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Developer Appeals EL Affordable-housing Denial- Landmark Files Suit After Zoning Board's Rejection Of Its Latest Application

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"It's very difficult to believe that they would have made a mistake about that. It's not rocket science to read a map, and it was their map. ... When the judge made her decision on the last appeal ... she relied on something they said that was flat-out not true." Michael Zizka, attorney for Glenn Russo, owner of Landmark Development LLC, on allegedly inaccurate testimony made by East Lyme officials.

East Lyme — The developer who hopes to build condominiums and affordable housing in the Oswegatchie Hills has filed a lawsuit to appeal the Zoning Commission's denial of his most recent application.

Glenn Russo, the owner of Landmark Development LLC of Middletown, filed the lawsuit in New London Superior Court on Tuesday. It names the town's Zoning Commission as the defendant.

This is Russo's second attempt to build in the Hills. In June 2002 the commission denied his first application, which sought a zone change that included a conceptual plan for 894 housing units — 280 of which were designated as affordable.

Russo appealed that decision, but a Superior Court judge upheld the commission's decision in September 2004.

The application that is the subject of the suit calls for phased development beginning with 352 units. Affordable housing would comprise 120 units, or 34 percent of the first phase. The affordable housing would consist of rental apartments near the entrance of the development, with market-rate condominiums for sale in an opposite corner near the Niantic River and Latimer Brook.

Russo and his attorney contend that this application will prove to the court that the town used false information in its first rejection, and that the judge upheld the town's denial based on misinformation. Specifically, the suit claims that when town officials said the site was completely outside the sewer shed, or sewer service area, and thus had no access to sewer and water service, they were misrepresenting the facts.

Russo and his attorney maintain that information the town presented about its Plan of Development, which outlines how much of the land should be preserved as open space, was also wrong and incorrectly influenced the judge's decision to uphold the commission's ruling.

"When we went in before, we had the Water and Sewer Commission saying that we were outside the sewer shed, which was false," Russo's attorney, Michael Zizka, said by phone on Thursday. "It's very difficult to believe that they would have made a mistake about that. It's not rocket science to read a map, and it was their map. ... When the judge made her decision on the last appeal ... she relied on something they said that was flat-out not true."

Zoning Commission chairman Mark Nickerson said he could not comment on the appeal other than to say he stands by the commission's decision and is confident it was based on facts. First Selectman Wayne Fraser called the appeal a "shame."

Russo said Thursday that he hopes the town will accept his offer to sell it a majority of the property while allowing him to develop a part of it.

"Even though we feel as though we were forced into filing this appeal, we still have some hope that we can work with the town and they would reconsider the offer that we've presented to them," he said.

The suit says the commission's reasons for denial do not meet its burden of proof. Under state law, a town cannot deny an affordable housing application simply based on its zoning regulations. Rather, the town must prove that the need to preserve the land outweighs the need for affordable housing.

The suit says there was substantial evidence in the record showing that the soil could support a community septic system and that the application "would not prevent the town from achieving its

preservation goals for the Oswegatchie Hills.”

The suit also says the town's affordable-housing regulation, which says any affordable housing must prove that water and sewer are available to the site, “is an illegal pretext since the Commission does not require public water and sewer availability for any other multifamily housing in East Lyme.”