

TABLE OF CONTENTS

	<u>Page</u>
LEGAL ARGUMENT	1
<u>POINT I</u>	1
DESPITE PLAINTIFF’S INADEQUATE ATTEMPT TO OBFUSCATE THE MATERIAL FACTS, THE PRICIPLES SET FORTH IN <u>LIBERTY SURPLUS</u> SUPPORT GRANTING THE BOROUGH’S MOTION FOR SUMMARY JUDGMENT	
<u>POINT II</u>	4
PLAINTIFF VIOLATED ITS THRESHOLD OBLIGATION TO ADEQUATELY PURSUE GOOD FAITH <u>PRE-SUIT</u> NEGOTIATIONS AND PLAINTIFF FAILED TO DEMONSTRATE EITHER THAT THE OBLIGATION DOES NOT EXIST OR THAT IT SATISFIED ITS OBLIGATION	
<i>Summary of Defendants’ Argument</i>	4
<i>Summary of Plaintiff’s Argument</i>	5
<i>Summary of Roselle Park’s Reply</i>	6
A. Unless And Until Either The Supreme Court Changes The Ground Rules For The Remedy It Created Or The Legislature “Clearly And Plainly” Changes The Limitations On The Remedy The Supreme Court Deemed Appropriate, Plaintiff Must Comply With All Of The Requirements Of The <u>Mount Laurel II</u> Decision—Not Just The Requirements It Claims The Court Regarded As Important.	8
1. The Supreme Court Established The Limitations On The Builder’s Remedy In <u>Mount Laurel II</u> Including The Obligation To First Engage In Good Faith Negotiations Before Filing Suit And Plaintiff Has Failed To Demonstrate That The Supreme Court Ever Eliminated Any Of The Limitations On The Builder’s Remedy, Including The Pre-suit, Good Faith Obligation.	8

2. Plaintiff Has Not Demonstrated That the Fair Housing Act “Plainly and Clearly” Eliminated The Pre-suit, Good Faith Negotiations.	11
B. <u>Toll</u> Eliminates Any Question As To The Continuing Vitality Of The Obligation To Engage In Pre-Suit, Good Faith Negotiations And Plaintiff’s Claim That The Supreme Court Never Reached The Issue Of Whether The Obligation Still Exists Has No Merit.	13
C. Braunstein Violated Plaintiff’s Obligation To Pursue Good Faith, Pre-Suit Negotiations By Joint Venturing With Avalon Bay And Suing The Municipality That Had Come To His Rescue And Was Engaged In A Redevelopment Process Gauged To Advance The Economic Interests Of Braunstein And The Redevelopment Goals Of The Community.	15
D. Plaintiff’s “Futility” Defense Has No Merit.	17
E. Even Handed Justice Requires That Whether A Developer Has Satisfied Its Pre-Suit Obligations Requires An Evaluation Of Its Pre-Suit Conduct.	19
F. Other Related Issues.	20
<u>POINT III</u>	22
PLAINTIFF VIOLATED ITS SEPARATE AND INDEPENDENT LEGAL OBLIGATION TO EXERCISE GOOD FAITH THROUGHOUT THE PROCESS.	
<i>Summary of Defendants’ Argument</i>	22
<i>Summary of Plaintiff’s Argument</i>	23
<u>The Borough’s Reply</u>	25
A. Braunstein’s Betrayal Hardly Constitutes “Good Faith”	25
B. The Supreme Court Never Intended Its <u>Mount Laurel</u> Doctrine To Empower Bullies Such As Ladell To Run Roughshod Over A Municipality Actively Seeking (1) To Achieve Constitutional Compliance And (2) To Foster The Redevelopment Of Land In A Manner Designed To Promote Community Input and Acceptance.	26

POINT IV 28

PLAINTIFF VIOLATED ITS OBLIGATION TO FORMULATE AND PRESENT A “PROPOSED PROJECT”. PLAINTIFF HAS FAILED TO PERSUADE THAT IT DOES NOT HAVE THIS OBLIGATION OR THAT IT HAS SATISFIED THE OBLIGATION.

Summary of Defendants’ Argument 28

Summary of Plaintiff’s Argument 28

The Borough’s Reply 29

POINT V 31

THE SUPREME COURT REQUIRED PLAINTIFFS SEEKING BUILDER’S REMEDIES TO BE THE “CATALYST FOR CHANGE” AND PLAINTIFF HAS FAILED TO MEET ITS BURDEN.

Summary of Defendants’ Argument 31

Summary of Plaintiff’s Argument 32

The Borough’s Reply 32

A. To “Succeed in Litigation,” A Developer Must Not Only Prove Noncompliance, But Also Prove That it Was the “Catalyst For Change” 32

B. Plaintiff Was Not The “Catalyst For Change” 35

POINT VI 40

AS A “PRECONDITION” TO DECLARING A PLAINTIFF ENTITLED TO ABUILDER’S REMEDY, THE SUPREME COURT REQUIRED PLAINTIFFS TO PROPOSE A SET-ASIDE THAT QUALIFIES AS “SUBSTANTIAL” AND PLAINTIFF MAY NOT SATISFY THE PREREQUISTE TO JUDICIAL RELIEF BY RELYING UPON A SUPERCEDED REGULATION NEVER INTENDED TO CREATE AN IRREBUTABLE PRESUMPTIONS.

Summary of Defendants’ Argument 40

Summary of Plaintiff’s Argument 41

The Borough’s Reply 41

POINT VII

45

THE BOROUGH'S ADOPTED HOUSING ELEMENT AND FAIR SHARE PLAN IS FUNDAMENTALLY SOUND AND MORE THAN SUFFICIENT TO BE REVIEWED BY COAH STAFF, SUBJECT TO WHATEVER REVISIONS OR ADDITIONAL INFORMATION THE AGENCY REQUESTS.

Conclusion

47