

# *EYE ON THE CLIFFS*

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

EC for Responsible Government    Website: <https://ecfrq.org>    October 12, 2020

Carin Geiger, President    Debbie Fehre, Acting Vice President/Secretary    Lynn Liaskos, Treasurer

## **There are significant risks to the Borough if it breaches the Affordable Housing Settlement Agreements**

The Settlement Agreements provide that if the Borough attempts to breach the terms of settlement, the court orders can be reinstated.

- 800 Sylvan Avenue can build 600 units on its property instead of 450.
- The Borough could be required to provide 174 affordable housing units, instead of 65. This could result in 870 new residential units in the Borough or the expenditure of upwards of \$45 million should the Borough decide to build these 174 units.
- Borough immunity would be revoked, exposing the Borough to more builder's remedy lawsuits.
- The court could rezone vacant single-family residential lots for only multi-family development.
- The court could rezone property from commercial and corporate use to dense residential development in the overlay zones and throughout the Borough.
- The court could void all Borough building height and density zoning restrictions to encourage more residential housing. Englewood Cliffs could become a Fort Lee North.

## **If the Borough seeks to breach the Settlement Agreements, our financial exposure could be in the \$\$ millions**

If the Borough breaches or seeks to breach the Settlement Agreements, it will be liable for all legal and related fees incurred by both the Fair Share Housing Center and 800 Sylvan Avenue to enforce their rights, as well as the costs of preparation of 800 Sylvan's concept plan and the legal fees for preparation of the Settlement Agreements and related documents.

The Settlement Agreement with 800 Sylvan Avenue provides:

*“In waiving their appellate rights, the Parties acknowledge that a change in political control of the Borough Council may occur, but that such change would not constitute a change in circumstances that would warrant a retraction of the waiver of the right to appeal. In the event that either Party files an appeal or seeks any relief related to the DJ action in any court in the State of New Jersey or in any court established pursuant to Article III of the United States Constitution, the non-breaching Party may move to enforce this provision of the Agreement and the breaching Party shall be liable for all legal fees incurred. Additionally, the breaching Party shall be liable to the other party for all costs incurred in connection with the negotiation of this Agreement and any related costs, including but not limited to fees paid to any consultant, attorney, architect, engineer, planner, or traffic consultant, arising from the implementation of this Agreement and/or the approval of the Concept Plan and Perspective.”*

**The Borough is obligated to use Borough funds to defend any challenge by a third party to the Settlement Agreement with 800 Sylvan Avenue.**

*“Each party exclusively shall be responsible for all costs which they may incur in obtaining Court approval of this Agreement or defending the Court’s approval if appealed by a third party. The Parties shall diligently and vigorously defend any such challenge.”*

**If the Borough attempts to breach the Settlement Agreement with the Fair Share Housing Center, it would be liable for all of Fair Share’s legal fees to enforce the Settlement Agreement.**

The Settlement Agreement with the Fair Share Housing Center, which deals with the number of affordable housing units that must be built as well as the overlay zones which are required for “future development opportunities” provides:

*“If an appeal is filed of the Court’s approval or rejection of this Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, the Appellate Division and the New Jersey Supreme Court, and Englewood Cliffs commits to continue to fully and swiftly implement the terms of this Agreement if the Agreement is approved before the trial court unless and until an appeal of the trial court’s approval is successful. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.”*

*“This Agreement may be enforced through a motion to enforce litigant’s rights or a separate action filed in Superior Court of New Jersey, Bergen County. A prevailing*

*movant plaintiff in such motion or separate action shall be entitled to reasonable attorney's fees and costs."*

**The Borough would also be exposed to a civil rights action that could result in significant financial damages and legal fee reimbursement.**

## EDITORIAL

*Englewood Cliffs residents should be alert to the costly risks to the Borough of any attempt to undermine the Affordable Housing Settlement Agreements. Over \$3.7 million has been spent so far on the Affordable Housing Litigation, which was triggered by the Planning Board's rejection of 800 Sylvan Avenue's corporate application. Many feel the settlement provisions are preferable and less egregious than the court orders, all of which have been unfavorable to the Borough.*

*It is the unfortunate reality of today's political climate that the affordable housing matter has divided the Mayor and Council along partisan lines. Instead of bipartisan support for the resolution of the litigation through the Settlement Agreements, there now appear to be some who promise to overturn the settlement, if elected. This would be reckless and irresponsible considering the extraordinary risks to the Borough, as outlined above.*

*The Settlement Agreements are available to the public on the Borough website and our website: <https://ecfrq.org>, and we encourage residents to educate themselves by reading them. No experienced litigator who deals with affordable housing issues has ever advised the Borough that we could prevail in court on appeal. In fact, our expert attorneys have repeatedly and emphatically stated that we would not.*

*Eye on the Cliffs is of the view that in the absence of the settlement, the Borough could be irreparably damaged by loss of control over residential development, and the low-rise landscape of our Borough could be lost forever.*

*EC for Responsible Government does not endorse candidates for election or support any political party, but we are committed to the words of Abraham Lincoln, which is part of our mantra, "Let the people know the facts, and the country will be safe." We trust that Englewood Cliffs voters, guided by the facts, will understand what is at stake on November 3.*

