

Town of Lamoine
Michael Jordan, Code Enforcement Officer
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To: Board of Appeals
From: Michael Jordan, Code Enforcement Officer
Re: Brief – Friends of Lamoine v. CEO
Date: March 3, 2015

As requested, here is the position of the Code Enforcement Officer in regard to preliminary items A-H of the February 25, 2015 Board of Appeals Agenda

a. Determination of Jurisdiction

I reiterate from the memorandum of December 16, 2014: The Complaint was for an alleged violation of the Gravel Ordinance. The Appeal Section of this Ordinance reads as follows: ***Any decision of the Planning Board may be appealed by any party of standing to the Lamoine Board of Appeals. The appeal shall be in writing and submitted within thirty (30) days of the date of the written decision of the Planning Board and shall be accompanied by the required fee as established by the Lamoine Board of Selectmen.*** The plain reading of this ordinance is that only a decision by the Planning Board may be appealed to the Lamoine Board of Appeals.

30-A MRSA §2691 addresses the issue of jurisdiction as follows: ***4. Jurisdiction.*** *Any municipality establishing a board of appeals may give the board the power to hear any appeal by any person, affected directly or indirectly, from any decision, order, regulation or failure to act of any officer, board, agency or other body when an appeal is necessary, proper or required. No board may assert jurisdiction over any matter unless the municipality has by charter or ordinance specified the precise subject matter that may be appealed to the board and the official or officials whose action or nonaction may be appealed to the board. Absent an express provision in a charter or ordinance that certain decisions of its code enforcement officer or board of appeals are only advisory or may not be appealed, a notice of violation or an enforcement order by a code enforcement officer under a land use ordinance is reviewable on appeal by the board of appeals and in turn by the Superior Court under the Maine Rules of Civil Procedure, Rule 80B. Any such decision that is not timely appealed is subject to the same preclusive effect as otherwise provided by law. Any board of appeals shall hear any appeal submitted to the board in accordance with Title 28-A, section 1054.*

The plain reading of this section of Maine law is that even without a specified appeal language in an ordinance, only a notice of violation or an enforcement order of a land use ordinance may be appealed. One can argue whether the Gravel Ordinance is a land use ordinance, but that argument is moot, because neither a notice of violation nor an enforcement order has been issued, and even if there had been one issued in this case, the appeal would have to come from the party allegedly in violation.

As the Board of Appeals correctly noted at its meeting of February 25, 2015, the complaint seems to stem from a decision made by the Board of Appeals on June 4, 2014 finding that this was not, per se, an end around the gravel ordinance, but

legitimately a commercial building application for which Site Plan Review was required. As Code Enforcement Officer, I am obligated to carry out the decisions of the Planning Board, and by extension, the Board of Appeals. To find this project in violation would be contrary to the Appeals Board decision and the issuance of the Site Plan permit by the Planning Board. The proper venue for a challenge of the Appeals Board decision would be Superior Court. The decision was never challenged

The bottom line is, the Board of Appeals does not have jurisdiction on this matter under the Gravel Ordinance; the Site Plan Review permit issuance was not appealed, and the Commercial Building Permit also was not appealed.

b. Determination of standing of Applicant

The submission in the prior memorandum of December 16, 2014 stands as follows:

...part of the language in the Gravel Ordinance refers to "party of standing". Because each ordinance in Lamoine has a distinct appeals process as of this writing, a party of standing would have to be specified in this ordinance in order to have anything other than its usual meaning. Maine Municipal Association's Board of Appeals manual provides some very good guidance in Chapter 4 as follows: ***If an appeal is brought by a citizens' group or some other organization, the test for the organization's standing to appeal is whether it can show that "any one of its members would have standing in his/her own right and that the interests at stake are germane to the organization's purpose.*** None of the individuals who signed this application are abutting property owners who would show a particularized injury in this matter. It is my contention that the Friends of Lamoine as identified either by the complaint or the appeal do not have standing in this matter.

c. Determination of parties to hearing

The parties get a little cloudy. Obviously the Friends of Lamoine group, the Code Enforcement Officer and Doug Gott & Sons are parties to this appeal. It could also be argued that the Lamoine Planning Board and the Board of Appeals could be parties.

d. Timeliness of Receipt of Appeal

Again, from the memorandum of December 16, 2014:

The Appeals Board has already ruled on this matter, returning the issuance of a Site Plan Review permit back to the Planning Board on June 4, 2014. No appeal of that decision was ever made to Superior Court, and the 45-day window to do so has long since elapsed. The Planning Board indicated the Site Plan Review permit for the commercial building project in question was now permitted at its meeting of August 13, 2014. No appeal of that decision has ever been made to Superior Court. The 45-day window to do so has long since elapsed. It is my position that this appeal fails on the timeliness issue.

e. Poll Board for Conflicts of Interest

I do not believe the Board of Appeals members have any conflict of interest that I am aware of.

f. Determination of Quorum – makeup of hearing board

Given that 4 members attended the meeting on February 25, 2015 and listened to well over an hour and a half of comment, I would contend that this would likely be the hearing board. That is the call of the Board of Appeals, and though the Board asked for a brief on this matter, I do not have any input to add.

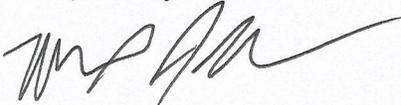
g. Rules of Procedure/Hearing Format

Because, in my opinion this matter fails on the jurisdiction, standing and timeliness matters, there should be no hearing, and the format of any hearing would thus be moot.

h. Time and location of hearing (if any)

See the argument in item "g" above.

Respectfully submitted,



Michael Jordan, Code Enforcement Officer

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cc: file, Friends of Lamoine, E. Bearor