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Elk Rapids: Development halted by Army Corps

Another Clous project is embroiled in wetlands controversy

Second of a three-part series

By
Record-Eagle staff writer

ELK RAPIDS - It sits like a monument to unresolved conflict - 20-plus acres of undulating, disturbed earth, overgrown weeds and water retention ponds, off Fourth Street in the village.

Developer Bill Clous' Elk Rapids Preserve housing project has lingered in this condition for more than a year, after the Army Corps of Engineers ordered work halted at the site in the spring of 2002.

Some environmentalists called site development there the largest wetlands fill in the state in recent years. Now comes the debate over whether the wetlands will be restored.

"Wetlands are what gives northern Michigan its character," said Vern Wolfgram, whose home is adjacent to the Preserve site.

"Wetlands are the filter that keeps our water clean," he said. "When they are gone, so is our water quality and the quality of life."

Whether the site even had wetlands - at least wetlands requiring regulation - is questioned by Clous and others at his Eastwood Custom Homes, which owns and is developing the Preserve, less than 700 feet from Grand Traverse Bay.

Eastwood officials cite a report from their environmental consultant, Steve Voice of Boyne City, that indicates no wetlands exist at the proposed 24-home site.

Army Corps officials, however, tested the property and determined it did have wetlands that fall under federal Clean Water Act regulations and require an Army Corps permit to fill or alter.

The developer has appealed the wetlands determination to the Army Corps divisional office in Cincinnati.

Eastwood administrative manager James Williams said the delay has caused the company financial hardship.

"We've got significant development costs that we're just having to sit on - and pay interest on - during this delay process," he said.

Clous recently told the Record-Eagle he planned on selling the Preserve lots for \$70,000 and \$80,000 apiece.

The property in question, in the southwest portion of Elk Rapids, remained undeveloped since the village was incorporated in the 1860s.

Interest in building on the property increased in the 1990s, and the state Department of Environmental Quality was asked to determine whether state wetlands filling permits were required there.

In a 1997 letter, DEQ analyst John Arevalo ruled no DEQ permit was needed, as the department had no jurisdiction over the area.

Contacted recently by the Record-Eagle, Arevalo said he walked only the property now known as the Capa Brand development, on the north side of Fourth Street, not the Preserve property south of the street. The smaller Capa Brand development, also being done by Eastwood and also stalled after Army Corps intervention, is owned by Glen and Myrna Howse.

Though the law states the DEQ has jurisdiction over wetlands within 1,000 feet of the Great Lakes, Arevalo indicated that was not the foremost consideration in the state's decision.

Instead, state officials focused on the evidence of historical draining of the site through created ditches, and whether the fact that some of the drainage to Grand Traverse Bay went through enclosed pipe met the requirement for "a surface water connection" to the Great Lakes.

Arevalo said he does not dispute that water flows from the Preserve site into Grand Traverse Bay.

"We administer laws," he said. "The number one question is, 'Do you have jurisdiction at the site or not?' "

He added that the issue for the DEQ to decide was whether surface water contained under a pipe for several hundred feet constituted a surface water connection.

"Because of the amount of enclosure that is there, we determined it did not," he said.

The Army Corps became involved in the Preserve controversy by a fluke. In early 2002, Eastwood employees asked village officials if they could use dredged materials from a village harbor project as fill at the Preserve. The DEQ gave its approval but the Army Corps was never asked.

Because earlier permits had indicated the "spoils" from the dredging would go to a nearby landfill, the Corps ordered a halt to the dredging project and that the spoils be taken to their originally agreed-upon destination.

Elk Rapids resident Greg Reisig, a vocal opponent of the Preserve wetlands fill, said the Army Corps seemed to take a much keener interest in the site after the dredging spoils diversion.

"That raised a lot of red flags," he said. "It was totally improper."

The federal Environmental Protection Agency then ruled that the Army Corps, not the state DEQ, had jurisdiction at the site. Then came the Corps' evaluation of the property, and the determination that wetlands connected to the Great Lakes exist there.

"The Corps has really dug its heels in on enforcement of the Clean Water Act," Reisig said. "They're not just going to roll over on this deal, at all."

What will happen now? All sides appear to be in a wait-and-see mode. The appeal to the Army Corps' Cincinnati office is pending and could take "months or years," said Scott McEwen of the Tip of the Mitt Watershed Council.

Williams, the Eastwood manager, indicated litigation may ultimately be the only way for the developer to recoup its costs.

And if the Army Corps decision is upheld?

"Everything is after the fact, because the wetlands have already been filled," Reisig said. "What we're asking for is a complete restoration of the wetlands, and that stiff fines be imposed."

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