

Landmark Development Sues East Lyme Zoning Commission, Again

The developer argues that the zoning commission overstepped the bounds of the court's mandate when it adopted new regulations that included a 150 foot buffer zone requirement for wetlands and watercourses.

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It wasn't exactly the holiday gift that East Lyme Zoning Commission members had been hoping for but it wasn't perhaps a huge surprise when Town Zoning Official William Mulholland handed out copies of a new lawsuit filed by Landmark Development Group LLC and Jarvis of Cheshire LLC at last night's Commission meeting.

Landmark has sued the town numerous times appealing a variety of decisions that have blocked [its 12-year-long effort to develop a housing estate on the 236 acres it owns off Caulkins Road](#) in the Oswegatchie Hills area of East Lyme.

Ironically, this latest lawsuit stems from [new regulations that were adopted by the Zoning Commission on December 6, 2012](#), under orders from Superior Judge Stephen Frazzini following a successful appeal by Landmark of a previous commission ruling.

The Case At Hand

On October 31, 2011, the court ordered the Zoning Commission to adopt new rules governing affordable housing as per Landmark's request. The Zoning Commission did as the court asked but with one exception. It opted not to reduce the size of the buffer zone it required for developments near wetlands and water courses.

"Notwithstanding the express remand order, and over Landmark's objection, the Commission adopted as part of the zoning regulation text amendment the following ... A 150 foot non-disturbed buffer shall be required from tidal wetlands and watercourses," Landmark's suit states.

Landmark's lawsuit alleges that the commission's decision to adopt that particular rule "is arbitrary, illegal, in abuse of its discretion," because it "is not authorized by and exceeds the scope of the Landmark remand order."

The suit further claims that "a zoning commission does not have jurisdiction under the General Statutes to establish any regulation with regard to tidal wetlands or watercourses" or "to establish a 'non-disturbed buffer' from tidal wetlands or watercourses."

That, Landmark states, falls within the exclusive authority of the Connecticut Department of Energy and Environmental Protection. Landmark concludes that the buffer zone requirement "imposes a substantial, substantive restriction on the proposed site development plan that will adversely impact the proposed affordable housing development."

More to Come

As this is pending litigation, no one from the Zoning Commission would comment last night. When the new regulations were adopted on December 6, however, commissioners were cautioned that wetlands are typically regulated by the state.

Zoning commissions, however, are entitled to consider the environmental impact of potential developments and do set regulations with that in mind. East Lyme's town attorney said at the time that he would be prepared to defend the commission's decision. The town has until January 29 to respond to the lawsuit.

The town, meanwhile, is bracing for a second lawsuit from the developer. Following the Water and Sewer Commission's December 11, 2012, [denial of Landmark's request for approval of sewer capacity](#) for its proposed development, Landmark's attorney Tim Hollister told the New London Day he would recommend that his client appeal that decision.