

Page 9

August 27, 2019

Re: **In the Matter of the Application of the Borough of Englewood
Cliffs
BER-L-6119-15**

of three members of the Borough Council, FSHC, and 800 Sylvan entered into a non-binding Memorandum of Understanding.

On July 10, 2019, an informational town hall meeting was held. The governing body did not approve the non-binding Memorandum of Understanding nor did it adopt the ordinance regarding same. Instead, the Borough passed Resolution 19-57 on July 29, 2019 which states in part:

. . . WHEREAS as a result of finding itself forced to prepare a plan before it knew with a measure of reliability the RDP it needed to plan for. . .
WHEREAS the Borough remains committed to complying and has emphasized that commitment at every turn even though, like so many public officials in other municipalities, the Borough's public officials have questioned the wisdom of the Mount Laurel doctrine. . .
WHEREAS as a result of the foregoing, the Governing Body wishes to express its commitment to providing affordable housing in a manner of its choosing and that the best way for the Borough to satisfy its obligations would not be to rezone the Sylvan site for residential housing. (emphasis provided)

Trial is currently scheduled for October 11, 2019. The court permitted the filing of the instant motion to terminate immunity and ordered release of the Special Master's report.

In addition to the procedural aspects of the case set forth herein, the court has been made aware that two council members

Page 16

August 27, 2019

**Re: In the Matter of the Application of the Borough of Englewood
Cliffs
BER-L-6119-15**

or at any time prior to now. In its Resolution 19-157, the governing body states,

WHEREAS, the plan was for the professionals to negotiate agreements consistent with a non-binding negotiation with Sylvan and FSHC; to introduce an ordinance to rezone the Sylvan site and thereafter, to take into account the public's input before voting on whether to adopt the Sylvan ordinance at second reading and to sign a settlement agreement with Sylvan; and . . .

WHEREAS, the public made its sentiments clear at the July 10, 2019 town hall meeting: (1) It was committed to comply voluntarily - even if the plan was even more expensive than its January 2019 affordable housing plan; and (2) it did not want to comply by rezoning the Sylvan site for high density residential zoning. .

WHEREAS as a result of the foregoing, the Governing Body wishes to express its commitment to providing affordable housing in a manner of its choosing and the best way for the Borough to satisfy its obligations would not be to rezone the Sylvan site for residential housing. . .

In essence, the Governing Body wants this court to believe that it negotiated in good faith for months with FSHC and 800 Sylvan, but the time, money and effort of the parties, the intervener and the Special Master in reaching the terms of the Memorandum of Understanding were all for naught in the face of public opposition. The court finds this to be an abuse of the process. The Governing Body says it "wishes to express its commitment to providing affordable housing in a manner of its

Page 17

August 27, 2019

**Re: In the Matter of the Application of the Borough of Englewood
Cliffs
BER-L-6119-15**

choosing," but the manner of its choosing has been to stall, procrastinate and evade its obligations. The result of allowing the Borough to provide affordable housing "in a manner of its choosing" has produced not a single unit of affordable housing. As a result, the Borough has lost the ability to determine the elements of its affordable housing plan which will be designed by third parties, the Special Master and the court.

The motion for an extension of the Borough of Englewood Cliffs' immunity from builders remedy suits is denied. The motion of 800 Sylvan Avenue, LLC through its counsel for the revocation of the Borough of Englewood Cliffs' immunity and FSHC opposition to the Borough's application is granted for the reasons set forth herein.

CHRISTINE FARRINGTON, J.S.C., ret'd, t/a

ⁱ This statement is also reflected in Resolution 19-157, July 30, 2019, p. 4

ⁱⁱ Special Master's report, August 14, 2019, pp. 52-53