To: Lamoine Board of Appeals
From: Lamoine Planning Board
Re: Appeals Board June 4 decision
Date: June 12, 2014

The Lamoine Planning Board requests the Lamoine Board of Appeals to formally reconsider its decision of June 4, 2014 which asserted that the Planning Board erred in its interpretation of Site Plan Review Standard J.1. We do so for the following reasons:

- The Appeals Board's authority to hear appeals under the Site Plan Review Ordinance is defined and limited by Section M of the ordinance. Since the applicant's appeal was one regarding a matter of interpretation (of Section J.1.), the scope of the Appeals Board's responsibility is noted in sections M.b. and M.d., as follows:
  - M.b. Appeals involving administrative procedures or interpretation of this ordinance may be heard and decided by the board of appeals as detailed below.
  - M.d. When errors of interpretation are found, the board of appeals may modify the interpretation or reverse the order of the board, but may not alter the conditions attached by the board. All changes in conditions, other than changes made by the granting of a variance, shall be made by the board in accordance with the board of appeals' interpretation.

- Though the Appeals Board voted that the Planning Board misinterpreted the Review Standard J.1. it did not specify in what way(s) the Planning Board made an error in interpretation nor did the Appeals Board state on what basis it made the decision that an error of interpretation had been made.

- In conducting an appellate review, as contrasted to a 'de novo' review, the Board of Appeals' review of the appeal is limited to the record created by the Planning Board and comparing that record to the findings and decision made by the Planning Board; the Appeals Board makes a determination as to whether the Planning Board's decision is supported by the Planning Board's record. No new information can be entered into the record.

- Two of the four enumerated 'findings of facts' noted by the Appeals Board are, in fact, not to be found in the record of the Planning Board's deliberations and thus cannot be cited as 'findings of fact.'
  - There is no record whatsoever about the possible 'stumpage' value of the material the applicant proposes to excavate or about the cost of the proposed building. The Appeals Board's speculation about these matters, while interesting, cannot be cited as a 'finding of fact' from the Planning Board's record which demonstrates that the Planning Board erred in its interpretation to Review Standard J.1. Further, it bears no relation to Review Standard J.1.

    - There is no record whatsoever of the Planning Board discussing whether the Review Standard J.1. either is or is not confusing. How, therefore, can the Appeals Board conclude that its opinion that 'the standard is confusing' constitutes a 'finding of fact' from the Planning Board's record which demonstrates that the Planning Board erred in its interpretation of Review Standard J.1.?

- A third 'finding of fact' - that the proposed building would pose less of an adverse visual impact on a neighboring property if it were sited at the proposed elevation rather than at the existing land surface elevation - is nothing but an opinion of the Appeals Board. The impact of the project on abutting or neighboring properties is not the subject of Review Standard J.1. and the Appeal Board's opinion on the subject cannot be cited as a 'finding of fact' in the Planning Board's record of its proceedings and thus as a criteria for finding that the Planning Board erred in its interpretation of Review Standard J.1.

- A fourth 'finding of fact' - that the Planning Board did not specify the number of cubic yards of 'soil' as distinct from gravel, stone, clay, and other materials that would be 'disturbed' in the proposed excavation of 70,000 cubic yards of material - begs the questions of quantity thresholds and definitions of various materials, neither of which are specified in the ordinance. Since neither is specified in the ordinance, the Appeals Board has no criteria, other than its opinions, by which to make its own judgments and thus has no criteria by which to determine that the Planning Board erred in its interpretation.

For the reasons noted, inasmuch as they argue that the Appeals Board has no basis for concluding that the Planning Board erred in its interpretation of Review Standard J.1., we request the Appeals Board meet to formally reconsider and reverse its June 4 decision.

Additionally, we note that:

- The Appeals Board has instructed the Planning Board to place conditions on the permit, specifying excavation and construction deadlines/goals/priorities. The Appeals Board has no authority to instruct the Planning Board to place such conditions on the permit.

- There was no vote to remand the case to the Planning Board with instructions regarding J.1.