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“Substantial Public Interest”

A judge shoots down a developer’s attempt to exploit affordable-housing law and make a killing building high-density housing in Oswegatchie Hills.

Judge Barbara Quinn has clarified a crucial point in her decision against the developer who wants to build high-density housing in the Oswegatchie Hills section of East Lyme. Affordable housing is a phony issue in the matter. Judge Quinn found after hearing from both sides that there is "a substantial public interest" in preserving the area as open space, and that this interest outweighs the public's interest in introducing more affordable housing into East Lyme. Landmark Development Group, in its most recent attempts to build in Oswegatchie Hills, has been exploiting the state's affordable-housing statute by proposing to build a third of the units as affordable rental housing. The remainder of the 854 units on pristine land overlooking the Niantic River would be, well, not so affordable. The law places the burden of proof upon the town to show that its reasons for turning down an affordable-housing development outweigh the public interest in affordable housing. Judge Quinn determined that they did.

Would that land developers listened to reason more than money. But with so much potential profit at stake, it doesn't appear that Landmark and its principal, Glenn Russo, are going to let this substantial setback drive them away. But Judge Quinn's decision does sharpen the handwriting on the wall, and it clearly favors the town in its battle to thwart Russo's plans to build hundreds of housing units above the banks of the Niantic River. It ought to put to rest the developer's argument that the town is using its zoning powers to keep poor people out of town, which is the basis for a federal civil rights lawsuit the developer has sponsored against East Lyme. First Selectman Wayne Fraser has properly characterized that tactic as frivolous. It is a ridiculous assertion that the town dreamed up its environmental case against Landmark to keep poor, minority families out of the town. The town has been campaigning for nearly 40 years to preserve the land, and East Lyme has been joined by Waterford, the regional Council of Governments and the state in that effort.

What Russo wants to do, even on a scaled-back basis, is contrary to the state's Plan of Conservation and Development, which target the undeveloped expanses of the Oswegatchie Hills for open space preservation. The state once agreed to grant the town \$1 million toward the cost of buying the land for open space. Nobody could reach an agreement over price in more recent negotiations (Maybe this most recent development will cause the parties to rethink the asking price). "The lengthy history of preservation efforts alone makes it apparent that the area has been under consideration for conservation due to its unique features for a long time," Judge Quinn wrote.

Revised plan doomed

Landmark has a revised plan before the Zoning Commission, a phased plan beginning with 354 units. That plan doesn't have any better chance of succeeding, given the town rationale for turning down the first plan, which reasons were upheld by Judge Quinn: the town can't extend water and sewers to the development because its capacity in both cases is limited; it has obligations to already developed areas of town; because the state disapproves of it; any such dense development would threaten the fragile ecosystem, and state and local plans call for conserving the area as open space. Mr. Russo may have unlimited patience, determination and money to continue fighting. The prize in that quest is made all the more valuable by the shrinking supply of undeveloped waterfront property and growing market for it among the wealthy. But fortunately, there are protections in place for the Oswegatchie Hills. And Mr. Russo isn't going to get away with posing as a champion of social justice to make killing at the expense of the environment.