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Panel Rejects Application For Oswegatchie Hills Plan-EL Zoning Commission unanimously turns down Landmark LLC proposal

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East Lyme — The town's Zoning Commission on Thursday night unanimously rejected a controversial application for 352 units of housing in the sprawling Oswegatchie Hills woodlands alongside the Niantic River.

But, unlike its previous denial of a similar application, the commission's decision left open the possibility that a portion of the land could be developed.

The application was for a phased development by Landmark LLC, starting with the 352 units. Affordable housing would comprise 120 units, or 34 percent of the development. The affordable housing would be rental apartments near the entrance of the development, with market-rate condominiums for sale in an opposite corner near the Niantic River and Latimer Brook. Landmark owner Glenn Russo of Middletown said after the decision he would appeal it in court.

“It's obvious to me and has been obvious to the state of Connecticut for some time that towns like East Lyme do not want the type of people who live in affordable housing units to live in their town,” Russo said. “That's why the state of Connecticut felt compelled to create an affordable housing statute to give the state the right to oversee and review decisions made by local boards.

“We intend to use that review process through an appeal of the zoning commission's denial.”

The zoning commission divided the lengthy denial into three segments, each with its own list of reasons. The sections include an amendment to the town's zoning regulations; a zone change request; and an affordable housing application.

Among its reasons to deny, the commission said the development would “unreasonably” pollute the hills; that water and sewer service are not available and that on-site septic is an unacceptable alternative; that there is no right of way allowing Landmark access to the proposed development; and that the affordable housing is different from and “less desirable” than the market-rate condos.

“As we sat here for six public hearings, it became very clear that it's the wrong development on the wrong piece of land,” said commission Chairman Mark Nickerson. “It's an intense development. It would represent, if not the biggest development in East Lyme, one of the biggest developments, on one of the most sensitive pieces of land. It just doesn't add up.”

Nickerson added, “This puzzle piece didn't fit in this puzzle here. That's not to say that this piece, affordable housing, doesn't fit in East Lyme, because it does. ... We do want affordable housing in East Lyme, but this land is too precious. It needs to be preserved.”

The zoning commission said Thursday night that if Landmark reapplies for a zone change, it should restrict its application to the portion of the site where water and sewer are available.

That was a marked difference from the decision on Landmarks' first application, in which the commission said sewer and water were not available on any part of the land. That application was for a change of zone and included plans for 894 units, of which 280 were designated as affordable. It was denied on June 26, 2002.

The commission also rejected a modified proposal by Landmark in July 2002. Russo appealed the decisions to the state Superior Court, which upheld the commission's decisions in a ruling issued last September.

Last September, during the hearings on the most recent application, an employee in the state Department of Environmental Protection wrote a letter concluding that the property is partially within the town's sewer shed.

Dennis Greci, a supervising sanitary engineer with the DEP, wrote that about 42 acres of the proposed development “lie within the proposed sewer service area known as Golden Spur...” Greci said that meant about 24 proposed residential units would receive sewer service.

In a November letter Greci also disputed one of Russo's main arguments by writing that the property outside the sewer shed cannot hook into the service. Greci also refuted Russo's claim that he has a right of way to the sewer because some of the property proposed for development abuts land that falls within the sewer shed.

In Connecticut, an affordable housing application is not subject to the same rules as other applications. The onus is on the town to prove that the need to preserve the land is greater than the good that would come from building affordable housing.

Russo said Thursday that a new affordable housing district regulation enacted last year by the town is discriminatory because it requires an applicant to prove that sewer and water are available.

“This commission has approved multi-family developments on community septic systems,” he said. “We are proposing a multi-family unit on community septic. The only difference between multi-family units on septic systems that they denied and multi-family developments that they approved are the people who live in the units.”

Russo still has a federal discrimination lawsuit pending against the town, the zoning and the water and sewer commissions, and four town officials. In it, he claims that the denial to allow the development of affordable housing was racially motivated.