

TO: Lamoine Board of Appeals

FROM: Friends of Lamoine

DATE: January 8, 2015

REGARDING: MEMORANDUM IN SUPPORT OF APPEAL OF COMPLAINT  
BY THE FRIENDS OF LAMOINE

We, on behalf of Friends of Lamoine, appeal the decision of Code Enforcement Officer Michael Jordan. Friends of Lamoine filed a complaint on October 22, 2014 which he denied.

In that complaint against Doug Gott and Sons, Inc. (“Gott”) with the Lamoine Code Enforcement Officer, it was stated that Gott is in violation of the Lamoine Gravel Ordinance of 2013 as amended on April 10, 2014 (“Ordinance”), with regard to activities taking place on Map 3 Lots 6 & 8. The violation applies to both a substantive section (Section 6 Applicability) of the Ordinance, as stated in the original complaint filed with the Lamoine Code Enforcement Officer, and, by implication, the intent of the Ordinance.

Gott is a general contractor a portion of whose business is the sale and use of gravel as that term is defined in the Ordinance.<sup>1</sup> After a successful appeal to this board, Gott received approval for the construction of a maintenance building involving the “disturbance of 70,000 cubic yards of material”. Of this volume of material, approximately 80% (or 56,000 cubic yards) is gravel (Lamoine Appeals Board Notice of Decision, June 4, 2014). As the term is used in the decision, the 80% that is “gravel” is understood by its common meaning and not the extended definition used in the Ordinance.

Of the 56,000 cubic yards of gravel that will be “disturbed”, it is the understanding of the Complainant that Gott has or is in the process of selling a significant portion of this material. This sale or use of this portion of the gravel in Gott’s contracting business constitutes a tangible benefit apart from and beyond what Gott will derive from the utility of the maintenance building project. Therefore, a distinction must be made between what will accrue to Gott from the sale or other use of this of gravel offsite in its business as a general contractor as opposed to the utility to Gott from the building project.

Claims that the Gravel Ordinance is not applicable to this activity by reference to construction projects such as a Walmart or Home Depot are not appropriate. First, site preparation by these types of businesses is a cost of construction and not a source of

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<sup>1</sup> SECTION 9. DEFINITIONS Gravel

‘Gravel’ shall be an inclusive term referring to the materials of sand, gravel, crushed stone, soil and loam which are excavated, extracted, processed, stored and transported in Gravel Operations.

revenue. Second, neither of these enterprises are engaged in the commercial sale and use of gravel in their business activities as is Gott.

To the extent that Gott will sell or derive some commercial benefit from the sale, removal, transport, etc. of gravel from the building site, the Lamoine Gravel Ordinance applies to this activity.

Although the Ordinance does not so state, it is clear from the language that it applies to all commercial activity involving the extraction and removal of this resource in excess of 500 cubic yards.

In addition to avoiding compliance with any restrictions or conditions required by the Ordinance or permit issued thereunder, Gott also avoids what could be in excess of \$1,000 payable to the Town of Lamoine Gravel Pit Restoration account<sup>2</sup>, a fund established by and for the citizens of Lamoine. Although this amount may seem insignificant compared with other costs of this project, it is not trivial in relation to its having been established as a public good.

It is further understood that compliance with one ordinance does not preclude the need for compliance with another ordinance. Obtaining a permit under the Site Plan Review Ordinance does not exempt Gott from the Gravel Ordinance or its more restrictive provisions (see Site Plan Review Ordinance, Section C, Conflict with Other Ordinances).

For the reasons stated hereinabove, we, the undersigned Complainants, on behalf of the Friends of Lamoine, request that the Board of Appeals sustain the complaint.

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<sup>2</sup> . The Ordinance (Section 5.3-Performance Guarantee-Escrow Account) states: “Each permit holder shall pay to the Town of Lamoine \$0.05 (5 cents) for every cubic yard of material excavated and removed from the permitted area .” Assuming 50% of the gravel on the site were sold, this would amount to \$1,400 due the fund.