

Court in, garbage out

Babylon property no longer to be used as debris transfer station

By DAVID WINZELBERG

A Farmingdale-based solid waste-removal company and a freight railroad have lost the latest court battle in a seven-year-long land-use dispute with Pinelawn Cemetery and the Town of Babylon.

Coastal Distribution and New York & Atlantic Railway have been operating a truck/rail transload station, where waste and/or cargo is transferred between trucks and railroad cars, since 2004 on land owned by the cemetery. The land is one of two parcels that make up the Long Island Rail Road's Farmingdale yard and was first leased to the railroad in 1904 for rail carrier use. The LIRR is now in its second 99-year lease from Pinelawn, but since its railway tenant handed off the property to the waste-removal company for another use, the town wants the waste transloading to stop and the cemetery wants the lease with the railroad voided.

Coastal and New York & Atlantic, which runs freight on LIRR's system, claimed the transloading operation is exempt from local zoning because rail facilities fall under the auspices of the federal Surface Transportation Board. But last week, a federal appeals court affirmed an earlier ruling that Coastal wasn't a rail carrier and wasn't acting as an agent of one either, suddenly clearing the way for Babylon and Pinelawn to lift the 2005 injunction that's allowed the waste transfer station to continue moving construction debris and building materials.

Attorney Fran Jacobs, of Duane Morris in Manhattan, who represents Pinelawn, said the land in question is actually zoned for residential use, which is why Babylon issued a stop-work order on Coastal shortly after it began operating on the site in 2004. Until now, the injunction has kept the trucks and freight cars full of debris and the heavy cargo rolling.

"This is supposed to be a quiet place for families," Jacobs said. "Now it's spewing out dust and whatever else there is."

Calls to Coastal and New York & Atlantic requesting comment on this story

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were not returned.

Jacobs said the appeals court decision simply upholds what her clients have been saying all along.

"This shows that when the court has all the facts, a railroad is a railroad and an independent business is an independent business," Jacobs said. "There's a difference between the two."

Babylon spokesman Tim Ruggeri said the town has a policy of not commenting on ongoing litigation. But he added, "We obviously believe this is a positive step."

Attorney and Huntington Councilman Mark Cuthbertson, who did some work on the case, said the appeals court ruling is a significant sign of support for local control in land-use disputes.

"This reaffirms the rights of local municipalities to regulate such operations," Cuthbertson said.

In a separate court action, Pinelawn is seeking to evict Coastal and the freight railroad from the property. Coastal got the exclusive rights from New York & Atlantic to run the transload operation in exchange for building the facility in 2002, according to court documents.

In 2008, the Surface Transportation Board ruled that because Coastal runs the Farmingdale transfer station, and not the railroad, the property wasn't under federal jurisdiction. The clash has continued in the courts ever since, and Jacobs acknowledged that the latest decision probably won't put the dispute to rest.

"It's unlikely that it's the end of this case," she said.

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