

# **Decade-Long Battle Over Landfill Goes Back To Court**

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**ERIC TICHY**  
City Editor  
[etichy@post-journal.com](mailto:etichy@post-journal.com)

**CARROLL** — A decade-long court battle to re-open and expand a construction and demolition landfill in the town of Carroll will inch forward next month.

Arguments are scheduled to be heard Oct. 24 in the Appellate Division, Fourth Department in Rochester between the town and Sealand Waste LLC, a waste management company based in Rush, New York. For about 10 years, Sealand has sought to purchase and expand the former Jones-Carroll Landfill on Dodge Road with consistent pushback from the town.

The town is appealing a ruling earlier this year by the New York State Supreme Court that allowed Sealand — a division of Sealand Contractor Corps. — to intervene on a lawsuit filed by Jones-Carroll challenging a 2007 Waste Disposal Law. Sealand decided to intervene after Jones-

Carroll reportedly ran out of money to continue litigating merits of the law, which bans solid waste facilities within the town.

James A. Daigler of Daigler Engineering, a firm hired by Sealand Waste, is confident the appellate court in Rochester will rule in Sealand's favor, paving way for the lawsuit to be heard in state Supreme Court in November. He said the ultimate goal, of course, is for the purchase to go through and eventually expand the former Jones-Carroll site.

*"I do expect that Sealand will prevail so this can move forward,"* Daigler said. *"The judge already ruled previously that this law was unconstitutional, and we expect that he will rule the same way."*

Jack Jones Jr., Carroll town supervisor, is hopeful the court will rule in the town's favor. He said the town has probably spent upward of \$100,000 defending its decision to effectively ban waste disposal.

*"We have a board that feels this is the right thing to do,"* Jones said. *"We have a county landfill (in the town of Ellery) that already handles all of our needs and we don't feel there is a need for this one."*

The history of the landfill dates back to 1984, when Donald J. Jones and his wife, Carol, purchased 50 acres of land in the town's agricultural and zoning district. The

town's Zoning Board of Appeals granted the pair a variance to use the plot of land as a construction and demolition landfill. Soon after, the state Department of Environmental Conservation granted Jones a permit to use less than 2 acres of the property as a landfill, and another permit in 1996 for further expansion of 1 acre. After Sealand expressed interest in purchasing the site for expansion, town officials unanimously passed an amendment to the town's zoning laws that eliminated landfills from operating with special-use permits, and prohibited further expansion of existing locations.

Attorneys for Jones-Carroll petitioned the state Supreme Court in an attempt to cancel the amendment, which set off a decade of litigation between Jones-Carroll, the town and later Sealand.

Daigler said should the court of appeals side with the town and Sealand is not allowed to intervene on Jones-Carroll's behalf, Sealand intends to file its own \$23 million lawsuit. If that occurs, Sealand will claim regulatory taking, a legal doctrine in which private property is limited by government regulation causing economic harm.

The state DEC was expected to issue a public notice within the next couple of days regarding draft permits to operate the facility. Sealand completed an environmental permit application from the DEC and U.S. Army Corps of Engineers.

In a press release mentioning the permits, Daigler reiterated a Host Community Benefit Agreement, a document between a developer and community that lists specific amenities that will be provided should development move forward.

Benefits that Sealand said it will provide the town include the rehabilitation of Dodge, Wiltsie and Frew Run roads; quarterly royalty payments between 50 cents and \$1 for every ton of waste accepted for disposal; annual payments of \$153,000 to the town, which would increase to more than \$300,000 annually; and the funding of a Safe Kids Walk This Way pedestrian safety program for the Frewsburg School District.

The DEC will hold a public hearing to discuss the draft permits, at which time residents will be allowed to address concerns and submit comments.

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