

UPDATE: Judge Tosses Oakwood's Lawsuit vs. Mount Kisco; Cemetery May Appeal

State Supreme Court justice, in his decision, states that the village's zoning change to restrict crematoriums is constitutional, and that Oakwood's venue for seeking relief was not proper.

Update, 4:44 p.m. Friday: Howard Kensing, Oakwood's president, informed Patch that the cemetery is considering an appeal of the judge's decision, but has a 30-day window for doing so. He has informed the cemetery's board about the judge's ruling.

"I think we're leaning that way, it's fair to say," Kensing said on whether or not the cemetery will go through it an appeal.

Original Story:

A New York State Supreme Court judge has dismissed [Oakwood Cemetery's](#) lawsuit against Mount Kisco, which sought to overturn a vote from the Village Board of Trustees that placed a zoning restriction on crematoriums.

Trustees [approved the ban last June](#), which established a zoning text definition of a cemetery that excludes cremation buildings from being a permitted use on cemetery properties. Oakwood [filed its lawsuit, as an Article 78 complaint, in October](#) and sought to overturn the vote. The cemetery has been seeking since 2008 to construct a crematorium on its property, which has been met with some local opposition due to traffic concerns.

In his 11-page decision issued Tuesday, Judge Albert Lorenzo sided with Mount Kisco and refuted each of Oakwood's legal claims.

Chief among his rebuttals are his rendering that a crematorium on a cemetery is not "a legally prior non-conforming use." He cited case laws ranging from a 1994 lawsuit against the Town of Mount Pleasant, to a 1997 case stating that non-conforming uses may not be enlarged, even if allowed to continue. Lorenzo argues that the cemetery could be considered a non-conforming use as a cemetery, but this does not include a crematorium.

Oakwood had argued that the cemetery, founded in 1882, predates Mount Kisco's zoning code.

Lorenzo also rebutted Oakwood's claim that state law governing cemeteries pre-empts Mount Kisco's zoning laws. The code includes a crematorium being listed under its cemetery definition, but Lorenzo believes that this does not automatically permit the construction of one. He also wrote that state statute does not, as written, include pre-emption over local zoning.

In addition, Lorenzo states that the Article 78 path for judicial relief is not a proper venue because it covers administrative actions, instead of the legislative action that village trustees undertook. He also disagrees with Oakwood's assertion that the village violated its right to due process.

Bob Davis, a partner lawyer at Singleton, Davis & Singleton, which is Mount Kisco's general legal counsel, said the village is "gratified" by the decision, and added it is "appreciative" that the court acted promptly.

Howard Kensing, Oakwood's president, explained that he found out about the decision Wednesday when contacted by The Journal News for a story the paper did on the dismissal. He said that he will have a statement on the ruling, which Oakwood can appeal to a higher state court level.

"I'm very unhappy with this whole situation," Kensing said about the village's action.

A copy of Lorenzo's dismissal is attached to this story as a PDF file.

Related Topics: [Mount Kisco Village Board of Trustees](#) and [oakwood cemetery](#)