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Attorneys for Defendants, City of Englewood, The Mayor and  
City Council of the City of Englewood

ENGLEWOOD ONE COMMUNITY, INC.,  
HORACE H. RAGBIR, AMY BULLOCK,  
AND JAMES S. COHEN,

Plaintiffs,

vs.

CITY OF ENGLEWOOD, THE MAYOR AND  
CITY COUNCIL OF CITY OF  
ENGLEWOOD,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: BERGEN COUNTY  
DOCKET NO. BER-L-005110-23

Civil Action

ANSWER AND SEPARATE DEFENSES

Defendants City of Englewood, the Mayor, and City Council of City of Englewood  
(hereinafter collectively “Defendants” or “Englewood”), by way of Answer to plaintiffs’  
Complaint in Lieu of Prerogative Writs, say as follows:

**INTRODUCTION**

To the extent this paragraph is determined to contain factual allegations, as opposed to a  
narrative of plaintiffs’ overall claim and an argument as to their position, defendants deny the  
purported factual allegations of this paragraph.

**PARTIES**

1. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1.

2. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2.

3. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3.

4. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4.

5. Defendants admit the allegations of paragraph 5.

6. Defendants admit the allegations of paragraph 6.

7. Defendants admit that portion of the allegations as contained in paragraph 7 of Plaintiff's complaint that alleges that Michael Wildes is the Mayor of the City of Englewood, and as such participated in various municipal activities in the discharge of his official duties as Mayor to the extent permitted by law. The balance of the allegations and implications set forth in paragraph 7 are denied.

**FACTUAL BACKGROUND**

**A. The Settlement Agreement between Englewood and the Fair Share Housing Center**

8. Defendants admit that portion of the allegations as contained in paragraph 8 of Plaintiffs' Complaint that alleges that a settlement was entered into on November 1, 2022 between Englewood and Fair Share Housing Center ("FSHC") regarding Englewood's affordable housing obligations. The balance of the allegations and implications set forth in paragraph 8 are denied.

9. Paragraph 9 states legal conclusions to which defendants need not respond.

10. Paragraph 10 states legal conclusions to which defendants need not respond.

11. Paragraph 11 states legal conclusions to which defendants need not respond.

12. Defendants admit the allegations of paragraph 12.

13. Defendants admit the allegations of paragraph 13.

14. Defendants admit the allegations of paragraph 14.

15. Defendants admit that portion of the allegations as contained in paragraph 15 of Plaintiffs' Complaint that alleges that a Settlement Agreement was entered into between Englewood and FSHC. The Agreement speaks for itself. The balance of the allegations and implications set forth in paragraph 15 of Plaintiffs' Complaint is hereby denied.

16. Defendants admit that portion of the allegations as contained in paragraph 16 of Plaintiffs' Complaint that alleges **for the purposes of the Settlement Agreement, certain obligations were established.** The balance of the allegations and implications set forth in paragraph 16 of Plaintiffs' Complaint is hereby denied.

17. Defendants admit that portion of the allegations as contained in paragraph 17 of Plaintiffs' Complaint that alleges the Settlement Agreement required the City of Englewood to adopt an overlay zones in various portions of the City. The balance of the allegations and implications set forth in paragraph 17 of Plaintiffs' Complaint is hereby denied.

18. Defendants admit that portion of the allegations as contained in paragraph 18 of Plaintiffs' Complaint that alleges that the overlay zoning ordinance had a map attached to it and a chart setting forth the affected blocks and lots. The balance of the allegations and implications set forth in paragraph 18 of Plaintiffs' Complaint is hereby denied

19. Defendants admit that the terms and conditions of the Settlement Agreement with FSHC were not available to the public prior to its approval by Defendants. The balance of the allegations and implications set forth in paragraph 19 of Plaintiffs' Complaint is hereby denied

20. Defendants admit that the Settlement Agreement was approved by Resolution adopted November 1, 2022. The balance of the allegations and implications set forth in paragraph 20 of Plaintiffs' Complaint is hereby denied.

21. Defendants admit that portion of the allegations as contained in paragraph 21 of Plaintiffs' Complaint that alleges that the Resolution was not available to the public in advance of the November 1, 2022 meeting. The balance of the allegations and implications set forth in paragraph 21 of Plaintiffs' Complaint is hereby denied

22. Defendants admit that portion of the allegations as contained in paragraph 22 of Plaintiffs' Complaint that alleges that the Settlement Agreement was submitted to the Court for a Fairness Hearing on January 10, 2023 and that a Fairness Hearing was conducted by Judge Farrington. The balance of the allegations and implications set forth in paragraph 22 of Plaintiffs' Complaint is hereby denied

23. Defendants deny the allegations of paragraph 23.

24. Defendants admit that portion of the allegations as contained in paragraph 24 of Plaintiffs' Complaint that alleges that residents expressed certain opinion at City Council meetings. The balance of the allegations and implications set forth in paragraph 24 of Plaintiffs' Complaint is hereby denied

25. Defendants admit that portion of the allegations as contained in paragraph 25 of Plaintiffs' Complaint that alleges the Court entered an Order Approving the Settlement

Agreement. The balance of the allegations and implications set forth in paragraph 25 of Plaintiffs' Complaint is hereby denied

**B. The Housing Element and Fair Share Plan**

26. Defendants admit that portion of the allegations as contained in paragraph 26 of Plaintiffs' Complaint that alleges that a Housing Element and Fair Share Plan ("HEFSP") was prepared by Englewood's Affordable Housing Planner. The balance of the allegations and implications set forth in paragraph 26 of Plaintiffs' Complaint is hereby denied

27. Defendants admit that the HEFSP was prepared by Englewood's Affordable Housing Planner. The HEFSP speaks for itself. The balance of the allegations and implications set forth in paragraph 27 of Plaintiffs' Complaint is hereby denied

28. The HEFSP speaks for itself. The balance of the allegations and implications set forth in paragraph 28 of Plaintiffs' Complaint is hereby denied

29. The HEFSP speaks for itself. The balance of the allegations and implications set forth in paragraph 29 of Plaintiffs' Complaint is hereby denied.

30. The HEFSP speaks for itself. The balance of the allegations and implications set forth in paragraph 30 of Plaintiffs' Complaint is hereby denied.

31. Defendants deny the allegations of paragraph 31.

32. The HEFSP speaks for itself. The balance of the allegations and implications set forth in paragraph 32 of Plaintiffs' Complaint is hereby denied.

33. The HEFSP speaks for itself. The balance of the allegations and implications set forth in paragraph 33 of Plaintiffs' Complaint is hereby denied.

34. The HEFSP speaks for itself. The balance of the allegations and implications set forth in paragraph 34 of Plaintiffs' Complaint is hereby denied.

35. The HEFSP speaks for itself. The balance of the allegations and implications set forth in paragraph 35 of Plaintiffs' Complaint is hereby denied.

36. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36.

37. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37.

38. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38.

39. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39.

40. Defendants admit that portion of the allegations as contained in paragraph 40 of Plaintiffs' Complaint that refers to minutes of the April 27, 2023 meeting of the Planning Board. The balance of the allegations and implications set forth in paragraph 40 of Plaintiffs' Complaint is hereby denied

41. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41.

**C. Ordinance 23-22 and its Implementing Resolutions**

42. Defendants admit that portion of the allegations as contained in paragraph 42 of Plaintiffs' Complaint that allege that Ordinance 23-22 was introduced on first reading on June 27, 2023. Ordinance 23-22 speaks for itself. The balance of the allegations and implications set forth in paragraph 42 of Plaintiffs' Complaint is hereby denied

43. Ordinance 23-22 speaks for itself. The balance of the allegations and implications set forth in paragraph 43 of Plaintiffs' Complaint is hereby denied

44. Ordinance 23-22 speaks for itself. The balance of the allegations and implications set forth in paragraph 44 of Plaintiffs' Complaint is hereby denied.

45. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45.

46. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 46.

47. Ordinance 23-22 speaks for itself. The balance of the allegations and implications set forth in paragraph 47 of Plaintiffs' Complaint is hereby denied.

48. Defendants admit that portion of the allegations as contained in paragraph 48 of Plaintiffs' Complaint that alleges that Ordinance 23-22 includes Block 1203, Lot 5 on the official tax map of the City of Englewood (the "Property"). The balance of the allegations and implications set forth in paragraph 48 of Plaintiffs' Complaint is hereby denied

49. Defendants admit that Mayor Michael Wildes purchased the Property in Englewood was purchased by legal entities in which Mayor Wildes was involved. The balance of the allegations and implications set forth in paragraph 49 of Plaintiffs' Complaint is hereby denied.

50. Defendants admit that in 2023 Mayor Michael Wildes participated in City Council meetings. Defendants lack knowledge or information sufficient to form a belief as to the truth of the balance of allegations set forth in paragraph 50.

51. The documents set forth in paragraph 51 speak for themselves. The balance of the allegations and implications set forth in paragraph 51 of Plaintiffs' Complaint is hereby denied

52. Defendants deny the allegations of paragraph 52.

**D. Passage of Ordinance 23-22 over Planning Board’s finding of inconsistency with Master Plan, Mayors veto of Ordinance, and Public Objections**

53. Defendants admit that portion of the allegations as contained in paragraph 53 of Plaintiffs’ Complaint that alleges that a notice pursuant to the Municipal Land Use Law (“MLUL”) was mailed to all property owners affected by Ordinance 23-22. Ordinance 23-22 speaks for itself. The balance of the allegations and implications set forth in paragraph 53 of Plaintiffs’ Complaint is hereby denied.

54. Ordinance 23-22 and the published Notice speak for themselves. The balance of the allegations and implications set forth in paragraph 54 of Plaintiffs’ Complaint is hereby denied.

55. Ordinance 23-22 and the published Notice speak for themselves. The balance of the allegations and implications set forth in paragraph 55 of Plaintiffs’ Complaint is hereby denied.

56. Defendants admit the allegations of paragraph 56.

57. Defendants admit that portion of the allegations as contained in paragraph 57 of Plaintiffs’ Complaint excluding the footnote therein. The balance of the allegations and implications set forth in paragraph 57 of Plaintiffs’ Complaint is hereby denied including Footnote

58. The consistency report and the Master Plan of the Planning Board speak for themselves. The balance of the allegations and implications set forth in paragraph 58 of Plaintiffs’ Complaint is hereby denied.

59. The consistency report and the Master Plan of the Planning Board speak for themselves. The balance of the allegations and implications set forth in paragraph 59 of Plaintiffs’ Complaint is hereby denied.

60. Defendants deny the allegations of paragraph 60.



61. Defendants admit that portion of the allegations as contained in paragraph 61 of Plaintiffs' Complaint that alleges that a meeting was held on August 8, 2023 and that a public hearing on Ordinance No. 23-22 was held. The balance of the allegations and implications set forth in paragraph 61 of Plaintiffs' Complaint is hereby denied.

62. Defendants admit that portion of the allegations as contained in paragraph 62 of Plaintiffs' Complaint which alleges that a request was made on the day of the hearing, August 8, 2023, to have Peter Steck put on a presentation and that a copy of his report was attached to that letter. The balance of the allegations and implications set forth in paragraph 62 of Plaintiffs' Complaint is hereby denied.

63. Defendants deny the allegations of paragraph 63.

64. Defendants deny the allegations of paragraph 64.

65. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 65.

66. Defendants admit that portion of the allegations as contained in paragraph 66 of Plaintiffs' Complaint which alleges that various members of the public opposed the overlay zones. The balance of the allegations and implications set forth in paragraph 66 of Plaintiffs' Complaint is hereby denied.

67. Defendants deny the allegations of paragraph 67.

68. Defendants admit that portion of the allegations as contained in paragraph 68 of Plaintiffs' Complaint which alleges the City Council approved Ordinance 23-22 by a 4-1 vote. The Mayor does not vote unless there is a tie. The balance of the allegations and implications set forth in paragraph 68 of Plaintiffs' Complaint is hereby denied.

69. Defendants admit that portion of the allegations as contained in paragraph 69 of Plaintiffs' Complaint which alleges that the City Council also adopted Resolution #267-08-23 in accordance with the requirements of the MLUL. The balance of the allegations and implications set forth in paragraph 69 of Plaintiffs' Complaint is hereby denied.

70. Defendants admit the allegations of paragraph 70.

71. Defendants admit that portion of the allegations as contained in paragraph 71 of Plaintiffs' Complaint which alleges that Mayor Wildes vetoed Ordinance 23-22. The August 11, 2023 letter speaks for itself. The balance of the allegations and implications set forth in paragraph 71 of Plaintiffs' Complaint is hereby denied.

72. Defendants admit that portion of the allegations as contained in paragraph 72 of Plaintiffs' Complaint which alleges that a special Council meeting was scheduled for August 22, 2023 to take action on the Mayor's veto of Ordinance 23-22. The balance of the allegations and implications set forth in paragraph 72 of Plaintiffs' Complaint is hereby denied.

73. Defendants admit that portion of the allegations as contained in paragraph 73 of Plaintiffs' Complaint which allege that the August 22, 2023 meeting was noticed as a remote meeting. The balance of the allegations and implications set forth in paragraph 73 of Plaintiffs' Complaint is hereby denied.

74. Defendants admit that portion of the allegations as contained in paragraph 74 of Plaintiffs' Complaint which alleges that August 22, 2023 was conducted remotely and virtually. The balance of the allegations and implications set forth in paragraph 74 of Plaintiffs' Complaint is hereby denied.

75. Defendants admit that portion of the allegations as contained in paragraph 75 of Plaintiffs' Complaint which alleges that the Council adopted Resolution #272-08-23

overriding the Mayor's veto. The balance of the allegations and implications set forth in paragraph 75 of Plaintiffs' Complaint is hereby denied.

76. Defendants admit that portion of the allegations as contained in paragraph 76 of Plaintiffs' Complaint which alleges Resolution #272-08-23 was adopted on August 22, 2023. The balance of the allegations and implications set forth in paragraph 76 of Plaintiffs' Complaint is hereby denied.

77. Defendants admit that portion of the allegations as contained in paragraph 77 of Plaintiffs' Complaint which allege that Judge Farrington denied Plaintiffs' untimely request to delay the final compliance hearing. The balance of the allegations and implications set forth in paragraph 77 of Plaintiffs' Complaint is hereby denied.

### **COUNT I**

#### **ORDINANCE 23-22 AND RESOLUTION NOS. 267-08-08-23 AND #272-0-22-23 SHOULD BE INVALIDATED AS INCONSISTENT WITH ENGELWOOD'S MASTER PLAN WITH NO REASONS PROVIDED FOR THE DEVIATION**

78. Defendants repeat their responses to the prior allegations of this complaint as if set forth at length herein.

79. Defendants admit that portion of the allegations as contained in paragraph 79 of Plaintiffs' Complaint which allege that a Master Plan for the City Englewood was adopted in 2014 by the Planning Board. The balance of the allegations and implications set forth in paragraph 79 of Plaintiffs' Complaint is hereby denied.

80. The Master Plan speaks for itself. The balance of the allegations and implications set forth in paragraph 80 of Plaintiffs' Complaint is hereby denied.

81. Defendants deny the allegations of paragraph 81.

82. Defendants admit that portion of the allegations as contained in paragraph 82 of Plaintiffs' Complaint which alleges that Ordinance 23-22 was referred to the Planning Board

to determine whether the same was inconsistent with the HEFSP and the Land Use Plan Element of the Master Plan of the City of Englewood. The balance of the allegations and implications set forth in paragraph 82 of Plaintiffs' Complaint is hereby denied.

83. Defendants deny the allegations of paragraph 83.

84. Defendants deny the allegations of paragraph 84.

85. Defendants admit the allegations of paragraph 85.

86. Defendants admit that portion of the allegations as contained in paragraph 86 of Plaintiffs' Complaint which allege that N.J.S.A. 40:55D-26 outlines the Planning Board's function when a land development ordinance is referred to it. The balance of the allegations and implications set forth in paragraph 86 of Plaintiffs' Complaint is hereby denied.

87. Defendants admit that portion of the allegations as contained in paragraph 87 of Plaintiffs' Complaint which alleges that N.J.S.A. 40:55D-26a establishes broad parameters for the governing body's consideration of land development ordinances. The statute speaks for itself. The balance of the allegations and implications set forth in paragraph 87 of Plaintiffs' Complaint is hereby denied.

88. Defendants admit that portion of the allegations as contained in paragraph 88 of Plaintiffs' Complaint which alleges that the Planning Board found that Ordinance 23-22 was not consistent with the Englewood Master Plan. The balance of the allegations and implications set forth in paragraph 88 of Plaintiffs' Complaint is hereby denied.

89. Defendants deny the allegations of paragraph 89.

90. Defendants deny the allegations of paragraph 90.

**COUNT II**

**ORDINANCE 23-22 AND RESOLUTION NOS. 267-08-08-23 AND #272-0-22-23 SHOULD BE INVALIDATED AS ARBITRARY, CAPRICIOUS, AND UNREASONABLE**

91. Defendants repeat their responses to the prior allegations of this complaint as if set forth at length herein.

92. Defendants admit that portion of the allegations as contained in paragraph 92 of Plaintiffs' Complaint which cite to the existence of N.J.S.A. 40:55D-62. The Statute speaks for itself. The balance of the allegations and implications set forth in paragraph 92 of Plaintiffs' Complaint is hereby denied.

93. Defendants deny the allegations of paragraph 93.

94. Defendants admit that the HEFSP and Ordinance 23-22 speak for themselves. The balance of the allegations and implications set forth in paragraph 94 of Plaintiffs' Complaint is hereby denied.

95. Defendants admit that portion of the allegations as contained in paragraph 95 of Plaintiffs' Complaint which allege that Ordinance 23-22 permits the construction of townhouses and multi-family units. The balance of the allegations and implications set forth in paragraph 95 of Plaintiffs' Complaint is hereby denied.

96. Defendants admit that portion of the allegations as contained in paragraph 96 of Plaintiffs' Complaint which allege that portions of the overlay zones are in flood zones in the City. The balance of the allegations and implications set forth in paragraph 96 of Plaintiffs' Complaint is hereby denied.

97. Defendants admit that portions of the City of Englewood may experience flooding during major and/or unusual rainfall. The balance of the allegations and implications set forth in paragraph 97 of Plaintiffs' Complaint is hereby denied.

98. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 98.

99. Defendants deny the allegations of paragraph 99.

100. Defendants deny the allegations of paragraph 100.

101. Defendants deny the allegations of paragraph 101.

102. Defendants deny the allegations of paragraph 102.

103. Defendants deny the allegations of paragraph 103.

### **COUNT III**

#### **ORDINANCE 23-22 AND RESOLUTION NOS. 267-08-08-23 AND #272-0-22-23 SHOULD BE INVALIDATED FOR FAILURE TO PUT FORTH FINDINGS SUFFICIENT TO WARRANT THE ADOPTION OF THE ORDINANCE**

104. Defendants repeat their responses to the prior allegations of this complaint as if set forth at length herein.

105. Defendants deny the allegations of paragraph 105.

106. To the extent that paragraph 106 of Plaintiffs' Complaint repeats and realleges prior allegations, Defendants repeat and reallege each and every of the responses to the same as if set forth herein at length . The balance of the allegations and implications set forth in paragraph 106 of Plaintiffs' Complaint is hereby denied.

107. Defendants admit the allegations of paragraph 107.

108. Defendants deny the allegations of paragraph 108.

109. Defendants admit the allegations of paragraph 109.

110. Defendants deny the allegations of paragraph 110.

111. Defendants deny the allegations of paragraph 111.

**COUNT IV**

**ORDINANCE 23-22 AND RESOLUTION NOS. 267-08-08-23 AND #272-0-22-23 SHOULD BE INVALIDATED AS TAINTED BY A CONFLICT OF INTEREST**

112. Defendants repeat their responses to the prior allegations of this complaint as if set forth at length herein.

113. Defendants admit that portion of the allegations as contained in paragraph 113 of Plaintiffs' Complaint which alleges that Mayor Wildes is a member of the Planning Board and Mr. Bern is the Planning Board Attorney. The balance of the allegations and implications set forth in paragraph 113 of Plaintiffs' Complaint is hereby denied.

114. To the extent that paragraph 114 of Plaintiffs' Complaint repeats and realleges prior allegations, Defendants repeat and reallege each and every of the responses to the same as if set forth herein at length. The balance of the allegations and implications set forth in paragraph 114 of Plaintiffs' Complaint is hereby denied.

115. Defendants deny the allegations of paragraph 115.

116. Defendants deny the allegations of paragraph 116.

117. Defendants deny the allegations of paragraph 117.

118. Defendants deny the allegations of paragraph 118.

119. Defendants deny the allegations of paragraph 119.

**COUNT V**

**ORDINANCE 23-22 AND RESOLUTION NOS. 267-08-08-23 AND #272-0-22-23 SHOULD BE INVALIDATED FOR EXCLUSION OF THE PUBLIC TO ATTEND THE HEARINGS IN VIOLATION OF OPMA**

120. Defendants repeat their responses to the prior allegations of this complaint as if set forth at length herein.

121. Defendants admit that a portion of the Open Public Meetings Act (“OPMA”) is set forth in N.J.S.A. 10:4-7. The Statute speaks for itself. The balance of the allegations and implications set forth in paragraph 121 of Plaintiffs’ Complaint is hereby denied.

122. Defendants admit the allegations of paragraph 122.

123. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 123.

124. Defendants deny the allegations of paragraph 124.

125. Defendants admit that portion of the allegations as contained in paragraph 125 of Plaintiffs’ Complaint which alleges certain members of the public suggested that the hearing be held at a place other than as advertised. The balance of the allegations and implications set forth in paragraph 125 of Plaintiffs’ Complaint is hereby denied.

126. Defendants deny the allegations of paragraph 126.

127. Defendants deny the allegations of paragraph 127.

128. Defendants admit the allegations of paragraph 128.

129. Defendants admit that portion of the allegations as contained in paragraph 129 of Plaintiffs’ Complaint that a portion of N.J.S.A. 10:4-9.3 is accurately quoted therein. Defendants note however that the entirety of that section of the Statute has been deliberately ignored. The balance of the allegations and implications set forth in paragraph 129 of Plaintiffs’ Complaint is hereby denied.

130. Defendants deny the allegations of paragraph 130.

131. Defendants deny the allegations of paragraph 131.

132. Defendants deny the allegations of paragraph 132.

WHEREFORE, Defendants demand that judgment be entered for the following relief:



- a) Dismissing Plaintiff's Complaint with prejudice;
- b) Awarding costs of suit;
- c) Awarding attorneys' fees; and
- d) Awarding any other relief this Court deems just and proper.

**SEPARATE DEFENSES**

**FIRST SEPARATE DEFENSE**

The Complaint fails to state a cause of action upon which relief may be granted.

**SECOND SEPARATE DEFENSE**

Plaintiffs' claims are barred by application of the Doctrine Equitable Estoppel.

**THIRD SEPARATE DEFENSE**

Plaintiffs' claims are barred by application of the Doctrine of Laches.

**FOURTH SEPARATE DEFENSE**

Plaintiffs' claims are barred by application of the Doctrine of Waiver.

**FIFTH SEPARATE DEFENSE**

Plaintiffs' claims are barred by application Doctrine of Unclean Hands.

**SIXTH SEPARATE DEFENSE**

At all relevant times hereto, Defendant acted within the scope of their lawful authority or apparent authority and all actions taken were the result of appropriate exercise of Defendant' discretion.

**SEVENTH SEPARATE DEFENSE**

Plaintiffs lack standing to commence or pursue this action.

**EIGHTH SEPARATE DEFENSE**

The actions of Defendants are presumptively valid.

**NINTH SEPARATE DEFENSE**

The actions of Defendant are fully supported by the record and are not arbitrary, capricious, or unreasonable

**TENTH SEPARATE DEFENSE**

Defendants have at all times acted properly and in the best interest of the public in accordance with statutory authority.

**ELEVENTH SEPARATE DEFENSE**

Plaintiffs' Complaint should be dismissed for their failure to exhaust administrative remedies.

**TWELVETH SEPARATE DEFENSE**

Plaintiffs' Complaint should be dismissed for failure to join an indispensable party in this action.

**THIRTEENTH SEPARATE DEFENSE**

The events that Plaintiffs allege as having given rise to its cause of action are beyond the control of the Defendants.

**FOURTEENTH SEPARATE DEFENSE**

The Complaint plaintiffs filed is in bad faith and intended to harass and intimidate these defendants.

**FIFTEENTH SEPARATE DEFENSE**

Plaintiffs' claims are barred for failure to disclose non-parties who may be joined.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to an award of attorneys' fees as to any of the claims contained in the Complaint, as there is no statute or rule of court that allows for Plaintiff to be awarded attorneys fees in this cause of action.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

All actions taken by Defendants were in furtherance of a Settlement Agreement by and between the City of Englewood and Fair Share Housing Center dated November 1, 2022, which Agreement was approved by the Superior Court of New Jersey and is being implemented in accordance with its terms.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' action is barred by virtue of the fact that it failed to seek to timely intervene in the declaratory judgment action, captioned *In the matter of the Application of the City of Englewood, a municipal corporation of the State of New Jersey*, BER-L-004069-19.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' action should be dismissed as an attempt to prevent the opportunity for the production of adequate low and moderate housing for the satisfaction of Englewood's fair share of the region's low and moderate income housing needs.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are limited by the doctrine of avoidable consequences.

**TWENTY FIRST AFFIRMATIVE DEFENSE**

Defendants acted at all times relevant herein in good faith and without fraud, malice, or reckless conduct.

**TWENTY SECOND AFFIRMATIVE DEFENSE**

Defendants are municipal entities and municipal officers who acted in good faith in the execution and enforcement of the laws of the State of New Jersey.

**TWENTY THIRD AFFIRMATIVE DEFENSE**

At all relevant times herein, Defendants acted within the scope of their lawful authority or apparent authority in all actions taken with a result of appropriate exercise of Defendants' discretion.

**TWENTY FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs are not the real party in interest in this Complaint.

**TWENTY FIFTH AFFIRMATIVE DEFENSE**

Defendants breached no duty which they owed to Plaintiffs.

**TWENTY SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims against Defendants are barred in as much as they violate public policy and various Court Orders.

**TWENTY SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are frivolous and without any reasonable basis in law or facts, cannot be supported by a good faith argument for extension, modification, or reversal of existing law, are lacking in evidentiary support, and are in violation of Court Rule 1:4-8 (a).

**TWENTY EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's complaint is frivolous and without basis in violation of the Frivolous Lawsuit Statute, N.J.S.A. 2A:15-59.1.

**TWENTY NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' have not been deprived of the beneficial use and enjoyment of its property as a result of Defendants' actions.

**THIRTIETH AFFIRMATIVE DEFENSE**

Plaintiffs' complaint should be dismissed for failure to join a party necessary for the complete disposition of the action.

**THIRTY FIRST AFFIRMATIVE DEFENSE**

Ordinance 23-22 is permissive and not mandatory. All underlying zoning remains in effect and Plaintiff and other property owners affected by the Ordinance remained able to utilize their property in accordance with the current underlying zoning.

**THIRTY SECOND AFFIRMATIVE DEFENSE**

The City's actions are in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq and the Open Public Meetings Act, N.J.S.A. 10:4-7 et seq

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

Plaintiff's action should be dismissed for failure to bring the same within the time period set forth in N.J.R. 4:69-6-6

**THIRTY FOURTH AFFIRMATIVE DEFENSE**

Defendant reserves the right to amend its answer and assert additional separate defenses upon the completion of discovery.

Dated: November 22, 2023

SURENIAN EDWARDS BUZAK & NOLAN LLC  
Attorneys for Defendants City of Englewood and City  
Council of City of Englewood

By *Edward J. Buzak*  
Edward J. Buzak, Esq.

**CERTIFICATION PURSUANT TO R. 4:5-1**

EDWARD J. BUZAK, of full age, hereby certifies as follows:

1. I am a member of the firm of Surenian, Edwards, Buzak & Nolan LLC, attorneys for the Defendants.

2. To the best of my knowledge, there is no other action pending in any court or any pending arbitration proceeding of which the matter in controversy herein is the subject and no such other action or arbitration proceeding is contemplated. To the best of my knowledge, there are no other parties who should be joined in this action.

3. The within Answer was filed and served within the time prescribed by the Rules of Court as extended.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: November 22, 2023

SURENIAN EDWARDS BUZAK & NOLAN LLC  
Attorneys for Defendants City of Englewood and City  
Council of City of Englewood

By *Edward J. Buzak*  
Edward J. Buzak, Esq.

**CERTIFICATION PURSUANT TO R. 1:38-7(b)**

EDWARD J. BUZAK, of full age, hereby certifies as follows:

1. I am a member of the firm of Surenian, Edwards, Buzak & Nolan LLC, attorneys for defendants City of Englewood and City Council of City of Englewood.

2. I certify that confidential personal identifiers have been redacted from documents now submitted to the Court and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: November 22, 2023

SURENIAN EDWARDS BUZAK & NOLAN LLC  
Attorneys for Defendants City of Englewood and City  
Council of City of Englewood

By Edward J. Buzak  
Edward J. Buzak, Esq.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, notice is hereby given that Edward J. Buzak, Attorney for the Defendants City of Englewood and City Council of City of Englewood is designated as trial counsel in the above captioned matter.

Dated: November 22, 2023

SURENIAN EDWARDS BUZAK & NOLAN LLC  
Attorneys for Defendants City of Englewood  
and City Council of City of Englewood

By Edward J. Buzak  
Edward J. Buzak, Esq





## SURENIAN, EDWARDS, BUZAK & NOLAN LLC

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*Also admitted:*

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November 22, 2023

### VIA ECOURTS

Bergen County Courthouse  
10 Main Street, Chambers 323  
Hackensack, NJ 07601

**RE: Englewood One Community, Inc. et al v. City of Englewood, et al  
County of Bergen; Docket No.: BER-L-005110-23**

Dear Judge Farrington:

As Your Honor is aware, this office represents the City of Englewood as Special Counsel in the above-referenced matter. Enclosed please find the Defendants' Answer and Separate Defenses.

I thank Your Honor for your continued time and attention to this matter.

Respectfully submitted,  
Surenian, Edwards, Buzak & Nolan  
*Edward J. Buzak*  
Edward J. Buzak

EJB/kc

Enclosure

cc: All Attorneys of Record (via eCourts)





New Jersey Judiciary  
Civil Practice Division

## Civil Case Information Statement (CIS)

Use for initial Law Division Civil Part pleadings (not motions) under Rule 4:5-1. Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed, or attorney's signature is not affixed.

### For Use by Clerk's Office Only

Payment type <input type="checkbox"/> check <input type="checkbox"/> charge <input type="checkbox"/> cash	Charge/Check Number	Amount \$	Overpayment \$	Batch Number
Attorney/Pro Se Name Edward J. Buzak, Esq	Telephone Number (732) 612-3100 ext.	County of Venue Bergen		
Firm Name (if applicable) Surenian, Edwards, Buzak & Nolan, LLC	Docket Number (when available) BER-L-005110-23			
Office Address - Street 311 Broadway, Suite A	City Point Pleasant Beach	State NJ	Zip 08742	
Document Type Answer and Separate Defenses	Jury Demand <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Name of Party (e.g., John Doe, Plaintiff) City of Englewood, et al Defendants	Caption Englewood One Community, Inc. et al v. City of Englewood et al			
Case Type Number (See page 3 for listing)	701			
Are sexual abuse claims alleged?	<input type="checkbox"/> Yes		<input checked="" type="checkbox"/> No	
Does this case involve claims related to COVID-19?	<input type="checkbox"/> Yes		<input checked="" type="checkbox"/> No	
Is this a professional malpractice case? If "Yes," see N.J.S.A. 2A:53A-27 and applicable case law regarding your obligation to file an affidavit of merit.	<input type="checkbox"/> Yes		<input checked="" type="checkbox"/> No	
Related Cases Pending? If "Yes," list docket numbers	IMO City of Englewood		BER-L-004069-19	
Do you anticipate adding any parties (arising out of same transaction or occurrence)?	<input type="checkbox"/> Yes		<input checked="" type="checkbox"/> No	
Name of defendant's primary insurance company (if known)	<input type="checkbox"/> None		<input checked="" type="checkbox"/> Unknown	

**The Information Provided on This Form Cannot be Introduced into Evidence.**

Case Characteristics for Purposes of Determining if Case is Appropriate for Mediation

Do parties have a current, past or recurrent relationship?  Yes  No


If "Yes," is that relationship:

Employer/Employee  Friend/Neighbor  Familial  Business

Other (explain) \_\_\_\_\_

Does the statute governing this case provide for payment of fees by the losing party?  Yes  No

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition.

 Do you or your client need any disability accommodations?  Yes  No

If yes, please identify the requested accommodation:

Will an interpreter be needed?  Yes  No

If yes, for what language?

**I certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).**

Attorney/Self-Represented Litigant Signature: \_\_\_\_\_

*Edward J. Buzak*

## Civil Case Information Statement (CIS)

Use for initial pleadings (not motions) under *Rule* 4:5-1

### CASE TYPES

(Choose one and enter number of case type in appropriate space on page 1.)

#### Track I - 150 days discovery

- 151 Name Change
- 175 Forfeiture
- 302 Tenancy
- 399 Real Property (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 Book Account (debt collection matters only)
- 505 Other Insurance Claim (including declaratory judgment actions)
- 506 PIP Coverage
- 510 UM or UIM Claim (coverage issues only)
- 511 Action on Negotiable Instrument
- 512 Lemon Law
- 801 Summary Action
- 802 Open Public Records Act (summary action)
- 999 Other (briefly describe nature of action)

#### Track II - 300 days discovery

- 305 Construction
- 509 Employment (other than Conscientious Employees Protection Act (CEPA) or Law Against Discrimination (LAD))
- 599 Contract/Commercial Transaction
- 603N Auto Negligence – Personal Injury (non-verbal threshold)
- 603Y Auto Negligence – Personal Injury (verbal threshold)
- 605 Personal Injury
- 610 Auto Negligence – Property Damage
- 621 UM or UIM Claim (includes bodily injury)
- 699 Tort – Other

#### Track III - 450 days discovery

- 005 Civil Rights
- 301 Condemnation
- 602 Assault and Battery
- 604 Medical Malpractice
- 606 Product Liability
- 607 Professional Malpractice
- 608 Toxic Tort
- 609 Defamation
- 616 Whistleblower / Conscientious Employee Protection Act (CEPA) Cases
- 617 Inverse Condemnation
- 618 Law Against Discrimination (LAD) Cases

**Track IV - Active Case Management by Individual Judge / 450 days discovery**

- 156 Environmental/Environmental Coverage Litigation
- 303 Mt. Laurel
- 508 Complex Commercial
- 513 Complex Construction
- 514 Insurance Fraud
- 620 False Claims Act
- 701 Actions in Lieu of Prerogative Writs

**Multicounty Litigation (Track IV)**

- 271 Accutane/Isotretinoin
- 281 Bristol-Myers Squibb Environmental
- 282 Fosamax
- 285 Stryker Trident Hip Implants
- 291 Pelvic Mesh/Gynecare
- 292 Pelvic Mesh/Bard
- 293 DePuy ASR Hip Implant Litigation
- 296 Stryker Rejuvenate/ABG II Modular Hip Stem Components
- 299 Olmesartan Medoxomil Medications/Benicar
- 300 Talc-Based Body Powders
- 601 Asbestos
- 624 Stryker LFIT CoCr V40 Femoral Heads
- 625 Firefighter Hearing Loss Litigation
- 626 Abilify
- 627 Physiomesh Flexible Composite Mesh
- 628 Taxotere/Docetaxel
- 629 Zostavax
- 630 Proceed Mesh/Patch
- 631 Proton-Pump Inhibitors
- 632 HealthPlus Surgery Center
- 633 Prolene Hernia System Mesh
- 634 Allergan Biocell Textured Breast Implants
- 635 Tassigna
- 636 Strattice Hernia Mesh
- 637 Singulair
- 638 Elmiron

If you believe this case requires a track other than that provided above, please indicate the reason on page 1, in the space under “Case Characteristics”.

**Please check off each applicable category**

- Putative Class Action**       **Title 59**       **Consumer Fraud**

# Civil Case Information Statement

## Case Details: BERGEN | Civil Part Docket# L-005110-23

**Case Caption:** ENGLEWOOD ONE COMMUNITY, INC. VS CITY OF ENGLEW

**Case Initiation Date:** 09/22/2023

**Attorney Name:** EDWARD J BUZAK

**Firm Name:** SURENIAN, EDWARDS, BUZAK & NOLAN LLC

**Address:** 311 BROADWAY STE A  
POINT PLEASANT BEACH NJ 08742

**Phone:** 7326123100

**Name of Party:** DEFENDANT : CITY OF ENGLEWOOD

**Name of Defendant's Primary Insurance Company**  
(if known): None

**Case Type:** ACTIONS IN LIEU OF PREROGATIVE WRITS

**Document Type:** Answer

**Jury Demand:** NONE

**Is this a professional malpractice case?** NO

**Related cases pending:** YES

**If yes, list docket numbers:** BER-L-004069-19

**Do you anticipate adding any parties (arising out of same transaction or occurrence)?** NO

**Does this case involve claims related to COVID-19?** NO

**Are sexual abuse claims alleged by: ENGLEWOOD ONE COMMUNITY, INC.?** NO

**Are sexual abuse claims alleged by: HORACE H RAGBIR?** NO

**Are sexual abuse claims alleged by: AMY BULLOCK?** NO

**Are sexual abuse claims alleged by: JAMES S COHEN?** NO

## THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** NO

**If yes, is that relationship:**

**Does the statute governing this case provide for payment of fees by the losing party?** NO

**Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:**

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

**Please check off each applicable category: Putative Class Action?** NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

11/22/2023  
Dated

/s/ EDWARD J BUZAK  
Signed