

EYE ON THE CLIFFS

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

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Carin Geiger, President

Debbie Fehre, Acting Vice President/Secretary

Lynn Liaskos, Treasurer

800 Sylvan Seeks \$1.8 Million from Borough for Breach of Settlement Agreements

In May, the Court determined that the Borough breached the Affordable Housing Settlement Agreements when the Borough moved to invalidate them based on the alleged conflict of interest of two former councilpersons. In connection with that breach, the Court approved payment by the Borough of legal fees incurred by both 800 Sylvan and the Fair Share Housing Center.

On Friday, June 25, attorneys for 800 Sylvan filed a Notice of Demand with the Court, seeking payment from the Borough of \$1.8 million. 800 Sylvan claims that when the Court found that the Borough breached the Affordable Housing Settlement Agreements, a provision of the Settlement Agreements was triggered. Such provision states that "the Borough shall be liable for all costs incurred in connection with the negotiation of the Agreement and any related costs, including...fees paid to any consultant, attorney, architect, engineer, planner, or traffic consultant, arising from the implementation of this Agreement..."

Now, 800 Sylvan is seeking payment under its Settlement Agreement for \$1.8 million for all expenditures it has incurred in connection with its 450-unit residential project. The Borough has seven days to respond to 800 Sylvan's Notice of Demand.

Earlier this month, at Mayor Mario Kranjac's request, the Borough Council approved the introduction of an ordinance authorizing the Borough to purchase the 800 Sylvan Avenue property by condemnation and eminent domain proceedings. However, the ordinance introduction was swiftly rescinded after attorneys for 800 Sylvan claimed that such ordinance would constitute another breach of the Settlement Agreement, and sought punitive sanctions against the members of the Mayor and Council, including prosecution for contempt of court, personal fines, and imprisonment.

Commentary

In its Affordable Housing Settlement Agreement with 800 Sylvan, the Borough voluntarily agreed to waive and surrender its rights to challenge or appeal the Settlement Agreement or any Court orders, decisions, opinions, or rulings related to it. Last month, the Court determined that the Borough's attempt to invalidate the Settlement Agreements, based on the alleged conflict of two former councilpersons, was a breach of the Settlement Agreements. That breach could now cost Borough taxpayers \$1.8 million.

Earlier this month, in another attempt to undermine the 800 Sylvan Settlement Agreement, and at Mayor Kranjac's urging, the Council introduced a new ordinance authorizing the Borough to purchase the 800 Sylvan property by eminent domain and to build 120 units of affordable housing units and other facilities on the property. Within one week, the Council rescinded the action after 800 Sylvan moved to declare that the new ordinance would constitute another breach of the Settlement Agreement. Penalties for breach could include prosecution of the Mayor and Council for contempt of court, as well as personal fines and imprisonment.

Taxpayers continue to foot the bill for the Borough's legal expenses associated with the Mayor and Council's attempts to challenge the Settlement Agreements. The Borough is not only liable for its own legal costs, which are considerable, but is also at risk now to pay substantial costs incurred by 800 Sylvan. Whether or not the Court approves 800 Sylvan's demand for \$1.8 million for the Borough's breach, any deliberate further breach of the Settlement Agreement by the Borough might find the Court less tolerant of another Borough challenge to the Court's orders and State law.

As the deadline for filing an appeal of the Court's final rulings in the Affordable Housing litigation approaches, the Borough Council is faced with a critical choice. It must decide whether it will appeal the Court's final rulings. Any appeal would clearly breach the Settlement Agreements, and would likely subject the Council members to potential prosecution for contempt of court, personal fines, and imprisonment. It could also expose the Borough to 150 more residential units at 800 Sylvan, and the loss of immunity from builder's remedy lawsuits such as the one brought by 800 Sylvan.

In the alternative, the Borough Council could decide not to appeal the Court's final rulings. Good government, based on respect for and compliance with State law, the exercise of prudent judgment, and a sincere concern for the Borough's taxpayers, should compel the Borough Council to put an end to the costly multi-year Affordable Housing litigation now.