

# 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***

March 2018

Issue 7

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

## UPDATE

### **Superior Court extends Englewood Cliffs immunity to April 30**

Following a hearing in New Jersey Superior Court on February 9, 2018, Judge Toskos issued an Order which grants Englewood Cliffs **temporary immunity** until April 30, 2018 from any builder's remedy lawsuit. The Order specifically includes temporary relief from the January 3, 2018 builder's remedy lawsuit initiated by Normandy Real Estate Partners (800 Sylvan Avenue LLC). In its builder's remedy lawsuit, Normandy has sought judicial permission to build up to 600 residential units on its property at 800 Sylvan Avenue in Englewood Cliffs, including a substantial affordable housing component.

**Commentary:** The extension of temporary immunity granted by the court is a short term victory for our community. It gives Englewood Cliffs more time, in the ongoing Affordable Housing Lawsuit, to develop an affordable housing plan for our community that might be acceptable to the court as well as the Fair Share Housing Center, a non-profit organization that has championed affordable housing throughout the State. Englewood Cliffs must now develop a legally defensible calculation of how many units of affordable housing are required in our community in order to meet our constitutional obligation, and provide for these units in our zoning plans. Jeffrey Surenian, the attorney recently retained by the borough, is considered an expert in calculating and defending these complex calculations which are often a source of contention between communities and the Fair Share Housing Center. In its 2015 plan, Englewood Cliffs earmarked the current site of the Lions Club and the adjacent tennis courts as the primary properties for affordable housing. It is not known if the earmarked properties will satisfy our borough's affordable housing requirement.

### **Englewood Cliffs seeks to have Normandy's attorneys removed**

Englewood Cliffs has filed a motion to remove the two law firms representing Normandy in connection with the motion Normandy filed in November 2017 to intervene in the ongoing Affordable Housing Lawsuit, based on their alleged conflict of interest. In its motion to intervene, Normandy argued that Englewood Cliffs has not met its constitutional obligation to provide affordable housing in our community and has done nothing in the past two years to show that it is making a good faith effort to provide the required affordable housing. The removal of the law firms representing Normandy could be

a temporary setback for Normandy as Normandy would have to find new attorneys. The hearing on this conflict of interest motion is scheduled for March 16. This motion and all others relating to the case are now to be decided by Judge Christine Farrington, as Judge Toskos will be retiring.

## **February 14 Mayor and Council Meeting**

### **Mayor and Council Hire Part-Time Public Safety Director for \$50,000 per year**

The Mayor and Council voted to hire Don Ingrasselino to be the Public Safety Director. Mr. Ingrasselino is a retired Chief of Police from Elmwood Park. He will be paid \$50,000 per year for this part-time position. Although Mr. Ingrasselino is a retired police chief, his position in Englewood Cliffs is a civilian position. Councilpersons Aversa, Ellen Park, and Oh voted against the resolution. Councilpersons McMorrow, Mark Park and Woo voted in favor, and Mayor Kranjac cast the tie-breaking vote to hire him. Councilman Woo stated that he hoped that Ingrasselino would help the borough reduce police overtime and plan for a successor to Chief Cioffi, who according to state law must retire no later than February 2019.

### **Sections of Ordinance that created the Public Safety Director position are suspended**

In an unprecedented procedural action, the Mayor and Council adopted a resolution to suspend sections of the ordinance that established the position of Public Safety Director. The suspended sections deal mainly with the "Duties, Functions and Responsibilities" of the Public Safety Director. Borough Attorney Rizzuto advised the Council that it has the legal authority under state law to suspend sections of an ordinance by resolution because "*there was no provision that allows it and no provision that disallows it*". Councilwoman Oh moved to table the resolution for consideration at the next meeting in order to allow sufficient time to compare the suspended provisions to the provisions of the original adopted ordinance. She stated that it was not fair to give council members a complicated resolution only three hours before a meeting and expect that they could make an informed decision. The motion to table the resolution did not pass. McMorrow, Mark Park, and Woo voted not to table and Kranjac cast the deciding vote. Thereafter, the resolution to suspend certain sections of the ordinance passed with the same vote as the resolution to hire Ingrasselino. On February 16, the adoption of this resolution was challenged in court (see "New Litigation" on next page).

### **Borough Attorney says Councilwoman McMorrow does not have a "Conflict of Interest" voting**

During the vote on the resolution to suspend certain provisions of the ordinance establishing the Public Safety Director position, Borough Attorney Rizzuto advised McMorrow that she could vote because she does not have a conflict of interest. Councilwoman Oh protested stating that it is inconceivable that McMorrow should be allowed to vote on an action directly affecting the Police Department. Had McMorrow been prohibited from voting, neither the resolution to hire the new Public Safety Director nor the resolution suspending parts of the ordinance establishing the position, would have been approved.

**Commentary:** Councilpersons Aversa, Oh and Ellen Park have repeatedly asked the borough attorney to provide a written legal opinion on this issue. The borough attorney continues to allow Councilwoman McMorrow to vote on virtually all police matters, rather than abstain or recuse from voting, without providing any legal justification. The New Jersey Local Government Ethics Law considers an elected official to have a conflict of interest if there is either a known personal or financial relationship to the matter being voted on. New Jersey case law goes further. The Appellate Court in 2009 in *Randolph v City of Brigantine Planning Board*, determined that:

***“(It) is not simply the existence of a conflict that may cause to overturn an action of a public official, but also the appearance of a conflict....Officials must be free of even the potential for entangling interests that will erode public trust in government actions. Thus, it is the potential for conflict, rather than proof of actual conflict or of actual dishonesty, that commands a public official to disqualify himself from action on a matter of public interest.”***

McMorrow has been sued by the PBA and by Police Chief Cioffi. She has, by her own admission, filed Internal Affairs complaints against police officers. Her husband sued the Police Chief and the borough in 2012, and he has filed a defamation lawsuit against a police officer which is still pending. In December 2017, Councilwoman McMorrow filed a lawsuit against the borough and the Police Chief seeking monetary damages, including punitive damages. The fact that she and her husband are plaintiffs and defendants in numerous lawsuits involving the Police Chief and Police Department would seem to create the appearance of a conflict. It is difficult to believe that she could be impartial and objective in any vote involving the Police Chief or the Police Department.

The *Favaro, Simon v Borough of Englewood Cliffs* lawsuit, filed in October 2017, alleges that Councilwoman McMorrow has a conflict of interest and should be prohibited from participating in any discussions or votes in regard to the Police Department and its personnel. The court will have to determine if McMorrow has a conflict of interest that should have prevented her from voting. If the court finds that McMorrow had a conflict of interest, certain Mayor and Council ordinances, resolutions and other items that she previously voted on could be challenged and set aside.

## **New Litigation**

### **Police Chief Cioffi’s attorney files request for a temporary restraining order**

On February 16, attorneys representing Police Chief Michael Cioffi asked the Superior Court for “An Order to Show Cause with Temporary Restraints”. The submission to the court asserts that the resolution adopted by the Mayor and Council on February 14, to suspend certain provisions of the ordinance establishing the position of Public Safety Director, was an attempt to circumvent a prior recommendation by the court that the ordinance be redrafted to address its deficiencies, and then re-enacted pursuant to the proper procedure provided by state law. Further, Cioffi’s attorneys assert that the Mayor and Council’s vote on February 14, to suspend certain of its provisions, fails to rectify the deficiencies of the original ordinance.

Cioffi’s filing describes the legal difference between an ordinance and a resolution, and the requirements under law for adopting and amending an ordinance. It cites case law to support the rule that a resolution cannot modify an ordinance. State law, according to the court documents, not only sets forth the specific procedures that must be followed in order to adopt an ordinance, but also stipulates that even an amendment to an ordinance requires public notice, publication of a newspaper notice, and a public hearing held at a meeting subsequent to the meeting at which the amendment to the ordinance is introduced. On the other hand, a resolution can be introduced, voted upon, and adopted by the Mayor and Council at the same meeting at which it is introduced, without any legally required opportunity for public input.

**Commentary:** If the Mayor and Council wanted to suspend specific sections of the ordinance establishing the position of Public Safety Director, it would appear that the proper procedure would have been to rescind the existing ordinance and adopt a new ordinance, or to amend the existing ordinance. Both of these actions would require public notice, legal notice by newspaper advertisement, and a public hearing. The borough must now defend another action taken by the Mayor and Council, incurring legal fees which taxpayers will pay. Once again, the court must decide whether Mayor and Council action taken in reliance on the opinion of the borough attorney will be upheld.

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## Important news for Englewood Cliffs residents

### \*\*\*\***ECRWSS**EDDM\*\*\*\* **RESIDENTIAL CUSTOMER**

The next meeting of the Mayor and Council is Wednesday, March 14 at the Mayor and Council Chambers. The caucus begins at 6:30 P.M. followed by the regular monthly meeting at 8:00 P.M. Please mark your calendars. An informed community is essential to the democratic process. Alternatively, you can watch the Mayor and Council meetings on the borough website or on our website by googling “EC for Responsible Government”. The videos are usually posted the day following the meeting.

## **School Superintendent Revises Policy on School Lunch Delivery**

At the February 5 meeting of the Board of Education, a group that specializes in school security briefed the Board of Education and the public on security issues in schools. They stated that research has found that a likely shooter would be someone who is known to the school district, and not an outsider with no ties, and raised issues that schools should be aware of to improve the safety and security of faculty and our school children. On February 14, barely one week later, one of the nation’s deadliest mass school shootings took place at the Marjory Stoneman Douglas High School in Parkland, Florida. Seventeen people were killed and fourteen more were taken to hospitals.

Within the following week, Englewood Cliffs Superintendent of Schools Jennifer Brower evaluated current procedures to determine if modifications would be required to improve the safety of our schools. In a mailing to all school parents on February 21, Ms. Brower stated that new safety procedures are required. Accordingly, effective February 28, the delivery of school lunches to children by all outside vendors is now prohibited. She stated that the “*nonstop opening of doors to drop off items is unsafe.*” In addition, anyone seeking entry to the schools must now make an appointment.

**Commentary:** We commend Superintendent Brower for taking swift and decisive action to address a school safety issue, even if it inconveniences some school parents. Her primary concern must always be the safety of the students and faculty.

## **Toyota Dealership expansion approved by Planning Board**

At its meeting on March 8, the Planning Board approved, with several modifications, an application submitted by the Toyota Dealership on 9W (Sylvan Avenue). Toyota sought approval to increase the size of its existing building, to add more and larger signage, and to revise the on-site parking configuration.