

Casella sues Hardwick

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Hardwick Landfill Inc. is suing the Zoning Board of Appeals, five members of the ZBA individually, and 10 town residents opposed to the garbage facility. Casella Waste Systems Inc. of Rutland, Vt., is the landfill owner.

The company filed the complaint in state Land Court in Boston last week. It is the third zoning-related lawsuit the company has brought against the town in 15 months. Casella reopened the landfill on Patrill Hollow Road in May 2003 shortly after purchasing it from the Roach family.

The new complaint alleges the ZBA "arbitrarily and capriciously" exceeded its authority and violates Massachusetts law because the board determined on Oct. 12 that "only 2.2 acres of land ... were the extent of the grandfathered landfill."

Court documents show the company claims it has grandfathered rights for a landfill on a nearly 23-acre tract known as Lot 2 on Map 83.

"All of Lot 2, not just the portion of it which actually was used as landfill prior to the adoption of the zoning by-laws, is grandfathered for use as a landfill," Hardwick Landfill Inc. alleges in the complaint. The zoning bylaw was enacted in 1974.

The Hardwick ZBA ruling of Oct. 12 states: "The board perceived from documents offered by Hardwick Landfill, Inc. that various Town officers and citizens acknowledged at different points in time the intention for a larger landfill to be built eventually in West Hardwick. However, those intentions could not form the basis for a larger grandfathered area of the landfill."

Records on file with the town show that Casella paid commercial property taxes of \$7,640.82 on 22.95 acres in fiscal 2006. Documents show the company owns a total of 161.57 acres in Hardwick. Residential and commercial property is taxed at the same rate in the town.

According to a copy of the civil complaint, Hardwick Landfill Inc. is suing the ZBA and members Peter King, Diane Hay, Erik Fleming, Jacob Stukuls and Charles Kidd. The five are each listed as individual defendants.

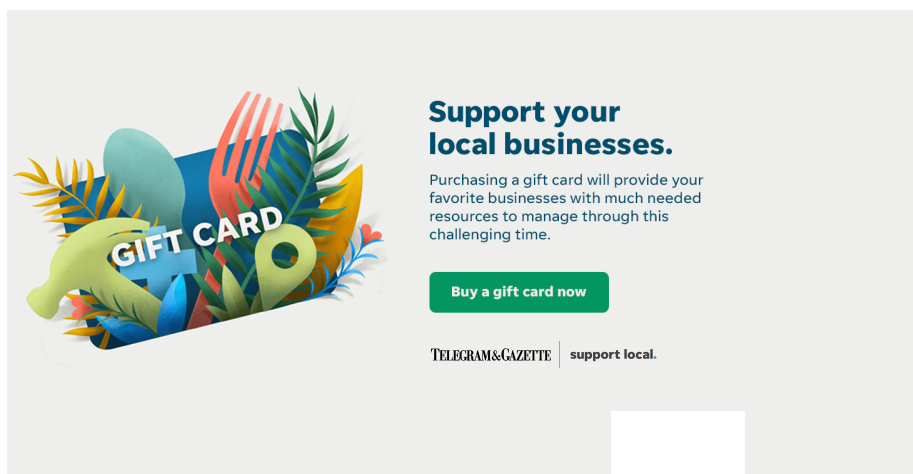
The complaint also names 10 Hardwick residents as defendants: Norman Mackinnon, Wendy and Aurelio Bolognesis, Deborah and Ray Chartier, George Clemmer, Thomas Kimberly, Dale Lind, Randall Noble, and Irene Prouty. The 10 had appealed a May ruling by the town's zoning enforcement officer involving the Hardwick landfill.

Court documents show the suit was filed Oct. 31 and served "by hand" to Hardwick Town Clerk Paula L. Roberts Nov. 1. Lawyers Stephen H. Oleskey, Robert C. Kirsch and Joshua R. Carver of the Boston law firm Wilmer, Cutler, Pickering, Hale and Dorr filed the action on behalf of Hardwick Landfill Inc.

The company is asking the court to annul the ZBA decision of Oct. 12, to permanently bar the town from enforcing the decision, to "declare that HLI may continue to conduct landfill operations on Lot 2 as a lawful nonconforming use" and to award the company costs and lawyers' fees.

"Such controversy has caused, and will continue to cause, harm to HLI, including actual and threatened monetary loss, difficulty making business decisions, and other hardships," the complaint says. Court documents do not specify the amount of the monetary loss.

The company also alleges in the complaint that the 10 Hardwick residents who filed the ZBA appeal "lacked standing" to seek redress, for reasons that include: "alleged injuries were not special or different from the concerns of others in the community."



The ZBA determined last month that the claims of the citizens “regarding truck traffic noise and odors were convincing, as were complaints about back-up horn noise from the heavy equipment used routinely at the landfill. The Board believes that these residents meet the test of being personally and differently aggrieved.”

In a related matter, the Planning Board will hold a public hearing Monday on a request submitted by Casella in September to create what the company is calling a “48-acre solid waste district.” The meeting is at 7 p.m. at the elementary school on Lower Road. A 2003 request by Casella “to rezone (203 acres) from residential to industrial” was shelved in 2004.

The zoning proposal would provide up to 12 years of additional capacity at the landfill, company officials say, of which 30 acres would be for dumping waste, with an 18-acre buffer.

There are conflicting statements about what is the specific landfill acreage.

In the state Department of Environmental Protection permit issued in May, the DEP referred to “the entire landfill of 21 acres.” The DEP has issued the company permits allowing 82,800 tons of trash to be dumped at the landfill each year.

Selectmen signed a contract with Casella in June 2005 that says the Hardwick facility “includes an existing 25 acre solid waste landfill footprint of which approximately 10 acres is currently operating.” The company’s 2003 zoning request showed that Map 83, Lot 2 contained “22.947 acres.”

At 7 p.m. Tuesday, the ZBA is scheduled to hear another appeal that was filed in June by the landfill owner, pertaining to a May decision of Hardwick Zoning Enforcement Officer Ralph Brouillette. The meeting is at the municipal building on Route 32. The hearing is a continuation of the June appeal.

The Hardwick ZBA agreed to the landfill owner’s request for a 75-day extension of the timeline for the appeal hearing, the town clerk said during a July 18 interview. Ms. Roberts said the agreement was made July 17.

A Casella executive said in July the extension would allow time for a town meeting vote on a zoning proposal that the company would make; the intent was to have a town meeting vote before the ZBA issued a decision.

Mr. Brouillette ruled in May that the area of the landfill where waste is being accepted is residentially zoned, and therefore impermissible for an industrial waste operation.

The zoning officer told the company in a letter dated May 26: “I will refrain from enforcing this determination until the Board of Appeals issues its decision. At that time, I will review the decision of the Board of Appeals to determine if a further stay of this order is appropriate.”

