

[May 26, 2006]

Appeals court upholds dismissal of Pulte lawsuit

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A state appeals court this week has upheld but modified a lower court's dismissal of a suit brought by a developer wanting to acquire previously allocated sewer capacity for the proposed Windy Acres development in Clinton Township.

The decision, handed down Thursday, upheld the 2004 dismissal in state Superior Court of Pulte Homes' suit against the New Jersey Department of Environmental Protection and several residents and businesses opposed to the developer's pursuit of sewer capacity through the Readington-Lebanon Sewerage Authority.

Further, the decision also upheld but modified another part of the same suit -- the lower court's dismissal of Pulte's suit against Clinton Township, the Readington-Lebanon Sewerage Authority, Lebanon Borough and the borough's sewerage authority. Pulte will be allowed to reinstate its lawsuit if the state decides the proposed development is necessary for Clinton Township to meet its affordable housing obligation and the parties fail to agree on sewerage for the 292-acre Windy Acres site.

Thursday's decision comes after Pulte appealed the Superior Court ruling dismissing the suit. In the case, Pulte had argued that the DEP's reclassification of Rockaway Creek -- which runs along the property targeted for Windy Acres -- as an environmentally sensitive stream unable to support sewer discharge forced Pulte Homes to acquire sewer capacity through the Readington-Lebanon Sewerage Authority.

That sewer capacity had been previously allocated to property owners and local businesses, who said that depriving them of the sewer capacity would create "extreme financial hardships."

Of the 515 units Pulte has proposed for the Windy Acres site, 365 are to be marketed as age-restricted units for those 55 and older, and up to 90 are slated as affordable housing units to help the township meet its second- and third- round state affordable housing obligations.

Windy Acres would be east of Lebanon Borough, along the Rockaway Creek.

Recently, the Township Council and Planning Board voted to adopt a revised settlement agreement with Pulte Homes for the construction of the proposed development, called Traditions at Hunt's Mill.

Township officials have said they hope the settlement agreement will end decades of litigation between the developer and township over the development's construction.

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