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## Landfill loses clay mine appeal

By DAVID L. SHAW dshaw@fltimes.com Apr 30, 2017

WATERLOO — Twice denied.

The Fourth Department Appellate Division Court in Rochester ruled Friday that Seneca Meadows Landfill in Seneca Falls cannot reargue a Feb. 3 ruling that halted the landfill's Meadow View Mine clay mining project in the town off North and Burgess roads. That court also denied Seneca Meadows' request to appeal the ruling to the state's highest court.

"Motion for reargument or leave to appeal to the Court of Appeals denied," the simple ruling stated.

It was made by Appellate Court Justices John Centra, Stephen Lindley, Patrick NeMoyer, John Curran and Shirley Troutman.

Friday's ruling was in favor of adjoining property owner Dixie Lemmon and Concerned Citizens of Seneca County (CCSC). They sought to void the zoning permit issued by town of Waterloo Code Enforcement Officer James Cleere and supported by the town's Zoning Board of Appeals.

Cleere and the ZBA said it was the only way to give the landfill access to the mine area.

Lemmon and CCSC argued that the strip of land on the west side of Burgess Road bordering the agriculturally-zoned clay mine area is zoned residential and could not be used for mining operations.

Trucks bringing soil from the mined area to the landfill across a controlled intersection on Burgess Road must cross over that strip of land.

The Appellate Court voted 5-0 in February in support of Lemmon and CCSC, who appealed a March 2016 decision from Acting State Supreme Court Justice Patrick Falvey. Falvey dismissed a challenge to the permit and upheld its issuance.

After the February ruling Seneca Meadows then filed a motion to be able to reargue the matter before the Appellate Court, possibly different judges. They claimed the court "overlooked or misapprehended" certain key facts and misapplied the law. That request was denied Friday, as was the request for the case to be heard at the Court of Appeals. Unanimous decisions by the Appellate Court are almost impossible to be appealed to the Court of Appeals.

"I wasn't surprised by the Fourth Department Appellate decision," Lemmon said Saturday. "There are very few cases that can reargue or appeal at that level."

Despite the February ruling against them, Seneca Meadows began mining soil from the 122-acre site in early April while their appeal was pending.

Lemmon, while happy with Friday's decision, was not pleased that mining continued into Saturday until it stopped at the request of Supervisor Gary Westfall.

"I asked Kyle Black (Seneca Meadows regional manager) to cease and desist and they did. I guess this decision was expected, but our code enforcement officer and the ZBA made a decision based on what has been done before in these situations, such as on Routes 5&20," Westfall said.

"It's up to Seneca Meadows now. We'll see what happens," he said.

Black could not be reached for comment Saturday.

The landfill purchased the property in 2008 and announced plans to mine soil to use for cover materials at the landfill and as clay liner material.

They said a nearby clay mine would have prevented the need to haul soil by truck from several miles away on town roads. They also said the body of water that would be created by the mining would be made into a recreational area.

Many Waterloo residents, particularly those living on the northern end of the village, objected to the mining and the dust, noise and traffic it would generate. Part of the mined area is across from the Waterloo Little League fields.

The state Department of Environmental Conservation granted Seneca Meadows a mining permit, but the town needed to issue a zoning permit for the operation.



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