



Town of Lamoine
Michael Jordan, Code Enforcement Officer
606 Douglas Hwy
Lamoine, ME 04605

(207) 667-2242

To: Lamoine Board of Appeals
From: Michael Jordan, Code Enforcement Officer
Re: Appeal filed by Friends of Lamoine
Date: December 16, 2014

I have been provided with a copy of a filing to the Board of Appeals dated December 11, 2014 signed by Kathleen Rybarz, for the Friends of Lamoine.

As I understand it, the filing disputes the conclusions in a letter written in response to a complaint from Friends of Lamoine dated October 22, 2014. The date of my response was November 13, 2014.

I believe the Board of Appeals does not have jurisdiction in this matter for the following reasons:

1. **Jurisdiction** - 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.
2. **Standing** - As noted above, 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 compliant or the appeal do not have standing in this matter.
3. **Timeliness** – 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.

The filing appears to be a belief by the Friends of Lamoine group that the town is failing to enforce the gravel ordinance. I again turn to the Maine Municipal Association Appeals Board manual, Chapter 4 Page 55:

Appeal of Failure to Enforce

The court will allow a person with legal standing to file a direct legal challenge in court where a municipality refuses to bring an enforcement action because it believes that the ordinance is not being violated. Richert v. City of South Portland, 1999 ME 179, 740 A.2d 1000; Toussaint v. Town of Harpswell, 1997 ME 189, 698 A.2d 1063.

Because of the information cited above, it is my belief that this matter is not properly before the Board of Appeals and more properly should be filed directly with Superior Court.

Respectfully submitted,

Michael Jordan, Code Enforcement Officer

mjj:sem