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First snakes, now worries of overdevelopment stall construction at Barnegat Township's Ocean Acres

By ERIC SCOTT CAMPBELL Staff Writer | Posted: Sunday, May 16, 2010 |

Owners of 85 properties, plus a large developer, can't build on their land in the third phase of the Ocean Acres development in Barnegat Township.

Barnegat Township officials say they're willing to risk a lawsuit from the developer, Barnegat-based The Walters Group, rather than rezone.

What's the problem?

First, there was a two-year survey to determine whether the 38 acres in question were still a habitat for northern pine snakes.

Once the Pinelands Commission said the snakes were gone and the area could be developed, that obligated the township to "promptly" restore residential zoning, according to a 2004 contractual agreement between the township, the Pinelands Commission and the Walters Group.

But concerns about overdevelopment and complaints from residents led the township to deny the zoning change earlier this month.

The Walters Group says it plans to sue the township for breach of contract.

The standoff leaves dozens of properties in limbo. Eighty-five of the 135 lots in Phase 3 are privately owned and some landowners are getting anxious.

"That piece of property is no different than any of the pieces of property that are being developed currently," said Joe Vincent, who owns a Phase 3 lot and wants to build a home there.

There are a total of 1,300 building lots in Barnegat Ocean Acres. Since 2003, The Walters Group has built and sold 252 homes and owns lots for about 550 more in Ocean Acres, which began in neighboring Stafford Township in the 1960s. The 800-acre Barnegat project is planned in 15 phases, which are proceeding as fast as the homes can sell, with the exception of Phase 3.

Attorney Joe DelDuca said the firm expects to close on another 20 to 25 homes this year. In this real estate market, the company wants to offer buyers as many options as possible, he said.

Phase 3 “is as important as anything else we’re working on. This delay is not minor,” DelDuca said.

The company agreed to arrange installation of roads and utility lines, for which private owners in Phase 3 will have to reimburse the company at building time.

“We’re deeply under water on this. We’re going to seek monetary damages for the delay,” DelDuca said.

The pine snake

Prospective buyers never thought it would take so long.

Decades ago, surveyors divided 38 wooded acres off Nautilus Drive in Barnegat into 135 building lots — Phase 3.

But in 2003, when Walters found the northern pine snakes, Phase 3 became the eastern tip of an environmental preserve within Ocean Acres.

The company argued against that, saying that Phase 3 wasn’t a “critical habitat” for the endangered species. As part of the rare three-way contract with the township and the Pinelands Commission in 2004, Walters was allowed to spend another two years searching and counting snakes in an effort to convince the Pinelands Commission the snakes could live without that land.

Walters set 42 traps. From 2005 to 2007, it caught rodents, frogs, lizards and other snakes, but no northern pine snakes. Last October, the Pinelands Commission endorsed the results and notified the township that it had dropped its objections to development.

Committee members were aware of the 2004 contract and the prospect of a lawsuit from Walters when they voted not to rezone the land for development on May 3. They agreed with the outpouring of residents and lobbyists, particularly Theresa Lettman of the Pinelands Preservation Alliance, who said they had seen too much building in recent years.

As audience members applauded the committee, the company’s representatives left the meeting without a word.

Kathy Cruz, who lives on Mutineer Drive in Phase 1 of Ocean Acres, did not attend that meeting, but she was pleased with the result.

“At one point, this has to be stopped. How much can we keep cutting down trees?” Cruz said.

“And it has nothing to do with the fact that I’m next to the woods. I’m from North Jersey.”

Cruz and her family live bordering Phase 3, and its forested northeast corner is her back yard. An old snake trap still sits nearby, lidless and out of use.

“I respect the idea of protecting the snakes,” she said.

The developer and the Pinelands Commission both say northern pine snakes have left Phase 3, but some residents are suspicious of that assertion because of what happened in May 2007: Walters reported finding chemicals dumped in front of several snake traps, chemicals that skeptics thought were intended to deter snakes from entering.

After chemicals were found, the traps were quickly moved, said Charles Horner, the Pinelands Commission's director of permitting. The survey's results were not significantly affected, he said.

Tough decisions

Dorothy Ryan is the only Township Committee member on the Planning Board, the only committee member up for election this year — and the only member to vote on the side of allowing Phase 3 construction.

Ryan agonized over her decision for six months.

"I like open spaces, I don't like to see the trees coming down," said Ryan, who is finishing her first three-year term. "What really was the deciding factor was what was best for Barnegat. I didn't think it was worth the risk of being sued for probably a considerable amount of money.

"I hope I'm wrong," Ryan added.

Mayor Jeff Melchiondo said the threat of a lawsuit couldn't override his objections to allowing the development.

"I had a lot of concern about how the study was done," Melchiondo said, "and about the number of students — would there be another 200 to 300 kids in the schools?"

The mayor expects the township, the population of which was about 15,000 in 2000, to grow by 10,000 in the next seven to 10 years. Most of those would move into various parts of Ocean Acres.

When Ryan was asked what message the Phase 3 imbroglio would send to other developers looking at Barnegat, she replied, "If I were a developer, I'd be leery. I don't know how you couldn't be."

But Melchiondo suggested developers would recognize the uniqueness of the situation and not see Barnegat in a bad light. Township Administrator Dave Breeden agreed.

"We're not worried about that," Breeden said. "There will be plenty of developers looking to build in Barnegat in the years to come."

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