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Developer to Town: Let Us Build Homes On Conserved Lots

A developer is urging Barnegat Township officials to adopt an ordinance that would create a new zone in the Ocean Acres section that would make way for 135 new homes. Introduced last month by the Township Committee, the ordinance would redesignate 135 lots currently located in a residential conservation zone (RCV). The new area would be known as an overlay zone.

Joseph DeDuca, general counsel and a partner in Walters Homes, told members of the committee and the Planning Board at a special meeting last week that in 2004, the Township Committee adopted an ordinance that divided the Ocean Acres section into two zones: a RCV, where building is prohibited, and a residential highland zone (RHZ), where development is allowed only on lots that exceed 10,000 square feet.

At the time, the new conservation zone decreased the number of buildable lots from 2,000 to 1,250. He said the zone changes were created to protect a local population of northern pine snakes.

After the ordinance was passed, DeDuca said Walters Homes objected, and settled the matter by entering into an agreement with the Pinelands Commission and the township to allow an additional impact study of the 135-lot portion of the conservation zone. He said the commission in October 2009 ruled that the 135 lots covering 38 acres did not constitute a threat to the northern pine snake.

"The Pinelands Commission did not lightly let this go," said DeDuca. "It took them more than two years after the study was complete to make this determination that it did not constitute a critical habitat."

As a result, DeDuca said the developer plans to erect single-family homes in the overlay zone, which is located in an area bordered by Nautilus Drive, Avalon Avenue, Mutineer Drive and Viking Drive.

"Since this has been determined not to be a critical habitat for the pine snakes, Barnegat has an obligation to rezone it," he said. "This development would be consistent with the state and the county and township master plans. Now it is the time for you to honor that contract. It has been a very long time for us not to develop land we should have been able to develop."

Board member Frank Pecci said the study was flawed, noting that a letter from the U.S. Fish and Wildlife stated that chemicals such as naphthalene and chlorine had been found near some of the traps. These devices were set to help locate beds and nests of snakes.

"Those chemicals may have served as a false deterrent for pine snakes," he said. "That could be why there was such a small number of snakes recorded."

Deputy Mayor Al Cirulli said the mention of chemicals could be a "major stumbling block" in voting for the ordinance, which will be up for a public hearing at the next Township Committee meeting, on Monday, May 3.

"This really sticks in my head," he said.

Chuck Homer, Pinelands Commission director of permitting, said the traps were relocated to another area.

"The Pinelands Commission has jurisdiction over this area, not Fish and Wildlife," he said, adding that the source of the chemicals was never found.

Theresa Lettman, director for monitoring programs at the Pinelands Preservation Alliance, said the ordinance amounted to "illegal contract zoning."

"The PPA believes that Barnegat Township is under no obligation to amend the township zoning ordinance," she said. "A prior committee cannot bind the current committee to amend zoning and the master plan."

Lettman said the Planning Board is under no obligation to endorse the ordinance because the committee "cannot tell the Planning Board what to do."

"The board's obligations are set out in the municipal land use law, not any contract the committee made with a developer," she said. "There is no public benefit to rezone this land for development. Rezoning this land will only benefit a private developer, because one developer owns all but a handful of lots, and by now it may control all of those lots as well."

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She added, "This land still serves important environmental functions for wildlife and protecting water quality. For those reasons alone, Barnegat should not rezone the land for development."

— Eric Englund
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