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Carroll Wins Landfill Appeal

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Email: "Carroll Wins Landfill Appeal"

CARROLL - The Town of Carroll has won an appeal to the Appellate Division, Fourth Department, and will no longer permit new landfills to operate within the town.

The court issued a ruling Dec. 31 in favor of the Town of Carroll, effectively overturning the previous state Supreme Court decision, which determined the town's 2005 Local Law Number 1 was invalid in relation to the landfill operated by Jones-Carroll Inc.

" We are very excited about it. We've been looking for this point for a long time and have been very patient. It's taken time, but we stuck with our lawyer and got the job done. You just have to have patience with things like these," Jack Jones, supervisor, said. "We've been going at this for probably five years."

The history of the Jones-Carroll Landfill stretches back to 1984, when Donald J. Jones and his wife, Carol L. Jones, purchased 50 acres of land in the town's agriculture and zoning district located on Dodge Road.

In 1989, the town's Zoning Board of Appeals granted Jones a variance to use the plot of land as a construction and demolition landfill. Records show four residents attended the public meetings, with no objections at the time.

Afterwards, the Department of Environmental Conservation granted Jones a permit to use less than two acres of the property as a construction and demolition landfill.

The DEC would again grant a permit for further expansion of one acre in 1996.

Active opposition by the town's citizens began when the town was informed Sealand Waste, of Rush, N.Y. intended to purchase the Jones-Carroll Landfill. Sealand Waste had also applied for a DEC grant to expand the landfill to the entire 49.5-acre property.

In 2004, Skip Axelson, a spokesman for the Carroll Concerned Taxpayers group, said that the expansion of the landfill would not just affect neighborhood residents, but it will affect the town as a whole. To properly voice their opposition, Axelson suggested attending town board meetings and a letter-writing campaign to "build a paper trail."

At the same time, Michelle Lingenfelter, a Dodge Road resident who lived next to the proposed site, expressed her opposition to the expansion.

"I don't believe anyone would want this in their backyard. When we built our house, right outside our door is what we came here for," Lingenfelter told The Post-Journal in October 2004. "Trees, bushes, the stream running through the property - this is beautiful country out here."

Sealand Waste had a special-use permit and a zoning variance, leaving residents to see the importance of zoning laws within the town. In October 2004, Greg Rabb, assistant dean of

social sciences at Jamestown Community College, said zoning laws are used to encourage development or protect a specific area in a town or village.

"In a rural community, you may want to protect agricultural land from being developed, protecting the environment, wetlands, swamps, forest," Rabb said. "Remove the zoning laws and the active citizen participation, citizens lose the ability to control what goes in their community."

ACTIVE CITIZEN PARTICIPATION

Active citizen participation increased, when more than 200 people attended the Sept. 8, 2004, town board meeting to voice their opposition to the landfill expansion. With each passing month, opposition to the expansion would continue to grow more vocal.

Steps to curb the expansion were discussed at a public comment session on Oct. 14, 2004, with Gary Abraham, an Allegany-based attorney, acting as limited council for Concerned Carroll Citizens.

Abraham, citing the additional authority that New York state towns have beyond zoning codes, implied that the town board should adjust the general code while Sealand Waste was waiting for the lengthy environmental quality review process to be completed.

In November 2004, the town board in the opinion of Paul Webb, town attorney, took the next step when then-Supervisor Steve Peterson announced the town would require Sealand Waste LLC to gain new special-use permits before expansion on the Dodge Road landfill.

The decision was made after a meeting Peterson had attended in Buffalo with DEC and Sealand Waste officials. At the meeting, Peterson learned of Sealand Waste intentions to turn the 50 acres of land into a non-putrescible landfill, capable of accepting pulverized asbestos, oil-contaminated soils, and medical waste in addition to construction and demolition debris.

When asked what the new zoning ordinances might entail, Peterson said, "I'd rather not predict. We've got to follow due process," he said. "We've got to do this right."

On Wednesday, Feb. 23, 2005, residents gathered at the Frewsburg Middle/High School to watch the town board unanimously pass an amendment to the town's zoning laws that eliminated landfills from operating by special-use permit and would allow no further expansion of current landfills.

According to the state Supreme Court, there are three sections to Local Law Number 1 of 2005. Section 1 of the 2005 law states that its purpose is "to eliminate the operation of sanitary landfills/demolition landfills in the Town's AR-1 zoning district."

Section 2 states the town's zoning law provides that "Sanitary landfill/demolition landfill is eliminated as a use allowed by special-use permit."

The third section of Local Law Number 1 of 2005 states that sanitary landfills or demolition landfills "operating under a permit issued by the DEC shall be allowed to continue without expansion, but absolutely no expansion of any landfill beyond the area and scope allowed under the operator's permit from the DEC as of the date of the local law shall be allowed."

In response to the amendment, Jones-Carroll's attorneys petitioned the state Supreme Court in Mayville, under Article 78 of New York Civil Practice Law and Rules. Appeals to New York courts under CPLR 78 often are attempts to cancel legislative or administrative acts on

technical grounds, approvals by wrong committees, not enough open hearing time after negative decision or failing to strictly adhere to decision making rules.

In September of 2005, the state Supreme Court issued its ruling - portions of Carroll Local Law 1 were invalid as related to the landfill operated by Jones-Carroll, Inc.

Webb made an appeal to the Appellate Division, Fourth Department, in early 2007.

After nearly five years of town board meetings and vocal opposition to Sealand Waste's expansion of the landfill, the Appellate Division ruled in a unanimous decision that the Supreme Court erred when it declared the local law invalid.

The Appellate Division concluded that the town had "rationally exercised their police power in declaring that landfills in AR-1 Zoning Districts should be eliminated and that Section 2 and 3 of the 2005 local law are reasonable measures to regulate and eventually eliminate non-conforming uses."

The Appellate Division also concluded that in adopting Local Law 1 in 2005, the Town of Carroll had fully complied with all aspects of the Environmental Conservation Law.

"Obviously it was important to the town and the residents that they had the local law upheld," Webb said Thursday. "The residents had the local law upheld. So from that standpoint, a lot of consideration by the Planning Board and the Town Board went into making a determination as whether or not landfills should be operated in that agricultural/residential district."

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