

Baldwin Board of Appeals

13 December 2016

Maietta hearing minutes

Members present: Al St. Saviour (chair), John Doyle (vice chair), Laurie Downey (secretary), Jon Bishop, Ron Parker and Dan Pierce (alternate)

Meeting called to order at 7 pm.

Chair Al St. Saviour described the basic background of this hearing: to hear an appeal by Maietta Enterprises to a Stop Work Order and Notice of Violation dated September 1, 2016 by Baldwin CEO. Chair reviewed the procedure of the meeting, and asked if any Board members had any disclosures. Board member Laurie D. stated that she was Baldwin's Commissioner for the Saco River Corridor Commission. Chair asked if there were any objections, and there were none. The floor was then open for testimony.

Testimony

Vincent Maietta, President of Maietta Enterprises

Vinny explained that his father had started the pit in the 1990s, and that he had worked many years there. Felt Maietta had always had a good relationship with the Town of Baldwin, and wanted that to continue.

Tim Norton, counsel for Maietta Enterprises

First Tim gave some background on issues that he claimed should have bearing on the Appeal.

1. Back taxes were an issue of contention, and had not been totally resolved. Had been suggested by representatives of the Town that the Town now owned the pit. Chair stated that this issue was not on the agenda and could not be resolved by the Appeals Board.
2. Maietta received a letter from the Town one year ago stating that the permit for the pit had lapsed due to disuse. Tim questioned why this letter was necessary, why couldn't the parties "sit down together and work out the issues"? He claimed that overall, the pit was "substantially in compliance" with the permit and ordinance.

Tim took exception to the Town's behavior with respect to the TRC report, commissioned by the Town. Maietta cooperated with TRC staff, gave them requested materials and allowed access to site. Maietta only received a copy of the report when it was presented at a Selectmens' meeting; did not receive a copy in advance and were not prepared to discuss it. Shortly thereafter Maietta was served with a Notice of Violation that contained many inaccuracies.

Violation #1: Re demolition debris

There are piles of concrete and bricks that have been observed. But where exactly are those piles? CEO did not investigate further, as recommended by the TRC report.

Violation #2: Re stockpiles of loam

TRC did not identify loam piles in the report, but asserted that they could be there. There actually are piles of loam, but they are not high quality loam, like you would buy at Lowe's. TN introduced Sean Frank to speak to this.

Sean Frank, engineer with Sebago Technics

Sean did site visit, observed piles and did test diggings. Found many piles of "loam" - bulldozed top layer of excavated areas that included stumps and rocks. Presented a map with location of these piles, and a table with estimated cubic area. Found numerous piles on site that he identified as loam - not screened. Presented a table with estimated amounts of "loam" based on GIS readings, stopped once he reached 22,000 cu. yds, as that was the amount required in the NOV.

There were questions about the composition of these piles and whether they qualified as "loam". Vinnie M. stated that this type of material was used to reclaim Phase 1, and that it has regrown well. There are stockpiles of material in Phase 2 since 2011; piles of sand are next to "loam" piles. Those piles are still on the site, haven't been removed, that this rough material is "loam for reclamation." When asked for a definition of loam, he said "organic material that vegetation grows in." There was much discussion over what constitutes "loam", and whether it can include rocks and stumps.

Tim Norton testimony, continued -

Violation #3 - re requirement to reclaim one Phase before moving on:

Maietta claims that much of Phase 2 is a "stockpile area" - close to 12 acres. Not the same as excavation. Need a place to store material; if all 44 open acres were reclaimed, the pit would be effectively closed. But the reclamation of Phase 2 should be discussed.

In 2010-2011 Maietta went through Chapter 11, and since then the company has gone through rough times. "We're here, we're ready to talk to the Town." Again, Chair asserted this was not relevant to the appeal.

David Lourie, counsel for Town of Baldwin

Asked when last excavation work was done, Vinnie M. couldn't say. Haven't excavated in many years.

How much debris was in the pit? Vinnie answered a few small truckloads.

Asked Sean Frank whether the piles he counted as "loam" contained debris - answer, no.

Wes Sunderland, Baldwin C.E.O.

Spoke of a gravel pit he knew of that was simply abandoned; wanted to avoid that.

Visited site twice. Phase 1 has been reclaimed - graded, and planted with coarse grass. Is OK.

Phase 2 not reclaimed before Phase 4 started, in clear violation.

Many piles of debris. In one corner of Phase 3, approximately 50 piles. Did not see many piles of loam, certainly not the 18,000 - 22,000 cu yds needed to cover 44 acres.

Tim N. asked whether Wes had done any site walks since the TRC report, Wes - no. (TRC had recommended additional investigation.) Stated that although he is concerned about the issue of all 4 phases being closed out, and that some of the underlying findings in the NOV are in error, there is a willingness to work to resolve.

D. Lourie - finds evidence of existing loam "incredible" - overly high. Appellant has burden of proof, the Board can judge the credibility of evidence. Order asks them to come up with a reasonable plan. In terms of deciding on a strategy with C.E.O., realized that the costs of reclamation were high and that a NOV was the best way to get things moving.

In closing, Tim N. asked that Board reverse violations and instead opt to have open conversations.

Hearing was then opened to public.

Marvin Reinhardt is an abutter. He reported seeing truckload after truckload of debris going into the pit. He has seen no activity there for 5 years; it hasn't been plowed for 4 years.

Vinny M. claimed that trucks have hauled out material within the last 5 years; he can provide trucking logs to prove this.

Norman Blake (Chair of Baldwin Planning Board) spoke of the issue of definition of loam, and pointed to standard #10 in the Baldwin Land Use Ordinance, clearly defines what qualifies. Does not include stumps and rocks. On the question of whether the permit is active, there is a conditional requirement that Maietta file reports every year - what areas are active, etc. Have not received report for many years. Last report was received from Sebago Technics, and was simply an account of a verbal conversation with company staff. The office trailer burnt down many years ago, and that trailer was the site office that had postings required in an active workplace. In his view, there is no active permit.

Question raised by Board member - if permit has lapsed, what is the status of NOV? Chair ruled that is outside of our purview.

Board member - Is Maietta willing to go down and show Wes stockpiles? Answer - yes. Vinnie M. claimed that Wes did not know where they are, and that the Board needs to consider that. The company intends to continue pit in Phase 3-4, at a much smaller scale.

8:37, motion to close public hearing was made, seconded and approved.

Board deliberation

Violation #1: Use of the pit as a dump for demolition or other debris

Laurie D. - Evidence of debris piles was documented in TRC report p. 12/13, and viewed on ZBA site walk. Clear violation of condition #12 of CUP: "No materials of any kind shall be imported to the site for processing..."

John D. - Agreed that we saw piles of debris on the site - asphalt, brick, tile, and that constituted a violation

Al S. - Saw multiple locations with debris, and was struck by Marvin R.'s observations of trucks hauling debris

Jon B. - Agreed with previous

Ron P. - Agreed

Motion was made and seconded to deny the appeal on violation #1, motion passed 5-0

Violation #2: Requirement to stockpile loam for remediation

Jon B. - Felt there wasn't enough information to make a decision

Ron P. - Unsure, because Maietta made an honest effort to locate loam

John D. - Clearly there is disagreement and/or misunderstanding about how much material is on site and whether it qualifies as loam. Sebago Tech says yes and has done work to locate. Should be collaboration with CEO, approving order will allow plan to move forward.

Laurie D. - There are lots of piles, but do they qualify as "loam"? Article 10.6.C.13.a. in the Baldwin LUO specifies that when excavated land is reclaimed "All debris, stumps, boulders and similar materials shall be removed or disposed of in an approved location..." Agree with John D. that a plan is needed.

Al S. - Dug holes during site walk, found a lot of stumps and rocks and other material that could not be considered loam. Need more proof that there is enough material there. Obligation of appellant to show it is sufficient, that didn't happen here.

Motion was made and seconded to deny the appeal on violation #2, motion passed 4-1

Violation #3: Reclamation of all four Phases

Discussion about needing to modify violation, as the permit did not require each phase to be reclaimed before proceeding to the next. Questioned David Lourie about process; he said we could modify. Wording of violation modified to read: "I find that since excavation has begun on Phase 4, pursuant to the CUP reclamation of Phase 2

must be completed. Within sixty (60) days you must submit a detailed statement and plan (including commencement and completion dates) for the reclamation of Phase 2." (The rest of the wording of violation to remain the same.)

Motion made and seconded to deny the appeal on violation #3, motion passed 5-0.

Motion to adjourn, approved at 9:22 pm.

*Submitted by Laurie Downey
Appeals Board secretary*

Board Chair
Albert H. San

12/20/16