

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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FACT CHECK

Many residents have raised questions with EC for Responsible Government regarding certain statements they are reading in campaign literature. Accordingly, *Eye on the Cliffs* will "fact check" those statements for the benefit of our residents.

Statement: *"Democrats secretly rammed through a settlement taking away your rights to fair resolution"*

Fact: This statement is false. In June, a councilperson officially announced that the Council would try to reopen settlement negotiations with 800 Sylvan and the Fair Share Housing Center. Thereafter, settlement was discussed at every Mayor and Council meeting, and many residents spoke about it at every public meeting.

On September 29, prior to a court hearing, attorneys representing 800 Sylvan, Fair Share Housing Center and the Borough, informed Judge Gallipoli that they had reached a tentative settlement, subject to approval by the Mayor and Council. The Judge gave all parties one week to finalize settlement agreements and for the Mayor and Council to vote on them.

On October 2, the Borough circulated an outline of the settlement terms to the Borough's email list and posted the outline on the Borough website.

On Sunday, October 4 at 2 PM, a Special Public Meeting was held via Zoom. Prior notice had been given that the purpose of the meeting was to consider the Settlement Agreements, and action could be taken. The Settlement Agreements were posted on the Borough Website during the meeting and the Special Litigation attorney, Thomas Trautner, explained each provision to the public. The meeting lasted 12 hours, ending with a vote in public session and public view on October 5 at 2 AM.

Statement: *"The vote was unlawful"*

Fact: The statement is false. The Borough attorney stated at the public meeting that the meeting was legal. The meeting was advertised

and conducted in full public view, as was the vote. Each Settlement Agreement was voted on separately and approved by a sufficient number of councilpersons.

Councilman Aversa abstained from voting on the Settlement Agreement with the Fair Share Housing Center because he owns the building where his dental practice is located within the East Palisade Avenue overlay zone.

Councilwoman Tsabari voted affirmatively on both Settlement Agreements. A vote on an affordable housing settlement is not the same as a vote on a land use application, where a Planning Board member who lives within 200 feet of 800 Sylvan's property would be deemed to have a conflict and barred from voting. With respect to an affordable housing settlement, each member of the council and the public are similarly affected. Regardless, she voted against any conceivable personal interest, and voted yes.

Councilwoman Oh lives in Englewood Cliffs, in a home she rents. New Jersey law does not make home ownership a requirement for serving as an elected representative or voting on Borough matters.

Statements:

"The Settlement can be overturned." "We will overturn this fraudulent settlement." "We will employ our fully developed cutting edge legal strategy to deliver the best possible outcome...."

Fact:

These statements are speculative, misleading, and unproven. The New Jersey Supreme Court's Mt. Laurel decisions are based on the New Jersey Constitution. The New Jersey Supreme Court has affirmed the law on at least four prior challenges. Local zoning and land use questions fall within the exclusive jurisdiction of state courts.

During the three years of affordable housing litigation in Englewood Cliffs, no one has come up with a viable legal strategy to prevail in 800 Sylvan's builder's remedy lawsuit or an alternative course of action to prevail in the affordable housing litigation.

During the local election campaign, no one has presented a legal basis to overturn the Settlement Agreements. Over 300 communities in the State have settled and none of them has successfully challenged a settlement.

Statement:

"We will challenge the Agreements."

Fact:

This statement is baseless and irresponsible. There are no legal grounds to challenge the Settlement Agreements. The Settlement Agreements describe what could happen if there is a challenge

brought by the Borough, itself. If the Borough breaches the Settlement Agreements, the Court can reinstate the original Court Orders which include loss of immunity, ordering the Borough to provide for 174 new affordable housing units, and rezoning and overlaying property throughout the Borough for inclusionary dense residential development without height and density restrictions. The 600-unit plan for 800 Sylvan Avenue will also be reinstated. The Borough will also be obligated to pay the legal and all related costs of both 800 Sylvan and the Fair Share Housing Center.

If an individual or group challenges the Settlement Agreements, the Borough is obligated to defend the Settlement Agreements, and to pay the costs of defending them.

Statement:

“So little difference -why not appeal?”

Fact:

The statement is misleading and deceptive. There is an enormous difference between the Court Orders and the Settlement Agreements.

Under the Court Orders, there is no immunity from builder’s remedy lawsuits, and nothing prevents another builder’s remedy lawsuit seeking to build high-density residential housing on any commercial or large vacant residential property in the Borough. Under the Court Orders, local Planning Board control over zoning has been removed, and any new development need not conform with any of our local building height or density restrictions. Under the Court Orders, there could be uncontrollable high-rise multi-family development throughout the Borough.

The Court Orders approved 600 units at 800 Sylvan (120 affordable) as part of its builder’s remedy. In addition, to meet the current affordable housing obligation, the Court required the Borough to either build 174 units (Borough cost estimate was \$45 million) or provide for them, which could result in up to 870 additional residential units built by developers.

In contrast, the Settlement Agreements resulted in the restoration of the Borough’s immunity by the Court, preventing any new builder’s remedy lawsuits. The Agreements limited height and density throughout the Borough and reduced the number of units at 800 Sylvan to 450 (90 affordable). To meet its current affordable housing obligation, the Borough is required to build only 65 units (reduced from 174) and to rezone the wooded area owned by LG, immediately adjacent to its new headquarters, for up to 60 residential units (12

affordable), should LG or a subsequent owner decide to build residential housing at that location.

The Settlement Agreements significantly reduce the negative and costly impacts of the Court Orders. The benefits of the Settlement Agreement are described in an October 6 posting on the Borough website: (<https://www.inglewoodcliffsnj.org>).

Statement: *“Immediately Implement Original 2018 Borough Affordable Housing Plan.”*

Fact: This statement is false. The Court has already ruled (January 2020 decision) that the Original 2018 Plan is constitutionally non-compliant.

Statement: *“Overturn punitive Court Decisions”*

Fact: This statement is false. The Settlement Agreements end the Englewood Cliffs Affordable Housing Litigation. As a condition of settlement, the Borough has waived its right to appeal to any court.

Statement: *“The Democratic approved settlement scenario is 2,730.”*

Fact: This statement is misleading. It assumes that all the developed property in each overlay zone in the Borough, and the undeveloped LG North Woods, will be converted to multi-family housing with an affordable housing component. It assumes that all the large properties along the Trillion Dollar Mile, like the \$80 million CNBC Headquarters, Unilever’s R&D building, and the newly constructed Lighthouse buildings near Sage Road; and the commercial properties on East Palisade Avenue and elsewhere, will be converted for residential housing.

Overlay zones are created to accommodate a community’s court-ordered unmet affordable housing requirement, which requirement need not be satisfied now or anytime in the future. Property in an overlay zone can remain commercial (its current use) or it can be converted to mixed use or residential use only if it includes 20 percent affordable housing.

Statement: *“\$375,000 to Fair Share”*

Fact: The statement is incorrect and misleading. The Settlement Agreement with the Fair Share Housing Center provides for a payment of \$335,000. Fair Share has agreed to drop its civil rights claim against the Borough. The civil rights claim could have resulted in punitive damages in the \$\$ millions, payable by Borough taxpayers.

Statement: *“\$200 million for two new schools”*

Fact: The statement is speculative and misleading. It is not based on any professional or other study. No demographic analysis of the potential impact on our public school system has been undertaken. No one knows how many children will be moving here and attending our school system. No analysis has been made of available space in the existing facilities at both Borough school sites, or the cost of any additional classroom or other space, or staff, that may be required.

Statement: *“\$50 million for new Police and Fire stations”*

Fact: This statement is speculative and misleading. No one has ever suggested that the Borough would require additional facilities for our police and volunteer fire departments.

Statement: *“\$5,000 to \$20,000 property tax increase for life”*

Fact: There is no basis for this statement.

Statement: *“10,000 additional residents”*

Fact: The statement is speculative and misleading. It assumes that every corporate property in an overlay zone on our Trillion Dollar Mile and on Palisade Avenue, as well as other properties in the Borough, will be converted to dense residential housing. The Settlement Agreements provide for up to 450 units at 800 Sylvan and up to 65 units on the Hudson Terrace site. An application for the Cioffi properties is pending, but it will have no more than 41 apartments, including 8 affordable units. Any additional residential construction is a matter of conjecture.

800 Sylvan Avenue LLC can build up to 112 three-bedroom townhomes which they have said will be sold for more than one million dollars each. It is not known if the townhomes will attract empty nesters and seniors who want to downsize, or young families.

Only 18 of the 338 rental units will be three-bedroom apartments. The balance will be studio, one and two-bedroom apartments.

The construction of the residential housing at 800 Sylvan can be phased in. 800 Sylvan is not required to build all 450 units and can build fewer units if it provides a 20 per cent set aside for affordable units.

The Borough affordable housing project on Hudson Terrace will contain family size apartments. The Borough does not have to begin to build the Hudson Terrace project until July 2023

It is not known what the total number of new residents will ultimately be, but there is no basis for the claim of 10,000.

Copies of the Settlement Agreements and the Court Orders are found on the EC for Responsible Government website. <https://www.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.*”