

## **Landfill Fight Not Over**

Carroll Attorney Taking Issue To State Supreme Court

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CARROLL - Carroll officials want residents to know their legal opposition to the Jones-Carroll landfill is not ending.

Although the state Court of Appeals recently ruled against a town motion to reargue a case it previously lost questioning zoning issues pertaining to the landfill, Town Attorney Paul Webb Jr. said questions pertaining to whether the landfill has to comply with a town law prohibiting landfills have not yet been addressed.

He recently asked the state Supreme Court to look at that issue, asking the matter be put on the court calendar, now that the litigation regarding zoning is complete.

Webb said representatives of the landfill previously asked state Supreme Court justices for judgement regarding the landfill prohibition, but, he said, that legal argument was put on hold while the zoning issue questioning whether the landfill was legally zoned was adjudicated.

Webb said a 2007 law prohibiting landfills and how that stands up against the proposed landfill will next be on the court's docket.

"Just because you have the right to have (a landfill), doesn't mean a municipality can't regulate it. We regulated it," Webb said, adding that regulation is independent of the zoning issue discussed in the previous case the town lost.

The town of Carroll, prior to enacting the 2007 Waste Disposal Law, determined that the groundwater and surface water pollution threatened the life and livelihood of town residents, Webb said. The town also determined that Chautauqua County had invested millions of dollars in the construction of solid-waste management facilities and could supply Carroll's needs for solid-waste disposal, said Webb.

Anthony Nosek, attorney for the Joneses, could not be reached to comment Tuesday.

The argument about the Joneses and what they should be permitted to do on the land they own began in 1984, according to court documents. The Joneses bought a 50-acre parcel in an agricultural/residential district in the town, with the town granting them a use variance in 1989 for the entire parcel to operate a construction and demolition debris landfill. A state Department of Environmental Conservation permit allowed them to use less than 2 acres for the landfill. They were later permitted to expand the landfill by 1 acre. The Jones-Carroll landfill, which encompassed a 3-acre section of a 50-acre parcel on Dodge Road, operated from 1989 through 2004.

The couple who owns the land entered into an agreement with Sealand Waste LLC in 2004 to expand the landfill: 37 acres would be used as a landfill, and the remainder would be buffer space and buildings. Sealand proposed to accept construction and demolition debris, along with other wastes including petroleum-contaminated soil, ash, slag, foundry sand and tire chips.

Residents voiced concern, and the Carroll Town Board passed an amendment to the town's zoning laws, and then a local law, prohibiting new landfills and the expansion of existing ones. The Joneses and their operating company, Jones-Carroll Inc., brought a lawsuit against the town questioning the zoning issue and won. Next, Webb has asked the court to consider the landfill prohibition.

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