



# Lamoine Board of Selectmen

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## Proposed Gravel Ordinance Referendum Vote – November 3, 2015

### **Background**

For many decades, the Town of Lamoine has regulated gravel extraction by local ordinance within the town borders. Numerous town meetings have passed various versions of a gravel ordinance, and with relatively few exceptions the individuals and corporations engaged in gravel mining have made every effort to comply with the local ordinances. In March 2013, the annual town meeting passed a new gravel ordinance which incorporated aspects of the Site Plan Review Ordinance into the gravel regulations, and removed gravel operations from requiring a site plan review permit, as there were many redundancies in both ordinances. Among the changes in 2013 was a doubling of the setback from boundary lines, which caused some of the corporations to claim the town had taken value from them without compensation. In June 2014 a petitioned town meeting question passed that essentially bars the town from approving any gravel pit in the Rural and Agricultural Zone, the very zone where most of the gravel deposits are located. These two actions and resultant lawsuits prompted the Board of Selectmen to appoint a working group of stake holders to review the gravel ordinance. That group suggested numerous items that needed attention in the ordinance process. Among those were:

- Setbacks
- Pit Restoration
- Water Quality & Separation from the water table
- The permitting process

Since the issuance of that report, the Board of Selectmen has undertaken an effort to rewrite the gravel ordinance so that the regulations balance the desire of the residents of our community for groundwater and aesthetic protection and the practical needs of our corporate landowners to be able to have a return from their substantial property investment. It has taken over two years to develop this ordinance. There has been a lot of public input received. Our Planning Board has provided a great deal of guidance in this document, as have many folks who are passionately concerned with the impacts of gravel mining, and from representatives of the companies that run the gravel operations. We appreciate the frank conversations and input from all sides, and applaud the decorum with which everyone involved has shown through this process.

The goal of this publication is to contrast the proposed ordinance with the document that is in place, and to explain the reasons for the major changes that exist. We realize that no ordinance will fully meet everyone's desires, and that the town meeting has the ability to make future amendments if needed.

## Summarized Changes

<b>Applicability (Section 6) and Administration (Section 7A)</b>	
<b>Proposed Ordinance</b>	<b>Current Ordinance</b>
Applies to operations that remove 1,000 cubic yards of material or one acre from a parcel of land during it's "lifetime" and clarifies that the gravel ordinance does not apply to activities such as building projects that require permits under the Building and Land Use Ordinance and Site Plan Review Ordinance	Applies to operations that remove 500 cubic yards of material or one acre.
<p><b>Reason for change:</b> After much consideration, the Planning Board suggested that any gravel removal totaling 1,000 cubic yards or less is relatively small and does not warrant regulation. If more than 10,000 square feet is disturbed, the operation would require a site plan review permit. The clarification that this does not apply projects requiring building permits is an attempt to clarify that building a house a commercial building that might excavate more than 1,000 cubic yards but which clearly is not a "gravel pit", does not need to obtain a gravel permit.</p>	
<b>Water Quality Monitoring – (Section 7C)</b>	
<b>Proposed Ordinance</b>	<b>Current Ordinance</b>
Requires applicants to provide a plan to document water quality as part of the application. One testing parameter removed.	Requires applicants to drill monitoring wells and provide test sample data as part of the application.
<p><b>Reason for change:</b> Drilling monitoring wells is an expensive process, as is water testing. The requirement to require an applicant to dig one or several wells prior to a permit being granted is a big risk in the event that a permit is denied. With input from the Planning Board, the requirement that an acceptable water quality monitoring plan be in place at the time of application was sufficient to process the application. Operation of the pit cannot begin until the infrastructure (either new or existing wells) is in place. The removal of a testing parameter (Volatile Petroleum Hydrocarbons) was recommended by hydrologists.</p>	
<b>Permit Length – (Section 7F)</b>	
<b>Proposed Ordinance</b>	<b>Current Ordinance</b>
5-years	3-years
<p><b>Reason for change –</b> The Planning Board suggested a longer permit term for several reasons. The longer permit will give the board a better idea of the long term plans for the parcel being permitted, and it will take some of the strain off the Board which has constantly been dealing with renewing permits. It will significantly reduce costs to both the applicant and the town for developing updated plans. The annual reporting requirement will keep the town informed of water quality and extraction rate numbers.</p>	
<b>Appeals – (Section 7G)</b>	
<b>Proposed Ordinance</b>	<b>Current Ordinance</b>
Additional language provides for appeals of enforcement actions by the Code Enforcement Officer	Only Planning Board decisions may be appealed.
<p><b>Reason for change –</b> The present ordinance has no provision or process for affected parties to appeal code enforcement actions. The proposed ordinance adds this important provision.</p>	

**Setbacks – (Section 8A)**

**Proposed Ordinance**

New operations would still have a 100-foot setback, but currently permitted operations, which all currently have passed Site Plan Review may reduce setbacks to the previously permitted distance, provided that the slope of the reduce setback is more gradual between 10 and 50 feet from abutting property lines, and that no noise producing machinery is operated within 100-feet of the line. Clarification about setbacks from water supplies and Shoreland Zones is included which mirror state law.

**Current Ordinance**

The setback is 100-feet but may be reduced to 50-feet with written approval of the abutting property owner on file at the Registry of Deeds. No 10-foot setback is allowed, though in previous versions of the gravel ordinance that provision existed. The setback from some wells conflicts with current state laws.

**Reason for change** – The people and corporation who have held permits for many decades argued that the ordinance that passed in 2013 took valuable resources away without compensation. The change does not apply to any new gravel operations that might seek a permit, as the 100-foot setback would apply. The concerns about the setback have centered on noise and visual “blight” which potentially decrease neighboring property values. The reduced setback clarifies that machines such as crushers and screens may not operate within 100-feet of abutting properties. It removes the provision for written permission on file at the Registry of Deeds for the 50-foot setback, but retains the 10-foot setback written permission. The goal of the setback was to offer the ability for permittees to continue to operate, but with reasonable restrictions that did not exist in any prior ordinance. The change to the well setback adds clarification and brings the ordinance in line with state regulations.

**Restoration and Expansion – (Section 8D)**

**Proposed Ordinance**

Clarifies that any restoration activity on the approved plan must be complete within one year of the permit expiration. Allows for the Planning Board to approve for restoration plans other than the limited plantings, and requires restoration of parts of operating pits if that operating area is to be enlarged.

**Current Ordinance**

Requires restoration to be complete “within one year of commencement” of restoration activities. No provision for alternative restoration plans, and no requirement to “restore as you go”.

**Reason for change** – One major goal for the community has been to encourage more restoration activity in the areas of pits that are no longer able to be mined. The change will require that restoration be completed before the working area can expand. It also provides for other restoration, such as a tree farm, or even house lots, instead of a very narrow list of vegetation that must be planted. The Planning Board still has final say over what restoration plan is approved. The new language also clarifies that any restoration must be complete by a date certain.

<b>Performance Guarantee – (Section 8D3)</b>	
<b>Proposed Ordinance</b>	<b>Current Ordinance</b>
Eliminates the requirement of a town maintained escrow account, allows for performance bond or irrevocable letter of credit. Requires easement for town to restore in the event the permit holder does not.	Requires payment of 5-cents/cubic yard to be kept and maintained by the town for restoration effort.
<p><b>Reason for change</b> – The fund generated by the 5-cent/cubic yard payment are minimal and insufficient to perform much restoration. The town is required to account for some 20-individual pits payment to the restoration fund, and the potential for unintentional errors in such cash management is huge. The new ordinance would eliminate the escrow account, but allow the permit holder to deposit enough money to restore the pit in a savings account, with the Town as joint owner. The current ordinance grants no right for the town to actually perform restoration on any parcel. The proposed language would allow the town to contract for the work to be done through an easement if the situation were to warrant.</p>	
<b>Annual Report – Section 8H</b>	
<b>Proposed Ordinance</b>	<b>Current Ordinance</b>
Clarifies a date certain (March 1) by which the annual reports must be received and outlines a retention schedule for the annual reports as well as other documents that must be on file at the town office	Annual report submission date is tied to the “anniversary date of the pit”, no record retention schedule guidance exists.
<p><b>Reason for change</b> – Tracking the many permitted operations which have various grant and expiration dates for receipt of the annual report is difficult at best. By requiring all operations to report the activity required (the same for both current and proposed), the Code Enforcement Officer can easily identify which permitted pits have complied. The amount of paperwork on file with the town is voluminous, and there is no guidance in current ordinance on what the town is required to keep and what may be discarded. The proposed ordinance specifies exactly what must be kept and for how long. This change, while mostly invisible to the general public, will greatly clarify for the town’s staff the filing requirements.</p>	

We hope this document is helpful and provides sufficient guidance on the changes to the proposed ordinance. We encourage you to read the proposed ordinance, and the current ordinance, and to ask questions if you have them.

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