

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>

April 23, 2021

Carin Geiger, President

Debbie Fehre, Acting Vice President/Secretary

Lynn Liaskos, Treasurer

BOROUGH BRINGS NEW SUIT TO UNDO AFFORDABLE HOUSING SETTLEMENTS

On April 16, 2020, the Borough filed a legal challenge to the Affordable Housing Settlement Agreements signed this past October. The Borough now claims that the agreements and all other related actions taken in 2019 and 2020 with respect to affordable housing are void as a matter of law and cannot be enforced or implemented because of an alleged conflict of interest on the part of former Borough Councilpersons Ed Aversa and Deborah Tsabari.

The legal challenge was filed by borough attorney Eric M. Bernstein, and not by the Borough's affordable housing attorney. After firing the Borough's previous team of affordable housing attorneys in January, the Borough appointed Michael A. Jedziniak, the Mayor's hand-picked choice, to be the new affordable housing attorney. However, Jedziniak resigned last week, citing irreconcilable differences and the failure of the Mayor and Council to follow his legal advice.

The Borough's proposed 2021 budget includes nearly \$1.7 million for affordable housing litigation and expenses, which will cost the average Englewood Cliffs homeowner approximately \$600. The Borough has already spent approximately \$4.2 million in connection with the affordable housing litigation, which appeared to have reached a conclusion with the Settlement Agreements signed with 800 Sylvan and the Fair Share Housing Center last fall.

The Mayor and Council held a public meeting on April 14 but did not inform the public that it intended to file this new legal challenge.

WHAT IS THE ALLEGED CONFLICT OF INTEREST?

The Borough alleges that because Councilwoman Tsabari owns a home within 200 feet of the 800 Sylvan property, and Councilman Aversa owns a building in the Palisades Avenue overlay district, they were each conflicted and should have been prohibited from participating and voting on all matters relating to the affordable housing litigation.

New Jersey's conflict of interest law is designed to prevent public officials from acting in their own self-interest. Specifically, public officials are prohibited from acting in any matter in which they have a direct or indirect financial or personal involvement that might reasonably be expected to impair objectivity or independence of judgment.

Whether a conflict exists, according to the New Jersey Supreme Court, depends upon the circumstances of each case. The Supreme Court defined the standard as "*whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty.*"

A conflict of interest can also arise, according to the New Jersey Supreme Court, "*when the public official has an interest not shared in common with other members of the public.*"

The Borough's legal challenge does not explain how or why Aversa and Tsabari's efforts to settle the Borough's long and expensive affordable housing litigation on terms substantially less burdensome to the entire Borough than what the various court orders had dictated, would constitute an interest not shared in common other members of the public.

ALLEGED CONFLICT OF INTEREST MOTIONS AGAINST AVERSA AND TSABARI HAVE ALREADY BEEN REVIEWED BY THE COURT AND DENIED

On July 8, 2020, NJ Superior Court Judge Farrington denied complaints filed by both Mayor Kranjac and resident Hemant Mehta which sought to restrain Councilpersons Aversa and Tsabari from participating in all matters related to the 800 Sylvan Avenue site and litigation because of their having an alleged conflict of interest. The complaints were dismissed with prejudice on October 27, 2020. No appeal was filed.

Referring specifically to the Mehta allegation of conflict of interest regarding Councilpersons Aversa and Tsabari, the Court decided:

The Mehta application similarly fails. His argument that certain people own property within 200 feet of the Sylvan site or within an overlay zone and therefore have a conflict of interest which bars their participation would apply to many residents of the municipality. It is not clear to the court how such an alleged conflict applies here. Pertinent to this issue, the court has voided the zoning ordinances of the Borough.... The matter is proceeding apart from the governing body.... In the event a settlement was reached between 800 Sylvan Ave and Fair Share Housing Center and such settlement is recommended by the Special Master and Fair Share Housing Center, the court would consider it to determine whether it meets the Borough constitutional obligation to provide affordable housing. There is, in sum, nothing in the complaint or in the supporting documents presented to this court to justify restraints against any of the defendants.

The Settlement Agreements were supported at the requisite Fairness Hearing by both the Fair Share Housing Center and the Special Master, and thereafter approved by Judge Farrington.

BOROUGH NOW RISKS COURT SANCTIONS

If the Court invalidates the Settlement Agreements or determines that the Borough is in breach of them, the risks to the Borough are significant.

- The Court could revoke the Borough's immunity from builder's remedy lawsuits, which would expose the Borough to new court-ordered high-density multi-family residential development.
- The Borough could be required to provide for 174 affordable housing units instead of the 65 units as specified in the Settlement Agreements, and in addition to 120 affordable housing units at 800 Sylvan. If the 174 units were to be built by the Borough, the cost to taxpayers has been estimated to be \$45 million, with virtually no tax ratables to help offset the cost, according to the Borough's experts.

- 150 apartment units could be added to the 800 Sylvan Avenue development, including 30 additional affordable housing units.
- There would not be any protection to selected vacant residential properties within the community from being rezoned for dense multi-family housing.
- The three-story height limitation in all the overlay zones south of 800 Sylvan Avenue, and the four-story height limitation on all overlay zones north of 800 Sylvan Avenue, would be eliminated. The Palisades viewshed will be at risk and Englewood Cliffs would not be protected from potential high-rise buildings like “The Modern”. Englewood Cliffs landscape could look like Fort Lee.
- Multi-family apartments could be built backing on to residents’ backyards along Sylvan Avenue from Van Nostrand Avenue to Hollywood Avenue.
- The Borough could be subject to financial penalties.

As of today (April 23, 2021), no date has been set for a court hearing on the Borough’s new legal challenge to the Settlement Agreements.

***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. Our website, <https://ecfrq.org>, contains more detailed information. We are completely supported by resident contributions. Contributions can be mailed to:**

**EC for Responsible Government
PO Box 1812
Englewood Cliffs, New Jersey 07632**

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.*”

