

NY Appellate Court Holds Not-for-Profit Corporation Law Does Not Preempt Field of Cemetery Regulation

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Oakwood Cemetery is a not-for-profit cemetery corporation and sought to begin offering cremation services in addition to the burial services it offered. Oakwood submitted its first application for a building permit for the crematorium in 2008, but the application was denied. In February 2011, Oakwood reapplied for a building permit but was advised that the application would not be considered because the village was considering a proposed amendment to the village code that would affect Oakwood's application. In June 2011, the village adopted a new definition of "cemetery" which expressly stated that "cemetery" did not include "facilities for cremation." Oakwood then brought an Article 78 proceeding claiming that the new definition of cemetery was unconstitutional because it was "preempted by Not-For-Profit Corporation Law article 15, also known as the "cemetery law." Additionally, Oakwood contended that the "operation of a crematory [was] included within its prior, nonconforming use of its property as a cemetery."

The trial court found that the not-for-profit law did not preempt the local regulation of cemeteries. On appeal, the court found that although the not-for-profit law governs the corporations that own and manage cemeteries, the law "does not expressly preempt zoning ordinances relating to the land use by cemeteries." Thus, the appellate court found that the trial court correctly concluded that there was no conflict between the laws because the not-for-profit law concerned the management of cemetery corporations, whereas the zoning ordinance concerned the land use aspect of cemeteries. The court found that the new zoning law was valid and not preempted by the not-for-profit law. The court also found that because Oakwood did not exhaust its administrative remedies with regard to its claim that the crematorium was included as a prior nonconforming use and that the lower court properly dismissed the claim.

Oakwood Cemetery v Village/Town of Mount Kisco, 981 NYS2d 786 (NYAD 2 Dept 2014)

The opinion can be accessed at:

<http://www.courts.state.ny.us/courts/ad2/calendar/webcal/decisions/2014/D40859.pdf>