

The Day
December 4, 2003

Developer sues East Lyme for discrimination

Landmark claims town rejected housing plan to block minorities

By Allison Frank, Day Staff Writer

East Lyme - Landmark Development Group LLC, the company that wants to build nearly 900 housing units in the Oswegatchie Hills, has filed a federal civil rights lawsuit against the town and several town officials charging racial discrimination against African Americans and Hispanics.

John C. Brittain, one of the lawyers who successfully argued the Sheff v. O'Neill school desegregation case, is representing Landmark and three other plaintiffs, two of whom are African-American women who say they can't afford to live in East Lyme and send their children to its schools.

Landmark claims that by denying its application to build 894 housing units, of which 280 or 30 percent would be classified as "affordable," the town is intentionally trying to block minorities from moving into East Lyme. The plaintiffs are seeking compensatory damages in the millions of dollars for what they say is a violation of federal fair housing laws.

First Selectman Wayne Fraser said the case has no merit and that the town may file countersuits against Landmark and its managing partner, Glenn Russo.

"We just figure it's another attempt to distract town officials from our real goal of finding an equitable way of preserving this land," Fraser said, adding that the town's insurance company is hiring lawyers to defend town employees. "This applicant has threatened many different actions against me personally and against the town in general because he didn't get what he felt he should get."

Landmark submitted a conceptual site plan for the 236-acre property last June. The 280 housing units set aside as "affordable" would be for households earning 60 to 80 percent of East Lyme's median income. In 2000, the state Department of Economic Development listed the median household income in East Lyme as \$69,032.

Zoning commissioners said in denying the application that the town's water and sewer systems couldn't support such a high-density development on that site. Septic systems, they said, would create runoff that could harm the Niantic River.

The commission determined that the public's health, safety and environmental interests in preserving the Oswegatchie Hills and the Niantic River outweighed the need to establish an affordable-housing district in that area.

In the lawsuit, Brittain claims that the Zoning and Water and Sewer commissions were using the water and sewer systems as an excuse to deny the proposal.

The suit, filed Oct. 27 in U.S. District Court in Hartford, also names the town's Zoning Commission, the Water and Sewer Commission, First Selectman Wayne Fraser, Town Planner Meg Parulis, Town Sanitarian George Calkins and Frederick Thumm, director of public works, as defendants and mentions that each one's race is Caucasian.

This is the second lawsuit Landmark has filed against the town. The company sued the town last fall in Superior Court after the Zoning Commission rejected its proposal for the housing complex in June 2002. The company owns 85 acres in the Oswegatchie Hills, and has an option to buy the two adjacent parcels that comprise the remaining 151 acres where the company wants to build houses.

That suit seeks to overturn the Zoning Commission's ruling. It is still pending.

Russo, Landmark's managing partner, also threatened at the time to sue the town for its lack of affordable housing. The suit cites 2002 housing statistics from the state Department of Economic and Community Development, saying that five percent of the dwellings in east Lyme are classified as affordable. The state recommends 10 percent.

"It's unfortunate that town officials have put the town itself in a position to potentially (pay) damages," in the millions of dollars, Russo said when reached at his Middletown office Wednesday. He referred questions about the lawsuit to Brittain. Hartford attorney M. Hatcher Norris is also representing the plaintiffs, who include another developer, Jarvis of Cheshire LLC.

Brittain said the civil rights case picks up where *Sheff v. O'Neill* left off.

In *Sheff v. O'Neill* plaintiffs argued that students in urban schools were racially isolated and not getting as high quality an education as students in suburban schools. The state Supreme Court ruling and subsequent settlements resulted in new programs to bring urban and suburban students together through inter district programs and charter and magnet schools.

The school desegregation suit, Brittain said, originally included an affordable housing component that was later left out.

"This is a new development or expansion of *Sheff v. O'Neill*," Brittain said in a phone interview from his office at Texas Southern University, where he teaches law. "The state says that the way to integrate schools is to integrate housing and build in permanent racial diversity, not to shift kids or bus kids" to other school districts.

One of the African-American plaintiffs, Susan Barlow of Hartford, sends her children to suburban schools through the state-funded Open Choice program, which enables students in high school and middle school to enroll in other towns. Brittain said the other African-American plaintiff, Lisa Clemons of Windsor, wants to live in a shoreline community with "better schools."

The two women say in the suit that they want to help diversity East Lyme schools, which have 61 African-American students and 78 Hispanics. That total minority student population is 387 out of 3,269 students, according to the state Department of Education's strategic school profile for 2001-2002.

Brittain said that neither Barlow nor Clemons has looked for housing in East Lyme.

Brittain said the case could set a precedent for the remedy phase of *Sheff v. O'Neill*. Because of the ruling, he said, suburban towns now have an obligation to offer "their fair share" of affordable housing and "to consider the consequences of segregation in schools."

Designated affordable housing is available by state law to people whose income does not exceed 80 percent of the media income for the region or the state.

The East Lyme Zoning Commission added an affordable housing district to the town's zoning regulations this summer. The town has not received any applications to build affordable housing under the new regulations yet, although Fraser said he has been talking to developers about an affordable housing complex for senior citizens.

"The problem isn't with the town," Fraser said. "The problem is with finding land that can accept the density and support the infrastructure so it doesn't become a negative impact on the town."

The town has been trying for decades to preserve the rocky Oswegatchie Hills woodlands on the west bank of the Niantic River. In the 1980s the town tried to persuade the state to buy the land, but the state Department of Environmental Protection was not interested in purchasing it until 1998, when Gov. John G. Rowland made open space preservation a statewide priority. The DEP approached Russo, but in a series of negotiations from 1998 to 2002 the two sides were not able to come to terms.

Landmark had initially applied to build a golf course and senior community in Oswegatchie Hills. When the Zoning Commission rejected that project, Landmark proposed a housing complex that included affordable housing.

Fraser said the town may consider filing countersuits against Landmark, but the main goal is to settle the ongoing debate about what to do with the Oswegatchie Hills parcel.