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Appellate Court Won't Grant Landmark Appeal Of Superior Court Judge's Ruling

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East Lyme — The State Appellate Court will not grant Landmark Development Group an appeal of a Superior Court judge's ruling that upheld a decision by the town's Zoning Commission.

In a decision issued last Wednesday, the court rejected the company's petition for a certification to appeal.

The decision essentially closes Landmark's lawsuit against the town for its denial of the developer's first affordable housing application, in June 2002.

A federal discrimination lawsuit, alleging that the denial was racially motivated, is still pending.

"We just hit a home run," First Selectman Wayne Fraser said by telephone Monday afternoon, minutes after receiving the news from the town's attorney, Edward O'Connell.

Fraser said the town spent close to \$150,000 defending the lawsuit.

"We were confident that the court system would uphold us," Fraser said. "Hearing the ruling is just tremendous news for us."

The first application by Landmark's owner, Glenn Russo, was to build an 894-unit housing complex with a number of affordable housing units in the Oswegatchie Hills. Landmark owns 85 acres in the Oswegatchie Hills and has an option to buy two adjacent parcels that comprise the remaining 151 acres where the company wants to build houses.

Russo's attorney, Michael Zizka, said Monday that he was not surprised by the Appellate Court's decision. Zizka said that because the state law on affordable housing says an application is not bound by the town's existing zoning regulations, the court likely determined that an appeal was unnecessary for the applicant to continue.

Russo currently has a second housing application pending before the town. The new plan calls for phased development, starting with a 352-unit housing complex, of which 120 units would be deemed affordable housing.

The zoning commission closed the public hearing portion of the application Nov. 9 and has 65 days to render a decision.

Russo had argued in the lawsuit in Superior Court that the commission used false information about the town's water and sewer systems when denying Landmark's first application. The commission said the town's water and sewer systems could not serve the hills area.

Russo said on Monday that he was disappointed the Appellate Court would not hear the case, but that his second application addresses the issues that the commission used in its denial. Specifically, he said, he addressed the issue of whether the land falls within the town's sewer shed and whether the land was designated for open space in the town's Plan of Conservation and Development.

"The denial of the last application and the ruling of the (Superior Court) judge against us was based on false information, which has subsequently been corrected," Russo said, "and we think the second application will be approved either by the town or by the court."