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Russo Loses Oswegatchie Hills Appeal

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East Lyme — For the second time in six years, a Superior Court judge has rejected an appeal by Glenn Russo, the developer who has tried for years to build affordable housing condominiums in the Oswegatchie Hills.

Last Friday, New Britain Superior Court Judge Eliot Prescott ruled in the town's favor on a 2005 appeal brought by Landmark Development Group. The real estate company, which is headed by Russo, was seeking a court decision to overturn the East Lyme Zoning Commission's initial rejection of his application.

"The case," Prescott noted, "highlights the sometimes competing public policies of developing and maintaining affordable housing and preserving and protecting Connecticut's fragile natural resources."

"In this case, the public policy of encouraging the development of affordable housing must yield in light of the unique and important environmental setting of the property sought to be developed," Prescott wrote in his decision.

"That's great news for the town," said Mark Nickerson, the commission's chairman. "The Zoning Commission works very hard in its deliberations, weighing all the evidence, and we're pleased that the judge came to the same conclusion as we did."

First Selectman Paul Formica said the judge's ruling is "certainly a good sign," and that the Oswegatchie Hills ought to be preserved, not developed.

"We are for affordable housing, just not on that piece of land," Formica said Tuesday.

Russo has had four various affordable housing plans rejected by the commission since 2002. He has appealed each rejection in court, with two appeals currently pending. He has also filed a federal civil rights lawsuit against the town.

"Obviously we're disappointed we didn't win on all of the points we tried to make," Russo said in a phone interview Tuesday. He added, however, that he believes the ruling bodes well for his pending appeals.

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Landmark's first application to develop condominiums in the Oswegatchie Hills was submitted December 2001. The zoning board denied the application in late June 2002.

The commission cited five reasons in its denial. The proposal wasn't compatible with local and state plans of development, which included protecting the area as open space. It had inadequate water and sewer for the proposed density of the project, the commission determined, and could potentially damage the ecosystem of Long Island Sound and the Niantic River. They also cited traffic concerns.

Landmark revised its application and resubmitted it in July of that year. The commission rejected the amended plan, saying it did not sufficiently resolve the initial problems. Landmark filed an appeal in October 2002 in Superior Court over that rejection.

On Sept. 7, 2004, another New Britain Superior Court judge, Barbara Quinn, upheld the commission's decision on the first application from Russo, citing the same concerns that the zoning board listed in its decision.

Simultaneously, Landmark submitted a new application, the one that Prescott ruled on Friday, which the judge called “a point of vigorous dispute by the parties from the outset.”

The new proposal did not, in its own terms, seek any amendments from the commission, but was submitted rather as an affordable housing application under the state statutes that provide for that type of housing.

The affordable housing laws are meant to “assist property owners in overcoming local zoning regulations that are exclusionary,” according to Prescott's decision.

State law recommends that at least 10 percent of the housing stock in a municipality be considered affordable, defined as being within the financial means of people who earn 60 to 80 percent of the median town income. East Lyme has 4.8 percent affordable housing, and the majority of that serves as elderly housing.

And though East Lyme is subject to those laws, Russo's plan would be a detriment to public health because of the inadequate sewer capacity for the proposed density and because there has been “a long standing public interest in preserving (the land) as open space,” Prescott's decision stated.



Developer Glenn Russo has been trying for years to build affordable housing on property he owns in the Oswegatchie Hills, but his applications so far have been rejected by the town. He has appealed two of the rejections, but was told by a judge Friday that the second appeal was being denied.