

Housing developer appeals East Lyme rejection

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East Lyme - The developer applying to build residential units in the Oswegatchie Hills has appealed two decisions made by town commissions last month to Superior Court.

Landmark Development Group and Jarvis of Cheshire, in one court filing, accuse the town's Water and Sewer Commission of a "subjective preference for certain uses of land."

The developer is seeking both to reverse the Water and Sewer Commission's decision denying its sewage capacity confirmation request and to eliminate an aspect of the Zoning Commission's newly-revised affordable housing regulations. In late December, the companies jointly filed two summons for the commissions to appear in state Superior Court.

For more than a decade, Glenn Russo, the principal in the Middletown-based companies, has applied and re-applied to develop land in the hills overlooking the Niantic River and has appealed decisions denying his applications. In 2005 his most recent application was to develop 840 residential units, designating 252 of those for affordable housing.

During an appeal of a decision that denied parts of that application, the Superior Court in 2011 ordered the Zoning Commission to review its regulations governing affordable housing districts.

Last June, the developer requested the Water and Sewer Commission to confirm the town's sewage capacity for the development, as described in the notice of appeals.

In a Dec. 21 summons, the developer took issue with the zoning commission's decision to require a 150-foot buffer between the developments and tidal wetlands and watercourses.

"We're disappointed we had to appeal the matters, but we feel we had good reasons to do each appeal," said Landmark attorney Timothy Hollister of Hartford.

The state Department of Energy and Environmental Protection has authority over tidal wetlands and watercourses, the document argues, so a zoning commission lacks jurisdiction over those entities and cannot require a buffer zone.

The developer further argues that the commission did not have the authority under the court decision to incorporate such a restriction or any new zoning text amendment.

In its court summons to the Water and Sewer Commission Dec. 28, the developer challenges the commission's determination last month that the town's remaining sewage capacity - between 130,000 and 225,000 gallons - could not support the developer's request.

The commission's Dec. 11 resolution stated the request for 118,000 gallons capacity per day is a "disproportionately large allocation of the Town's remaining sewage treatment capacity..."

The applicant argues the town has a sewage capacity of 309,000 gallons and that the commission has requested 1.5 million additional gallons of capacity from the New London wastewater treatment plant that East Lyme uses, according to a Dec. 28 notice of appeal.

The notice further states that the "Commission's denial is not based on any objective, written criteria that a water pollution control authority is legally authorized to apply to a sewer application, but instead is based on its subjective preference for certain uses of land."

First Selectman and Water and Sewer Chairman Paul Formica said the commission made its decision based on "an extraordinary amount of testimony and facts" at several public hearings that determined the town had insufficient sewer capacity for the development at this time period. Should the town's sewer capacity change in the future, he explained, the applicant can re-apply.

"It is the applicant's right to apply, as well as appeal," said Formica. "We encourage the process and at this point stand by the commission's decision."