THE ZONING BOARD OF APPEALS
TOWN OF LAMOINE
606 Douglas Highway, Lamoine, ME 04605

REVISED NOTICE OF DECISION OF THE ZONING BOARD OF APPEALS

APPELLANTS:	Harold MacQuinn, Inc.
Attorney:	Edmond J. Bearor, Esq., Rudman Winchell
LOCATION:	Kittredge Gravel Pit, off Douglas Highway, Lamoine Map 3 Lot 33 Map 3 Lot 31
OWNER:	Harold MacQuinn, Inc.
APPEAL:	Appealing the November 14, 2017, decision of the Lamoine Planning Board to deny Appellant's application for a gravel expansion permit under the Town's Gravel Ordinance
APPELLEE:	Town of Lamoine, Planning Board
Attorney:	Daniel Pileggi, Esq.

PARTIES OF INTEREST/OPPONENTS:

	(i) Friends of Lamoine
Attorney:	John Steed, Esq.
	(ii) Cold Spring Water Co.
Agent	John Holt
	(ii) Tweedie Trust
Agent	Catherine de Tuede

Background

The Planning Board held a final public meeting on November 14, 2017, on the Appellant's application under the Town's Gravel Ordinance (the version in effect as of September, 2012, which was the date the Appellant first sought approval to expand the existing gravel pit operation known as the Kittredge Pit), to expand the Kitteridge gravel pit. The Planning Board found that the Applicant failed to meet the criteria set out in Sections 7.D.3 and 7.D.6 of the Gravel Ordinance, and therefore denied the application.

The Town's Gravel Ordinance requires the granting of a permit if the board makes a positive finding based on the information presented that the proposed operation meets seven

listed criteria. The two criteria that the Planning Board decided the Appellant failed to meet state as follows:

> Section 7.D.3: Will not unreasonably result in water pollution, nor affect adversely existing ground water, springs, or springs
>
> Section 7.D.6: Will not adversely affect surrounding properties.

The Appellant filed a timely appeal of that decision with the Town Board of Appeals, which undertook a de novo review (pursuant to Section 7.G of said Gravel Ordinance) of these two criteria under appeal, holding hearings on February 12, 2018, March 26, 2018, and March 28, 2018, hearing evidence from the Appellant, Appellee, and Interested Parties, as well as comments from the public. The Board, at duly noticed public meetings, did a site visit on May 8, 2018, and deliberated on May 8, and May 9, 2018.

Findings and Conclusions

Section 7.D.3. By unanimous vote, the Board of Appeals concludes that the proposed operation will not result in water pollution nor affect adversely existing ground water, springs, or ponds. The Board finds that the application was supported by a hydrogeologist report and testimony of Michael A. Deyling, which report was peer reviewed by a second hydrogeologist, Robert G. Gerber. Both hydrogeologists testimony was that the Kitteridge pit is a distinct water table from the adjacent Cold Spring Water Co. aquifer, and that these two water tables were not hydraulically connected. They concluded the proposed expansion would not affect the Cold Spring Water Co. aquifer hydraulically, nor would the aquifer be impacted by any unanticipated release of petroleum product within the pit excavation area. The Board notes that a report from Willem Brustsaert, a civil and environmental engineer, gave a contrary conclusion, however the Board is persuaded by the testimony from Mr. Deyling and Mr. Gerber, including the additional testing results requested by Robert G. Gerber and his follow up report to the Planning Board confirming Mr. Deyling's report and conclusions. Mr. Deyling further testified before this Board addressing water sources other than the Cold Spring Water Co. aquifer would not be impacted by the proposed expansion.

Section 7.D.6. By unanimous vote, the Board of Appeals concludes that the proposed operation will not adversely affect surrounding properties. The Board has weighed carefully all the evidence submitted from the parties on this issue. There has been a gravel pit operating on Lot 33 for many years, and the board finds that application to expand the pit will not increase the level of operations that would already be available to the Appellant under its current area of operation. The Board finds that the evidence stated above from the hydrogeologists show that there is no adverse effect on the neighboring property of Cold Spring Water Co.

The distance of the current operations from the properties adjacent to and near the southerly boundary of Lot 31 is considerable. Under the version of the Gravel Ordinance in effect in September, 2012, the Appellant could excavate up to 50 feet from the southern property line of Lot 31 for three years (after a period of three years, a renewal application under the current version of the Gravel Ordinance limits excavation to the 100 foot setback). This caused concern for several owners south of the southerly line of Lot 31 since it would result in operations much closer to their homes than the current operations. However, the Applicant offered to maintain a 100 foot set back from the southerly boundary line of Lot 31, instead of the 50 foot setback allowed under the version of the Gravel Ordinance this application falls under. The Board finds that a 100 foot set back would substantially alleviate the concerns raised regarding the effect of the expansion on surrounding properties, particularly those south of the southerly line of Lot 31. Thus, by limiting this application to excavation up to the 100 foot setback line, the incentive to immediately excavate the area between 50 and 100 foot from the southerly boundary of Lot 31 within the next three years is gone, which was the major source of the concern for the surrounding properties. A 100 foot set back would keep the operations on the north side of the hill known as Miro's hill or Cousins hill, leaving the vegetative buffer intact, and any operations at the 100 foot set back would be at a lower elevation than if the operation expanded to that 50 foot strip, thus having minimal additional impact than the current operations. The Applicant stated he would continue the operations from the north of the property and work south, instead of starting operations near the southerly boundary. Other conditions as listed below would further work to minimize any impact from the expansion of the current operations on surrounding properties, especially those south of the southerly boundary.

The properties across Douglas Highway to the west will have no greater impact, and a buffer of vegetation is to be added along the westerly boundary as depicted on the plan (Exhibit A) in green, with additional screening and buffering.

Decision

Based on the above findings and conclusions, the Appeal of the Planning Board's November 14, 2017, decision denying the Appellant's application under the Gravel Ordinance to expand the Kitteridge gravel pit is GRANTED, with the following conditions:

1. No operations of any kind to take place within 100 feet from the southern boundary of Lot # 31 on Tax Map 3.

2. A revised map shall be filed with the Town to show the new 100 foot set-back from the southerly boundary of Lot 31 within 60-days of issuance of a permit

3. The existing entry driveway within this 100 foot setback area shall be moved outside this set back area, and then restored with vegetation, within six (6) months of issuance of the permit, and a revised map showing any new driveway shall be filed with the Town within 60 days of completion.

4. Vegetation removal in the expansion area is only to take place when necessary for excavation of a new area for gravel extraction purposes.

5. The existing erosion along Douglas Highway that this property abuts shall be remediated within six (6) months of the issuance of a permit, together with the remediation and re-vegetation of any driveway openings that are no longer in use.

6. A vegetative screen and buffer is to be added along the westerly boundary as depicted on the plan (Exhibit A) in green, within six (6) months of the issuance of a permit

7. Excavation shall be maintained at the ratio of 2 ½:1 feet to maintain adequate slope.

This matter is remanded to the Planning Board for action consistent with this decision.

Date: June 22, 2018

H. Griffin Fenton
Town of Lamoine Board of Appeals Chairperson