

EYE ON THE CLIFFS

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

EC for Responsible Government

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July 11, 2021

Carin Geiger, President

Debbie Fehre, Acting Vice President/Secretary

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BOROUGH APPEALS COURT DECISION UPHOLDING THE AFFORDABLE HOUSING SETTLEMENT AGREEMENTS

In yet another attempt to invalidate the Affordable Housing Settlement Agreements, the Borough filed a Notice of Appeal of Judge Farrington's May 21, 2021 decision. The decision held that there was no conflict of interest on the part of two former councilpersons who voted to approve the Settlement Agreements. The Borough's appeal was filed July 6 in NJ Appellate Court.

The Borough brought the appeal despite having expressly waived its right to appeal. An explicit provision set forth in the Settlement Agreements states that:

"The Parties agree to waive any and all appellant rights that they may have....Specifically...the Parties voluntarily agree to waive and surrender any and all claims arising out of any order, decision, opinion or ruling and...agree not to seek any relief of any kind....In waiving their appellant rights, the Parties acknowledge that a change in political control of the Borough Council may occur, but such change would not constitute a change in circumstances that would warrant a retraction of the waiver of the right to appeal..."

800 SYLVAN MAY SEEK \$1.8 MILLION FROM THE BOROUGH AND ENFORCEMENT OF COURT ORDER ALLOWING AN ADDITIONAL 150 RESIDENTIAL UNITS

In response to the July 6 filing, 800 Sylvan filed a Notice of Breach of the Settlement Agreements on July 8. The Borough has seven days (from July 8) to cure the breach by withdrawing the appeal. The Notice of Breach informed the Mayor and Council that if the appeal is not rescinded, 800 Sylvan would pursue recovery of \$1.8 million in legal and professional fees to which it believes it is entitled pursuant to the terms of the Settlement Agreements. It also stated that it may seek enforcement of the builder's remedy judgment it was granted by the court in February 2020, allowing it to build 600 residential units at 800 Sylvan Avenue.

THE COURT APPEAL EXPOSES THE BOROUGH TO A MULTITUDE OF SIGNIFICANT RISKS

The Settlement Agreements provide the Borough with many zoning protections and reduce the amount of required affordable housing in the Borough from 347 units to 177 units. The Settlement Agreements provide the Borough with protection from new builder's remedy lawsuits. They also require that future development must comply with the Borough's protective building height and density zoning restrictions. Such restrictions prevent massive apartment house construction in the Borough and prohibit properties within the residential zone from being used for or converted to multi-family inclusionary affordable housing.

800 SYLVAN MAY BE ENTITLED TO BUILD 600 RESIDENTIAL UNITS ON ITS PROPERTY EVEN IF THE SETTLEMENT AGREEMENTS ARE INVALIDATED

On May 24, 2021, the Court approved site plans for both a 600-unit and 450-unit development at 800 Sylvan Avenue. The Court retained jurisdiction to resolve any disputes. In the unlikely event that the Borough might prevail in invalidating the Settlement Agreements, the Appellate Court could find that in the absence of a valid Settlement, the prior Court Decision in the Mount Laurel action, which was not appealed, would dictate the Borough's affordable housing obligation. The January 17, 2020 Court Decision permitted up to 835 units on the 800 Sylvan Avenue property, including a total of 167 affordable housing units.

BOROUGH ATTORNEY QUILTS

Less than one day after filing the Notice of Appeal of the Affordable Housing Settlement Agreements, Borough Attorney Eric M. Bernstein, abruptly resigned. He informed the Borough in writing on July 7 that neither he nor his firm will continue to represent the Borough of Englewood Cliffs. Bernstein's resignation is effective July 30.

Bernstein, who was appointed Borough Attorney in January 2021, replaced Michael Jedziniak, Esq. as the Borough's Special Affordable Housing Attorney in March. Jedziniak also quit, stating that he could no longer represent a governing body that failed to follow his legal advice.

COMMENTARY

The Mayor and Council need to explain to the community what they reasonably hope to achieve by appealing Judge Farrington's May 21 decision that upheld the validity of the Affordable Housing Settlement Agreements. This is particularly relevant because many legal experts believe that the Settlement Agreements significantly reduced the impact of the court's January 2020 decision in the Borough's Mount Laurel action.

Mayor Mario Kranjac's continuous rants about corruption and conspiracies, which are unsupported by fact or evidence, are no substitute for intelligent and sober analysis and discussion of the benefits and risks of continuing to litigate. We need light, not noise.

The community needs to know how Englewood Cliffs will be better off if the Settlement Agreements are invalidated. If the agreements are invalidated, the community also needs to know what Kranjac will propose as a constitutionally compliant affordable housing plan. His 2018 plan, limited to 77 affordable units, was held to be non-compliant by the court.

The Mayor and Council also need to disclose to the taxpayers the costs of continuing to litigate, including the substantial fines and penalties that could be imposed by the court. The Borough's proposed 2021 budget, which at this late date has not yet been adopted, had included nearly \$1.7 million for affordable housing litigation. On top of that, the Borough may have to reimburse 800 Sylvan for \$1.8 million for its expenses incurred in reliance on the Settlement Agreements. There is no provision for this payment in the 2021 proposed budget.

It is both noteworthy and troubling that the attorneys retained by Kranjac to represent the Borough in affordable housing matters have abruptly resigned.

The next Mayor and Council meeting is scheduled for Wednesday evening, July 14 at 6:30 P.M. The meeting will be conducted via zoom. Residents can listen to and participate in the meeting on their phone or on their computer. The direct link to sign into the meeting is found on the Borough Calendar on the Borough Website. For your convenience, the zoom link follows:

<https://zoom.us/j/92651911728?pwd=Z1JBS3J2UVgxcW9vUkNhbWpINE9xUT09>

Meeting ID: 926 5191 1728

Passcode: 215853

Dial by your location

+1 646 558 8656 US (New York)

The governing body generally will go into closed session at 6:30 P.M. The public portion of the meeting generally begins at 8:00 P.M.