

STATE OF MAINE
HANCOCK, SS

SUPERIOR COURT
Docket No. AP-18-_____

FRIENDS OF LAMOINE)
Plaintiff)
and)
JEFFREY DOW AS TRUSTEE)
for the TWEEDIE TRUST)
Plaintiff)
vs.)
THE TOWN OF LAMOINE)
Defendant)
HAROLD MACQUINN, INC.)
Party in Interest)

80B COMPLAINT

1. Plaintiff Friends of Lamoine is a non-profit corporation organized under the laws of the State of Maine, which "advocates the preservation and enhancement of our community and its resources through education and citizen involvement" and encourages "balanced social and economic development that conserves our natural resources and promotes a healthy environment for residents, small-businesses, visitors, and future generations."
2. Friends of Lamoine advocate extensively in opposition to expanding gravel operations in Lamoine, and have worked to enact laws which will prevent further expansion of gravel operations in Lamoine.
3. Friends of Lamoine has members who own properties which are directly negatively impacted by and/or which are adjacent to the development activity herein appealed.
4. Friends of Lamoine, through counsel and through the presence of its members, participated in all hearings related to the matters herein appealed.
5. Plaintiff Tweedie Trust is a Trust, which owns property which will be negatively impacted by the proposed development and which abuts or is across the road from the site of the development activity herein appealed.

6. Plaintiff Tweedie Trust, through and authorized representative, and the beneficiary of the Trust, participated in the hearings related to the matters herein appealed.
7. Defendant Town of Lamoine is a Municipality located in Hancock County, Maine.
8. Party-in-Interest Harold MacQuinn, Inc., ("MacQuinn") is a corporation incorporated under the laws of the State of Maine.

FACTS

9. In 2012, MacQuinn, in order to expand gravel extraction operations at a pit in Lamoine, applied for gravel permit under the Town's Gravel Ordinance and for sight plan approval, under the Town's Site Plan Review Ordinance.
10. In 2014, the Town, through its Planning Board, denied MacQuinn's application, under the Town's Site Plan Review Ordinance and Gravel Ordinance, to engage in Gravel extraction on a parcel of land adjacent to an existing pit in the Town of Lamoine. MacQuinn appealed to the Superior Court on June 6, 2014, and moved for a Trial of Facts on July 14, 2014. That appeal was docketed as AP-2014-007, in the Hancock County Maine, Superior Court.
11. In November of 2016, MacQuinn's appeal in AP-2014-007 was dismissed WITH PREJUDICE, per a stipulation of dismissal, with no further order of the Court.
12. Independent of the Court, MacQuinn and the Town, had agreed, informally, to settle MacQuinn's appeal on the following conditions: the Town would allow MacQuinn to submit an updated application under the ordinances in effect in 2012; and John Holt, the Planning Board Chair, whom MacQuinn alleged was biased, would recuse himself from any hearing or deliberation on the new application.
13. MacQuinn submitted a renewed applications for Gravel and Site Plan Review permits or approval in February of 2017.
14. MacQuinn's 2017 application could not be granted under the ordinances in effect at the time of its submission.
15. The Town of Lamoine Planning Board, after public hearing and deliberation, applying the March 16, 2011 revisions of the Town's Gravel Ordinance, finding that MacQuinn failed to

establish that the gravel pit expansion would not adversely impact surrounding properties and that it would not adversely impact surrounding water supplies, and denied its application for a Gravel Permit.

16. The Town of Lamoine Planning Board, after public hearing and deliberation, applying the March 16, 2011 revisions of Site Plan Review Ordinance, did not approve MacQuinn's Site Plan, finding that MacQuinn had failed to establish that the project would preserve and enhance the landscape, and not adversely impact surrounding water systems, and denied MacQuinn's application for site plan approval on those grounds.
17. MacQuinn timely appealed both issues the Town's Municipal Board of Appeals (herein after "the Appeals Board).
18. The Appeals Board, in the Spring of 2018, conducted hearings and deliberations on MacQuinn's appeals.
19. As to the Gravel Ordinance, MacQuinn requested and received a *de novo* hearing, and the Appeals Board found that MacQuinn had met the requirements of the Ordinance, and granted MacQuinn's gravel permit.
20. As to the Site Plan Review Ordinance, the Appeals Board conducted a limited appellate review of the Planning Board's decision and ruled that the sections of the Ordinance under review did not apply to the MacQuinn application, and remanded the matter to the Planning Board.
21. The Planning Board, following the Appeals Board's ruling, approved Macquinn's site plan on July 9, 2018, and issued its written notice on July 16, 2018.

COUNT I

22. The Town of Lamoine made an error of law and exceeded its executive and judicial authority when the Appeals Board, Planning Board and the Board of Selectmen permitted MacQuinn to seek a gravel permit and site plan review under the ordinances in effect in 2012 for MacQuinn's 2017 application, pursuant to the parties' informal agreement to dismiss AP-2014-07.

23. The Appeals Board applied improper and unconstitutional review standards, made erroneous conclusions of law, and exceeded its authority in its decision overturning the Planning Board's decision to deny MacQuinn's Site Plan Review Application, including but not limited to:

- a. The Appeals Board hearing MacQuinn's 2017 appeal, beyond the scope of its authority, as the Appeals Board was limited to correcting errors of interpretation by the Planning Board.
- b. The Appeals Board applying the appeal standards of the 2012 versions of the applicable ordinances, when, at most, MacQuinn had a vested right in the substantive requirements of the 2012 ordinances, not the appeal procedures.
- c. To the extent the Appeals Board acted within its authority, it erred in its interpretation of the Site Plan Review Ordinance and/or that ordinance's interplay with the Gravel Ordinance as to sections J.1, J.10, and J.17 of the Site Plan Review Ordinance, in that it found each of these sections invalid or inapplicable to MacQuinn's application. These errors include, but are not limited to:
 - i. The Appeals Board ruled that, Section J.1 of the Site Plan Review Ordinance was superseded by the Town's Gravel Ordinance, but this was an erroneous ruling beyond the scope of the Appeals Board's authority.
 - ii. The Appeals Board ruled that Section J.1, titled "Preserve and Enhance the Landscape" was void because it is impossible to preserve and enhance the landscape if one is removing gravel. But, the title of the section has little import in applying the actual requirements of the ordinance.
 - iii. The Appeals Board ruled that Section J.1 does not apply to gravel extraction projects, because that section only applies to "construction" and gravel extraction is not "construction." The reference to "construction" in section J.1, however does not

apply to the section which the Planning board relied upon in denying MacQuinn's application--language which the Appeals Board seems to have ignored: "environmentally sensitive areas such as aquifers, significant wildlife habitat, wetlands, steep slopes, floodplains, historic buildings and sites, existing and potential archeological sites and unique natural features will be maintained and preserved to the maximum extent."

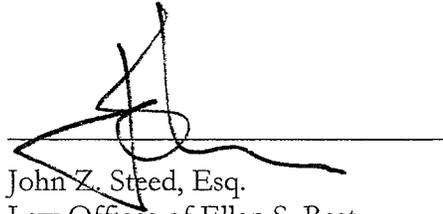
- iv. The Appeals Board ruled that Sections J.10 and J.17 of the Site Plan Review Ordinance were inapplicable because the Town's Gravel Ordinance, and the Site Plan Review Ordinance each have water protection requirements and that since MacQuinn had met the requirements of the Gravel Ordinance the Site Plan requirements did not apply. The requirements of the Gravel Ordinance are, however, much narrower in scope and do not in any way invalidate the broad water protection requirements of the Site Plan Review Ordinance. The Gravel Ordinance, for example, requires, essentially, that the project stay at least five feet from the ground water table, and that petrochemicals be handled carefully, whereas the Site Plan Review Ordinance requires the applicant show that the project will not adversely impact the town's or region's water system.
- v. The Appeals Board erred in that it entertained MacQuinn's argument that Sections J.1, J.10, and J.17, were invalid and did not apply to their application, when those arguments were raised, for the first time, in a supplemental filing, presented after the hearing and the parties' arguments to the Appeals Board.

WHEREFORE, the Plaintiffs ask that this Honorable Court Order that MacQuinn's Site Plan approval and Gravel Extraction Permit be revoked, and that its 2017 application be dismissed, with prejudice. In the alternative, Plaintiffs ask that this Court uphold the Planning Board's decision denying site plan approval, and order that MacQuinn's site plan approval and Gravel Extraction

Permit for the Kittridge Site be revoked, and for any other remedy which the Court finds just or equitable

Dated August 7, 2018

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "John Z. Steed", is written over a horizontal line. The signature is stylized and somewhat abstract.

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