

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

Lynn Liaskos, Treasurer

BOROUGH LOSES IN COURT AGAIN

COURT REJECTS BOROUGH'S ATTEMPT TO VOID THE AFFORDABLE HOUSING SETTLEMENT AGREEMENTS

COURT: TSABARI AND AVERSA HAD NO CONFLICT OF INTEREST

BOROUGH MUST NOW PAY 800 SYLVAN'S LEGAL FEES

On Friday, May 21, NJ Superior Court Judge Christine Farrington rejected the Borough's challenge to the Affordable Housing Settlement Agreements. The Borough had alleged that the agreements were void from the outset (*ab initio*) because it claimed that former Councilpersons Aversa and Tsabari had a conflict of interest that required them to recuse on all actions involving settlement, including the October 4, 2020 vote to approve the Settlement Agreements. The Court disagreed.

The Court reviewed controlling legal precedents regarding conflict of interest and found that no conflict of interest exists. The Court referenced the Borough's previous statements in an earlier case brought in 2020 by Englewood Cliffs resident Hemant Mehta. In the Mehta case, the Borough argued that Tsabari and Aversa were not conflicted in any way because any interest they would have would be shared with the community at large. Judge Farrington wrote:

"The Borough previously and explicitly asserted that Tsabari and Aversa did not have any conflicts, albeit in separate but related litigation. The Borough now seeks to make the very same argument it opposed in the Mehta lawsuit...This court accepted the Borough's argument and ruled in the Borough's favor [in the Mehta case.]"

The Court found that a vote on the Settlement Agreements is analogous to the Borough Council's responsibility to vote on a Borough Master Plan; the rule that bars officials who live within 200 feet from voting does not apply. An affordable housing settlement affects the entire community, just like a Borough Master Plan.

The Court noted that the Borough had not alleged any conflict of interest imputed to Councilperson William Woo, and to former Councilpersons Jimmy Song and Gloria Oh, The Court said Woo's home is within 200 feet of the location of an elementary school (the North Cliffs School) that was excluded from one of the Borough's affordable housing plans. Accordingly, an alleged conflict based upon 200 feet proximity to a particular site was no different for Woo as had been alleged for Tsabari.

The Court reaffirmed that there was no conflict of interest, but if there were conflicts based on 200 feet proximity to certain sites, such conflicts would have made it impossible for the Council to have had the requisite quorum available to vote on the Settlement Agreements. Therefore, by necessity, each councilperson was properly permitted to vote.

The Court also said that if the Settlement Agreements are voided, the remedy is to default to the Builder's Remedy, approved by the Court in February 2020, which allows for a total of 600 units to be built at 800 Sylvan Avenue.

COURT DIRECTS BOROUGH TO PAY 800 SYLVAN LEGAL FEES

In a separate but related ruling, the Court found that the Borough's challenge to the Settlement Agreements constituted a breach of such agreements and directed the Borough to pay the legal fees incurred by 800 Sylvan for its attorneys' work in defending the Settlement Agreements from the Borough's breach. The Court did not impose any punitive contempt of court charges, monetary fines, or other sanctions against the Borough because the delay that would be required to adjudicate any sanctions did not serve the interest of those in need of affordable housing.

COURT APPROVES FINAL SITE PLAN FOR 800 SYLVAN AVENUE 450-UNIT PLAN CAN MOVE FORWARD

The Court also approved the site plan for 800 Sylvan Avenue for both the 600-unit plan (per Builder's Remedy) and 450-unit plan (per October 4, 2020 Settlement Agreement) as recommended by Special Hearing Officer Judge Maurice Gallipoli. In both approved plans, there will be an entrance and exit

onto Floyd Street for the townhomes, and all residents will be able to access Sylvan Avenue. The buffer on Floyd Street will be 10 feet wide, and a sidewalk will be constructed from Hollywood Avenue to Witte Field. Judge Farrington concurred with Judge Gallipoli in finding that the Borough's recommendations, including certain public safety and emergency access matters, had all been thoroughly addressed, and were "redundant, unresponsive, and not useful. "

BOROUGH SUIT AGAINST FORMER BOROUGH ATTORNEYS IS DISMISSED FOR FAILURE TO STATE A CAUSE OF ACTION

Earlier this year, the Borough sued four former Borough Attorneys claiming each of them had violated the New Jersey Rules of Professional Conduct for Attorneys by failing to turn over all their files to the Borough. On May 21, the Court dismissed the Borough's suit for failure to state a cause of action under New Jersey law, but permitted the Borough to file an amended claim or provide a list of all the documents it could identify as missing from the 55 boxes of documents and 17,000 emails which had already been turned over to the Borough in January 2021.

**The Court is expected to render a Final Order of Judgment
and Repose on Monday, May 24.**

**The Final Order should end the affordable housing
litigation.**

Commentary

The litigation that began in 2015 to determine the Borough's affordable housing obligation is likely to end this week when Judge Farrington renders the Final Judgment of Compliance and Repose. In 2015, the Borough had an affordable housing obligation that was measured in single digits, as there was no substantial land available for construction of affordable housing. That changed in 2017, when the Planning Board rejected an application to build a new corporate development at 800 Sylvan Avenue, and 800 Sylvan thereafter sued for the right to build multi-family housing on its 20-acre property.

The Borough's various attempts to stop 800 Sylvan have failed. Court orders and rulings have made it clear that 800 Sylvan has the right to build as many as 600 units of multi-family housing provided 20% are dedicated for affordable housing. The Court has rejected the Borough's recent attempt to nullify the Settlement Agreements finding that there was no conflict of interest that could void the agreements. The Settlement Agreements specifically prohibit the Mayor and Council from appealing such agreements to any court.

Although there has never been a clear path to achieving Mayor Mario Kranjac's pledge to "Stop 800 Sylvan", the Mayor and Council have allocated nearly \$1.7 for legal and related expense in connection with the affordable housing matter in the 2021 budget. It can be expected that Kranjac will try to use those funds to continue his futile and costly battle. In doing so, he will risk bringing punitive and costly sanctions on the Borough and its taxpayers.

It is hoped that good judgment will finally prevail, and the Borough will cease wasting taxpayer money seeking relief from the courts and will honor the Settlement Agreements and not expose the Borough to risks and sanctions. The Borough has already expended upwards of \$4.2 million on affordable housing litigation and has budgeted another \$1.7 million for 2021. The Borough should now reduce the \$1.7 million budgeted for 2021 and provide only the amount of funds required to pay costs already incurred as well as the legal fees that the Court has ordered the Borough to pay to 800 Sylvan.

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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://ecfrg.org>, contains more detailed information, court documents and previous issues. We are completely supported by resident contributions. Contributions are appreciated and can be mailed to:

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

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