” from involving the community and utilizing an RFP process seeking multiple proposals. This is not a credible denial because, at a minimum, Mr. Braunstein would have reaped the financial benefits of the increase in value of the zoning created in the Borough’s adopted Redevelopment Plan, even if the Borough exercised its right to condemn the site. Consequently, pursuant to the principles of Liberty Surplus, this fact should be deemed admitted.

Paragraph 54. On April 17, 2006, the Planning Board noted that the Borough Council was poised to adopt a Resolution requesting the Board to work with HGA on the Romerovski redevelopment project.

Plaintiff admits this fact.

Paragraph 55. The Planning Board noted that “there will be intense public hearings and input from town members.”

Plaintiff admits this fact.

Paragraph 56. On April 20, 2006, the Borough Council authorized the Planning Board to conduct a preliminary investigation to determine if the Romerovski Site qualified as a “redevelopment area” as that term is defined in the Local Redevelopment and Housing Law at N.J.S.A. 40A:12A-5.

Plaintiff admits this fact.

Paragraph 57. The Borough also authorized the preparation of a Redevelopment Plan for the area if the Romerovski Site qualified as a redevelopment area.

Plaintiff admits this fact.

Paragraph 61: On June 6, 2006, Mr. Braunstein walked the site with Mr. Latini.

Plaintiff admits this fact. **Moreover, Braunstein admits that it was his understanding that this site visit was necessary for Roselle Park to declare the property in need of redevelopment and to move along the process of redeveloping the property.**

Paragraph 62. As the Borough conducted a series of public meetings and as the Borough’s Planning Consultant drafted a redevelopment plan, Mr. Braunstein informed the Mayor that several developers were talking with him concerning the redevelopment of his site and that he felt the interest was sincere and encouraging.

Plaintiff admits this fact.

Paragraph 64: The widespread interest rendered it likely that the process the Borough had instituted would generate several redevelopment proposals and thereby enable the Borough to choose the proposal it deemed most suitable for the community.

Although plaintiff denies this fact, a sophisticated land use attorney such as Ronald Ladell could not have conceivably believed that the Borough would relinquish its ability to make the site as attractive as possible for redevelopment; and to encourage multiple proposals in the hope that this process would generate multiple choices from which the Borough could choose what was best for the public. Pursuant to the Liberty Surplus Ins. Corp. v. Amoroso, 189 N.J. 436 (2007) opinion, this fact should be deemed admitted.

Paragraph 65. Mr. Braunstein informed the Mayor that these developers had various ideas.

Plaintiff admits this fact.

Paragraph 68. The August 21, 2006 Planning Board minutes provide that the mayor stated that “the process has been moving along nicely. This is because the property owner [Braunstein] has really cooperated and wants community support for this.”

Plaintiff admits this fact.

Paragraph 69. Mr. Braunstein attended the August 21, 2006 Planning Board meeting and (a) stated he “is more than willing to work with the town to enhance the property”; and (b) that “a 400-500% tax improvement is possible” for the Borough.

Plaintiff admits this fact.

Paragraph 71. At that meeting, the Planning Board Chairman even noted that “this process could have taken years without Mr. Braunstein’s help.”

Plaintiff admits this fact.

Paragraph 73. In keeping with its promise to allow the public to meaningfully participate in the redevelopment process, the Borough held multiple discussions at the Planning Board level concerning the Romerovski project.

Plaintiff admits this fact.

Paragraph 74. On May 15, 2006, June 22, 2006, July 17, 2006, August 21, 2006, September 18, 2006, October 2, 2006, and November 9, 2006, the Planning Board held meetings to discuss *inter alia* the Borough's general revitalization goals and the Romerovski redevelopment project.

Plaintiff admits this fact.

Paragraph 77. The planning board and its professionals educated the public as the Board discussed various topics including housing, redevelopment, transit-oriented development, circulation and road improvements and a general planning vision for the future of the Borough.

Plaintiff admits this fact.

Paragraph 78. These public input sessions also provided an opportunity for the public to voice specific input on the pending Romerovski Site Redevelopment Plan.

Plaintiff admits this fact.

Paragraph 79. Mr. Braunstein participated in *some of* these meetings.

Plaintiff admits this fact.

Paragraph 80. On September 18, 2006, the Planning Board unanimously voted to recommend the Romerovski site as a "Redevelopment Area" as provided for under the Local Redevelopment and Housing Law.

Plaintiff admits this fact.

Paragraph 81. On October 16, 2006, the Planning Board adopted the resolution memorializing its September 18th vote to recommend the Romerovski site as a “Redevelopment Area.”

Plaintiff admits this fact.

Paragraph 82. On October 19, 2006, the Borough Council adopted a resolution accepting the Planning Board’s determination and stating that the Borough “looks forward to the creation of the Redevelopment Plan that specifically addresses the issues contained in the aforementioned study.”

Plaintiff admits this fact.

Paragraph 88. By the end of 2006, the Borough had formally authorized HGA not only to prepare New Directions and the Romerovski Site Redevelopment Plan, but also a Housing Element and Fair Share Plan.

Plaintiff admits that by the end of 2006, HGA was authorized to prepare New Directions and the Romerovski Site Redevelopment Plan. Plaintiff admits that by the end of 2006 HGA was authorized to prepare data for a Housing Element.

Paragraph 89. New Directions is a planning document that discusses the general planning issues and considerations for the entire Borough.

Plaintiff admits this fact.

Paragraph 91: On November 9, 2006, the Planning Board met to discuss the preliminary recommendations of the Redevelopment Plan with the public.

Plaintiff correctly notes that the Planning Board did not meet on November 9, 2006. This was a typographical error. The Planning Board indeed met on November 22, 2006,

the minutes of which were provided by the Borough in the Jedziniak Certification at Exhibit 13. This fact therefore should be deemed admitted.

Paragraph 92. During this important planning process, HGA explained the Borough's need to adopt a Housing Element and Fair Share Plan ("Fair Share Plan")

Plaintiff correctly notes that the Planning Board did not meet on November 9, 2006. This was a typographical error. The Planning Board indeed met on November 22, 2006, the minutes of which were provided by the Borough in the Jedziniak Certification at Exhibit 13. This fact therefore should be deemed admitted.

Paragraph 93: In response, the Borough immediately committed to adopting such a plan, requesting a proposal from HGA for the costs associated with same.

Plaintiff minces words by stating that the Borough did not commit "immediately." Since the Planning Board discussed the need for a Housing Element and Fair Share Plan on November 22, 2006, and the Borough Council authorized the drafting of its Plan on December 7, 2006, the Borough asserts that this qualifies as "immediately" and should be deemed admitted.

Paragraph 102. On November 20, 2006, the Planning Board openly acknowledged that the "Fair Share housing plan is needed as soon as possible in Roselle Park."

Plaintiff admits this fact.

Paragraph 104. The Redevelopment Plan adopted in March 2007 provides, "The Plan does not anticipate the use of eminent domain, given the cooperative relationship with the property owner."

Plaintiff admits this fact.

Paragraph 105. The Redevelopment Plan specifically included provisions for affordable housing, including the following language: “All project must incorporate provisions that address the Borough’s Growth Share obligation in accordance with the Council On Affordable Housing (COAH) through inclusion or payment in lieu.”

Plaintiff admits this fact.

Paragraph 106. On December 7, 2006, the Borough formally authorized HGA to begin drafting its Housing Element and Fair Share Plan. See Jedziniak Cert. at Exhibit 14 (Resolution authorizing HGA to draft the Borough’s Housing Element and Fair Share Plan).

Plaintiff offers a nonsensical denial. The Resolution authorizing HGA to draft the Borough’s Housing Element and Fair Share Plan speaks for itself, and the allegation should therefore be deemed admitted.

Paragraph 107. On December 18, 2006, the Borough noted that “the Housing Fair Share Plan Resolution 174-06 was adopted by the Mayor and Council. The draft [Housing Element and Fair Share] Plan should be available within the next two months.” This was a reference to the first stage of the plan involving the demographic information required by the Fair Housing Act. See Jedziniak Cert. at Exhibit 15, (minutes of the December 18, 2006 Planning Board meeting).

Plaintiff admits this fact.

Paragraph 108. On February 1, 2007, the Borough Council formally authorized HGA to complete the drafting of the Borough’s Housing Element and Fair Share Plan in accordance with the course the Borough charted late in 2006. Jedziniak Cert. at Exhibit 17. Resolution No. 48-07, attached as Exhibit 17 to Jedziniak Certification states, “BE IT RESOLVED by the Mayor and Council of the Borough of Roselle Park, that [HGA] be and is hereby awarded a contract in

the amount not to exceed \$17,000 for the completion of the Housing Element/Fair Share Plan for the Roselle Park Planning Board.” (Emphasis added). Semantics aside, the Borough’s Council officially awarded the contract to complete the HE/FSP to HGA, thereby authorizing HGA to create the Borough’s HE/FSP.

Plaintiff offers a nonsensical denial. The Resolution authorizing HGA to complete the Borough’s Housing Element and Fair Share Plan speaks for itself, and the allegation should therefore be deemed admitted.

Paragraph 109. On February 15, 2007, plaintiff served the Borough with the complaint it had filed on January 31, 2007.

Plaintiff admits this fact.

Paragraph 112. In early August of 2006, while the Borough was working on developing its Redevelopment Plan, Braunstein asked the Mayor to meet with a potential redeveloper to discuss a redevelopment idea for the site.

Plaintiff admits this fact.

Paragraph 113. On or around August 9, 2006, the Mayor met with Braunstein and Ron Ladell, a representative of AvalonBay Communities, to discuss Ladell’s proposal.

Plaintiff admits this fact.

Paragraph 114. At the meeting, Ladell stated that he only constructs apartment projects.

Plaintiff admits this fact.

Paragraph 115. Ladell also informed the Mayor of the favorable reputation of Avalon Bay as a skilled developer of housing.

Plaintiff admits this fact.

Paragraph 118. Naturally, the Mayor also reminded Braunstein and Ladell that he did not have sole authority to say yes or no to their plans.

Plaintiff admits this fact.

Paragraph 119. On October 31, 2006, Ladell formed Roselle Park VP, LLC, a Delaware Limited Liability Company, which included 450 West Westfield Realty, LLC (Braunstein's company) as the "non-managing member" of same.

Plaintiff admits this fact.

Paragraph 120: Neither Braunstein, Ladell, nor anyone else informed the Borough of this LLC or its purpose.

Plaintiff admits this fact.

Paragraph 121. On or around December 12, 2006, the Mayor participated in a meeting with Chuck Latini, P.P., (the Borough's consulting planner from HGA), Braunstein, and Ladell.

Plaintiff admits this fact.

Paragraph 124: The Mayor explained to Mr. Ladell that the Borough had the right to choose who would redevelop the site, and that while he could certainly compete for the job, the Borough intended to engage in the RFP process envisioned by the Borough from the outset.

Plaintiff admits this fact.

Paragraph 134. Some residents remarked that they wanted affordable housing or apartments with affordable rents.

Plaintiff admits this fact.

Paragraph 135. The Mayor "said that he could be persuaded to permit a . . . rental project. . .

Plaintiff admits this fact.

Paragraph 137: On or around December 13, 2006, the day after the meeting with Latini, Ladell, and Braunstein, the Mayor called Ladell and informed Ladell that, upon reflection, the Borough refused to be bullied by any developer.

Plaintiff admits this fact.

Paragraph 138. The Mayor also stated that he personally would rather see the site continue to lay fallow than to have the Borough bullied into developing the site in a manner not in the best interests of Roselle Park.

Plaintiff admits this fact.

Paragraph 139. The Mayor did not entirely close the door on the bus tour.

Plaintiff admits this fact.

Paragraph 145. Ladell stated to the Mayor that he would take as many people as the Mayor wanted.

Plaintiff admits this fact.

Paragraph 150. On or around January 19, 2007, Ladell contacted Mr. Latini, evidently frustrated because the process was not moving fast enough for him.

Plaintiff admits this fact.

Paragraph 157. on February 15, 2007, the Borough Council introduced and adopted on first reading the Ordinance (Ordinance No. 2201) adopting the Borough Redevelopment Plan for the Romerovski site.

Plaintiff admits this fact.

Paragraph 158. On March 1, 2007, the Borough Council adopted Ordinance No. 2201 on second reading.

Plaintiff admits this fact.

Paragraph 159. The minutes of this meeting state:

[Mayor DeIorio] said the next step after this portion is completed is to solicit developers. He said the intent of the Governing Body and the community is to try to get a developer. He said a developer may come in and ask for something completely different that may not be 100% of what this plan is, but something that we might be able to work with.

Mr. Latini said this is a starting point and we have to see what is out there on the market and if we are able to attract exactly what we want. He said if that does not work out then you are back in there to make some changes based on what you received and the comments you received from the development community. He said that way the redevelopment laws permit that when a redeveloper selected in the project makes sure the Borough gets its planning costs reimbursed, as well as any other costs you would have to work in the RFP process, it would go on to a developer and not the taxpayer.

Mayor DeIorio said we need a Redevelopment Plan that would entice developers to come into the Borough. It is not an easy process and we expect to have some challenges to make sure that this becomes something that the Borough residents can appreciate.

[Ibid.] (emphasis added).]

Plaintiff admits this fact.

Paragraph 160. Finally, those minutes demonstrate that the Borough had specifically planned for the construction of affordable housing on site:

[Chuck Latini] said there is an age restricted component involved, affordable housing obligations have to be met to the site for development. COAH governs that if you grow by residential development or commercial development, you have an obligation to provide affordable housing. We are applying COAH's rules as they will eventually be amended to the project. It makes the Borough whole and you won't have to provide it somewhere else.

[Ibid.]

Plaintiff admits this fact.

Paragraph 164: Mr. Ladell held himself out as a sophisticated developer.

Plaintiff admits this fact.

Paragraph 165: A sophisticated developer, represented by competent counsel, would have known full well that if the Borough completed the compliance process it initiated, the developer would not be able to leverage the municipality via a Mount Laurel lawsuit.

Plaintiff does not respond. However, having a sophisticated land use attorney as its managing member, it is inconceivable that the plaintiff did not know that it could use the Mount Laurel doctrine as legal leverage to eliminate its competition and undermine the Borough's redevelopment efforts. Pursuant to the Liberty Surplus Ins. Corp. v. Amoroso, 189 N.J. 436, 445 (2007) opinion, this fact should be deemed admitted.

Paragraph 166: On January 31, 2007, Mr. Ladell filed his Mount Laurel lawsuit against the Borough.

Plaintiff admits this fact.

Paragraph 171: On March 1, 2007, the Borough adopted its redevelopment plan.

Plaintiff admits this fact.

Paragraph 177. Periodically, the New Jersey Council on Affordable Housing ("COAH") assigns quotas to municipalities across the state called "fair share" responsibilities.

Plaintiff admits this fact.

Paragraph 178: COAH adopted regulations pursuant to which a municipality could ascertain its responsibilities for the first and second housing cycles in 1986 and 1994 respectively.

Plaintiff admits this fact.

Paragraph 179: COAH adopted regulations pursuant to which a municipality could ascertain its responsibilities for the first, second and third housing cycles in 2004. The so-called Cycle III regulations became effective on December 20, 2004.

Plaintiff admits this fact.

Paragraph 180: The New Jersey Builders Association and other entities filed an appeal challenging the Cycle III regulations.

Plaintiff admits this fact.

Paragraph 181: On January 25, 2007, the New Jersey Appellate Division issued an opinion regarding COAH's third round rules. See In re Adoption Of N.J.A.C. 5:94 and 5:95 By New Jersey Council On Affordable Housing, 390 N.J.Super. 1 (App. Div. 2007).

Plaintiff admits this fact.

Paragraph 182: The Court affirmed many aspects of COAH's Cycle III regulations, invalidated certain sections, and remanded certain issues to COAH for rulemaking, to be completed within six months.

Plaintiff admits this fact.

Paragraph 183. More specifically, the Appellate Division

1. Invalidated N.J.A.C. 5:94-4.4 to the extent that this regulation authorizes municipalities to adopt ordinances that impose set-aside obligations on developers without giving them any density bonuses or other compensatory benefits;
2. Invalidated various regulations by which municipalities determined their fair share responsibilities;
3. Gave COAH until July 25, 2007 to amend its regulations to respond to the concerns the Court had raised; and
4. Stayed COAH's right to certify the housing element and fair share plans of municipalities until after COAH adopts regulations responsive to its decision.

Plaintiff admits this fact.

Paragraph 184: On February 14, 2007, COAH filed a Motion with the Appellate Division requesting a stay of its partial invalidation of N.J.A.C. 5:94-4.4.

Plaintiff admits this fact.

Paragraph 185: The Appellate Division granted this motion.

Plaintiff admits this fact.

Paragraph 186: In addition, COAH brought a motion seeking more time to amend its regulations in response to the decision.

Plaintiff admits this fact.

Paragraph 187: On February 14, 2007, COAH also petitioned the Supreme Court for certification of the issue of whether the Appellate Division correctly ruled that a municipality must provide a compensatory benefit to developers as a quid pro quo for mandatory affordable housing set asides. The New Jersey Builder's Association and other interested parties filed cross petitions.

Plaintiff admits this fact.

Paragraph 188: On June 13, 2007, the Supreme Court denied the various petitions.

Plaintiff admits this fact.

Paragraph 189: On or around that same date, Appellate Division entered an order in response to COAH's motion, extending the deadline for COAH to adopt responsive regulations from July 25, 2007 to December 31, 2007: "The application by COAH to extend time to adopt rules consistent with this court's opinion is granted. Proposed rules shall be adopted by COAH and published in the New Jersey Register no later than December 31, 2007."

Plaintiff admits this fact.

Paragraph 190: The Roselle Park Fair Share Plan is based upon N.J.A.C. 5:94 as it existed prior to the Appellate Division decision dated January 25, 2007.

Plaintiff admits this fact.

Paragraph 191: However, the Borough has committed to amend its Fair Share Plan in accordance with any amended regulations that evolve from the appeals described above.

Plaintiff admits this fact.