

# *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>

December 23, 2020

Carin Geiger, President

Debbie Fehre, Acting Vice President/Secretary

Lynn Liaskos, Treasurer

## **Court Approves Affordable Housing Settlement After 5 Years of Costly Litigation**

**Borough immunity from future  
builder's remedy lawsuits is now restored**

**Court approves both the 600 and 450-unit plans for  
800 Sylvan Avenue**

Yesterday, Bergen County Superior Court Judge Christine Farrington issued a Judgment of Compliance and Repose, which ends 5 years of expensive litigation between the Borough, the Fair Share Housing Center and 800 Sylvan Avenue. The Judgment will remain in effect until July 1, 2025.

The Court delivered its opinion at the conclusion of the long-awaited Fairness and Compliance Hearing. At the Hearing, each of the parties testified that the terms of the Settlement Agreements are fair and reasonable to the protected class. The protected class is low and moderate income households in the region.

As part of the Judgment, the Court reinstated the Borough's zoning ordinances and restored its immunity from builder's remedy lawsuits. The Court also returned jurisdiction on land use and zoning to the Englewood Cliffs Planning Board.

The Court approved both the 450-unit and the 600-unit plan for 800 Sylvan Avenue. The Court stated that approval of the 600-unit plan was "*for the sole purpose of eliminating any need for a further compliance and/or fairness hearing with regard to that plan in the event the Borough reneges or fails to abide by the terms of the settlement agreements.*"

## **Court approves plans that will produce a minimum of 162 affordable housing units in Englewood Cliffs**

The Court Order requires that 90 affordable housing units be built at 800 Sylvan Avenue, and 60 to 65 affordable housing units be built by the Borough at the Borough-owned site on Hudson Terrace. In addition, 12 affordable housing units may be built on the rezoned LG USA North Woods site.

The Court had previously ordered the Borough to provide 294 affordable housing units in Englewood Cliffs (174 affordable housing units, in addition to 120 units at 800 Sylvan Avenue which were approved by the Court as part of a builder’s remedy). The Judgment of Compliance and Repose, consistent with the Settlement Agreements, requires 132 fewer affordable housing units be built in the Borough than previous Court Orders directed.

The Court concluded, based on the testimony of the expert planners and the Special Master, that the reduction in the amount of affordable housing is fair and reasonable to the protected class because affordable housing will finally be built in Englewood Cliffs after 45 years of delay. The Court also found that the expanded overlay zones will provide future opportunities for affordable housing in the Borough.

The chart below compares the previous Court Orders to the Judgment of Compliance and Repose rendered on December 22, 2020.

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

<b>Affordable Housing Units</b>	<b>Prior Court Orders</b>	<b>December 22, 2020 Judgment</b>	<b>Difference</b>
<b>800 Sylvan Avenue</b>	120	90	(30)
<b>Additional Units required to be built in the Borough</b>	174	72	(102)
<ul style="list-style-type: none"> <li>- Units to be built by the Borough (60-65)*</li> <li>- Units required to be built if LG North Woods is developed (12)</li> </ul>			
<b>Total</b>	294	<b>162</b>	(132)

\* The Settlement Agreements require a minimum of 60 units and a maximum of 65 units be built by the Borough at Hudson Terrace

## **Severe penalties if Borough fails to meet its obligations under the Settlement Agreements**

Judge Farrington affirmed that the Court will continue to act on behalf of both the Borough and the Planning Board to satisfy any conditions or actions that are required to effectuate the terms of the Settlement Agreements, including 800 Sylvan's right to build a 450-unit complex. The Court noted that it was fully prepared to compel 800 Sylvan to construct the larger 600-unit complex at 800 Sylvan Avenue, and to reinstate all prior Court Orders (which removed immunity from builder's remedy suits, suspended all Borough zoning ordinances, eliminated rental bonuses, and required 174 affordable housing units be built in addition to the 120 units at the 800 Sylvan Avenue site) if the Borough does not meet its obligations.

## **New Zoning Ordinances Approved by the Court**

The Court approved each of the new zoning ordinances, which codify the terms of the Settlement Agreements. These new zoning ordinances establish the overlay zones for multiple properties along 9W, Palisade Avenue, and at the Sisters of Peace Property on the Palisades. The overlay zones provide future opportunities for more affordable housing in the Borough. The properties located in overlay zones can continue as they are currently used, or they may be converted to residential use or mixed use, both inclusive of affordable housing units.

The zoning ordinances each include height and density restrictions.

The Court also approved rezoning of the 20-acre portion of the 800 Sylvan Avenue property for inclusionary affordable housing. The Court approved both the 450-unit and the 600-unit builder's remedy plans for the site as fair and reasonable. In addition, the North Woods property owned by LG USA was rezoned to allow up to 60 residential units, and the Borough's 100 percent affordable housing complex at Hudson Terrace will be rezoned to accommodate 60 to 65 units. When a property is rezoned, it may be used only for the purpose permitted by the rezoning.

None of the vacant residential land within the existing residential sections of the Borough has been rezoned or included in any overlay zone. Although these vacant parcels were included to calculate the Borough's immediate affordable housing obligation, they have not been rezoned by yesterday's Court decision and will remain zoned for only single-family homes.

## **Borough waives right of appeal**

The Court found that the Borough's waiver of its right to appeal the Settlement Agreements was an important component of the settlement because it ensures that construction of affordable housing in Englewood Cliffs will happen sooner than later. The Court affirmed several times that if the new Borough administration fails to meet its obligations, there will be severe penalties imposed by the Court, including (1) compelling the construction of the 600-unit plan at 800 Sylvan Avenue, instead of the 450-unit plan, (2) loss of immunity from builder's remedy lawsuits, and (3) reinstatement of the prior Court Orders.

## **Court dismisses various objections to Settlement Agreements**

Englewood Cliffs resident Hemant Mehta and a recently formed local resident group each filed objections to the Settlement Agreements as part of the Fairness Hearing process. Lawyers for LG USA, various representatives of the conservation community, and the attorney for the Cioffi properties also filed objections. The Court noted that none of the objectors produced any experts to testify that the Settlement Agreements were not fair and reasonable to the protected class.

The Court found that Mr. Mehta's objections were not timely and that none of the issues he raised, including the alleged catastrophic impact of the settlement on property values, borough services, and resident property taxes are relevant to the current proceedings which are to determine if the settlements are fair and reasonable to the protected class. The Court stated that *"the Borough has evaded its affordable housing obligations for 45 years and now cannot be heard to complain about the impact of finally beginning to address those obligations"*.

The Court found that the objections raised by the conservation community to the inclusion of the Sisters of Peace property in the settlement agreements are satisfactorily addressed in the language of the proposed ordinance which the Court found provides protection to the Palisades viewshed. The Court further noted that the conservation community would have an opportunity to revisit the issue should there actually be a proposed new development on the Sisters of Peace site.

Objections filed by LG USA were addressed by minor modifications to the proposed ordinances affecting its property. The Cioffi project application for

a mixed-use development at the south end of Sylvan Avenue will be heard by the Special Hearing Officer, and not the Englewood Cliffs Planning Board.

## **Court states it will compel 600-units (instead of 450) to be built at 800 Sylvan Avenue if the Borough's October 4 meeting violated OPMA, as resident group alleges**

The Court stated that the resident group's alleged violations of the Open Public Meetings Act (OPMA) will be heard in January 2021. The Court stated that the alleged violations have no bearing on the Fairness Hearing because should the Court find that the October 4 meeting notice was not sufficient by OPMA standards and that the settlements are not fair and reasonable to the interests of the protected class, the Court would implement proceedings to compel construction of the 600-unit plan at 800 Sylvan Avenue pursuant to the builder's remedy which the Court found to be fair and reasonable to the protected class.

The Court dismissed most of the other objections submitted by the Englewood Cliffs resident group. The Court found the criticism of the Borough for not considering the possible impact of Covid-19 on commercial real estate in the Borough to be speculative. The Court also found that the 27-day period to file objections to the Fairness Hearing was more than adequate, and that the Court was satisfied with the legal notice of the 800 Sylvan Ave project conducted by the Special Hearing Officer.

## **Court commends elected officials**

The Court concluded its findings with a statement about the obligation of elected officials to uphold the Federal and State Constitutions, and all state laws. The Court noted that each elected official swears to uphold the State Constitution when he/she takes the oath of office and commended the members of the Borough Council who respected their oath of office and worked hard to develop settlement agreements that upheld the Constitutional requirement to provide affordable housing.

All of the new ordinances and related documents may be found on the Borough website. The EC for Responsible Government website contains copies of the Court Orders and related documents. <https://ecfrg.org>

*Eye on the Cliffs* is a publication of EC for Responsible Government, a non-partisan and not-for-profit residents group whose goal is community education about local issues. We do not endorse any political party or candidate. We began as a group of residents who joined with the conservation community to seek a reduction in the height of the LG USA headquarters. We learned that residents working together can make a difference. We are inspired by the words of Abraham Lincoln: *“Let people know the facts and the country will be safe.”*