



# Lamoine Board of Appeals

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## Draft

### Minutes of July 14, 2014

Chair Griff Fenton called the meeting to order at 6:33 PM.

Present were: Appeals Board Members Griff Fenton, Connie Bender, Jim Crotteau, Jay Fowler, Jon VanAmringe; Recording Secretary Stu Marckoon, Appellant's attorney Ed Bearor, Appellant Tim Gott, Code Enforcement Officer Michael Jordan, Planning Board chair John Holt, members of the public Lynn Tscheiller, Bruce Gillett, Walter Grenier and Catherine deTuede

**Minutes – June 4, 2014** – Jay moved to approve the minutes as printed. Jim 2<sup>nd</sup>. **Vote in favor was 5-0.**

**Gott v. Planning Board** – Chairman Fenton said a request from the Planning Board to the Appeals Board for reconsideration of the vote on June 4, 2014 has prompted a few items of correspondence from the Planning Board Chair John Holt and Planning Board Secretary Gordon Donaldson. He said attorney Ed Bearor has written to the Appeals Board concerning the Planning Board's request. He asked if there was anything to add to the written correspondence. Rev. Holt said the paper stands for itself. Attorney Bearor said the Appeals Board would be on a slippery slope if it entertains a request for reconsideration. Chairman Fenton said he wanted the item on the agenda in order to deal with it. Mr. Crotteau moved to deny the request from the Planning Board to reconsider the Appeals Board vote. Mr. Fowler 2<sup>nd</sup>. **Vote in favor was 5-0.**

Stu reported to the Appeals Board that he drafted a formal notice of decision by cutting and pasting from the minutes. Mr. Fenton said it was well done, and Mr. Fowler agreed that is spelled out the decision well. Mr. VanAmringe moved to approve the [notice of decision](#) as stated. Mr. Fowler 2<sup>nd</sup>. **Vote in favor was 5-0, the board signed the document.** (A copy was hand delivered to Mr. Bearor following adjournment).

**MacQuinn v. Planning Board** – Chairman Fenton summarized the case, saying in September of 2012 Harold MacQuinn, Inc. sought to expand a permitted gravel extraction by filing gravel and site plan review permit applications. He said the Planning Board denied the expansion on May 13, 2014 based on adverse impact to the landscape and incompatibility with the Comprehensive Plan. He said the Appeals Board received the filing for appeal on June 11, 2014.

Chairman Fenton said he would like to go through the preliminaries on the appeal, starting with jurisdiction. Mr. VanAmringe noted there are two appeals – one of the gravel permit decision and one of the site plan review decision. He asked if this is the same pit. Mr. Bearor said yes. Chairman Fenton said he would like to consider the appeals together. There was no objection to either considering the matter together or agreeing that the Appeals Board would have jurisdiction in the matter.

Chairman Fenton said the issue involves Map 3 Lots 31 and 33. On other matters, there was no objection to the Appeals Board finding that:

- The Applicant (Harold MacQuinn, Inc.) has standing.
- The application was timely filed (the June 11, 2014 filing was less than 30-days following the May 13, 2014 decision).
- There were no conflicts of interest among Appeals Board Members.
- The members present represented a quorum and would be the members to decide the case if and when the time comes.
- The procedure would be similar to that used in the just decided Gott matter.

Chairman Fenton said he would like to pass for now whether the matter would be held as a de novo hearing or an administrative appeal. He asked Attorney Bearor for a clarification of a request in regard to a simultaneous filing in Superior Court.

Mr. Bearor said that an appeal was filed in Superior court because of provisions in the Site Plan Review Ordinance. He said that earlier today he filed a motion of facts in regard to possible illegal Planning Board meetings, bias and conflicts of interest. He said he would request of the Appeals Board to stay the case until the Superior Court rules on whether the case before it is “kosher”; orders a new Planning Board hearing, or rules that the case requires a ruling from the Board of Appeals. He said he was not sure if the Appeals Board has the ability to rule on whether there were violations of the Freedom of Access Act. He said the Appeals Board process could be long and painful and all for naught depending on what the court has to say. He said he would not object to staying any action for now. He said he asked the court for a ruling within 6-months, and it would be folly to gather up all the information required for a record until the parties know what the court is going to do.

Chairman Fenton said that was why he passed on the type of hearing for now. Mr. Crotteau said it would make sense to stay the matter until the court rules. Mr. Fowler said it was unnecessary to go through this 2-to-3 more times. Mr. VanAmringe asked what happens to the pit in the interim. Mr. Bearor said the pit cannot expand, but they do have a license for a previously permitted area.

Mr. Crotteau moved to stay actions by the Board of Appeals until a court decision is rendered giving the appellant and the board some direction. Mr. Fowler 2<sup>nd</sup>. Planning Board chair Holt said the Appeals Board has not dealt with the de novo vs. administrative hearing issue. He said he would like to see the Appeals Board request assistance from the Town Attorney so that the Appeals Board could be armed with information regarding the scope and standard of review ahead of time. He said perhaps it is not worth spending money on the Town Attorney until the town hears from the court. Chairman Fenton said the court could rule that it has to be a de novo hearing. He said the issue has entered the thinking of the Appeals Board. **Vote in favor was 5-0.** Mr. Crotteau asked that Stu be notified of when the Appeals Board has to deal with the matter. Stu said the town attorney is in the loop on the case.

**Other** – Chairman Fenton said a summary of the appeals section of each ordinance that has one was prepared and he'd like to deal with the matter at a meeting in the near future. Mr. Crotteau said he would prefer one set of rules for Board of Appeals actions. Chairman Fenton said that was the goal. He said he would try to prepare a matrix of the various ordinances. Mr. VanAmringe asked if this would take place at a workshop

session. Chairman Fenton said he had no time frame in mind perhaps an ordinance could be crafted in time for the next town meeting. He said such an ordinance would be of benefit.

**Next Meeting Date** – The next meeting date will be determined at a later time.

There being no further action, the meeting adjourned at 6:56 PM.

Respectfully submitted,

Jon VanAmringe, Secretary

jev:sem