

## **Court Sides With Landfill**

Carroll Attorney Calls Case 'Unique'

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CARROLL - Even though the state's Court of Appeals has ruled in favor of Donald and Carol Jones in their pursuit to expand landfill operations, the argument whether they can do so seems far from over.

While the municipality's attorney said he does not think a landfill can be expanded due to a 2007 law passed by the town, the attorney for the Joneses called that argument "irrational."

"They're not going to be able to start up a landfill," said Paul Webb Jr, Carroll attorney in the matter. He said the town's 2007 waste disposal law would prohibit the landfill expansion planned by the Joneses. Even though that is the case, he questioned the court's Thursday ruling, saying he is having "a hard time" rationalizing what they had to say. Webb said in its decision the court compared the landfill, which puts things into the ground, with mining cases, where things are taken out of the ground. He therefore called the case "unique."

"It doesn't make sense," said Anthony Nosek, attorney for the Joneses, about Webb's view.

"You either have a property right or you don't," said Nosek. He said if the town takes the stance that the Joneses can't expand the landfill, he will amend the lawsuit and seek damages for the cost of the lawsuit, along with filing litigation regarding the 2007 law.

"It's just as unconstitutional," he said, adding he "can't imagine" that would be the town's stance. Nosek said he was willing to accept that the law argued in the first round of legal battles was passed "in good faith" by town officials if they thought they could enact it, but, he said the court told them no.

"We hold that the zoning ordinance at issue in this case, which restricted the development of landfills, does not apply," reads the courts' Thursday ruling about whether the Joneses could expand the landfill they operated in the town. The justices said the Joneses acquired "a vested right" to use the 50-acre parcel they have as a landfill for construction and demolition debris before the enactment of the zoning law.

In 1984, the Joneses purchased the 50 acres in an agricultural/residential zoning district. In 1989, the town gave them a special-use variance permitting the operation of a construction and demolition landfill when the Joneses obtained a Department of Environmental Conservation permit allowing landfill operations on a portion of the acreage. In 2005, the town adopted a zoning law prohibiting expansion of any landfill beyond the area allowed under the DEC permit.

"The town sought to prevent plaintiffs from using the remaining 47 acres of their property for landfill purposes," states the ruling.

Comparing the ruling to mining, the court's Thursday ruling states, "as a matter of practicality as well as economic necessity, a quarry operator will not excavate his entire parcel of land at once, but will leave areas in reserve, virtually untouched until they are actually needed." The ruling states, therefore, a quarry owner would not seek a permit for lands it did not intend to excavate immediately.

"We conclude that the C & D landfill in this case is sufficiently similar in nature to the quarries," the justices state, adding, "the owner of the landfill property can reasonably be expected to hold a portion

of the land in reserve for future expansion of that activity, just as a quarry operator may find necessary."

The justices' ruling reports even though a DEC permit covered only a limited area, that does not determine the Joneses' rights over the remaining 47 acres of the parcel.

The ruling states that in 1989, the town acknowledged there was no other reasonable use for the property by granting a variance that covered all 50 acres.

"This not only established that the landfill was a lawful use, it also gave plaintiffs a measure of security that they would be able to use additional acreage for the landfill operation as the need arose as long as DEC continued to issue the appropriate permits for expanded operations," states Thursday's ruling.

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