

Proposed Landfill/Land Acquisition: New York Appellate Court Addresses Taking Issue



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A New York Appellate Court (Fourth Department) (“Court”) addressed in a November 8th Order an action filed by a potential purchaser of a 50 acre parcel of property against the Town of Carroll, New York alleging a taking without just compensation. See *Jones v. Town of Carroll*, 2019 NY Slip Op 08040.

The Court determined that the Plaintiff (Sealand) did not have a valid cause of action because it lacked the requisite vested property interest.

The holding was based on the fact that Sealand did not yet own the property.

The Court noted that Sealand simply had an agreement in which it was granted access to the property to test its suitability for expansion of a landfill on the entire parcel. Sealand had expressed an intention to enter into contract negotiations contingent upon the success of this testing and permitting processes. The property was apparently going to be used as a landfill for construction and demolition debris.

The Court dismissed Sealand’s Complaint to the extent it alleged the taking of property without just compensation. It held that a property interest must exist before it may be taken. It further noted in part:

Where, as here, there is nothing more than an expectancy interest, there is an insufficient basis upon which to find a takings clause violation.

A copy of the Order can be downloaded [here](#).