

EYE ON THE CLIFFS

"Let us not seek the Republican answer or the Democratic answer, but the right answer. Let us not seek to fix the blame for the past. Let us accept our own responsibility for the future." John F. Kennedy
"Let people know the facts and the country will be safe." Abraham Lincoln

EC for Responsible Government is a not-for-profit corporation established and managed by and for residents of Englewood Cliffs. Our organization is non-partisan and does not endorse or support candidates in local elections. We will continue to inform residents with timely accurate information about current issues. Please visit our website (ecfrg.org).

CARIN GEIGER, President DEBBIE TSABARI, Vice President DEBBIE FEHRE, Secretary LYNN LIASKOS, Treasurer

UPDATE

Normandy Real Estate Partners seeks Court permission to build 600 housing units, including affordable housing, at 800 Sylvan Avenue

Borough hires new attorney to fight Normandy's housing plan

Normandy also sues to overturn Planning Board's denial of its application to build a Class A Office Building at 800 Sylvan Avenue

Borough officials to meet with Normandy to discuss "office and business development" at 800 Sylvan Avenue

BACKGROUND:

On October 12, 2017, after four months of public hearings, the Englewood Cliffs Planning Board voted (4 to 3) to deny Normandy Real Estate Partners' application to construct a first class corporate headquarters building on its site at 800 Sylvan Avenue. In the aftermath of that denial, Normandy has brought various legal proceedings, which we describe and comment upon below.

NORMANDY'S AFFORDABLE HOUSING LAWSUITS AGAINST THE BOROUGH:

On November 29, 2017, Normandy filed a motion to obtain Court permission to intervene (the "Motion to Intervene") in the borough's ongoing Affordable Housing litigation (the "Mt. Laurel" litigation). In its motion, Normandy argues that Englewood Cliffs has not met its constitutional obligation to provide affordable housing in our community and, further, has done nothing in the past two years to show that it is making a good faith effort to provide the required affordable housing. Normandy also asked the Court to include 20 acres of its property at 800 Sylvan Avenue as land available for purposes of meeting the borough's affordable housing obligation.

In its December 28, 2017 response to the Normandy motion, the borough asserts that Normandy was "not being honest" with the Planning Board and sought to build residential housing from the outset, a position publicly articulated, but not explained, by Mayor Kranjac and Council President McMorrow. The borough also asserts that 800 Sylvan Avenue is a single undivided property and argues that because there is a tenant on 8 acres of the property with an 18 year lease, Normandy cannot offer the remaining 20 acres to help the borough meet its affordable housing obligation.

On January 2, 2018, Normandy responded to the borough's December 28 response. In addition to its legal arguments, Normandy included a Certification by its Vice President that stated: *"As a result of the stagnant market for such office buildings, the impending loss of our tenant, and the Board's hostile reaction to our*

proposal (emphasis added), *my partners and I reconsidered our investment objectives for the 20 acre parcel in question. Given the healthy market for multifamily housing in the area, and the Borough's need to satisfy its affordable housing obligation, we are determined to seek a rezoning for inclusionary residential development.*" Normandy's Vice President stated that as the owner of the property, Normandy is *"willing, ready and able to construct multi-family inclusionary development with a substantial amount of low and moderate income housing."* Normandy states that the Appeal of the Planning Board denial (see below) was filed only as a fallback position if the Court does not allow its property to be considered available for affordable housing.

On January 3, 2018, as a corollary to its Motion to Intervene, Normandy filed a "Builder's Remedy" lawsuit. If the Court decides that Englewood Cliffs has not met its affordable housing obligation, then Normandy is asking that a "Builder's Remedy" be applied to its property. A "Builder's Remedy" designation would permit Normandy to submit a plan to the Court to construct up to 600 residential units at 800 Sylvan Avenue, including a substantial affordable housing component, without regard to borough zoning restrictions.

January 5, 2018 Court Hearing on Normandy's Motion to Intervene:

On January 5, 2018, at the initial Superior Court hearing on Normandy's Motion to Intervene, Judge Toskos asked why the borough was over two months late in submitting required plans and studies to the court, and questioned: *"What has the town been doing for two years?"* to meet its affordable housing obligation. Judge Toskos was referring to two recent court orders: one dated September 29, 2017, requiring the Borough of Englewood Cliffs to submit an updated housing plan to the court by October 31, 2017; and a subsequent court order dated November 1, 2017, requiring the borough to submit an Updated Vacant Land Adjustment to the Courts. Neither of these deadlines had been met. The Judge stated: *"It's incumbent upon municipalities to be proactive in trying to come up with some kind of solution....I don't see that that's been done here."*

Planning Board Attorney Chris Martin, representing the borough on this matter, claimed that it is too late for Normandy to intervene, its motives are questionable, and stated that the property is not vacant and available as described by Normandy. The borough believes that Normandy may not offer only 20 of its 28 acres for residential housing because 800 Sylvan Avenue remains a single 28 acre property, and no subdivision has yet been approved. Accordingly, the property is not vacant and available for such housing. He also informed Judge Toskos that the borough has no high school and limited access to public transportation. The next court hearing on Normandy's Motion to Intervene is scheduled for February 9, 2018 at 10:00 A.M. at the Bergen County Courthouse. Be sure to check before you go as the date and time is always subject to change.

On January 18, 2018, at a special meeting of the Mayor and Council, attorney Jeffrey Surenian was hired as co-counsel to defend the borough in the housing lawsuits. It was also announced that borough officials would be meeting with Normandy to discuss "office and building development" at 800 Sylvan Avenue.

Commentary: *Englewood Cliffs currently has approximately 1800 single family homes. If the Court allows Normandy to Intervene and include 20 acres of its property in the borough's list of vacant land available for affordable housing, and further approves a Normandy's request to build up to 600 new residences on the 20 acre property, the number of homes in Englewood Cliffs will increase by over 30 percent.*

Our community cannot absorb a 30 per cent increase in residences without significant changes. Our small K-8 school system does not have the capacity to absorb the number of new children that may need to be educated without compromising the quality of education currently provided. The likely increase in the number of students of high school age would result in an additional burden. Our streets and thoroughfares, water and sewer lines, police and public works departments may have to be expanded or enlarged to meet the new increased residential demand. We cannot begin to determine the magnitude of new infrastructure requirements and additional services that may be needed, or their cost. Who will pay for all these needs?

NORMANDY'S APPEAL OF THE PLANNING BOARD DENIAL OF ITS BUILDING APPLICATION:

On December 22, 2017, Normandy filed an appeal seeking to overturn the Planning Board's October 12, 2017 denial of its application to build a corporate headquarters at 800 Sylvan Avenue. Normandy alleges that the Planning Board decision was arbitrary and capricious, unreasonable, incorrect as a matter of law, and contrary to the Municipal Land Use Law; and was also compromised by Planning Board Chairman Russell Porrino's

conflict of interest. Normandy states that the variances which it sought were necessary to renovate and convert the out of date existing building on the property into a facility that could attract a world-class tenant or buyer. The numerous variances requested by Normandy related to the height of the existing building (which would not be changed), and to the existing parking deficiencies and deed restriction. Normandy also asked for approval to subdivide its 28 acre property into two parcels: the 8 acre Unilever building parcel and a separate 20 acre parcel which Normandy stated would make the renovated and updated world-class facility more attractive to future owners. Normandy has asked the Court to permit it to build in accordance with its initial application.

Commentary: *If the Planning Board had approved Normandy's application to renovate the existing office building, it is hard to believe that Normandy would thereafter have sought Court permission to build dense residential housing on its property. Such request would not have been credible; Normandy would lack "clean hands" if it had succeeded in obtaining Planning Board approval, and immediately thereafter changed course. Normandy is basically a developer of corporate buildings, and sought permission from our Planning Board to create a trophy class A building. Sadly, our Planning Board voted no and turned Normandy down.*

It is puzzling and disturbing that Mayor Kranjac and Carrol McMorrow persist in defending the Planning Board decision. In their defense of that decision, they both have stated that it was Normandy's intent from the outset to build residential housing at the 800 Sylvan Avenue site. If that is true, it would mean that Normandy was guilty of perjury for lying in the testimony given during the four public hearings on its building application. Normandy testified under oath at those hearings. Why would Normandy have spent hundreds of thousands of dollars on its application to the Planning Board when it could easily have brought a motion to intervene in the borough's Mt Laurel litigation in the first place? Comments by the mayor and council president, attacking Normandy's integrity and honesty, can do nothing but antagonize and alienate Normandy, and serve no public purpose.

Kranjac and McMorrow have yet to publically explain why they believe Normandy wanted to build residential housing from the outset. They have suggested that the ten day period that elapsed between November 8 (the date the Planning Board adopted its final resolution denying the application), and November 17 (the date Normandy notified the borough of its plan to file the Motion to Intervene), would have been an unrealistically short time frame for Normandy to have prepared its legal challenge. But Kranjac and McMorrow have miscalculated the number of days that elapsed. The time period actually started on October 12, when the Planning Board voted to deny the application, and November 29, when Normandy actually filed its Motion to Intervene. Normandy and its lawyers were in the room when the Planning Board voted to deny on October 12, and had almost six weeks to prepare court documents, not the mere ten days which Kranjac and McMorrow inaccurately claim.

EC for Responsible Government believes that the Planning Board decision to deny Normandy's application to build a new corporate headquarters facility was misguided, wrong, and not in the best interest of the community. Perhaps the Planning Board should reconsider before it spends more taxpayer dollars fighting Normandy's appeal of the denial of its building application. After all, if the Normandy application for corporate development gets a green light, it is conceivable that Normandy might abandon what could be a lengthy and expensive court battle over its housing plans, and proceed to build the corporate headquarters it proposed to build from the outset.

We would hope that in the aftermath of Normandy's appeal of the Planning Board decision, the mayor and council would initiate settlement negotiations with Normandy that could lead to the approval of its corporate building plans, and the withdrawal of all other related litigation. In that regard, EC for Responsible Government is encouraged that borough officials, including the mayor, plan to meet with Normandy to discuss office and building development at 800 Sylvan Avenue. As mayor, it is incumbent upon him to reach out to Normandy to try to find a solution. It is his responsibility, and we expect nothing less.

Previous borough administrations successfully managed for over six decades to maintain the balance in Englewood Cliffs of residential and corporate development. Kranjac must take the initiative to extend an olive branch to Normandy and negotiate a settlement that allows Normandy to build a class A commercial building on the 20 acre site. A negotiated settlement might eliminate the threat of dense residential housing in Englewood Cliffs for the foreseeable future.

EC for Responsible Government
PO Box 1812
Englewood Cliffs, N.J. 07632

ecfrg2017@gmail.com

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Important news for Englewood Cliffs residents

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RESIDENTIAL CUSTOMER

KRANJAC LOSES TWO LAWSUITS HE CALLED "FRIVOLOUS" BOROUGH ORDERED TO PRODUCE DOCUMENTS

Ellen Park's lawsuit: On January 5, 2018, in the case in which Mayor Kranjac refused to hand over to Councilwoman Ellen Park copies of communications between himself and the borough attorney, New Jersey Superior Court Judge Robert Contillo, ruled that Park is entitled to all the documents that she requested from the borough. Judge Contillo wrote: *"The records requested are government documents as they are emails sent and received by officials of Englewood Cliffs regarding government business."*

Judge Contillo's opinion also stated: *"It appears to be an unassailable proposition that a duly elected member of a municipality would be entitled to copies of communications between their municipal counsel and any other member of the government body regarding official business."*

Carin Geiger's lawsuit: On January 19, 2018, in the case in which Mayor Kranjac refused to hand over a copy of an email he sent to a newspaper reporter, New Jersey Superior Court Judge Robert Contillo ruled that Geiger is entitled to the email that she requested from the borough.

Judge Contillo wrote: *"The email pertained to government business...Defendants have not offered any evidence to suggest that Mayor Kranjac's email meets the statutorily recognized basis for confidentialitythe fact that there is a political dispute over this issue of official town business does not transform this public record into something else. The email sent concerned official business and qualifies as a government document..."* As to the defense that the Shield Law prevents disclosure (the Shield Law protects a newspaper, not the newspaper's source), the Judge stated that the Mayor does not have the authority to assert the Shield Law. *"The Shield Law privilege does not apply to him and is not available to Defendants."*

The borough was ordered by the Court to pay all of Councilwoman Park's and Geiger's legal expenses. These expenses are in addition to the thousands of dollars spent by the borough to retain special counsel hired to defend Kranjac's decision not to produce the requested documents.

Commentary: *We question Mayor Kranjac's decisions to refuse to release the requested documents to Councilwoman Park and to Carin Geiger, and to use taxpayer dollars, our tax dollars, to pay lawyers to defend his decisions. During the pendency of these lawsuits, he threatened Geiger with sanctions for pursuing the matter in court, publicly disparaged and tried to embarrass the plaintiffs, and repeatedly characterized the lawsuits as "frivolous". The Judge thought otherwise.*

In a previous matter, a Judge ordered Kranjac to release the Guida Reports. These were the reports of Judge Guida that recommended penalties for former police Lt. Mura. Thus, in his short time in office, Kranjac has now been ordered three times to release documents, despite his having campaigned on a platform to promote government transparency. As discussed elsewhere in this newsletter, Englewood Cliffs faces significant legal challenges that will likely be lengthy and costly. Taxpayer funds should not be squandered on a mayor's ego-gratifying litigation that neither protects the public interest nor improves the governance of our small community. We hope that Kranjac now has a better understanding of the law as it pertains to public information, will respect that law, and will not continue to spend taxpayer money to defend his unlawful withholding of public information.