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ATTORNEYS FOR PLAINTIFF, HEMANT MEHTA
By: Karl J. Norgaard, Esq. (ID# 040592004)

Hemant Mehta,
Plaintiff,
v.
Gloria K. Oh, Edward F. Aversa, Jimmy Song,
Deborah Tsabari and the Borough of Englewood
Cliffs,
Defendants.

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY- LAW DIVISION

Docket No. BER-L-

**VERIFIED COMPLAINT IN LIEU OF PREROGATIVE WRIT, FOR DECLARATORY
JUDGMENT VOIDING COUNCIL VOTE, AND FOR TEMPORARY RESTRAINTS**

Pursuant to R. 4:5-1, R. 4:67 and R. 4:69, HEMANT MEHTA, through his counsel Norgaard, O'Boyle & Hannon, by way of Verified Complaint in Lieu of Prerogative Writ against the Borough of Englewood Cliffs, Gloria K. Oh, Edward F. Aversa, Jimmy Song and Deborah Tsabari, states:

PRELIMINARY STATEMENT

1. This Complaint challenges the legality of a vote held by the Borough Council of the Borough of Englewood Cliffs, Bergen County, New Jersey, which took place on June 10, 2020 (the "Vote"). It is alleged herein that the Vote constituted a conflict of interest for four of the councilmembers who voted, and that same must be overturned.

2. This Complaint seeks relief for knowing and intentional violations of 1) the New Jersey Open Public Meetings Act, N.J.S.A. §10:4-6 *et seq*, 2) N.J.S.A. §4:20-77, 3) the Borough

of Englewood Cliffs' By-laws, and New Jersey's Local Government Ethics Law, N.J.S.A. §40A:9-22.1 *et seq.*

3. This Complaint further alleges that the Councilmembers listed herein must be restrained from voting in matters which present a conflict.

PARTIES

4. Plaintiff Hemant Mehta is an individual and resident and a taxpayer of the Borough of Englewood Cliffs. Plaintiff has standing in this matter as a resident and a taxpayer of the Borough of Englewood Cliffs and because he will be aggrieved as a property owner and citizen of the town by the Councilmembers actions.

5. Defendants Gloria Oh, Edward F. Aversa, Jimmy J. Song and Deborah Tsabari are members of the Council of the Borough of Englewood Cliffs ("Defendants").

JURISDICTION AND VENUE

6. Pursuant to R. 4:3-1(a)(1), R. 4:69, and the New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-52, et seq., the Superior Court of New Jersey, Law Division, Bergen County Vicinage has jurisdiction and venue over this complaint because the acts giving rise to this complaint are violations of state law, and the acts occurred in Bergen County.

STATEMENT OF FACTS

7. On June 10, 2020, a Motion was brought before the Council during a regularly-held Mayor and Council meeting¹ which sought to authorize the investigation of the Defendants related to the Borough's affordable housing litigations, including *In re Borough of Englewood Cliffs*, BER-L-6119-15, *800 Sylvan v. Borough of Englewood Cliffs*, BER-L-69-18 and A-4019-17T2 ("Motion"). See **Exhibit A**.

¹ A video of the meeting is available at <http://www.EnglewoodCliffsNJ.org/content/307/1495/default.aspx>

8. The Motion brought against the Defendants alleged as follows:

WHEREAS, since January 3, 2019 through today Gloria Oh (“Oh”), Edward Aversa (“Aversa”), Deborah Tsabari (“Tsabari”) and Jimmy Song (“Song”) have controlled the Borough Council;

WHEREAS, Ellen Park (“E. Park”) was a Council Member through December 31, 2019;

WHEREAS, the facts addressed herein include E. Park only through December 31, 2019;

WHEREAS, Oh, Aversa, Tsabari, Song and E. Park affirmatively and by their own admissions (and as confirmed by Borough Counsels) excluded Mayor Mario M. Kranjac and Councilman William Woo (and Ramon Ferro in 2020) from communications provided to and received from the various Borough attorneys in 2019 and 2020 (the “Communications”);

WHEREAS, Oh, Aversa, Tsabari, Song and E. Park affirmatively and by their own admissions (and as confirmed by Borough Counsels) excluded Mayor Mario M. Kranjac and Councilman William Woo (and Ramon Ferro in 2020) from participating in litigation strategy and negotiations in 2019 and 2020 (the “Litigation Strategy”);

WHEREAS, Mayor Kranjac repeatedly demanded access to communications and participation in litigation strategy and negotiations in 2019 and 2020;

WHEREAS, Oh, Aversa, Tsabari, Song and E. Park secretly negotiated a Memorandum of Understanding and draft Settlement Agreement with 800 Sylvan and Fair Share Housing Council in 2019;

WHEREAS, Oh, Aversa, Tsabari, Song and E. Park took an oath of office to uphold the laws of the United States of America and the State of New Jersey;

WHEREAS, in order to protect the interests of the Borough and its residents, an investigation of Oh, Aversa, Tsabari, Song and E. Park is required; and

WHEREAS, pursuant to and consistent with NJSA 40A: 60-5, the Mayor recommends to the Council such measures set forth herein as being necessary or expedient for the welfare of the Borough and its residents.

See Exhibit A.

9. Despite a clear conflict of interest, the Councilmember Defendants failed to recuse themselves from voting on the Motion.

10. The Vote failed because the Defendants declined to allow themselves to be investigated.

11. Defendants have violated ethics common law by voting in a matter which represents a clear conflict of interest.

12. Defendants have further violated Local Government Ethics Law, N.J.S.A. 40A:9-22.1 *et seq.*

13. Per the above, there is a statutory and common-law duty for Councilmembers to not engage in self-dealing and conflicts of interest in their official capacity.

14. The necessity of an investigation is obvious.

15. The *In re Borough of Englewood Cliffs*, BER-L-6119-15 in 2015 case began initially when the Borough of Englewood Cliffs filed a Declaratory Action seeking to secure immunity from exclusionary zoning lawsuits while the Court processed review and approval for the Borough's affordable housing plan ("Mt. Laurel Action").

16. 800 Sylvan Avenue, LLC ("800 Sylvan") owns real property located at 800 Sylvan Avenue, in Englewood Cliffs, NJ ("800 Sylvan Site"). 800 Sylvan filed a "builder's remedy" lawsuit against Englewood Cliffs, in 2018 seeking to have its property converted from a commercially zoned site to a residential one by including 15% affordable housing in its 600-unit plan.

17. The Borough of Englewood Cliffs and its Councilmembers represented to the public that it was litigating in good faith on behalf of the citizens of Englewood Cliffs.

18. On October 22, 2018, the Court in the Mt. Laurel Action entered an Order Authorizing Expenditure of Affordable Housing Trust Funds. *See Exhibit B*. This Order authorizes the Borough to purchase two parcels of land, with which to construct two properties for

a 100% affordable housing project. *Id.* The parcel was purchased by the Borough on 21st December 2018.

19. Two new council members were elected on January 2, 2019, Jimmy Song and Deborah Tsabari. Both council members campaigned on a platform of opposition to the use of the 800 Sylvan Site for low-cost housing, and for use of the parcels purchased by the Borough instead.

20. The Planning Board held a public hearing on January 7, 2019 on the Housing Element and Fair Share Plan (“Fair Share Plan”), which was adopted on that same date. *See Exhibit C.* The Council endorsed this plan on January 24, 2019, authorizing expenditure on the parcels on that same date, in Resolutions numbered 19-51 and 19-52, respectively. *Id.*

21. While publicly appearing to stay on course, the new Councilmembers, in connection with Councilmembers Oh, Aversa and Park, took a different stand privately; they stopped bidding out the construction on these parcels and appointed new attorney Albert Wunsch, sabotaging the efforts of the compliance and secretly negotiating with 800 Sylvan.

22. The Defendants then began a concerted effort to cut the Mayor and the other councilmembers off from any participation in the Mt. Laurel Action, Fair Share Plan, and 800 Sylvan Site.

23. The construction on the parcels in connection with the Fair Share Plan never began, and the project was subsequently abandoned. This failure represented an intentional attempt by the councilmembers to thwart all other avenues for meeting the Borough’s Mt. Laurel obligations.

24. The Mayor and the other councilmembers were not permitted to participate in either the litigation or the settlement discussions with 800 Sylvan, nor were they permitted to advance the Fair Share Plan, nor were they provided with any information. Mr. Wunsch, allegedly representing the Borough, refused to discuss anything with the Mayor.

25. The abandonment the next steps for those sites left the Borough in the untenable position of being forced to settle the case with 800 Sylvan or lose the right to control the provision of low-cost housing to its citizens.

26. The March 7, 2019 Case Management Order in the Mt. Laurel Action required settlement negotiations to take place between Englewood Cliffs, 800 Sylvan and the Fair Share Housing Center (“FSHC”). *See Exhibit D.*

27. However, in a letter sent by the Borough’s attorney to 800 Sylvan, it was represented to the Court that the settlement discussions were taking place between 800 Sylvan, the FSHC, and the “Mount Laurel Subcommittee of the Borough of Englewood Cliffs,” (“Subcommittee,”) the party who was *actually* going to be signing the memorandum of understanding. *See Exhibit E.*

28. In response to the letter, the Court entered a subsequent case management order which required a conceptual settlement not with the Borough of Englewood Cliffs, but with the “Mount Laurel Subcommittee of the Borough of Englewood Cliffs.” *See Exhibit F.*

29. The subcommittee only contained three council members, Deborah Tsabari, Edward Aversa and Ellen Park, and could therefore not engage in binding settlement negotiations pursuant to N.J.S.A. 40A:60-1 *et seq.*

30. The subcommittee’s actions were further violative of the Bylaws of Englewood Cliffs, which provide that a standing committee shall not “make promises or commitments to anyone which directly or by inference bind the Council.” *See Exhibit G* at Section 4(b) on Page 5. Such subcommittee would only report back to the council with recommendations, as per Section 4(A)(3). *Id.*

31. As the Mayor of Englewood Cliffs' certification of June 5, 2019 in support of his Motion for an Injunction compelling the turnover of information relating to the case makes clear, there was a concerted effort to exclude the Mayor from any participation in the Mt. Laurel Action. *See Exhibit H.*

32. The subcommittee, 800 Sylvan and FSHC additionally engaged in secretive settlement discussions, from which they intentionally excluded both the Mayor and the public from any knowledge of the terms thereof.

33. The settlement was presented to the public on July 10, 2019, with disastrous results. The citizens of Englewood Cliffs became aware, as of that meeting, that the Fair Share Plan widely supported by the public was not going to be followed, but rather a back-room deal that included the 800 Sylvan Site to provide low-cost housing and providing overlay zones on another dozen sites which would eventually lead to another several thousand units to be added if it followed the footsteps of 800 Sylvan. Englewood Cliffs currently only has 1800 households, spanning 2 square miles with a population of 5,500 people.

34. The in-fighting between the Councilmembers and the Mayor, coupled with the procedural stonewalling taking place on behalf of the Borough and the failure to proceed with the parcels included in the Fair Share Plan, ultimately lead to the Court finding that the Borough had acted in "bad faith", revoking the immunity granted to the Borough, leaving the Borough vulnerable to builder's remedy lawsuits. *See Exhibit I*². This was a disastrous result.

35. The Borough's pretrial information sheet demonstrates that no fact witnesses were presented by the Borough in the Mt. Laurel Action or builders remedy lawsuit. *See Exhibit J.*

² The full written opinion is omitted as same is lengthy and not germane to the specific issues herein, but can be provided upon the Court's request.

36. The subcommittee therefore, in addition to being an unauthorized agent of the Borough, did not present a full case on behalf of the Borough and its residents. It would be impossible for example, without a fact witness, to establish that the Borough engaged in a meaningful effort to provide low-cost housing. As an elementary matter, compliance cannot be established without a factual basis for same.

37. This purposely created “error” begs the question of who was in charge of the litigation, a question in desperate need of an answer through the proposed investigation. It was either a strategic choice by the Attorneys or by the subcommittee, but one that was not informed by proper judgment.

38. I filed an intervention motion³ pointing out to these defects, but the borough and its attorney opposed my application for intervention, in spite of the fact that we were supposedly fighting for the same cause- protection of the Borough’s ability to control its own low-cost housing and keep these matters out of the hands of a commercial developer. Obviously, this was not the case. I subsequently was denied intervention as they adequately represented my interest as per the Judge’s order.

39. Councilmember Deborah Tsabari owns property located at 106 Hollywood Avenue, Englewood Cliffs, NJ. This property is located within 200 feet of the 800 Sylvan Site. Councilmember Tsabari should therefore have recused herself from participation on any issues related to that site and the Mt. Laurel Action, as it would constitute a conflict of interest. *See Exhibit K.*

40. Upon information and belief, Councilmember Edward Aversa owns property, and/or is a member or owner of the entity which owns property, located at 617 East Palisade

³ This motion can be provided at the Court’s request.

Avenue, Englewood Cliffs, NJ. This property is located within and part of an overlay zone that was included in the Fair Share Plan adopted by the Borough. Councilmember Aversa should therefore have recused himself from voting on any issues related to that site as it would constitute a conflict of interest. *See Exhibit L.*

41. According to the Borough website, there is a regularly-scheduled council meeting scheduled to take place on July 8.

42. Over the past year, almost every closed session resolution has included the Mt. Laurel Action, the Fair Share Plan, and the 800 Sylvan Site and/or 800 Sylvan.

43. Upon information and belief, clandestine settlement talks between the Council and 800 Sylvan are continuing now, and one such discussion took place on June 18, 2020, in a closed special meeting.

44. Plaintiff respectfully requests that this matter be addressed at that meeting to reduce the hardship on the parties and to ensure that a speedy investigation is conducted.

45. There is a possibility that the Defendants “torpedoed” the Mt. Laurel Action through 1) their apparent conflicts of interest; 2) their intentional concealment of their activities from the Mayor and the public at large; 3) their failure to introduce any fact witnesses in the Mt. Laurel Action; 4) their abandonment of the alternate sites; 5) their failure to litigate in good faith; without an investigation, these facts will never come to light and the Defendants will be able to continue unfettered.

COUNT ONE

THE JUNE 10, 2020 VOTE REGARDING THE AUTHORIZATION OF THE INVESTIGATION OF THE DEFENDANTS IDENTIFIED FURTHER IN EXHIBIT A MUST BE VOIDED AND DEFENDANTS MUST BE RESTRAINED FROM FUTURE VOTING ON THIS MATTER DUE TO CONFLICTS OF INTEREST (COMPLAINT IN LIEU OF PREROGATIVE WRITS).

46. Plaintiff incorporates paragraphs 1 through 45 of this complaint as if fully set forth herein.

47. Defendants were not entitled to vote on whether an investigation into their own activities was authorized, and should have recused themselves pursuant.

48. Because the vote was taken in violation of common law ethical principles, and Local Government Ethics Law, N.J.S.A. 40A:9-22.1 *et seq.*, it must therefore be voided, and Defendants prohibited from taking part in a revote.

WHEREFORE Plaintiff requests relief as follows:

- (i) An Order voiding the existing vote of the conflicted members and requiring that recusal of the conflicted members be required on a future vote; ;
- (ii) Temporary restraints prohibiting Defendants from voting in matters in which they have a conflict of interest unless and until an investigation may be conducted;
- (iii) If a special meeting is held prior to July 8, 2020, the special meeting notice shall include this subject in the notice and special meeting agenda, properly advertised by the Borough Clerk, to allow a vote to be conducted prior to any activities which would have been prevented by the temporary restraints requested in section (ii) above.

COUNT TWO

COUNCILMEMBER DEBORAH TSABARI MUST BE PROHIBITED FROM PARTICIPATING IN ALL MATTERS RELATING TO THE 800 SYLVAN SITE AND LITIGATION (COMPLAINT IN LIEU OF PREROGATIVE WRIT).

49. Plaintiff incorporates paragraphs 1-48 of this complaint as if fully set forth herein.

50. Councilmember Deborah Tsabari owns property located at 106 Hollywood Avenue, Englewood Cliffs, NJ. This property is located within 200 feet of the 800 Sylvan Site. Councilmember Tsabari should therefore have abstained from voting on any issues related to that site as it would constitute a conflict of interest.

51. Councilmember Deborah Tsabari's actions are in violation of established ethics common law, as further codified Local Government Ethics Law, N.J.S.A. 40A:9-22.1 *et seq.*

52. Councilmember Deborah Tsabari should be prohibited from participating in any issues relating to the Mt. Laurel Action, the 800 Sylvan Site, the Fair Share Plan.

WHEREFORE Plaintiff requests relief as follows:

- (i) An Order finding Defendant Councilmember Tsabari's participation in any issues relating to the Mt. Laurel Action, the 800 Sylvan Site, the Fair Share Plan to be in violation of applicable ethics law and prohibiting future participation;
- (ii) Restraints prohibiting Defendant Councilmember Tsabari from participating in any matter relating to the Mt. Laurel Action, the 800 Sylvan Site, the Fair Share Plan.

COUNT THREE

COUNCILMEMBER EDWARD AVERSA MUST BE PROHIBITED FROM PARTICIPATING IN ALL MATTERS RELATING TO THE 800 SYLVAN SITE AND LITIGATION (COMPLAINT IN LIEU OF PREROGATIVE WRIT).

53. Plaintiff incorporates paragraphs 1-52 of this complaint as if fully set forth herein.

54. Councilmember Edward Aversa owns property, and/or is a member or owner of the entity which owns property, located at 617 East Palisade Avenue, Englewood Cliffs, NJ. This property is located within the proposed overlay zone as part of the Fair Share Plan, and he should therefore have recused himself from voting on or discussing any issues related to that site as it would constitute a conflict of interest.

55. Councilmember Edward Aversa's actions are in violation of established ethics common law, N.J.S.A. 40:55d-23(b), and Local Government Ethics Law, N.J.S.A. 40A:9-22.1 *et seq.*

56. Councilmember Edward Aversa should be prohibited from participation in any issues relating to the Mt. Laurel Action, the 800 Sylvan Site, the Fair Share Plan or proposed overlay zones affecting his property

WHEREFORE Plaintiff requests relief as follows:

- (i) An Order finding Defendant Councilmember Aversa's participation in any issues relating to the Mt. Laurel Action, the 800 Sylvan Site and the Fair Share Plan to be in violation of applicable ethics law and prohibiting future participation;
- (ii) Restraints prohibiting Defendant Edward Aversa from participating in any matter relating to the Mt. Laurel Action, the 800 Sylvan Site, the Fair Share Plan, including overlay zones affecting his property.

NORGAARD O'BOYLE
Attorneys for Plaintiff

/s/ Karl J. Norgaard, Esq.
KARL J. NORGAARD, ESQ.

DATED: 6/30/20

RULE 4:5-1 CERTIFICATION

Pursuant to R. 4:5-1, the undersigned member of the bar of this court hereby declares that the matter in controversy is not presently the subject of any other action pending in any other court or of any pending arbitration or administrative proceeding.

NORGAARD O'BOYLE
Attorneys for Plaintiff

DATED: 6/30/20

/s/ Karl J. Norgaard, Esq.
KARL J. NORGAARD, ESQ.

TRIAL COUNSEL DESIGNATION PURSUANT TO R. 4:25-1

Karl J. Norgaard, Esq. is hereby designated as trial counsel.

NORGAARD O'BOYLE
Attorneys for Plaintiff

DATED: 6/30/20

/s/ Karl J. Norgaard, Esq.
KARL J. NORGAARD, ESQ.

VERIFICATION

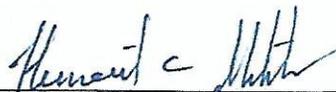
STATE OF NEW JERSEY)

SS:

COUNTY OF BERGEN)

HEMANT MEHTA, being duly sworn according to law, upon his oath, deposes and says:

I am the Plaintiff herein named and the statements contained herein are true to the best of my knowledge, information and belief.



HEMANT MEHTA

Sworn and subscribed to
before me this 30th day
of June, 2020



Carol Ann Rose
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES: 6/11/25