

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

Volume 12

January 2019

Carin Geiger, President

Debbie Fehre, Acting Vice President/Secretary

Lynn Liaskos, Treasurer

Eye on the Cliffs is a publication of EC for Responsible Government, a non-partisan not-for-profit residents group whose mission is to educate our neighbors about issues facing our community. The quotation above from John F. Kennedy is our mantra. We are also inspired by the words of Abraham Lincoln, "Let people know the facts and the country will be safe." Our organization does not endorse or support any candidates for public office.

We are supported by and appreciate resident contributions. Contributions may be mailed to:
EC for Responsible Government PO Box 1812 Englewood Cliffs, New Jersey 07632

Home Burglaries Reported on the Rise in Englewood Cliffs

There have been several reported home burglaries in our community in recent months. During November and December, burglaries were reported on Summit Street, Irving Avenue, John Street, Johnson Avenue, and Pershing Road. There was also an attempted burglary on Chestnut Street and a theft of a car on Geraldine Court. On January 20th, there was a burglary reported on Charlotte Place. Police Departments recommend several burglary prevention measures. They recommend that residents always make their home look occupied. Residents should leave outdoor lights on after dark and put lights on timers. Doors and windows should be locked before you leave the house. Alarm systems should be activated whenever you leave your home. For further information, please contact the ECPD (201 569-8300).

Tsabari and Song are seated at the January 3rd Reorganization Meeting

Deborah Tsabari and Jimmy Song, the two Democrat Council Candidates who were elected on November 6, 2018, officially took their seats at the Reorganization Meeting on January 3rd, replacing Republican Councilpersons Mary O'Shea and Mark Park. The official election tally, including provisional and absentee ballots, was: Deborah Tsabari: 1,255 votes, Jimmy Song: 1,247 votes, Donald Yee: 1,168 votes, and Mark Park: 1,154 votes. At the same January 3rd Meeting, Councilwoman Gloria Oh was elected Council President.

Highly Prohibitive Pay to Play Ordinance Repealed

In 2006, the State of New Jersey passed legislation binding on all government entities, including Englewood Cliffs, intended to ensure that individuals and businesses do not make campaign contributions in exchange for no-bid government contracts or other political favors. This legislation prohibits the award of contracts to any vendor without a fair and open selection process. It applies to all contracts valued more than \$17,500 and affects all business organizations and individuals that have made reportable political contributions in excess of \$300 during the year prior to the award of the contract or during the contract term. The Borough of Englewood Cliffs has always complied with the requirements of the state law. The borough publicly advertises for the receipt of bids for all professional service contracts and conducts a fair and open process to award these contracts.

In December, following the November election, the Mayor and Councilpersons Woo, O'Shea and Mark Park approved a new borough ordinance that they stated was the most restrictive Pay to Play Ordinance in the state. The new ordinance became effective on January 1, 2019, the same day that borough council leadership shifted, for the first time since 2016, from Republican to Democrat. The restrictive ordinance was intended to prohibit the award of **any** contract to **any** vendor that had contributed to either the local political party or candidates or to a Bergen County political organization for a period of four years preceding the adoption of the ordinance.

At the January 3, 2019 Reorganization Meeting, the council's new majority took the first step to repeal this ordinance, asserting that it was punitive and designed to preclude them from selecting the professionals who they felt would best serve this community. The ordinance was repealed at the January 15, 2019 Mayor and Council Meeting, with Councilman Woo opposed and Councilman Song abstaining. On January 18, Lauren Eastwood amended a previously filed complaint to request the court invalidate the repeal, alleging violations of the Open Public Meetings Act.

Affordable Housing Trial to Begin March 5, 2019

The Affordable Housing trial is scheduled to begin March 5, 2019. The issue at trial is the determination of the number of affordable housing units that are required to be built in Englewood Cliffs. This number is referred to as the Realistic Development Potential (RDP). It is calculated as the difference between (1) the borough's fair share obligation, and (2) the adjustment to that obligation based on a lack of vacant and developable land.

Bergen County Superior Court Judge Christine Farrington has already determined that the borough's fair share obligation is 584 affordable housing units. That number is not based on the current availability of vacant and developable land. The calculation of the RDP reflects the reality that in a fully developed community such as Englewood Cliffs, there may not be sufficient vacant land that is suitable for affordable housing. It permits the downward adjustment of the fair share obligation to an amount consistent with available vacant and developable land. The RDP increases if vacant land that is suitable for affordable housing becomes available. Vacant land can be deemed suitable for affordable housing even if existing zoning restrictions do not permit housing on such land. The difference between the fair share obligation and the RDP is the "unmet need". It is a future goal, often addressed through the creation of overlay zones, which are areas designated for potential future affordable housing development.

The court, with the assistance of a Special Master, will decide the RDP of our borough. The borough planner has determined that our total RDP is 77 affordable housing units, 55 of which are attributed to Normandy's 20 acre 800 Sylvan Avenue property. Normandy and the Fair Share Housing Center believe that the RDP for 800 Sylvan Avenue is 120 affordable housing units. The widely divergent 800 Sylvan Avenue RDP numbers (55 and 120) are based on different calculations about how much of the 20 acre property is developable and the density of housing that is ultimately permitted.

Borough Submits its Affordable Housing Plan to the Court - Community Meeting to be Held

Englewood Cliffs complied with a Court Order to submit its Housing Element and Fair Share Plan (Affordable Housing Plan) to the court on December 10, 2018. The Plan became a public document upon submission to the court. It was first posted on the borough website on or about January 4, 2019. On January 7, following public comment, the Plan was unanimously approved by the borough's Planning Board. On January 15, the Mayor and Council tabled approval of the Plan. They stated that a community-wide public meeting would be scheduled. A date has not yet been selected.

The Borough Plan includes the demolition of the police station and the community center, the construction of a new police station and community center, and the construction of 57 units of 100% affordable housing near Borough Hall. It does not provide any affordable housing at 800 Sylvan Avenue. The units will be built on contiguous borough owned property including the tennis courts, the former Lions Club, the Hudson Terrace building recently acquired with \$1.9 million of COAH Trust Funds, and the current site of the police station and community center. The plan does not address the borough's revenue producing cell tower, currently located within the proposed affordable housing site.

The Borough Plan requires a "Resolution of Intent" to issue \$12.7 million bonds. The Plan anticipates that a private developer will fund and build the affordable housing units. The cost to taxpayers is dependent upon the extent and availability of tax credit financing. The Plan states that the borough may issue \$12.7 million in bonds. If the developer obtains 4% tax credit financing, the taxpayer cost of the housing component is estimated to be \$7.125 million plus an additional \$5.57 million for the demolition and construction of a new police station and community center. The Plan notes that the developer can apply to the State for 9% tax credit financing to reduce the borough's share of the cost. In 2018, no affordable housing plan in Bergen County obtained 9% tax credit financing. The Plan also anticipates that funds will continue to be available from the Borough's COAH Trust Fund. Financial shortfalls, for any reason, will be the responsibility of the taxpayers. The Plan does not contain any description or analysis of the impact the Plan may have on borough services, borough schools, or borough property taxes.

Accompanying the Plan is a resolution that states that the borough of Englewood Cliffs agrees to "appropriate funds or authorize the issuance of debt to fund any shortfall in the development of an affordable housing project ...that may arise whether due to inadequate funding from other sources or for any other reason."

The Borough Plan also addresses the unmet affordable housing need by establishing overlay zones for future affordable housing development along Hudson Terrace, East Palisade Avenue and in the southern part of Sylvan Avenue. An overlay zone permits a property owner to continue the current use of the property or, alternatively, to develop the property so it includes affordable housing. The overlay zones encourage affordable housing by increasing the permitted density of each property by promoting construction of housing units above street level stores.

The Plan includes the statement that it "*reflects the judgment of the citizens of Englewood Cliffs that the best plan for this community is one that complies without the Sylvan Avenue site, even though the cost of complying without Sylvan is substantial.*" The basis for such statement is unclear, as up to now there have been no community-wide public hearings or meetings, and it is not known whether there has been any input from the Police Department, the Volunteer Fire Department, or the Board of Education.

The Normandy Alternative: Normandy seeks permission to construct 600 units of housing at 800 Sylvan Avenue, of which up to 120 would be affordable housing units. The property would no longer be available for corporate use. The construction and ongoing maintenance costs of such housing would be the responsibility of the developer, not Englewood Cliffs taxpayers. The property would remain on tax rolls, increasing our tax base, and paying taxes annually to support borough municipal, school and county services. Taxpayers, however, would bear the burden of any resulting increased costs in services. Currently, there are slightly more than 1,900 homes in Englewood Cliffs. Since 1985, our schools have had about 500 students enrolled each year. The impact of a 30% increase in housing units on our schools is not known. Additional classroom space may be required. There has been no study on the impact and cost of Normandy's proposed new residential development on the borough.

A Brief History of Affordable Housing in Englewood Cliffs

The Affordable Housing Plan developed by the borough states that since 1989 Englewood Cliffs has prepared numerous affordable housing plans and has submitted them to the Council on Affordable Housing (COAH).

In 1995, COAH determined that the RDP for Englewood Cliffs was only 4 units. However, in 1997 following a site visit to Englewood Cliffs, COAH demanded that the borough adopt an overlay zone on the then vacant Prentice Hall property. This would have allowed a developer to construct up to 150 housing units on that 27 acre site. The borough refused to change the zoning. COAH denied substantive certification. Citibank later leased the property. LG purchased the property in 2010 for its new corporate headquarters. It will be assessed for \$300 million upon completion. In 2008, the Borough's Planning Board adopted another plan which it submitted to COAH in 2009. That plan received a completeness determination from COAH, but COAH's rules were challenged in court before the borough could receive substantive certification. As part of the 2009 submission to COAH, the borough included a plan which provided for the establishment of a COAH Trust Fund. This was approved by COAH in 2011.

In 2015, along with over 300 municipalities, the borough filed a Declaratory Judgment Action in response to the Supreme Court's Mount Laurel IV decision, which transferred jurisdiction on affordable housing from COAH to the local courts. The borough developed another plan in November 2015 which recalculated the RDP of the borough as 9 units.

- From 1995 through 2015, the borough's RDP was less than 10 units.
- No builder's remedy law suits were filed against the borough between 1995 and 2017.

In October 2017, the Englewood Cliffs Planning Board rejected the Normandy application for a corporate building on 20 acres of its 800 Sylvan Avenue site. The Planning Board's decision was formalized by resolution the following month.

In December 2017, Normandy intervened in the Declaratory Judgment Action to which the Fair Share Housing Center was already a party. It stated that it would demolish the current building on its property at 800 Sylvan Avenue. It offered its 20 acre site to assist the borough in meeting its affordable housing obligation and sought a recalculation of the borough's RDP. The Fair Share Housing Council agreed. They both claimed that the revised RDP was now increased to 129 units from the previous 9 units. Normandy also filed a tax appeal.

In January 2018, Normandy filed a builder's remedy lawsuit seeking to construct 600 units of dense residential housing on its property at 800 Sylvan Avenue, including as many as 120 affordable housing units. In April 2018, the court dismissed that action without prejudice and extended the borough's immunity from builder's remedy lawsuits until March 5, 2019. An appeal is pending. Normandy is also seeking to reverse the denial of its corporate application by the Planning Board, and the trial on that matter is scheduled to begin on February 15, 2019.

Borough Sanctioned by Court for Violation of Temporary Injunction. Financial Penalty Assessed

On December 21, 2018, Judge Farrington voided the appointment of an Acting Chief of Police stating that the Englewood Cliffs Mayor and Council "*violated both the letter and the spirit of the temporary restraining order*" imposed by the court. Judge Farrington also found that the Mayor and Council had violated the Open Public Meetings Act because they failed to give adequate notice to the public that they intended to make the appointment. She directed the borough to reimburse the Englewood Cliffs PBA its legal costs because the borough violated the court's restraining order.

2018 Police Overtime Spending Reportedly Exceeds \$330,000

Despite the Mayor's intention to reduce police overtime spending by requiring his personal approval of any such spending, borough records show that police overtime spending in 2018 did not decrease. While the Mayor provided \$175,000 for police overtime in the 2018 budget, actual police overtime expenditures in 2018 have reportedly exceeded \$330,000. During the past three years, police positions that could have been filled to reduce overtime, have remained vacant. This month, the Mayor has directed a police officer, presumably on overtime, to attend all Mayor and Council Meetings, so that he does not have to press his "emergency call button" when he wants police to evict a citizen from a public meeting. It has been reported that the Mayor has used his call button nine times in recent months to summon police officers who have been on patrol or other duty.

IMPORTANT NEWS FOR ENGLEWOOD CLIFFS RESIDENTS

****ECRWSEDDM****
RESIDENTIAL CUSTOMER

Cioffi Tapes to be released to the Public.

In a December 21, 2018 ruling on a motion brought by Lt. James Tracy of the ECPD and challenged by the borough, Bergen County Superior Court Judge Christine Farrington directed that the borough release the "Cioffi tapes" that are not otherwise confidential because of attorney-client privilege. In a lengthy decision, Judge Farrington determined that the borough had violated the Open Public Records Act (OPRA). She also directed the borough to pay Lt. Tracy's legal fees.

Judge Farrington wrote:

"If the Borough had concerns regarding its obligations under OPRA, it had a duty to seek clarification of same from the District Court. They did not. What's more, the Borough continuously breaches the confidentiality that it seeks....To allow the Borough to hide behind this exemption while it continues to selectively use the recordings in its ordinary business, would violate the spirit of OPRA....This Court will not allow the Borough to selectively and routinely use the recordings to conduct official municipal business, while at the same time claiming the audio files are not government records. An underlying premise of OPRA is that society as a whole suffers when 'governmental bodies are permitted to operate in secrecy.'"

Residents who want a copy of the tapes when they become available should file an OPRA request with the borough clerk.

Commentary: *Since this past August, Mayor Kranjac and former Councilwoman McMorrow repeatedly urged the public to demand the release of the tapes. Snippets of selected recordings have been played at public meetings. The Mayor has quoted from them and often referred to them both at public meetings and in emails to residents. Campaign literature was filled with references to them. Disciplinary charges filed by the borough against Police Chief Cioffi, three senior police officers and the borough clerk have been based on comments allegedly heard on the tapes. Yet, during the same time period, since last summer, an attorney hired by the borough has been fighting to prevent Lt. Tracy from obtaining a copy of the tapes. It is unclear why the borough was spending taxpayer money fighting to prevent the release of the tapes while, at the same time, it was imploring the public to demand that they be released.*

The public will soon have an opportunity to listen to the tapes and judge for themselves whether what they hear substantiates the allegations of sexism, racism and violence voiced by the Mayor and former Council President. Before the tapes are released, the borough attorney has promised to review the tapes to make sure that individual privacy rights under Federal and State law will remain protected, and to insulate the borough from potential litigation brought by employees or residents if their personal privacy rights are violated by the release, without redaction, of these tapes.

New Borough Bylaws Proposed

On January 15, 2019 the Mayor and Council voted to introduce new bylaws. The significant changes to the bylaws include limiting an individual's comment time at public meetings to five (5) minutes, and the establishment of an Agenda Committee. The Agenda Committee will be responsible for preparing the Mayor and Council Meeting agendas to make sure that the agendas include both the Mayor's and the Council's legislative priorities. In the past, the Mayor has acted unilaterally in determining what will be included in the agendas published in advance of public meetings. The proposed changes to the bylaws will be the subject of a public hearing at the February 13th meeting of the Mayor and Council.

Three New Lawsuits Filed in January

Mayor Kranjac filed a personal lawsuit, seeking punitive and compensatory damages, against Chief Cioffi, who will be represented by the borough's insurance lawyers. Kranjac also sought a temporary injunction to prevent the Council from revising the bylaws claiming that it was a "power grab" encroaching on his authority as Mayor. The judge encouraged the Mayor to withdraw his action. He did, and the Council agreed to modify the proposed bylaw changes. Resident Lauren Eastwood sued alleging that the Council (a) violated the law by introducing changes to the bylaws and by initiating repeal of the Bidding (Pay to Play) Ordinance at the Reorganization Meeting without providing copies to the public prior to the meeting or permitting the public to address such matters; (b) illegally terminated the borough attorney and borough administrator without prior notice, and (c) illegally appointed Albert Wunsch as acting borough attorney and Lisette Duffy as acting borough administrator without the Mayor's consent. She also alleged that Attorney Wunsch has a conflict of interest.

