

EYE ON THE CLIFFS

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

EC for Responsible Government

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October 18, 2020

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Settlement Agreements are filed in Court

Judge Signs Consent Orders

The Borough's Affordable Housing Settlement Agreements with the Fair Share Housing Center and 800 Sylvan were filed in court last week. Judge Christine Farrington signed Consent Orders on October 13, having determined that the Settlement Agreements have "apparent merit". The Consent Orders temporarily restore the Borough's immunity from builder's remedy lawsuits. Immunity will become permanent only after a final Judgment of Compliance and Repose (JOR) is signed by Judge Farrington in December, following a public hearing.

After the Borough lost its immunity last year, 800 Sylvan Avenue's builder's remedy lawsuit was able to proceed, and 800 Sylvan won the right to build a 600-unit high-density multi-family project, which included 120 affordable housing units. The Borough's Settlement Agreement with 800 Sylvan Avenue, however, reduces the total number of units to 450, and the affordable housing component to 90.

The Settlement Agreements, which bind the Fair Share Housing Center, 800 Sylvan Avenue, and the Borough, will officially end all the affordable housing litigation after the court signs the JOR. A JOR is the official and final judicial determination that declares that the Borough has met its affordable housing obligation. Immunity will then be restored to the Borough until at least July 1, 2025.

At its meeting on October 14, the Mayor and Council passed a resolution which will implement certain provisions of the Settlement Agreements,

and prohibit the Borough's Planning Board from spending any public funds on Planning Board actions that could delay or otherwise impede and subvert the requirements of the Settlement Agreements, including the hiring of attorneys for such purpose. The Planning Board is funded by the Borough. Each of its members is appointed solely by the Mayor. The resolution (20-154), which was voted along party lines, is posted on the Borough website.

Mayor Encourages Residents to Initiate Litigation to Challenge Settlement Agreements

At the same October 14 meeting, the Mayor once again attacked everyone who favored the Settlement Agreements, often engaging in vicious personal insults and accusations. He signaled to his supporters to fight the settlement, stating, *"If you are a resident and listening, my hands are tied, but yours are not."*

Commentary: The Mayor does not accept the reality that his fight to stop 800 Sylvan is over, and that he and the community have lost. He now encourages residents to litigate, without regard to the fact that the Borough would be obligated to defend any litigation against the Settlement Agreements. Wasn't \$3.7 million enough? Our tax bills are so high this year, primarily because of affordable housing litigation costs.

The Borough's loss in Court was largely attributable to an inadequate 2018 affordable housing plan that the Mayor developed and submitted to the Court. The Mayor has often contended that the Borough would implement its affordable obligation in its own way. However, the Court found that the Borough's own way was "to stall, procrastinate and evade its obligation." One of the specific findings of the Court, after weeks of hearings which evaluated the Mayor's Plan, was that the Plan was constitutionally non-compliant; the Court took special note that the Plan completely ignored the affordable housing development potential of the vacant and available 800 Sylvan site.

A settlement has finally been signed. It is less onerous than the Court Orders. The number of residential units on the 800 Sylvan Avenue property has been reduced from 600 to 450 and will include more than one hundred expensive million-dollar town homes. The number of additional affordable housing units that must be built has been reduced from 174 to 65. The settlement removes the possibility that the Court will rezone vacant residential property in our single-family home community for high density multi-family homes. Overlay zones have significant height and density restrictions so we will never have a high-rise tower like Fort Lee's "Modern" built in our low-rise community.

No one can predict how many of the properties in the overlay zones will ultimately convert to inclusionary affordable housing. But we do know that a property occupied by a major corporation such as CNBC, is unlikely to be sold. We also know that landlords are unlikely to break long term leases. Those who are speculating that there will be conversions of all the corporate properties along our Trillion Dollar Mile are fearmongering and misleading residents.

No Affordable Housing Settlement Agreement has ever been overturned by the New Jersey courts. Why would anyone, especially the Mayor who is himself an attorney, ever encourage others to challenge a settlement when there is no likelihood of success and so many dire consequences? It just does not make sense.

