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Oswegatchie Hills Showdown: Preservation or Development?

By Allison Frank

Day Staff Writer, East Lyme/Salern

Editor's Note: In an occasional series on Oswegatchie Hills, The Day looks at attempts over the last 30 years to preserve the property and the different proposals owners have made for the land. The property, seen alternately as a spot prime for development or preservation, is at the heart of two lawsuits.

East Lyme - Nearly every evening for the past 42 years, Fred Grimsey and his wife have watched the Oswegatchie Hills fall asleep. From their living room overlooking the Niantic River in Waterford, they sit on leather couches and look through back windows at the water, now covered by ice and blanketed with snow. They marvel at the pinks, the blues, the dusky violets in the sky as the sun sets over the hills' wooded landscape, perched above the river's west bank.

The roughly 800-acre woodland spans Niantic and Waterford. The portion of the hills lining more than a mile of the waterfront has escaped development, save for a cluster of houses in the northwest corner and single-family homes along Oswegatchie Hills and Quarry Dock roads.

"I always said that I wonder when they're going to get over there and rape it," Grimsey said of developers eyeing the prime waterfront property.

Grimsey, a retired Connecticut College professor and Electric Boat engineer, is president of a local environmental group with about 40 members formed to protect the river and the hills. He knows that some development in the hills is inevitable, but he says he hopes it will not come at the expense of polluting the river and destroying the ecosystem.

"There's so much ledge and outcropping," he said. "The best use would be a nature preserve, or a lodge with educational programs for kids."

Today the property is at the heart of two lawsuits, one in federal court and the other in the state system. In the state case, a developer wants to reverse a decision by East Lyme's Zoning Commission denying his proposal for a housing complex with some affordable units on roughly 230 acres along the waterfront. The developer, Glenn Russo, head of Landmark Development LLC of Middletown, also recruited high-profile civil rights attorney John C. Brittain to launch a separate, federal discrimination lawsuit against East Lyme and several town officials.

The federal case claims the commission denied the affordable housing proposal to prevent African-Americans and Hispanics from moving into town. The town has filed a motion to dismiss that federal case and is preparing to defend the state lawsuit in an affordable housing appeals court this winter.

Grimsey knows that determining the use of the land is not in his hands. But through Save the River/Save the Hills - the group he founded in 2001 - he hopes to affect the outcome of the state case. He plans to apply for intervenor status, which would allow Save the River/Save the Hills to file motions and present testimony on its environmental concerns. The group has started a legal defense fund to cover expenses for that possibility. And if Landmark and its real estate subsidiary, Jarvis of Cheshire LLC - managed by Russo's wife Alicia - win the state appeal, Grimsey said, Save the River/Save the Hills will sue them in turn.

The legal battle over the hills could have been avoided, local environmentalists and residents say, if either the town or the state had purchased the land to preserve as open space. But negotiations over the years between the town and the landowners, and the state and Landmark failed to reach an agreement on preservation.

The town had a chance to buy the land in 1987, when it received a \$1 million state grant to help with the purchase. At the time, the late Phathon Matthews owned more than 150 acres in the hills and was asking the town for \$2.5 million for his land, managed under the name of Sargents Head Realty Corporation.

The town failed to use the grant, however, so the state repealed it in 1989. Matthews withdrew his offer that year, citing negative publicity.

First Selectman Wayne Fraser, who took office in 1997, blames his predecessors for dropping the ball. "The town made a huge mistake," Fraser said in a recent interview. "If we had more preparation back then, (the grant) would have given us a great opportunity to preserve" the land.

Fraser and town officials under previous administrations have tried to curb development in the hills. The Planning Commission has consistently recommended in plans of development dating back to 1968 that the property be preserved as open space. The East Lyme Land Conservation Trust currently owns more than 100 acres in the hills, and conservation easements blanket at least another 45 acres. Fraser said the town purposely did not extend sewers to the site over the years to discourage development there.

The town in 1989, under former First Selectman Dennis Murphy's administration, formed an Oswegatchie Hills study committee to discuss potential uses of the land and to draft regulations to govern it. Murphy requested an environmental review of four parcels in the hills, three of which comprise the roughly 230-acre site that Landmark wants to develop. Those three parcels include:

- * About 113 acres owned by the Matthews family through Sargent's;
- * Another 29 acres owned by Sargent's; and
- * 86 acres now owned by Landmark through its subsidiary Jarvis.

When the late David Cini took office in 1990, he met with Phathon Matthews to discuss preservation of land along the Niantic River. Matthews asked Cini to include him in future plans to protect the waterfront. "As you certainly know, I have spent 65 years of my life on the river," Matthews wrote to Cini in February 1990, "and presently own a very large amount of the waterfront, for which I am so anxious to protect."

Matthews died in 1994, and Cini died two years later while in office. Matthews' widow, A. Cynthia Matthews declined to be interviewed for this article.

The Matthews family began acquiring property in the hills in the 1950s.

Landmark obtained its 86 acres by foreclosing in 2000 on a parcel that had belonged to other people. By the time Landmark entered the picture, the Zoning Commission had rezoned the hills to three-acre lots to restrict development. And in 1999, the commission increased the lot size to five acres and limited the type of development to single-family homes, or small business such as inns by special permit. However, the commission was forced last year to revert to three-acre zoning after an appeal of the 1999 decision won in court.

When Fraser took office in 1997, preserving Oswegatchie Hills was among his top priorities. He wrote to Gov. John G. Rowland in 1998, pitching the property as a potential gem for state land preservation.

Rowland had just proposed spending more than \$160 million over five years on land acquisitions throughout Connecticut. Fraser told the governor that the hills could be a link in the Route 11 greenway - a corridor of open space - and could be used as a nature preserve with hiking trails.

Matthews' real estate agent followed up with a letter to Rowland's office listing the price of Sargent's land as \$1.9 million. Rowland told Fraser the state wasn't interested.

The DEP had reviewed the property for the state Recreation and Natural Heritage Trust program, he said, but decided the property was overpriced and unsuitable for its needs. Rowland advised the town to apply for a grant through the state's open space program, which helps municipalities buy land to set aside for recreation and conservation. The town didn't take his advice, Fraser said, because it couldn't afford the property even with the help of a grant.

In 1999, however, the DEP changed its mind about Oswegatchie Hills. DEP Commissioner Arthur Rocque Jr. told Fraser his agency was interested in acquiring several vacant parcels in the hills through the heritage trust program. That program, Rocque said, had "ample funds for the purchase of such a valuable piece of property."

The DEP offered to buy 143 acres from Sargent's, Rocque said in a letter to Fraser, but the property was tied up in options to Landmark, which prohibited the Matthews family from considering the state's offer. On Sept. 15, 1998, Sargent's signed an agreement with Russo, of Landmark Development, to sell the developer 150 acres in the hills, including the 113.5 acres at 23 Calkins Road and the 29-acre parcel on Quarry Dock Road.

Russo, in a recent interview, said he still has a contract to purchase the property, which he called an ideal

site for affordable housing, because "it's close to the highway and to the commercially zoned areas of East Lyme."

Russo didn't want to build affordable housing when he first approached the Zoning Commission in 1999 with a development proposal. He pitched a golf course and senior citizen community for the waterfront property, but the commission denied the plan, saying, among other things, that chemicals used to maintain the greens would seep into the Niantic River.

Russo returned with a second idea to establish an Affordable Housing District in Oswegatchie Hills. He presented the commission with a plan for 894 homes, 30 percent of which would be so-called affordable units. Affordable housing is available under state law to people who earn between 60 percent and 80 percent of a town's median income.

The commission denied the proposal in June 2002, saying that the town's sewer system could not be extended to the site and that the land could not support such a high-density development.

Landmark's lawsuits charge that at least a portion of its property lies within the town's watershed and is fit for sewers.

The failed attempts to develop the property frustrated Russo and the Matthews family. William Matthews, of Boston, said during a public hearing in March 2002 that his family has the right to benefit economically from their land.

"We have this valuable piece of land with which we can do little, and with which the town feels we should do nothing," Matthews said. "If it's worth as much as it's been made out to be, the town should have acted more forcefully to acquire it."

Fraser said the town tried to work with Russo on a deal with the state to preserve the land as open space. While the town maintained it couldn't afford the property, the state pursued deals between 2000 and 2001 to buy property from Russo for as much as \$2.5 million.

DEP appraised 423 acres in the hills at \$2.1 million. The land included Landmark's 86 acres, the two Sargent's parcels, and 194 additional acres that Russo used to hold options on.

Russo said the property was worth more than the appraisal. He countered by offering the state 229 acres for \$5.9 million. The DEP declined, and negotiations fizzled. A DEP spokeswoman said the state is no longer looking at the land.

As the battle over the hills heads for court, environmentalists like Grimsey are working to raise awareness for their campaign. Save the River/Save the Hills has been joined by the Friends of the Oswegatchie Hills Nature Preserve, a group named for a vision of what should be built there.

On a recent evening, as he sat in his wood-paneled living room, Grimsey thumbed through newspaper clippings and copies of documents about the hills. He said he's saddened that an environmental issue has turned into a fight over racial equality and affordable housing in East Lyme.

"I've seen some beautiful falls," he said, gesturing to the window at the darkening landscape across the river.