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Diocese sues Old Westbury over proposed cemetery

By Pete Sheehan
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Should a Church planning to open a cemetery be required to conduct psychological testing on the effects of viewing a cemetery or to hire an arborist to survey trees?

According to a complaint filed in federal court, those were the kind of actions that the Village of Old Westbury has asked of the Diocese of Rockville Centre during its application to open a new cemetery north of Jericho Turnpike in Old Westbury. Such "bad faith" practices and subterfuge by village officials, said Tom Renker, diocesan attorney, constitute an effort to prevent or burden the diocese's attempt to open a new cemetery. As a result, the diocese filed suit against the village, village officials and consultants Nov. 30 in U.S. District Court for the Eastern District of New York.

"This has been a process of placing obstacles in the path of the diocese's plan to make legitimate religious use of property obtained for the benefit of the people of the diocese," Renker said. "When the diocese has agreed to jump through one hoop, the village has held up three more."

The resulting legal expenses and consultant, engineering, and other fees have cost the diocese about \$3.5 million since 1995, said Neal Barlin, diocesan cemeteries director. By contrast, the diocese budgeted \$10 million to construct the cemetery. "And we haven't even really turned ground yet."

So the diocese has filed suit under the 2000 Religious Land Use and Institutionalized Persons Protection Act, Renker said. Congress enacted the law to protect the free exercise of religion from illegal discrimination by local zoning boards and municipalities in the application of zoning codes.

Kenneth Auerbach of Sahn Ward and Baker, counsel for the village, declined to discuss specific allegations, but denied prejudicial treatment. "We have every confidence that the accusations (against the village) will be successfully defended against."

"We are not opposing the proposal. We are reviewing it," he said. "It is a major project with long-term implications. It is a process that takes time and is nearing completion."

The suit is the latest episode in a 14-year dispute over the diocese's plan to open a new cemetery, Queen of Peace. Past litigation resulted in a ruling in favor of the diocese by the New York State Supreme Court and the Appellate Division. The diocese began acquiring the 97-acre parcel, a former horse farm, in 1992,



Barlin said. In 1995, the diocese applied to open a new cemetery there, citing a lack of free burial space at other Catholic cemeteries in Nassau County.

At Holy Rood, the diocesan cemetery in nearby Westbury, “we get about a dozen calls a day, but we have no single or double plots.”

Village officials denied the application, citing concerns about groundwater quality and traffic, as well as the village’s land use plan and open land areas, and arguing that a cemetery would be a commercial rather than religious use. Some residents voiced opposition over the threat of lowered property value.

Diocesan officials and consultants maintained that a cemetery is open space and that the environment, water supply, traffic level, and property value would not be adversely affected. “We have agreed to make reasonable accommodations to legitimate concerns,” Barlin said.

In addition, diocesan cemetery officials disputed the contention that a cemetery is a commercial enterprise, citing the importance of burying the dead in Catholic tradition and recognizing those who died as part of the Communion of Saints. Services are regularly offered at Catholic cemeteries, which are considered places of worship.

The diocese filed suit in 1996 in New York State Supreme Court in Mineola. In 2000, Judge Thomas Phelan ruled that for Catholics, a cemetery is religious use. The village appealed but the New York State Appellate Division upheld Judge Phelan’s ruling. The village appealed again, but the New York State Court of Appeals, the state’s highest court, declined to review the decision.

Under the court ruling, once the matter was returned to the village, village officials were to give the diocese’s application for religious use of its property preferential treatment, Renker said. Instead, village officials “used arcane local zoning regulations as tools for carrying out religious discrimination.”

“We did hire the arborist” in response to one of the village’s requirements, Barlin said, at considerable expense. Other proposed requirements, such as psychological testing, were not pursued, but the diocese spent effort and expense to examine whether they should be.

The diocese’s complaint also alleged that village officials held the diocese to higher scrutiny on environmental concerns than other proposed projects, such as the construction of a private golf course, and withheld documents from diocesan officials important to their application.

Regarding the possible environmental impact of a new cemetery, Adrienne Esposito, director of Citizens Campaign for the Environment, said that hers and other groups have in the last two years raised concerns about possible formaldehyde and other chemicals leaking into Long Island groundwater.

Barlin replied that the diocese has commissioned extensive environmental tests at existing Long Island cemeteries, including Holy Rood, which he said “has existed for 80 years and provided an excellent comparison for the proposed Queen of Peace Cemetery.” The tests have shown “no adverse impacts to groundwater,” he said, with the exception of elevated nitrate levels. The diocese, he said, will implement practices to minimize nitrate to acceptable levels.

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