

# *EYE ON THE CLIFFS*

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

EC for Responsible Government

Website: <https://ecfrg.org>

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Carin Geiger, President

Debbie Fehre, Acting Vice President/Secretary

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## **Affordable Housing Settlement Approved**

On Tuesday October 6, Judge Maurice Gallipoli, the court-appointed Special Hearing Officer for the Borough's Affordable Housing Litigation, announced in court that the parties had reached a settlement. He will submit the Settlement Agreements and a Consent Order to Judge Christine Farrington for her consideration and approval. The settlement will end the Borough's three-year long litigation with 800 Sylvan Avenue and the Fair Share Housing Center, which had cost the Borough more than \$3.7 million. Temporary immunity from builder's remedy lawsuits will be restored retroactive to September 29 when Judge Farrington signs the Consent Order. The Consent Order will officially terminate the litigation.

## **Judge Gallipoli calls conduct of October 4 Borough Meeting "an embarrassment"**

On Sunday October 4, the Mayor and Council held a Special Meeting, via Zoom, to consider the settlement. The Borough's attorneys outlined the terms of the settlement, and the settlement documents were posted on the Borough website and viewable during the meeting.

Judge Gallipoli commented in court about the meeting. He remarked that it was:

*"so frustrating that I had to hang up three times.... the total lack of respect and professionalism...the lack of courtesy. It was an embarrassment how that meeting was conducted."*

The meeting continued for over 12 hours, finally concluding about 2:00 o'clock A.M. on Monday morning. Over 150 people viewed the meeting and heard the Borough's legal experts emphatically and repeatedly advise the Council to settle. Jeffrey Surenian, the Borough's Affordable Housing Attorney, stated that the Borough was unlikely to succeed in court, at any level. He pointed out that without a settlement the Borough would be vulnerable to uncontrolled development.

After hearing all public comments, the Council voted to introduce and approve the Settlement Agreements. Councilmen Woo and Ferro voted against each Settlement Agreement. Councilpersons Aversa, Oh and Tsabari voted to approve the Settlement Agreement with 800 Sylvan Avenue, and Councilman Song abstained. Councilpersons Oh, Song, and Tsabari voted to approve the Settlement Agreement with Fair Share Housing Center. Councilman Aversa abstained because he owns property on Palisade Avenue.

The Mayor’s attempt to block the introduction of the resolutions to approve the Settlement Agreements was overruled by the Borough Attorney. The Mayor, who has a tie-breaking vote, also tried to disqualify Tsabari and Aversa’s votes, but was again overruled by the Borough Attorney.

## **IMPACT OF SETTLEMENT**

The charts below compare the impact of the Court Orders to the settlement approved by the Council on October 4.

### **Affordable Housing Units Required to be Built**

<b>Affordable Housing Units</b>	<b>Court Orders</b>	<b>October 4 settlement</b>	<b>Difference</b>
<b>Approved for 800 Sylvan Avenue</b>	120	90	(30)
<b>Additional Units required to be built by or within the Borough</b>	174	65	(109)
<b>Total</b>	294	<b>155</b>	<b>(139)</b>

### **Total New Residential Housing Required**

(Exclusive of overlay zones, the woods at the north end of the new LG Headquarters, and a mixed-use building on Sylvan Avenue south of Bayview Avenue and known as the Cioffi Project\*)

<b>Total Residential Housing Units</b>	<b>Court Orders</b>	<b>October 4 settlement</b>	<b>Difference</b>
<b>Approved for 800 Sylvan Avenue**</b>	600	450	(150)
<b>Additional Units built by or within the Borough ***</b>	174 to 870	65	(109 to 805)
<b>Total</b>	774 to 1470	<b>515</b>	<b>(259 to 955)</b>

\* The Cioffi Project must comply with a 20% affordable housing requirement. Its application is still pending court review.

\*\* The Court approved 835 units at 800 Sylvan; 800 Sylvan chose to build 600 units.

\*\*\*The Court has ordered 174 affordable housing units be built, in addition to 120 affordable housing units at 800 Sylvan Avenue. If built by private developers, 174 units could have resulted in as many as 870 new residential units. If the 174 units were to be built by the Borough, the cost to taxpayers was estimated to be \$45 million with no offsetting tax ratables.

**As described on the Borough website, the settlement accomplishes the following:**

- Ends three years of costly litigation. Over \$3.7 million has been spent on litigation and related expenses.
- Restores the Borough's immunity from builder's remedy lawsuits, protecting us from any new court-ordered high-density residential development.
- Protects vacant residential properties within the community from multi-family rezoning. Vacant residential properties will not be included in any overlay zone or rezoned for multi-family housing.
- Establishes a three-story height limitation in all the overlay zones south of 800 Sylvan Avenue, and a four-story height limitation on all overlay zones north of 800 Sylvan Avenue. The Palisades viewshed will be protected. Englewood Cliffs will never have high-rise buildings like "The Modern" or look like Fort Lee.
- Ensures that no multi-family apartments are built backing on to residents' backyards along Sylvan Avenue from Van Nostrand Avenue to Hollywood Avenue.
- Brings in an estimated annual total of \$2 million in new tax revenues for the Borough and Board of Education to offset additional expenses for services.
- Increases the possibility of securing favorable financing for the Borough's Hudson Terrace 65-unit project, which could significantly reduce the Borough's construction cost.
- Eliminates/reduces 150 apartment units from the 800 Sylvan Avenue development.
- Vehicular access to the 338-unit apartment complex at 800 Sylvan Avenue will be available only from Sylvan Avenue. Vehicular access to Floyd Street will be permitted only for the 112 new million-dollar townhouses.

The settlement documents are found on the Borough website (<http://www.EnglewoodCliffsNJ.org/>) and on the EC for Responsible Government website.

## OVERLAY ZONES

Overlay zones are required for a municipality to comply with the court mandated number of affordable housing opportunities that must be made available in the future. Property owners within an overlay zone are provided with the **option** to continue the current use, or to build inclusive multi-family residential housing on their property. The attorneys stated that overlay zones are fundamentally different from rezoning. The properties in overlay zones retain their current zoning. The owners of properties in overlay zones have the option to convert to multi-family housing which must include affordable housing. Any actual new housing development on such sites is speculative.

According to the Borough website, the properties in the overlay zone at the north end of Sylvan Avenue are each state of the art, multi-million dollar commercial and corporate headquarters. They include the \$80 million CNBC Corporate Headquarters and television studios; the Unilever Research and Development building, which has 15 years remaining on its lease; the \$5 million Lighthouse Project built in 2018; and the Sylvan Corporate Center, which recently leased 60,000 square feet to a high tech company. Any residential housing development on the former LG headquarters site is restricted to residents over the age of 55. The property on the Palisades owned by the Sisters of Peace is also age-restricted to seniors, and any construction on such property cannot impair the Palisades viewshed.

The other properties in overlay zones had already been designated as overlay zones in the Borough's Affordable Housing Plan of December 10, 2018 Plan. The zones include the commercial properties on both sides of Sylvan Avenue south of Van Nostrand Avenue; the commercial properties on the east side of Sylvan Avenue from Charlotte Place north to Palisade Avenue, which includes the location of the Borough's proposed 65-unit Hudson Terrace project, and the commercial properties on both sides of Palisade Avenue.

## ADDITIONAL SETTLEMENT PROVISIONS

The settlement also provides for payment of \$335,000 to the Fair Share Housing Center to offset its legal fees. It stipulates that the Fair Share Housing Center will withdraw its civil rights violation lawsuit against the Borough. Such lawsuit sought actual and punitive damages from the Borough. The settlement also prohibits the Borough Council from providing any public funds to the Planning Board to pay Planning Board legal fees incurred to challenge the settlement.

The Settlement Agreements also provide that the Borough must defend any challenges to the agreements and, further, make the Borough liable for all legal fees and related costs incurred by 800 Sylvan and the Fair Share Housing Center should the Borough itself challenge the Settlement Agreements in the future. In addition, the Settlement Agreement with 800 Sylvan provides that if the Borough breaches the agreement, 800 Sylvan can proceed to build 600 units, instead of 450.

## EDITORIAL

During the lengthy 12-hour marathon meeting of the Mayor and Council on October 4, and, in fact, at no public meeting since the 800 Sylvan Avenue litigation started in 2017, has the Mayor, or the Councilpersons and residents who have spoken out in opposition to 800 Sylvan and the Fair Share Housing Center, offered a strategy for us to prevail in court. No viable alternative to the Borough settling the matter has been presented. If there had been a logical and sound path for the Borough to win in court, it should have been revealed. Instead, there has been only finger-pointing, and personal accusations and attacks.

The naysayers, led by the Mayor, want to hire new attorneys, and continue the litigation all the way to the United States Supreme Court. Yet, as explained by the attorneys during the Special Meeting, there appears to be no issue of law that would give jurisdiction to the federal courts to hear our case. The case would, therefore, never end up in the United States Supreme Court. There is also little likelihood of success in the state courts because the trial court judge's decisions were based on applicable law and a detailed analysis of the evidence.

The charts above show how much more housing we would have if there were no settlement. But they do not tell the full story. They do not describe the additional risks of failing to settle which include: the continuing loss of immunity exposing the Borough to profit-motivated developers; the risk of court-ordered rezoning of selected vacant residential properties for multi-family housing construction; the risk of the court rezoning corporate and commercial property for multi-family residential use; the continuing loss of our protective zoning which limits building height and density; and the financial risk of significant punitive damages to the Fair Share Housing Center.

It was time for the Borough Council to settle the matter, rather than continue the losing court battle and risk subjecting the Borough to even greater court-ordered affordable housing requirements. The four members of the council, who finally put the welfare of our community ahead of politics and voted to settle the affordable housing litigation, made the right decision. It is now time for the Mayor and Council to end the fighting and blaming, and work together to plan for the betterment and future of Englewood Cliffs.

