

EYE ON THE CLIFFS

"Let people know the facts and the country will be safe." Abraham Lincoln

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Affordable Housing Litigation Update: We may finally have a settlement...

The eagerly awaited Tuesday, September 29 start of the public hearing on 800 Sylvan's residential housing site plan has been put on hold. After a nearly two-hour court delay, Anthony Del Vecchio, Esq., representing 800 Sylvan, and Thomas Trautner, Esq., representing the Englewood Cliffs Mayor and Council, jointly informed the Court that all parties to the Affordable Housing Litigation have agreed to "an amiable resolution that needs to be considered by the Englewood Cliffs Mayor and Council."

Judge Gallipoli then ordered the Englewood Cliffs Mayor and Council to meet, no later than Monday October 5, to "accept or reject the terms of the global resolution".

If approved by the Mayor and Council, Judge Gallipoli stated that he would promptly sign a settlement and consent order, which he expects will be approved by Judge Christine Farrington. These actions would end the Affordable Housing Litigation, which has consumed the time and attention of the Borough, as well as over \$3.7 million dollars in legal and related fees, for the past 3 years.

Details of the "amiable resolution" were not disclosed. A protest by the lawyers for the Borough's Planning Board that it was not involved, met with a harsh reminder from Judge Gallipoli, that he, not the Englewood Cliffs Planning Board, will decide the matter.

A Special Meeting of the Mayor and Council, at which a vote on the settlement agreement is anticipated, is scheduled for this Sunday, October 4, at 2:00 o'clock P.M. Because of COVID restrictions, it will be a Zoom Meeting. Login information can be found on the Borough website.

What we face if the litigation continues...

The July 2019 decision by the Mayor and Council to continue to litigate our affordable housing obligation has significantly increased both the affordable housing obligation of the Borough and the resultant number of homes that might be built in the Borough in order to satisfy our affordable housing obligation.

The chart below summarizes the difference between what the Court has already ordered at the conclusion of the litigation earlier this year, and the Memorandum of Understanding (MOU) which had been negotiated, but not adopted in the summer of 2019.

Affordable Housing Units	Court Order	MOU/ Settlement	Difference
Approved for 800 Sylvan Avenue	167*	80	+ 87
Additional Units required to be built	174	15	+ 159
Affordable Units at 20-32 Sylvan and 4 Bayview Avenues	6	-	+ 6
Total Affordable Housing Units required to be built in Englewood Cliffs	347	95	+252

*800 Sylvan submitted a plan for 120 affordable housing units, fewer than the 167 units permitted by the Court decision

Since last summer, the Court has approved 600 housing units, including 120 affordable units, to be built at 800 Sylvan Avenue. The hearings before Judge Gallipolli would have finalized the 800 Sylvan Avenue site plan but would not have reduced the Court approved density of 600 units.

In addition, the Court has ordered that 174 more affordable housing units be built throughout the community. These 174 additional affordable units could generate approximately 870 developer-built units, because developers are allowed to build 4 market rate units for every affordable unit.

If you add the **600** units (including 120 affordable) at 800 Sylvan to the **870** additional units (including 174 affordable), the Borough would be faced with an untenable obligation to add nearly **1500** units of high-density housing in our community. Alternatively, the Borough could build 100% affordable housing, which could cost taxpayers as much as \$45 million, but reduce the total number of new units to 774 (the 600 at 800 Sylvan plus 174 elsewhere in the Borough and largely at the Borough's expense).

A settlement of the pending affordable housing litigation would prevent that.

Why settlement of the litigation is helpful ...

A settlement could accomplish the following:

- (i) Limit the total amount of high-density housing units in the Borough.
- (ii) Restore the Borough's immunity from builder's remedy lawsuits to protect us from additional high-density residential development.

- (iii) Limit corporate and commercial properties on 9W and Palisade Avenue from being converted into dense residential housing developments.
- (iv) Prevent high-density affordable housing units from being built in the single-family residential areas of the Borough. If there is no settlement, the Court can order zoning changes throughout the Borough to provide for the construction of 174 new units of affordable housing. This could result in mandatory rezoning of vacant residential property in the Borough for multi-family affordable housing. When property is rezoned for multi-family affordable housing, any future development must include multi-family homes. Vacant affected sites are located on:
- **Bolz Street**
 - **Sara Hill Lane**
 - **Kim Hunter Road**
 - **Demarest Avenue**
 - **Floyd Street**
 - **Laurie Drive**
 - **Roberts Road**
- (v) Establish restrictions on building density, the number and type of units, traffic patterns, building height, buffers and landscaping, and occupant age, in order to reduce the impact on our public school system, public thoroughfares, and the Palisades viewshed.

Without a settlement, the Borough will remain vulnerable to high-density housing on vacant land within the residential areas of the community.

Without a settlement, any corporate or commercial properties on 9W or Palisade Avenue could be converted into dense residential developments

COMMENTARY:

After a raucous public hearing in July 2019, the Englewood Cliffs Council, encouraged by the Mayor and approximately 300 residents, abandoned a potential settlement agreement and proceeded to litigate. Over one year later, the Borough now faces the certainty of dense residential development at 800 Sylvan Avenue and is susceptible to additional dense multi-family development in the residential zones, along the 9W commercial corridor, and on Palisade Avenue. We had highly experienced lawyers working for us. But, the law was not on our side, and we lost.

The Mayor still refuses to acknowledge that the case has been lost, and that he has been unable to stop dense residential development at 800 Sylvan Avenue. Instead, he wants to hire a new team of lawyers to continue the litigation, all the while indifferent to the grave risks of continuing to lose in the courts. While he knows that no court in New Jersey will take away the right of 800 Sylvan to build dense residential housing on its property and that land use and zoning always has been a matter of State concern, he hopes the federal courts, even the US Supreme Court, will hear the case and rule in our favor. This is magical, pie-in-the-sky thinking.

Englewood Cliffs is correctly, if unfairly, perceived as having a long history of exclusionary zoning. No New Jersey court will exempt Englewood Cliffs from the affordable housing laws and requirements that apply to every other municipality in the state. Even if the Borough succeeds on appeal in reversing parts of Judge Farrington's over-reaching orders, no court can overlook the fact that the Borough has no affordable housing and that there is a developer with a 20 acre site at 800 Sylvan Avenue who is ready, willing and able to build 120 affordable housing units.

Whether we like it or not, dense residential development has been approved for 800 Sylvan Avenue. Continued litigation will only determine how many additional affordable housing units must be built in the Borough and where they will be located.

To the extent that the Borough itself will be required to build a large number of affordable housing units, the cost to taxpayers could be staggering, exceeding \$45 million with limited offsetting tax revenues. In addition, if litigation continues, and without immunity, the Borough remains vulnerable

to an untenable amount of multi-family dense housing in residential and commercial zones.

If the Borough's elected officials cannot come to a bipartisan consensus, it must fall upon a majority of the Council to take appropriate action to protect our single-family home zoning and our Trillion Dollar Mile from encroachment by greedy developers, and to mitigate and reduce the potential impact of the court decisions unfavorable to our community. At this time, a settlement may be the best chance to save our town.