

# Town Of Carroll Landfill Lawsuit Comes To A Close

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CARROLL – After a decade-long legal battle, the town of Carroll has emerged victorious in a lawsuit which, if lost, would have resulted in a 50-acre landfill in the town's agricultural and residential zoning district.

On June 11, the Court of Appeals ruled in favor of the town and denied creation of the landfill, operated by Jones-Carroll Inc. and its potential buyer, Sealand Waste. The town of Carroll can now enforce all of the provisions of the 2007 Waste Disposal Law and all litigation involving Jones-Carroll and the Waste Disposal Law has now been concluded with the Court of Appeals decision.

“This basically tells us there will be no landfill in the town of Carroll,” said Jack Jones, town supervisor. “This is a big victory for the town of Carroll, for Chautauqua County and in essence, the whole country. It shows that home rule does rule, and I think that is a good thing.”

Anthony Nosek, a lawyer from Cohen & Lombardo P.C. in Buffalo and counsel for Jones-Carroll said he was disappointed with the outcome.

“It sets an interesting problem because it makes a legal action illegal,” he said. “It will be interesting to see how this precedent will play out.”

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. Afterward, the Department of Environmental Conservation granted

Jones a permit to use less than 2 acres of the property as a construction and demolition landfill. The DEC would again grant a permit for further expansion of 1 acre in 1996.

Active opposition by the town's citizens began when the town was informed Sealand Waste of Monroe County intended to purchase the Jones-Carroll Landfill. Sealand Waste had applied for a DEC grant to expand the landfill to the entire property.

In 2005, the Carroll Town Board amidst growing public opposition to the landfill unanimously passed an amendment to the town's zoning laws that eliminated landfills from being operated with special-use permits, and prohibited further expansion of current landfills. Jones-Carroll's attorneys petitioned the state Supreme Court in Mayville, attempting to cancel the amendment on technical grounds.

In September 2005, the state Supreme Court ruled that portions of the town's law were invalid in regard to the landfill operated by Jones-Carroll Inc.

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

The Appellate Division concluded that it previously erred and that the town had "rationally exercised their police power in declaring that landfills (in the agricultural and residential zoning district) ... should be eliminated."

The Appellate Division also concluded that the town of Carroll had fully complied with all aspects of the Environmental Conservation Law. Jones-Carroll attorneys attempted to renew motions against a 2007 town law that prohibited the construction of any solid waste management facility in the town. The court sided with the town of Carroll again.

Last year, the Appellate Division unanimously sided with the town, ruling Jones-Carroll and Sealand Waste could not expand into a 50-

acre, non-putrescible landfill because of zoning and public safety concerns.

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