

July 19, 2024 - The Day

by Elizabeth Regan

East Lyme — There's was one thing the attorneys for the two sides agreed upon Friday morning during the civil trial in the lawsuit developer Glenn Russo of Landmark Development Group has brought against the Water and Sewer Commission.

Affordable housing expert Tim Hollister and East Lyme Town Attorney Mark Zamarka both put it this way: "Mr. Russo has been trying to develop this property for a long time."

Russo's most recent proposal calls for 840 units in 24 buildings, which would cover about 36 acres of his 236-acre spread off Calkins Road. Russo told New London Superior Court Judge James Spallone that he bought the property, which includes about a mile of waterfront land on the Niantic River, because it was valuable. Environmentalists over the years have positioned the site as invaluable to an ecosystem that feeds into Long Island Sound. In the latest legal showdown in more than 20 years of litigation, Russo was trying to convince the court that the sewer commission was not justified when it created a resolution adding restrictions on who qualifies for access to the public sewer system.

A key question has been just how much of the long, contentious history is admissible in a court case that involves what Zamarka described as a narrow question. "Did the commission have a reasonable basis for enacting this resolution?" he asked. "Anything besides that is irrelevant." But Russo, who purchased the first portion of the land in 2000, laid out a timeline through questioning from his lawyer that suggested the town since at least 2001 has been actively trying to quash his ability to develop the property. He pointed to documents he found when poring through files in the Town Hall, including minutes from two conference calls in 2001 involving an attorney, then-First Selectmen Wayne Fraser, and the leaders of the planning, zoning and public works departments.

Hollister submitted a page from the minutes detailing "potentials" when it came to denying any development applications that might come the town's way. Russo at the time had an option to buy the remainder of the property, according to minutes from the conference calls. The participants in the minutes discussed the lack of water and sewer availability as a justifiable reason to reject a housing development in town, even if it is filed under the state's affordable housing statute that makes it more difficult for towns to say no to projects that help address the need for affordable homes. "Without water and sewer, cannot get affordable housing project through," the minutes said. Hollister described the document as "extraordinary." "Everything, in our view, flowed from this meeting," Hollister said of the ensuing two decades of litigation. But

the document wasn't admissible in court, according to Spallone. The judge agreed with Zamarka that there was no foundation for the single page that was out of context from the rest of the minutes and not authenticated by another party. The minutes, including the inadmissible page, were provided to The Day by Hollister.

The trial was originally scheduled for May, but was postponed amid a legal skirmish over what evidence is admissible and what's not. Spallone ultimately allowed a majority of the exhibits submitted by Hollister despite Zamarka's argument that previous applications for sewer capacity and zoning approval were not germane to whether the sewer commission was justified in making its resolution to ensure it can maintain an adequate sewer capacity. Hollister argued that the resolution, which gives a developer 12 months to apply for all the necessary permits and four years to complete the project, unfairly targets large-scale affordable housing developments that typically take longer than applications for smaller projects. He described it as impossible to get a project off the ground with those restrictions. He said no developer would be able to get financing for a project if the lender knows the sewer allocation could fall through mid-way through a project. "No developer's going to do this and no bank's going to finance it," he said. "It's absolutely impractical." Commission members in 2018 allocated 118,000 gallons of sewage per day for Landmark after a state Appellate Court decision forced the town to do so. Officials then and now have warned the town is close to reaching the capacity of a system designed to send 1.5 million gallons of sewage per day from East Lyme to New London's Piacenti Water Treatment Facility. Hartford Superior Court Judge Henry S. Cohn at the time cited the commission's decision to approve 160,000 gallons per day of sewer capacity for the luxury Gateway Commons development as evidence the town had more capacity than its resistance to Russo's project would indicate.

While the four-year expiration date in the contested sewer commission resolution doesn't apply to existing approvals, Russo said the change will prevent him from getting approval to build out the remaining 190 acres. "Eventually we would develop the entire parcel," he told The Day of his ultimate plan. Russo and Hollister argued the timing of the amendment, which was drafted and approved about one month after the commission was forced by the court to allocate the 118,000 gallons of sewage per day, proved the measure was retaliatory and targeted to prevent Russo from further developing the property. He declined to comment on whether he is in negotiations to sell the property.

*The judge will determine the next steps. We will keep you informed once we hear additional information.*