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and the Planning Board of the Borough of Roselle Park

Roselle Park VP, LLC

Plaintiff,

v

**Borough of Roselle Park and the
Planning Board of the Borough of
Roselle Park**

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY
DOCKET NO. UNN-L-338-07**

Civil Action

MOUNT LAUREL

**REPLY TO PLAINTIFF'S COUNTER
STATEMENT OF FACTS**

1. Defendants (hereinafter collectively referred to as “the Borough) are without sufficient information to confirm or deny whether the business on the Romerovski site has been “as profitable as Isreal Braunstein would like.” Based upon numerous statements made, and actions taken by Mr. Braunstein, however, this allegation is admitted.

2. Defendants admit that Israel Braunstein is “a sophisticated developer” and that he has “experience developing real estate.” The Borough **denies** that it ever alleged that Mr. Braunstein, personally, was a “sophisticated developer.” See Latini Certification, dated June 27, 2007, at para. 61 – 62. Instead, the Borough alleged that plaintiff was a “sophisticated developer” considering the admitted fact that AvalonBay is the “managing member” of plaintiff. See Ladell Cert., dated September 25, 2007, at para. 1. Nevertheless, Mr. Braunstein is presumed to be aware of the law and therefore his “sophistication” in real estate development is not relevant. Mr. Braunstein also admits that he has operated a substantial business at least since 1996, and that he has a “personal attorney.” See Certification of Braunstein, dated September

25, 2007, at para. 39. Thus, his allegation concerning his lack of sophistication is insignificant, at best.

3. The Borough **denies** that Braunstein has never told anyone that his business was losing money. See Certification of DeIorio, dated August 20, 2007, at para. 7; see also DeIorio Certification, dated, October 1, 2007, at para. 14 – 19.

4. The Borough admits that Braunstein approached the Borough due to financial woes on his site and requested the Borough's assistance in facilitating a solution to Braunstein's financial problems.

5. Defendants are without sufficient information to confirm or deny Mr. Braunstein's state of mind on whether the legal process for redevelopment "mattered" to Mr. Braunstein.

6. Defendants are without sufficient information to confirm or deny Mr. Braunstein's state of mind regarding whether Mr. Braunstein cared if he met with Mayor DeIorio at a private informal meeting or at a public meeting.

7. Defendants are without sufficient information to confirm the date when Mr. Braunstein began to actively market the property. Defendants admit, however, that Mr. Braunstein tried unsuccessfully to divest himself of the financially draining Romerovski site.

8. **Denied.** Mr. Braunstein is presumed to be aware of the law and therefore is presumed to know that New Jersey Redevelopment Laws contemplate a process where multiple proposals are secured through an RFP process and whereby the municipality chooses the most attractive proposal. See more detailed discussion of this issue in paragraph 69, *infra*. In addition, Mr. Braunstein expressly knew as early March of 2006 that the Borough was considering the RFP process to attract multiple proposals. See Certification of Latini, dated

October 1, 2007, at para. 12 - 19 and Exhibit A (notes taken by Latini at the meeting on March 29, 2006 demonstrating that discussions concerning the RFP process were discussed at that meeting); see also DeIorio Cert., dated August 20, 2007, at para. 33 (also discussing the March 29th, 2006 meeting and stating “that the Borough, as the redevelopment entity, would seek 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.”; see also DeIorio Cert., dated October 1, 2007, at para. 36 - 40).

9. **Denied.** Mr. Braunstein never stated that he “would not challenge Roselle Park designating his property as an area in need of redevelopment” as long as he could pick the redeveloper. Certification of DeIorio, dated October 1, 2007, at para. 150. The Borough was unmistakably clear to Mr. Braunstein (1) that the Borough would be conducting a series of public outreach meetings to allow its residents to state their opinions about how the site should be redeveloped, and (2) that the Borough, as the redevelopment entity, would seek 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. See DeIorio Cert., dated August 20, 2007, at para. 33; see also Certification of Latini, dated October 1, 2007, at para. 12 - 19 and Exhibit A (notes taken by Latini at the meeting on March 29, 2006). In addition, the Borough’s adopted Redevelopment Plan, a draft of which was supplied to the Borough by its planner on November 30, 2006, expressly stated the following: **“The Plan does not anticipate the use of eminent domain, given the cooperative relationship with the property owner.”** See the Borough’s adopted Redevelopment Plan, Certification of Latini, dated July 27, 2007, at Exhibit B, page 25. The RFP process envisioned by the Borough

was the impetus for the “in concert” reference within the Borough’s Redevelopment Plan. See Certification of Latini, dated October 1, 2007, at para. 34 - 39.

10. **Denied.** See answers to paragraphs 8 and 9, *supra*.

11. **Denied.** First, the moment Mr. Braunstein approached the Borough for help in redeveloping his site, he knew, or should have known, that the use of eminent domain was not only statutorily sanctioned, but constitutionally authorized. Second, notwithstanding the Borough’s vested power to resort to eminent domain, plaintiff provides no documentation or any other evidence to demonstrate the Borough’s intent to resort to condemnation. Third, the Borough provides directly contrary evidence demonstrating that it did **not** intend to employ condemnation. See the Borough’s adopted Redevelopment Plan, Certification of Latini, dated July 27, 2007, at Exhibit B, page 25 (Wherein the Redevelopment Plan expressly stated: “The Plan **does not anticipate the use of eminent domain, given the cooperative relationship with the property owner.**”) Finally, the Borough never stated, or implied, that they would need to resort to condemnation. See Certification of DeIorio, dated October 1, 2007, at para. 46. In fact, the Borough’s intention, at all relevant times, was to identify the most attractive proposal work with the developer deemed most attractive after receiving public input. Since Mr. Braunstein had such financial difficulties with the subject property as zoned and used, there was every reason to believe that the Borough through the RFP process could create a sufficiently attractive redevelopment plan to enable Mr. Braunstein to secure an economic benefit and to enable the Borough to pick the best proposal for the community.

12. **Denied.** First, it is not the Borough’s legal responsibility to make sure that Mr. Braunstein “obtains a financial benefit”, although the Borough’s redevelopment plan has certainly advanced that goal. Second, the Borough objects to this assertion because it requires a

legal conclusion, is subjective, is patently opinion-based, and is not a legitimate allegation of fact. Finally, until Mr. Braunstein precipitously formed his partnership with Mr. Ladell, the Borough's goal was to create a win-win situation. In the event that the Borough decides to exercise its right to condemn Mr. Braunstein's property, the law requires the Borough to pay fair market value, which would reflect the increased value created by the Borough's adopted Redevelopment Plan. See City of Asbury Park v. Asbury Park Towers, 388 N.J.Super. 1, 9 (App. Div. 2006)("In an eminent domain proceeding, the condemnor's obligation is to pay 'just compensation' for the property obtained, which is defined as 'the fair market value' of the property as of the date of the taking, determined by what a willing buyer and a willing seller would agree to, neither being under any compulsion to act." (citing State, by Comm'r of Transp. v. Silver, 92 N.J. 507, 513 (1983); Deland v. Twp. of Berkeley Heights, 361 N.J.Super. 1, 21 (App. Div.), certif. denied, 179 N.J. 185 (2003)).

13. Defendants admit that Mr. Braunstein coordinated a meeting in February of 2006 to discuss a non-inclusionary development

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16. The Borough admits that a meeting occurred on March 29, 2007 between Israel Braunstein, Richard Kaplan (Mr. Braunstein's attorney), Mayor DeIorio, Susan Gruel, and Chuck Latini. In that meeting, the Borough representatives informed Mr. Braunstein that, as a matter of common practice in the redevelopment process, an RFP would likely be issued to attract interested redevelopers. See Certification of Latini, dated October 1, 2007, at para. 14 - 19 and

Exhibit A (notes taken by Latini at the meeting on March 29, 2006 demonstrating that discussions concerning the RFP process were discussed at that meeting); see also Certification of Latini, dated October 1, 2007, at Exhibit B (relevant excerpt from Stan Slachetka, A.I.C.P., P.P. and David G. Roberts, A.I.C.P., P.P., A.S.L.A., C.L.A., The Redevelopment Handbook, A Guide to Rebuilding New Jersey's Communities, 2003; see also DeIorio Cert., dated August 20, 2007, at para. 33 (also discussing the March 29th, 2006 meeting and stating “that the Borough, as the redevelopment entity, would seek 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.”).

17. Admitted, to the following extent. At the March 29th meeting, Mr. Braunstein stated that he might be interested in acting as the redeveloper of the site, and that he might like to create a partnership with a larger, more experienced redeveloper when the time came. Despite Mr. Braunstein's interest in dabbling in the redevelopment business, the Mayor was unmistakably clear (1) that the Borough would be conducting a series of public outreach meetings to allow our residents to state their opinions about how the site should be redeveloped, and (2) that the Borough, as the redevelopment entity, would seek 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. Certification of DeIorio, dated August 20, 2007, at para. 32 – 33.

18. The Borough agrees that during this meeting early on in the Borough's redevelopment process, a final decision had not been made concerning the various options open to the Borough under the redevelopment laws. However, Braunstein was made expressly aware by Mr. Latini of the common RFP technique, and the Mayor stated that “this is the way the

Borough would like to proceed because it made sense to get as many proposals as possible.” See Certification of Latini, dated October 1, 2007, at para. 14 - 19 and Exhibit A (notes taken by Latini at the meeting on March 29, 2006 demonstrating that discussions concerning the RFP process were discussed at that meeting); see also DeIorio Cert., dated October 1, 2007, at para. 36 - 40; see also DeIorio Cert., dated August 20, 2007, at para. 33 (also discussing the March 29th, 2006 meeting and stating “that the Borough, as the redevelopment entity, would seek 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.”).

19. **Denied.** Defendants admit that the Mayor attended a meeting with Braunstein and Ladell on August 9, 2006. However, the Mayor **denies** that he was aware that “Braunstein intended to partner with AvalonBay.” In fact, the Mayor had no idea that a partnership was formed or about to be formed between these two men until plaintiff admitted that 450 West Westfield Realty, LLC (Braunstein’s company) had partnered with AvalonBay to form the entity that sued the Borough in plaintiff’s motion papers in July of 2007. DeIorio Cert., dated October 1, 2007, at para. 88.

20. The Borough has insufficient information to admit or deny what Mr. Ladell was “aware” of.

21. The Borough admits that, as of August of 2006, it had not yet developed a Housing Element and fair Share Plan. The Borough **denies** plaintiff’s inference that the Mayor is personally responsible for “developing a Housing Element and Fair Share Plan”, as this is the responsibility of the Borough, not the Mayor. Certification of DeIorio, dated October 1, 2007, at para. 95 - 97. The Borough denies that anything plaintiff said or did was the impetus for the

Borough's development of a Housing Element and Fair Share Plan. See Certification of DeIorio, dated October 1, 2007, at para. 151 – 157.

22. **Denied.** While Ladell did mention that he thought the site could handle upwards of 300 units, Ladell did not “propose” anything. Certification of Latini, dated October 1, 2007, at para.74 - 77; Certification of DeIorio, dated October 1, 2007, at para. 115 - 120. Ladell supplied the Borough with no concept plan or any other details of what he sought to achieve on the site. In addition, **neither Braunstein nor Ladell ever mentioned affordable housing in any discussion with Borough representatives.** Braunstein's and Ladell's assertions to the contrary are false. See DeIorio Cert., dated August 20, 2007, at para.77; see also Latini Cert., dated June 27, 2007, at para. 52; Latini cert., dated October 1, 2007, at para. 57; DeIorio Cert., dated October 1, 2007, at para. 121.

23. Defendants **deny** that Ladell ever submitted a “proposal.” See Certification of Latini, dated October 1, 2007, at para.74 - 77; Certification of DeIorio, dated October 1, 2007, at para. 115 - 120.

24. The Borough questions the relevance of this assertion because it is not a municipality's responsibility to instruct a sophisticated developer on the legal prerequisites of a builder's remedy—particularly one familiar with the trial judges rulings in the Rumson and Oceanport cases. The Borough admits that the Mayor did not state that plaintiff should attend a public meeting because at that point, the Borough had neither adopted a Redevelopment Plan nor begun its RFP process.

25. The Borough **denies** that Mayor DeIorio “requested” that Israel Braunstein and Ron Ladell should wait until after the November 2006 election. Certification of DeIorio, dated September 21, 2007, at para. 17 – 20. The Borough admits that the Mayor stated that, as a

practical matter, no official Borough action was going to take place on the Redevelopment Plan until at least after the election.

26. **Denied.** Once Mr. Latini described the redevelopment process to the Borough, it was always the intention of the Borough to conduct an RFP process, and that is the common practice throughout the state on redevelopment projects. See Certification of Latini, dated October 1, 2007, at para. 14 – 19 and Exhibit B.

27. This paragraph is identical to paragraph 26 above. See the Borough’s answer to paragraph 26.

28. Admitted.

29. **Denied.** While Ladell did mention that he thought the site could handle upwards of 300 units, Ladell did not “propose” anything. The Borough denies that Ladell presented a concept plan for the Borough’s consideration. Nor did he even *mention* that he had a concept plan, engineering reports, or anything that might give the Borough a specific understanding of what he wanted or reasonably thought he could achieve. Certification of DeIorio, dated October 1, 2007, at para. 115 – 119. Ladell supplied the Borough with no concept plan or any other details of what he sought to achieve on the site. In addition, **neither Braunstein nor Ladell ever mentioned affordable housing in any discussion with Borough representatives.** Braunstein’s and Ladell’s assertions to the contrary are outright lies. See DeIorio Cert., dated August 20, 2007, at para.77; see also Latini Cert., dated June 27, 2007, at para. 52; Latini cert., dated October 1, 2007, at para. 57; DeIorio Cert., dated October 1, 2007, at para. 121.

30. To the extent a reply is necessary, it is **denied**. Defendants **deny** that Ladell ever submitted a “proposal” for 300 units. See Certification of Latini, dated October 1, 2007, at para.74 - 77; Certification of DeIorio, dated October 1, 2007, at para. 115 - 199. Instead, Ladell

came to the December 12th meeting with one agenda: to pressure the Borough into accepting his company as the redeveloper of the site. DeIorio Cert., dated October 1, 2007, at para. 115. In response to Ladell's pressure for the Borough to select AvalonBay as the redeveloper, the Mayor explained that the Borough would be going through the RFP process, that the public would be involved in this decision. DeIorio at para. 136 - 141. Mr. Braunstein's December 13th email to the Mayor, attached to Braunstein's certification, demonstrates that the Mayor insisted on the public's participation: "I can assure you **we realize the position you have of the responsibility to your constituents to take their opinions into consideration.**" (emphasis added).

31. **Denied.** The Borough questions the relevance of this assertion since it is not a municipality's responsibility to instruct a sophisticated developer on the legal prerequisites of a builder's remedy. Nevertheless, the Mayor did state he agreed to go on this trip as long as Ladell understood that he would need to discontinue his overly aggressive attitude and participate in the redevelopment process like any of his competitors as part of the process. DeIorio Cert., dated October 1, 2007 at para. 136.

32. **Denied.** The RFP process was discussed with Mr. Braunstein, at a minimum, in meetings on March 29, 2006 and August 9, 2006. See DeIorio Cert., dated August 20, 2007, at para. 33; see also Certification of Latini, dated October 1, 2007, at para. 14 - 19 and Exhibit A (notes taken by Latini at the meeting on March 29, 2006). In addition, the Borough scheduled public meetings in which the redevelopment of the Romerovski site was discussed at length, including meetings on May 15, 2006, June 22, 2006, July 17, 2006, August 21, 2006, September 18, 2006, October 2, 2006, and November 9, 2006. See Latini cert., dated June 27, 2007, at para. 20. The public, the Borough Council, the Planning Board and Mr. Braunstein were all aware of the intended RFP process.

33. **Denied.** See Certification of DeIorio, dated August 20, 2007, at paragraphs 92 – 94.

34. **Denied.** See Certification of DeIorio, dated September 21, 2007, at paragraphs 73 - 78.

35. **Denied.** See Certification of DeIorio, dated September 21, 2007, at paragraphs 30 – 32; see also Latini Certification, dated September 20, 2007, at para. 8 – 12.

36. Admitted.

37. **Denied.** On December 13, 2006, the Mayor called Ladell and informed him that, upon reflection, the Borough refused to be bullied by any developer. The Mayor also stated that, based on Ladell's overly aggressive, obnoxious statements the day before, 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 the residents of Roselle Park. See Certification of DeIorio, dated August 20, 2007, at paragraphs 79 – 80.

38. Despite the Mayor's refusal to allow Ladell to bully the Borough into capitulation, the Borough admits that the Mayor still agreed to participate in a bus trip, as long as Ladell understood that he would need to discontinue his overly aggressive attitude and participate in the redevelopment process like any of his competitors as part of the process. The Mayor agreed to participate in the bus trip because, despite Ladell's aggressive tactics, he still thought it would be proper to maintain an open mind. Moreover, the Mayor was not planning on traveling on this bus trip alone, but instead would be accompanied by several representatives of the Borough including, for instance, a number of interested residents, planning board members, and members of the Borough Council. Although the Mayor told Braunstein and Ladell that he would agree to the bus trip as part of the competitive process, he was uncomfortable scheduling a

bus trip to an AvalonBay project before the Borough had issued an RFP and received a response. The Mayor felt it would be inappropriate to partake in a bus trip with a potential redeveloper before they met with the public via RFP, because this may have caused public speculation that we were conducting a “back office deal” behind the public’s back, which was exactly the opposite of what we were trying to accomplish through the whole redevelopment process. Therefore, although the Mayor stated that he would like to take this bus trip, he also wanted that to happen after their presentation to the public and then members of the public who saw the presentation and who were interested could go on the bus trip. See Certification of DeIorio, dated August 20, 2007, at paragraphs 81 – 86. Certification of DeIorio, dated October 1, 2007, at para. 135 – 144.

39. Admitted.

40. Admitted. However, defendants **deny** the inference that the Borough did not return Braunstein’s and Ladell’s calls and messages because the Borough was closed-minded to developing an inclusionary development on site. Instead, the Mayor decided not to return the calls because Ladell and Braunstein pressed the issue of having a bus trip before the RFP process began. Despite the Mayor’s clear message concerning the Borough’s intention to conduct the “beauty pageant” of an RFP, they were trying to push the Mayor into selecting them without entertaining proposals of other developers and without allowing the public to comment on the proposals, thereby circumventing the open process we had promised the public. See Certification of DeIorio, dated August 20, 2007, at paragraphs 89 – 90; see also DeIorio Cert., dated October 1, 2007, at para. 115 - 119.

Moreover, as a sophisticated land use attorney, Mr. Ladell failed to even submit a letter to the Borough Council or Planning Board requesting an audience and the opportunity to present

his proposed project. This is what any sophisticated land use attorney would do, and this is precisely what the plaintiff's attorney in the Oceanport matter did. In Oceanport, the developer requested in writing that the Borough Council consider rezoning its site for an inclusionary development and submitted a concept plan to the Council for review. The Borough Council properly referred the plan to the Planning Board, and the developer attended a hearing before the Planning Board. This is exactly what Ladell could have, and should have done. Having admitted that he was aware of the principles stemming from the Oceanport matter, Mr. Ladell should not be heard to complain that he didn't even take the steps that were deemed *insufficient* in Oceanport.

41. Denied. In addition, **neither Braunstein nor Ladell ever mentioned affordable housing in any discussion with Borough representatives.** Braunstein's and Ladell's assertions to the contrary are untrue. See DeIorio Cert., dated August 20, 2007, at para.77; see also Latini Cert., dated June 27, 2007, at para. 52; Latini cert., dated October 1, 2007, at para. 57; DeIorio Cert., dated October 1, 2007, at para. 121.

42. **Denied.** This is an absurd legal conclusion drawn by plaintiff merely to in a thinly-disguised effort to provide some basis to oppose the Borough's arguments regarding the plaintiff's legal obligation to be the "catalyst for change" to satisfy the first element of the builder's remedy test. In response to advice of the consulting planner, the borough and its Planning board initiated the compliance process. Thus, defendants were the catalyst for change—not plaintiff. See Certification of DeIorio, dated August 20, 2007, at paragraphs 100 – 106; Certification of DeIorio, dated October 1, 2007, at paragraphs 153 - 157.

43. **Denied.** The Mayor told Ladell at the December 12, 2006 meeting that the Borough was drafting its Housing Element and Fair Share Plan. See Certification of DeIorio, dated August 20, 2007, at paragraphs 92 – 94

44. The Borough admits that this lawsuit was filed before the Borough adopted its Housing Element and Fair Share Plan.

45. **Denied.** Plaintiff filed suit on or around February 1, 2007 and served the lawsuit on February 15, 2007. That was the first time defendants knew of the lawsuit. By that time, the Borough had already authorized the drafting of its Housing Element and Fair Share Plan and it was poised to adopt the final version of its Redevelopment Plan, which required the development of affordable housing on site. See Certification of DeIorio, dated August 20, 2007, at paragraphs 100 – 106; see also Certification of Latini, dated June 27, 2007, at paragraphs 29 – 33 and Exhibit B.

46. To the extent that this allegation is relevant to any issues in the pending motions, it is admitted.

47. To the extent that this allegation is relevant to any issues in the pending motions, it is admitted.

48. Object, this is not a statement of fact, but plaintiff's assertion of law. To the extent that this allegation is relevant, the FHA speaks for itself. In any event, the Borough does not seek a "transfer" of this lawsuit from the Court to COAH. See the Borough's Proposed Form of Order submitted in conjunction with its Motion for Summary Judgment. In fact, as in the Rumson and Oceanport matters, the Borough seeks a dismissal of plaintiff's lawsuit on any of a number of independent legal grounds, and the *authorization* for the Borough to perfect its filing and seek COAH's approval of its housing element and fair share plan.

49. Defendants object to this allegation. This is not a statement of fact, but plaintiff's assertion of law. To the extent that this allegation is relevant, the FHA speaks for itself. In any event, the Borough does not seek a "transfer" of this lawsuit from the Court to COAH. See the Borough's Proposed Form of Order submitted in conjunction with its Motion for Summary Judgment. In fact, as in the Rumson and Oceanport matters, the Borough seeks a dismissal of plaintiff's lawsuit on any of a number of independent legal grounds, and the *authorization* for the Borough to perfect its filing and seek COAH's approval of its housing element and fair share plan.

50. **Denied.** See Certification of Latini, dated June 27, 2007, at pages 11 – 19.

51. The Borough admits that it filed a motion for temporary immunity from additional Mount Laurel litigation without prejudice to any defenses defendants had against plaintiff.

52. The Borough admits that plaintiff ironically sought a mandatory injunction compelling the Borough to conduct "good faith negotiations" after plaintiff filed suit and after it failed its express threshold legal obligation to conduct such negotiations prior to filing this suit.

53. **Denied.** See Certification of Jedziniak, dated October 1, 2007, at Exhibit A (letter dated September 28, 2007 confirming that the motion was never formally withdrawn).

54. The Borough admits that plaintiff ironically sought a mandatory injunction compelling the Borough to conduct "good faith negotiations" after plaintiff filed suit and after it failed its express threshold legal obligation to conduct such negotiations prior to filing this suit.

55. The Borough admits that plaintiff ironically sought a mandatory injunction compelling the Borough to conduct "good faith negotiations" after plaintiff filed suit and after it failed its express threshold legal obligation to conduct such negotiations prior to filing this suit. Plaintiff's motion is returnable October 5, 2007 at this time.

56. Defendants are without sufficient information to confirm whether AvalonBay, the managing member of Plaintiff, is a “sophisticated developer that builds only apartment communities throughout New Jersey, among other states” and whether AvalonBay “owns and manages approximately 50,000 apartment homes in ten states.” If the Court believes that this fact is relevant to the disposition of this case, Defendants should be able to engage in factual discovery. See R. 4:46-5(a). We do, however, admit that Ron Ladell is a sophisticated developer.

57. The Borough admits that Ron Ladell is an attorney and developer experienced in land use matters in New Jersey.

58. The Borough admits that on September 25, 2007, plaintiff revealed for the first time, plaintiff has stated that it “intends to develop a 300 residential unit development on the property with a 15% set aside for affordable housing, which will be deed restricted in accordance with applicable regulations.” The Borough **denies** that this untimely “promise” is sufficient to satisfy the legal requirement to submit a “proposed project” to the Borough prior to filing suit. See Defendants’ Brief in Support of Motion for Summary Judgment, dated August 28, 2007, at Point III, pages 84 – 93. Indeed, plaintiff seeks a protective order barring defendants from receiving its proposed project and related documents.

59. Defendants are without sufficient information to confirm whether Ladell, if asked, could have presented concept plans for the development of the subject property at the meetings in August and December 2006. If the Court believes that this fact is relevant to the disposition of this case, Defendants should be able to engage in factual discovery. See R. 4:46-5(a). Defendants do admit that plaintiff failed to present any purported concept plans before it sued as part of any good faith, pre-suit negotiations. Indeed, plaintiff failed to reveal these purported

concept plans in response to defendants' discovery demands. Instead, plaintiff has brought a motion seeking to avoid responding to defendants' discovery demands.

60. The Borough has insufficient information to admit or deny the allegation that "Ron Ladell had an engineering firm prepare a feasibility study analyzing the feasibility of a 300 unit residential project at the property." If the Court believes that this fact is relevant to the disposition of this case, Defendants should be able to engage in factual discovery. See R. 4:46-5(a). Defendants do admit that plaintiff failed to present any purported feasibility study before it sued as part of any good faith, pre-suit negotiations. Indeed, plaintiff failed to reveal this purported feasibility study in response to defendants' discovery demands. Instead, plaintiff has brought a motion seeking to avoid responding to defendants' discovery demands

61. The Borough has insufficient information to admit or deny the allegation that "Ron Ladell had an engineering firm prepare a study analyzing the access to and from the property for a 300 unit residential project at the property." If the Court believes that this fact is relevant to the disposition of this case, Defendants should be able to engage in factual discovery. See R. 4:46-5(a). Defendants do admit that plaintiff failed to present any purported access study before it sued as part of any good faith, pre-suit negotiations. Indeed, plaintiff failed to reveal this purported access study in response to defendants' discovery demands. Instead, plaintiff has brought a motion seeking to avoid responding to defendants' discovery demands.

62. The Borough admits that "after this litigation was filed, Roselle Park adopted its Redevelopment Plan." The Borough admits that its initial Redevelopment Plan, adopted on March 1, 2007, did not "mandate a specific density for the redevelopment of the property." The Borough is in the process of amending its Redevelopment Plan to state that the zoning will permit up to 215 units of residential housing, or a density of approximately 43 units per acre. In

fact, on September 6, 2007, the Borough introduced the amended Redevelopment Plan and the associated Redevelopment Ordinance. On that same date, the Borough Council referred the amended Redevelopment Plan and Ordinance to the Borough Planning Board for a consistency review. On September 17, 2007, the Planning Board conducted such a consistency review and found it to be consistent with the Master Plan. The Borough has scheduled a hearing to consider the adoption of the ordinance amending the Redevelopment Plan on October 4, 2007, and has already provided public notice of same. Since the adoption of the amendment will take place the day before the return date of the various motions before the Court, the Borough expects that it will report to the Court on October 5th that the formal action had taken place. See DeIorio Cert., dated September 21, 2007, at para. 44 – 47.

63. The Borough admits that, despite the disruption caused by plaintiff’s lawsuit, on June 18, 2007, the Borough completed the process it initiated before plaintiff filed suit: namely, it adopted and endorsed its Housing Element and Fair Share Plan. The Borough forwarded its adopted and endorsed Housing Element and Fair Share Plan to COAH, together with copies of the relevant Planning Board and Council Resolutions and service list. See Certification of Latini, dated October 1, 2007, at para. 78 - 80.

Therefore, the Borough is poised to perfect COAH jurisdiction upon dismissal of this action. Although the version of the Housing Element and Fair Share Plan adopted on June 18, 2007 states that 215 residential units could be developed on the property, it is anticipated that the planning board will amend its Housing Element to mirror its Redevelopment plan and that, as a result, the housing element will make clear that “up to 215” units. See Certification of Latini, dated October 1, 2007, at para. 79. In any event, the Borough’s amended Redevelopment Plan controls the zoning on the site. Nothing in the proposed Redevelopment Plan is intended to

relinquish the Borough's right to select the redeveloper or to negotiate a redevelopment agreement acceptable to the community. See Certification of Latini, dated October 1, 2007, at para. 85.

64. The Borough admits that the Housing Element and Fair Share Plan provides that a minimum of 20 percent of the units on the subject property will be affordable and that the Borough reserves the right to increase the set-aside depending upon the results of a study. The Borough admits that the current Redevelopment Plan contemplates that 11.11 percent of the units on the subject property will be affordable. The proposed amended Redevelopment Plan mirrors the current Housing Element and Fair Share Plan and eliminates the inconsistency. See Certification of Latini, dated October 1, 2007, at para. 82. Nothing in the proposed Redevelopment Plan is intended to relinquish the Borough's right to select the redeveloper or to negotiate a redevelopment agreement acceptable to the community. See Certification of Latini, dated October 1, 2007, at para. 85.

65. The Borough admits that the current Redevelopment Plan prohibits the construction of rental housing on the subject property. However, the Borough has introduced a proposed amendment to its Redevelopment Plan that will not prohibit apartments. Nothing in the proposed Redevelopment Plan is intended to relinquish the Borough's right to select the redeveloper or to negotiate a redevelopment agreement acceptable to the community. See Certification of Latini, dated October 1, 2007, at para. 85.

66. This paragraph requires a legal conclusion and therefore no answer is required. However, as a sophisticated developer, Mr. Ladell knows that it is a business judgment whether or not to seek variances. Since he decided to invoke the principles of the Mount Laurel doctrine

to get what he wanted, he is bound to abide by all the requirements and legal limitations associated with the doctrine. He failed to do so.

67. The Borough admits that the minutes of the Planning Board meetings in 2006 submitted by the Borough in its motion papers do not refer to an "RFP process." However, Mr. Latini's notes from the March 29, 2006 meeting with Mr. Braunstein demonstrates, without question, that an "RFP process" was discussed well before Mr. Ladell come into the picture. See Latini Cert. dated October 1, 2007, at Exhibit A. In addition, on March 1, 2007, the date the Borough adopted its Redevelopment Plan, the Borough was unequivocal about its desire for multiple proposals:

[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.

[Certification of Jedziniak, dated July 27, 2007, at Exhibit 19]

These two documents demonstrate that the Borough had discussed the RFP process from March 2006 through the present.

68. See answer to paragraph 67, supra.

1. 69. The Borough **denies** that the Borough ever intended to relinquish the right to decide the redeveloper and to negotiate a redeveloper's agreement it deemed appropriate. See Certification of Latini, dated October 1, 2007, at para. 85. The RFP process envisioned by the Borough and the "cooperative relationship" the Borough had with Mr. Braunstein was the very impetus for the Borough planner to include the "in concert" reference within the Borough's Redevelopment Plan. The reference to "its choice" was not a relinquishment of the vitally important power of the municipality to choose the redeveloper. Rather, a review of the entire sentence reveals the Borough and owner "to select" redevelopers. Certainly, Mr. Ladell's efforts to cut off the RFP process and select him demonstrates that he realized that the borough had to sign off on any redeveloper. Certification of Latini, dated October 1, 2007, at para. 37 – 38. Unfortunately, the "cooperative relationship" the planner referred to in the Redevelopment Plan ended when Mr. Braunstein was apparently seduced by a lucrative offer from Mr. Ladell and AvalonBay. After Mr. Ladell came into the picture, Mr. Braunstein's position changed radically. See Certification of Latini, dated October 1, 2007, at para 40. In addition, one sentence cleverly plucked out by plaintiff does not support its strained interpretation of the Borough's Redevelopment Plan. New Jersey Redevelopment Laws contemplate that the Redevelopment Entity, in this case the Borough, will select the redeveloper, and it is particularly common for the selection process to start with a Request For Proposals. See e.g. See Certification of Latini, dated October 1, 2007, at Exhibit B (excerpt from Stan Slachetka, A.I.C.P., P.P. and David G. Roberts, A.I.C.P., P.P., A.S.L.A., C.L.A., The Redevelopment Handbook, A Guide to Rebuilding New Jersey's Communities, 2003). In fact, the Redevelopment Handbook supports the Borough's position: "**The most common approach is [for the redevelopment entity] to select a redeveloper through a competitive process in**

which proposals are solicited from potential redevelopers.” Ibid. (emphasis added). The Redevelopment Handbook also notes that a municipality “may designate the property owner as the official redeveloper. . . .” Ibid. In that case, obviously, “there is no need to seek out other developers—**unless, of course, the redevelopment entity wants an assurance that the developer’s proposal is the best.**” Ibid. (emphasis added).

Based upon the above, no credible interpretation of the sentence cited by plaintiff could mean that the Borough was estopped from ultimately selecting the redeveloper of the Romerovski site through the RFP process it envisioned.

70. Defendants admit that the Borough’s plan creates a realistic opportunity for the provision of affordable housing with a minimum set aside of 20 percent and that the affordable housing could be rented or sold. We **deny** that a 15% set aside of rental housing constitutes a “substantial” set aside as a matter of law.

71. **Denied.** See Jedziniak Cert., dated July 27, 2007, at Ex. 17; see also Latini Cert., dated June 27, 2007, at paragraph 29 (“On December 7, 2006, the Borough formally authorized HGA to begin drafting its Housing Element and Fair Share Plan.”). Element and Fair Share Plan.”).