

Special Public Meeting of the Englewood Cliffs Planning Board
Minutes
August 4, 2014

The Regular Meeting of the Englewood Cliffs Planning Board was called to order by Chairman Fehre at 7:30 PM.

Present at Roll Call:

Mr. Fehre
Mr. Dooly
Mr. Torvato
Mr. Kilmartin
Mr. Chinman
Mayor Parisi
Councilman Aversa
Mr. K. Kim, 1st Alternate
Mr. Surace, 3rd Alternate

Absent:

Ms. Rosenberg
Mr. Nikow
Mr. Duffy, 2nd Alternate Mr.
Mr. S. Kim, 4th Alternate

Also Present:

Bernard Mirandi, PE, of Boswell Engineering, the Borough's consulting engineer
Michael Kates, Esq., of Kates Nussman Rapone Ellis & Farhi, the Board's attorneys.

Public notice of this meeting has been given in compliance with the Open Public Meeting Law by advertisement in The Record, and posting of notice on the municipal building bulletin board at 482 Hudson Terrace.

Flag Salute led by: Mr. Chinman

Old Business:

New Business:

Ordinance #2014-11 - Advisory Report to Governing Body

Chairman Fehre stated that the only item on the agenda is to review Ordinance #2014-11 which was introduced at the Mayor and Council meeting on July 9, 2014. (see full ordinance attached to the minutes)

Mr. Kates stated that the board's roll is not to simply review the ordinance but identify any revisions in the ordinance that deem to be inconsistent with the Master Plan and give any recommendations to the governing body. The Board also has the option to refrain from acting based upon sufficient reasons.

Mr. Kates recommended that the board should consider refraining. Board's defense to the case that is now pending in the Appellate Division suggests that it might be appropriate to be identified as a conflict of interest.

Mr. Kates also stated that failure of the planning board to transmit its report or comment substantively simply relieves the governing body from special requirements pursuant to the vote. It doesn't frustrate the governing body from holding it's hearing or making a determination. The recommendation of no comment I am suggesting is based on several factors. First no comment has been legitimized in a NJ Supreme Court decision. In Great Atlantic v. Point Pleasant, 137 N.J. 136, 140-141, 152 (1994). Second, you have consistently

studied and concluded that the LG site could and should support additional height within 27 acres. Your predecessor zoning board as a separate entity, did so as the approving authority of LG development application. The zoning board has now merged into the Planning Board as a single board. You also did so as a Planning Board and as a legislative board in considering the Master Plan amendments, hiring of Planners, and studied the matter. The third reason in defending the height variance that was granted by the zoning board, you have argued that consistently in the court with the briefs filed that the ordinance that this amendment rescinds has not just a significant salutary effect but has a strategic litigation purpose and that is to make the appeal moot.

Mr. Kates commented all deliberations by this board of course tonight which I have not discussed with any of you, but it is within the discussion of the board whether to hear members of the public on this matter. Refusal by the board to allow the public participation does not deprive anyone the opportunity to speak. That will be addressed when the matter is returned to the governing body on August 13th. So the people here tonight and public at the governing body meeting will be able to speak. It is your determination as a board to allow the public comment tonight but all members of the public will have the right to comment at the general governing body meeting. It is not mandated by the statute that you open this up as it was a hearing. This is a recommendation that's being asked of you.

Chairman Fehre then requested a motion to instruct the Board Attorney to advise the Borough Council that the Planning Board chooses to offer no substantive comments with respect to Ordinance No. 2014-11 inasmuch as any commentary would be in conflict with the Planning Board's position in defense of ongoing litigation. Motion was made by Mr. Kilmartin, seconded by Mr. Trovato. This motion was approved by roll-call vote. 9 Ayes (Mr. Fehre, Mr. Dooly, Mr. Chinman, Mr. Kilmartin, Mr. Trovato, Mr. K. Kim, Mr. Surace, Mayor Parisi, Councilman Aversa) No Nays, No Abstentions.

Mayor Parisi questioned does this board have to give a decision to the Mayor & Council? Mr. Kates stated that they just have to say they reviewed it and we have elected not to give a substantive comment. Mayor Parisi questioned so then the Mayor & Council at the next meeting can do whatever they need to do to pass the ordinance even though you couldn't stop them based on statutes that are around today. Mr. Kates stated that there is a requirement that the council await the report from the Planning Board within 35 days of referral. Mayor Parisi stated but if we choose not to elect your decision we can still move forward? Mr. Kates stated that the recommendation will be no comment so there is nothing to chew on. Mayor Parisi stated so the Board is not going to make a decision for all the reasons that were stated and the Mayor & Council is free to act at their next meeting to adopt or not adopt the zoning change. Mr. Kates stated yes.

Chairman Fehre requested a motion to open to public. Motion was made by Mr. Chinman, seconded by Mr. Dooly and carried unanimously by voice vote.

Mary O'Shea, 12 Irving Avenue, Did the item you acted upon had go to a committee to report and I heard no committee report given to the other board members.

Mr. Kates stated there was no committee meeting in regards to this. We had a review committee meeting to discuss applications that are going in front of the board. There was no discussion of this matter. Mary O'Shea stated no one discussed this matter before they voted on it tonight? Mr. Kates stated that he gave a confidential memo to the board members prior to tonight outlining what I had said tonight so that they wouldn't be surprised by my comments. There was no committee meeting regarding this matter.

Mr. Fehre stated there was no meeting in regards to this we have a Review Committee meeting once a month to go over applications in front of the board to deem complete. That is the only meeting we have had.

Carrol McMorrow. 7 Ridge Road stated that at the July meeting of the Mayor & Council Mayor Parisi stated that he was going to meet with the committee on July 22 at 2pm. I think that is what Ms. O'Shea was talking about. Maybe the Mayor can give us a report of that meeting. Mayor Parisi stated that he spoke to Mr. Kates and I am protected by privilege since there is a lawsuit on going. I asked Mr. Kates at our normal once a month review meeting and only spoke to him.

Mr. Kates stated it was attorney client discussion there was no meeting about it.

Ms. McMorrow questioned Mr. Surace who was a member of the former Board of Adjustment if he was allowed to vote on this issue? Mr. Kates stated yes.

Chairman Fehre requested a motion to close the public portion and adjourn the meeting at 7:49 pm. Motion was made by Mr. Chinman, seconded by Mr. Kilmartin and carried unanimously by voice vote.

Respectfully submitted



Caterina Scancarella

Planning Board Administrative Secretary

ENGLEWOOD CLIFFS PLANNING BOARD
SPECIAL MEETING – August 4, 2014 7:30 PM
10 Kahn Terrace, Englewood Cliffs, NJ

CALL TO ORDER

The meeting of the Englewood Cliffs Planning Board will come to order this (date). The time is (time).

"OPEN PUBLIC MEETINGS ACT" STATEMENT

Public notice of this meeting has been given in compliance with the Open Public Meeting Law by advertisement in The Record, and posting of notice on the municipal building bulletin board at 482 Hudson Terrace, Englewood Cliffs.

ROLL CALL

FLAG SALUTE LED BY:

APPROVAL OF MINUTES:

OLD BUSINESS:

NEW BUSINESS:

Ordinance # 2014-11 – Advisory Report to Governing Body

PUBLIC COMMENTS OTHER THAN HEARING ON THIS AGENDA

ADJOURNMENT

NOTICE OF SPECIAL MEETING
PLANNING BOARD
BOROUGH OF ENGLEWOOD CLIFFS

At the call of the Chairman, a Special Meeting of the Englewood Cliffs Planning Board will take place on **Monday, August 4, 2014, at 7:30 P.M.**, in the Council Chambers (Police Headquarters Building), 10 Khan Terrace, Englewood Cliffs, New Jersey.

The purpose of the meeting is to review proposed Ord. 2014-11 and transmit to the governing body a report evaluating the Ordinance. The Ordinance is entitled "AN ORDINANCE TO AMEND AND SUPPLEMENT THE ZONING ORDINANCES OF ENGLEWOOD CLIFFS AS TO PROHIBIT THE CONSTRUCTION OF ANY BUILDING, INCLUDING CORPORATE, PROFESSIONAL AND BUSINESS OFFICES IN ANY ZONING DISTRICT IN THE BOROUGH OF ENGLEWOOD CLIFFS IN EXCESS OF 35 FEET IN HEIGHT." Ordinance No. 2014-11 was introduced on first reading on July 9, 2014 and has been advertised for public hearing on August 13, 2014. The Planning Board has until August 26, 2014 (35 days from receiving the Ordinance) to issue its report. Although the Borough Council can hold its public hearing as scheduled on August 13, 2014, it cannot vote on second and final reading until receipt of the Planning Board's report or the expiration of 35 days on August 26, 2014, whichever occurs first in time.

The Board's authority to evaluate and report on the Ordinance is conferred by N.J.S.A. 40:55D-26a, and is to include identification of any provisions in the proposed Ordinance which are inconsistent with the municipal master plan, recommendations concerning these inconsistencies, and any other matters the Board deems to be appropriate for the governing body's consideration.

It will be in the discretion of the Board whether to permit public comment. A public hearing is not required by the statute.



BOROUGH OF ENGLEWOOD CLIFFS

482 HUDSON TERRACE • ENGLEWOOD CLIFFS, NJ. 07632

(201) 569-5252

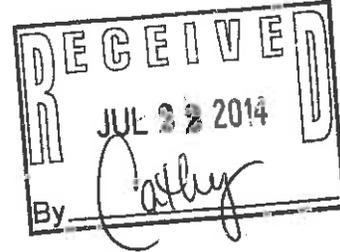
LISETTE M. DUFFY, RMC
ADMINISTRATOR/BOROUGH CLERK

FAX (201) 569-4356

July 22, 2014

Cathy Scancarella
Planning Board
Borough of Englewood Cliffs

RE: Ordinance 14-11



Dear Cathy:

Enclosed for distribution is the verbiage for Ordinance 14-11 as approved at the Special Meeting of the Mayor and Council on July 22, 2014. I am asking that you please forward to the Planning Board for their review.

Ordinance 14-11 was introduced by title only on July 9, 2014 and the Public Hearing is set for August 13, 2014.

Should any additional information be needed, please do not hesitate to contact me.

Sincerely,


Lisette M. Duffy, RMC

Cc: Mayor Parisi, via email

Enc.

**BOROUGH OF ENGLEWOOD CLIFFS
BERGEN COUNTY, NEW JERSEY**

ORDINANCE 2014-11

AN ORDINANCE TO AMEND AND SUPPLEMENT THE ZONING ORDINANCES OF ENGLEWOOD CLIFFS AS TO PROHIBIT THE CONSTRUCTION OF ANY BUILDING, INCLUDING CORPORATE, PROFESSIONAL AND BUSINESS OFFICES IN ANY ZONING DISTRICT IN THE BOROUGH OF ENGLEWOOD CLIFFS IN EXCESS OF 35 FEET IN HEIGHT

BE IT ORDAINED by the Mayor and Council of the Borough of Englewood Cliffs, County of Bergen, State of New Jersey that an Ordinance entitled "An Ordinance to Amend and Supplement the Zoning Ordinances of Englewood Cliffs as to Prohibit the Construction of any building, including corporate, professional and business offices in any zoning district in the Borough of Englewood Cliffs in excess of 35 feet in height " is hereby enacted

SECTION 1. All zoning ordinances in the Borough of Englewood Cliffs are hereby amended and supplemented with the addition of the following statement:

No building, including corporate, professional and business offices, shall be constructed within the confines of this borough or in any zoning district in excess of 35 feet.

BE IT FURTHER ORDAINED that all ordinances or parts of ordinances inconsistent with or in conflict with this ordinance are hereby repealed as to said inconsistencies and conflict, and

BE IT FURTHER ORDAINED that should any part or provision of this Ordinance be held unconstitutional or invalid, such decision shall not affect the validity of this Ordinance as a whole or any part thereof, other than the part held so unconstitutional or invalid.

This ordinance shall take effect upon final adoption and publication according to law.

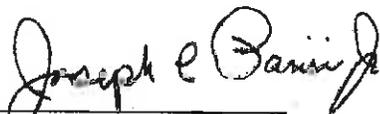
I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF AN ORDINANCE INTRODUCED AT A MEETING OF THE MAYOR AND COUNCIL HELD ON JULY 9, 2014.

ATTEST:

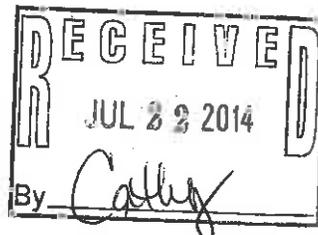


Lisette M. Duffy, Borough Clerk

By:



Joseph C. Parisi, Jr., Mayor



KATES NUSSMAN RAPONE ELLIS & FARHI, LLP.

ATTORNEYS AT LAW

190 MOORE STREET
SUITE 306
HACKENSACK, N.J. 07601-7418

TEL. (201) 488-7211

FAX (201) 488-1210

mkates@nklaw.com

August 5, 2014

FOUNDED 1913
FORMERLY
PLATOFF, HEFTLER, HARKER & NASHEL

OF COUNSEL

ZAKIM & ZAKIM P.C.

KELLY J. DEERE*

MICHAEL B. KATES
BRUCE L. NUSSMAN
RICHARD T. RAPONE
JOEL M. ELLIS **
MICHAEL FARHI *^Δ
MATTHEW Z. EARLE **

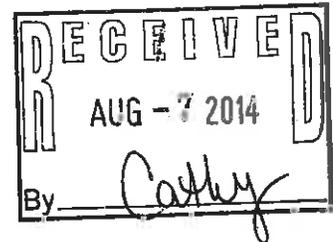
KATHRYN L. WALSH*
CARA LANDOLFI*

* NJ & NY BARS
Δ SO. DIST. NY/EA. DIST. NY
♦ SO. DIST. NY
◆ MASS
∇ FLA

* NJ & PA BARS

Mayor and Council
Borough of Englewood Cliffs
482 Hudson Terrace
Englewood Cliffs, NJ 07632-2983

Re: Proposed Ordinance 23014-11



Dear Mayor Parisi and Members of the Borough Council:

As you know, on July 19, 2014 the Council introduced on first reading Ordinance No. 2014-11 and by Resolution 14-107 referred it to the Planning Board on July 22, 2014 for review and comment, as required by the Municipal Land Use Law, N.J.S.A. 40:55D-64. The Planning Board responded by advertising and holding a special meeting on August 4, 2014.

At that meeting, the Planning Board voted unanimously to offer no substantive comments with respect to Ordinance No. 2014-11, inasmuch as any commentary would be in conflict with the Planning Board's position in defense of ongoing litigation. The vote was as follows:

Motion by: Mr. Kilmartin

Seconded by: Mr. Trovato

In Favor: Chairman Fehre, Mr. Dooly, Mr. Kilmartin, Mr. Trovato, Mr. Chinman, Mr. K. Kim, Mr. Surace, Councilman Aversa, Mayor Parisi.

Opposed: None

Respectfully submitted, at the direction of the Planning Board,

A handwritten signature in black ink, appearing to be "Michael B. Kates".

MICHAEL B. KATES
Planning Board Attorney
MBK:hsg

cc: Planning Board

E. Carter Corriston, Esq., Borough Attorney

COPY