

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

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Borough Council votes to continue the Affordable Housing Litigation Opposing the Fair Share Housing Center (FSHC) and Normandy (800 Sylvan)

On July 29, the Englewood Cliffs Council voted in favor of a resolution to halt settlement negotiations with the Fair Share Housing Center (FSHC) and Normandy, and prepare for a court trial scheduled to begin on October 11, 2019. The action followed the Council's Affordable Housing Committee's recommendation to litigate. The Committee had repeatedly stated that it would make a determination only *after* it heard from the public as to whether the Borough should settle or continue the court battle.

Hundreds of residents attended a public hearing at the Upper School on July 10, at which the Borough's hired experts updated the community at length about the status of the litigation and the terms of a proposed settlement agreement. Residents at the July 10 hearing overwhelmingly supported continuation of the litigation rather than approving a settlement agreement.

If approved by the court, the proposed settlement agreement would have allowed Normandy to build a total of 400 residential units at 800 Sylvan Avenue, including 94 townhomes and 80 affordable housing units, which would have generated an estimated \$1.66 million in annual tax revenue for the Borough and the Board of Education. The proposed settlement agreement would also have required the Borough to build 15 additional affordable housing units at Hudson Terrace, and would have ended the affordable housing litigation and secured immunity for the Borough until 2025 from litigation (builder's remedy suits) seeking to rezone property for affordable housing construction.

At the July 10 hearing, the Borough's affordable housing attorneys and planners explained that a settlement agreement would allow the Borough to shape its destiny rather than have the court dictate how the Borough would satisfy its affordable housing obligation. The experts stated that the response from the FSHC and Normandy to the December 12, 2018 Affordable Housing Plan submitted by the Borough (the "Mayor's Plan" to build 57 units on Hudson Terrace), raised significant doubt that the court would agree that only 57 new units would satisfy the Borough's fair share affordable housing burden if litigation were to ensue.

Background: The calculation of a municipality's obligation to provide affordable housing is directly affected by the availability of vacant, available and suitable land for housing construction. Until 2017, the Borough's affordable housing obligation was never more than nine units because there were no significant parcels of available land. That changed on October 12, 2017, when the Planning Board denied Normandy's application (which had been filed May 17, 2017) to develop corporate facilities at 800 Sylvan Avenue. Following the denial, Normandy sought court approval to consider its 20 acre property at 800 Sylvan Avenue, which is currently zoned only for corporate development, to be vacant, available and suitable for affordable housing. If the court agrees, the Borough's affordable housing obligation will increase for the first time since 1985, to potentially more than 100 units. In the litigation that will commence in October, the court alone will determine the total number of affordable housing units that must be built in Englewood Cliffs.

The Planning Board that denied Normandy's corporate application is an independent body whose members are appointed by the Mayor. Normandy's application was denied in a 4 to 3 vote. The Planning Board continues to fight Normandy's *corporate* application and is challenging the March 13, 2019 Superior Court ruling which approved Normandy's proposed subdivision and shared parking for a corporate headquarters at 800 Sylvan Avenue .

IMPORTANT NEWS FOR ENGLEWOOD CLIFFS RESIDENTS

******ECRWSSDDM******
RESIDENTIAL CUSTOMER

Lt. William Henkelman sworn in as new Englewood Cliffs Police Chief

William Henkelman was recently sworn in as the new Chief of the Englewood Cliffs Police Department. His appointment was recommended by the Council's Police Committee. Councilman Woo abstained from voting on the resolution to appoint Henkelman.

Chief Henkelman has worked in Englewood Cliffs since 2000. He graduated from New Jersey City University in 1998 with a degree in criminal justice. After spending the first 12 years of his career as a patrolman, he was promoted to sergeant in 2012 and to lieutenant in 2013. Lt. Henkelman assisted the department in becoming an accredited police agency, and has served as a tour commander, a department grant writer, and an Internal Affairs Officer. He is a firearms instructor and an EMT, and has received a Life Saving Award for a successful CPR, and was inducted into the Honor Legion for a firearms arrest. At his swearing in, he praised his fellow officers. Chief Henkelman is committed to expanding community policing in which police work with the community to make it a safer place in which to live and work. He encourages residents to communicate their concerns to him.

Last week, Chief Henkelman alerted residents to a recent increase in car thefts in the Borough. He urged residents to take precautions including locking car doors, removing key fobs from cars, and maintaining exterior lighting.

Other News

- PSE&G will repair damage done to our streets by its gas improvement program at no taxpayer expense after the work is completed.
- Councilpersons Aversa, Oh, Park, Song and Tsabari voted to override the Mayor's veto of an ordinance which eliminated the requirement that new police hires must have a college degree. The Police Department supported the new ordinance because it expands the pool of candidates to fill vacancies. No new police officers have been hired in the past 4 years.
- A \$3 million bond issue was unanimously approved by the Council to fund a tax settlement for 2008 to 2018 with the Tea Land Corporation. The Borough Auditor stated that the negotiated settlement saved the Borough about \$1 million.
- The Council tabled, with Councilwoman Tsabari voting no, a resolution to override the Mayor's veto of a new ordinance which would have prohibited the placement of large billboards on residential property.

Application under review for new 5-story 59 foot high multi-family, mixed-use building

The Planning Board has held hearings on an application by the owners of the properties located at 20 to 32 Sylvan Avenue in the southern end of Englewood Cliffs to build a five-story 59 foot high building on a site of approximately 2 acres. At its July 11 meeting, Planning Board members indicated they were not likely to approve a building height higher than 35 feet, and suggested that the proposed buffer zone be expanded, parking be eliminated from the front yard, and vehicular egress be limited to Sylvan Avenue. The Planning Board Chair stated that 20 percent of the building's residential units must be set aside for affordable housing. The applicant's attorneys are expected to address the Planning Board's concerns at a future meeting of the Planning Board.

THE RISKS OF PROCEEDING TO TRIAL ARE “OVERWHELMING”

At the July 10 public hearing on affordable housing, attorney Jeffrey Surenian, an expert who defends municipalities in affordable housing litigation, said that the risks of Englewood Cliffs proceeding to trial are “overwhelming.” Both FSHC and Normandy’s experts stated in court documents that between 166 and 334 affordable housing units are immediately required in Englewood Cliffs. However, the Borough owns no land available and suitable for affordable housing units other than the Hudson Terrace sites for which 57 units are proposed in the Mayor’s Plan (57 units would give the Borough credit for 77 affordable housing units). The cost and location of any additional sites for Borough built affordable housing is unknown. A judge, not the Borough, will now determine the number of affordable housing units that must be built in order for the Borough to provide its fair share of affordable housing. The court will likely be guided by the recommendation of a Special Master appointed by the court.

It was also explained at the July 10 hearing that, statistically, more school age children come from affordable rate housing than market rate housing. The cost of educating additional school age children, particularly high school age children, in a municipal, taxpayer-supported affordable housing project will not be offset by new tax revenue. This is because an affordable housing project built by the Borough would be exempt from property taxes, and would not generate tax revenue to offset increased costs of municipal and school services.

Commentary: Residents of Englewood Cliffs are not in favor of dense residential development at 800 Sylvan Avenue. The Mayor and Council have repeatedly affirmed that they also oppose it, and have now voted to continue to litigate against the FSHC and Normandy. While the Borough has stated that it will comply with a court order, it does not want to rezone 800 Sylvan Avenue to satisfy its affordable housing responsibilities. Englewood Cliffs is now one of only a small number of New Jersey communities that have chosen to litigate rather than settling their fair share affordable housing obligation through negotiation. Of the 330 communities in the state who faced affordable housing litigation, 300 or 90% have already settled with the FSHC and developers rather than proceed to trial.

The risk to our community is far more than the spiraling cost of litigation. The taxpayer cost of the 57 unit municipal project at Hudson Terrace may be significantly understated. As proposed, the 57 unit municipal project at Hudson Terrace would require, at minimum, the relocation and construction of a new police station at taxpayer expense.

There are also significant undetermined taxpayer costs if the court should find that the affordable housing obligation for Englewood Cliffs is substantially greater than the 57 units proposed for the Hudson Terrace site or if the site on Hudson Terrace is found to be too small or otherwise unsuitable for 57 units. There is currently no other vacant and suitable land already owned by the Borough where additional units can be built.

*The court also has the discretion to grant Normandy the right, as both the FSHC and Normandy have sought, to construct a dense residential project, including a significant affordable housing component, on its site at 800 Sylvan Avenue **in addition** to requiring that the Borough build the 57 units in the Mayor’s Plan.*

Extension of the current immunity from future builder’s remedy lawsuits is also in the hands of the court, and is opposed by Normandy. In the unlikely event that immunity is withdrawn by the court, the Borough may not be protected from the builder’s remedy lawsuit already filed by Normandy for 600 residential units, and the Borough could be vulnerable to new lawsuits from other developers.

Whatever the outcome of the affordable housing litigation, it is indisputable that the Planning Board’s denial in October 2017 of Normandy’s application to build a corporate headquarters at 800 Sylvan Avenue will have a profound, long-lasting and costly impact on Englewood Cliffs in the years ahead.

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. We are 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

MUNICIPAL TAXES TO INCREASE \$236 FOR THE AVERAGE HOME

In June, the Council introduced a “no tax increase” budget for 2019. However, on July 29, following the July 10 affordable housing hearing, the Council added \$585,000 to the budget for litigation. The additional funds are needed for costs of (i) defending the Borough in the continuing affordable housing litigation brought by the FSHC and Normandy, and (ii) unanticipated litigation consisting of more than a dozen separate lawsuits filed against the Borough since December 2018 by Mayor Mario Kranjac, and former Councilpersons Carrol McMorro, Lauren Eastwood, and Mary O’Shea. Michael McMorro has also filed a new lawsuit against the Borough seeking monetary damages.

Instead of no tax increase as originally budgeted, the additional litigation expense will now cost the average home assessed at \$1.3 million approximately \$236. Final budget adoption is scheduled to take place on August 14.

The school budget, adopted by the Board of Education, increased \$436,000, resulting in an approximately \$185 hike in the school tax paid by the average home assessed at \$1.3 million.

Both the Borough and school budget increases are the maximum amount permitted by state law.

ENGLEWOOD CLIFFS MUNICIPAL BUDGETS AND TAXES: 2010 TO 2019

<u>YEAR</u>	<u>CONTROL*</u>	<u>TOTAL BUDGET</u>	<u>TAX LEVY</u>	<u>SURPLUS USED</u>	<u>NON TAX REVENUE</u>
2019 ^(A)	D	\$18,369,156 ^(A)	\$14,234,878	\$1,217,114	\$2,917,164
2019 ^(B)	D	17,784,156 ^(B)	13,649,878	1,217,114	2,917,164
2018	R	18,100,375	13,649,879	1,545,000	2,905,496
2017	R	17,102,260	12,550,863	1,300,000	3,251,397
2016	R	15,913,605	12,418,067	910,000	2,587,537
2015	D	16,191,586	12,466,818	850,000	2,874,768
2014	D	15,576,074	11,431,031	850,000	3,295,043
2013	D	15,379,494	11,323,637	850,000	3,205,857
2012	D	13,361,111	11,304,264	0	2,056,847
2011	R	13,587,295	10,463,322	995,000	2,128,973
2010	R	13,270,049	10,527,903	604,000	2,138,146

^(A) 2019 Budget as amended July 29, 2019
^(B) 2019 Budget as originally introduced June 12, 2019
* D = Democrat Control R = Republican Control

MAJOR CHANGES IN THE 2019 MUNICIPAL BUDGET

- Savings:**
- \$134,000 by elimination of full-time Borough Administrator and full-time recreation director positions.
 - \$30,000 by reduction in annual payment to the Fort Lee Library.
- Increases:**
- \$1,335,000 is now budgeted in 2019 for legal fees and related expenses for trial preparation, settlement negotiations and trial, an increase of \$900,000 from 2018. The Borough budgeted \$435,000 in 2018 to defend the affordable housing lawsuit.
 - \$200,000 to pay costs of new lawsuits filed from December 2018 to July 2019.
 - Cost of hiring four (4) new entry level policemen.
 - Cost of enhanced maintenance of Witte Field by the Department of Public Works.
 - \$63,550 for Planning Board expenses. This amount includes legal costs for the Planning Board’s continuing defense of its denial of Normandy’s corporate application.

Capital Program: Four new police cars are to be purchased to replace older, high maintenance cost vehicles. Bonds will be issued, subject to state approval, to fund a \$3 million tax appeal settlement which covers the 10 year period from 2008 to 2018, and to pay contractual obligations to several retired Borough police officers.