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## Town, NCES butt heads in court

By REBECCA BROWN  
COURIER STAFF

**NORTH HAVERHILL**—It could hardly be called scintillating court room drama. But in over six hours of testimony Monday, opposing sides squared off on the landfill dispute that could have great consequences not only for Bethlehem but for the region.

Judge Edward Fitzgerald, Jr. presided over the case that even Bethlehem's attorney, Phil Waystack,

*'Gould sought to build the case that Bethlehem unfairly and illegally singled out the NCES landfill in a series of townwide votes.'*

called "paper heavy." According to Waystack, the court may take several weeks to decide the issues presented Monday.

However, three legal counts were split off from the proceeding and may be heard in a separate trial. According to Waystack, lawyers on both sides agreed that issues of due process, the town's below market rate trash disposal fee, and "taking" of property were too complex to prepare in the 30 days allowed by the court.

Furthermore, Waystack presented motions to dismiss several counts in the NCES complaint against Bethlehem. NCES attor-

neys were given 10 days to respond.

In dispute is a 3.5 acre expansion owner North Country Environmental Services started building at the Trudeau Road landfill in September. With a state permit in hand, NCES commenced construction, even though Bethlehem residents voted as recently as last March to prohibit landfill expansion.

### Legality of zoning at issue

NCES claims Bethlehem's zoning law prohibiting private landfill expansion is illegal. The company further claims it won local approval to expand years ago, when prior owners first gained subdivision approvals, then a variance, and finally a special exception to operate a landfill.

The town counters that its zoning laws are legal, and that previous approvals were always for a finite number of acres, now about to be filled to capacity with trash.

Each side ended up suing the other. In earlier court rulings, the cases were consolidated, and parts of each case were presented Monday.

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### Three witnesses tell story

Three witnesses were called to present technical and historical interpretations of the 22-acre landfill, which started in 1976.

Scott Shillaber, a principal of Sanborn, Head Associates, a civil engineering firm directing the landfill construction, was called by NCES attorney Bryan Gould. Shillaber described the landfill design and state approval process.

Bob Watts, manager of the NCES landfill, was called by Gould to describe his search through town files and the Grafton Country Register of Deeds, where he found plats showing planning board subdivision approvals dated 1983 and 1985. NCES considered these plats new evidence of town approval of the landfill, as each subdivision was clearly marked as for "use as a landfill."

Watts described the first landfill application in 1976 by original owner Harold Brown

to the town for a landfill on his 87 acres of land. A variance was granted, and with state approval, Brown started a 3.82 acre landfill in an old gravel pit.

NCES now claims that with that action, the town approved landfill use for all 87 acres.

Watts then described first the denial, and then the approval of a special exception for the next owner, Sanco, Inc., to expand the landfill. The zoning board reversed itself in 1985, according to minutes and depositions from an earlier legal case read by Watts, when members decided they could not "zone out" landfills.

### Landfill singled out

Then through Watts' testimony, attorney Gould sought to build the case that Bethlehem unfairly and illegally singled out the NCES landfill in a series of townwide votes. The 1987 town meeting vote prohibited the location of all but town-owned solid waste

facilities. In 1992, residents voted to prohibit expansion of existing landfills.

Gould also asked Watts to read passages complimentary of the landfill from the town master plan. Watts was also asked to describe the landfill operation's methods dealing with odor, "vectors" (a landfill term for animals and insects that can get into the trash), and water quality test regimens.

### Not only dump in town

In his cross examination of Watts, attorney Waystack succeeded in showing that the NCES landfill was not the only dump in town. The town dump on Prospect Street was still accepting certain forms of trash through the late 1980s. Under Waystack's questioning, Watts also acknowledged that NCES accepts trash from other states, including New York and Connecticut, as well as from North Country communities.

Bethlehem Selectman Norm Brown was called by Waystack

to present his carefully and tediously researched chronology of landfill events since 1976. Through this process, Waystack attempted to show that the variance and special exception had specific limits in size. However, one potentially revealing bit of evidence, believed to be an outline of the special exception written by Consumat-Sanco for use with the zoning board in 1985, was disallowed by Judge Fitzgerald because its origin could not be proved. The outline describes the special exception area as 14 acres. The final language of the special exception, and the 23 conditions later attached to it by the zoning board, do not contain a description of size.

### Town says size is limited

Brown went on to read from correspondence between the town, state and landfill owners over through the 1990s describing the town's contention that local approval is limited to the 22 acres about to be filled, and no more.

In his cross examination, attorney Gould hammered away at the issue of whether the town was trying to put NCES out of business in its votes prohibiting changes in zoning law in 1997 and 1998, and presently, when selectmen chose to sue the company.

Brown countered that the select board has a duty to act to prevent violations of its zoning ordinances.

Gould and Brown jostled on the issue of whether it is possible, under Bethlehem zoning, for a private landfill to win local approval for expansion. Is it possible, Gould later asked, for the town to locate a landfill next door to NCES and operate legally under town zoning? Yes, Brown answered.

Waystack also tried to enter as evidence a financial prospectus showing NCES parent Casella Waste Systems, Inc. as

a multi-million dollar public company, implying that shutting down the Bethlehem facility would not "put NCES out of business." Judge Fitzgerald upheld Gould's objection that the prospectus was not germane to the case at hand.

"There were no great surprises," Waystack said of the hearing after its conclusion. "It's a long story to be told."

Gould declined to discuss the case.

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TOWN: Bethlehem  
PROJECT: NCES Landfill Stage II  
LETTER/DATA/PERMIT/FA/OTHER