

TOWN OF LAMOINE

Minutes of Planning Board Meeting

**May 13, 2014
Lamoine Town Hall**

Planning Board Members

Present: Holt, Bamman, Gallagher, Donaldson, Tadema-Wielandt, Fowler (alt)

Code Enforcement Officer

Present: M. Jordan

Members of the Public

S. Salsbury, C. Lippitt (S. W. Cole), E. Bearor (Rudman & Winchell), P. MacQuinn, B. Gillett, K. Rybarz, D. Schick, Jane Fowler, T. Gott, C. de Tuede, B. Jones

Members of the Press None

1. Chair Holt called the meeting to order at 7 p.m.

2. Consideration of Minutes

Gallagher (Tadema-Wielandt) moved to accept the minutes of the [April 1, 2014](#) regular Planning Board Meeting as written. Vote to approve: 5-0. Several suggestions were made regarding the minutes of the Public Hearing, [April 29, 2014](#). Bamman (Gallagher) moved to accept the minutes as amended. Vote to approve: 5-0.

3. [Code Enforcement Officer's](#) Report

a. [Permits Issued](#) – Report accepted.

b. [Enforcement Actions](#) - Report accepted.

In response to a question from Holt, CEO Jordan reported that he has written Notices of Violation to the owners/operators listed on the nine gravel permits with conditions requiring installation of monitoring wells by May 1, 2014. None of the required wells has been installed.

4. [Conservation Commission](#) – No report.

5. Old Business

a. Site Plan Review Permit [Application, Harold MacQuinn, inc.](#) Expansion of gravel operations (Map 3 Lots 31 & 33).

Holt inquired of the applicant if they intend to submit further revisions to this application. Salsbury indicated that they plan to submit additional information reflecting the recommendations from Summit Environmental Consulting, Inc. that

the grading plan be revised (p. 8 of Supplemental Hydrogeologic Assessment, December 2013).

Mr. Bearor brought forward a memorandum he submitted to the Town on behalf of the applicant (dated May 10, 2014) claiming that Gordon Donaldson had sent an email to the Planning Board in violation of the law, that this act suggested that Mr. Donaldson was “possibly biased”, and that he should recuse himself from further participation in the application. Donaldson indicated that he had erred in not copying the email to the Town Office, as he normally does, and apologized for the oversight. He further remarked that sharing resources among Board members is, in his opinion, essential to the Board’s ability to render informed and well-reasoned judgments and that this had been his goal in sharing resources pertinent to the review standards that the Board is charged with evaluating. (See copy of Donaldson’s explanation emailed to the Board and the Town Office 5/14/14). Mr. Donaldson declined to recuse himself.

Tadema-Wielandt, after indicating his confidence in Donaldson’s ability to participate in this and future decisions, moved to exclude Donaldson from further participation in this application. No second was forthcoming.

Holt explained that the opportunity for public input and for the applicant to present a full application had passed. The meeting would be devoted to deliberations by the Planning Board and discussion will be limited to the voting members of the Board, as per Maine Municipal Association guidelines. He requested that there be explicit motions on each review standard.

[Secretary’s Note: Regarding the review of the Site Plan application below, I have reported first the Review Standards on which the Board found the application to be in compliance. Second, I report substantive discussion on those that the Board voted “did not meet” the standard. Third are listed the Review Standards found “not to apply”. Finally, I report the Board’s action to attach conditions to two Review Standards initially found not to be in compliance.]

1. Review Standards on which the application was **found to be in compliance.**

#6 Buffering and Screening (5-0; motion by Holt/Donaldson)

#9 Surface Water (5-0; motion by Bamman/Holt)

#11 Air Pollution (5-0; motion by Holt/Bamman)

#12 Odor (5-0; motion by Holt/Bamman)

#13 Noise (5-0; motion by Holt/Bamman)

#17 Stormwater Drainage (5-0; motion by Holt/Bamman)

#18 Conservation, Erosion, and Sediment Control (5-0; motion by Holt/Bamman)

#20 Financial and Technical Capacity (5-0; motion by Holt/Tadema-Wielandt)

Section K Special Review Standards. Motion by Holt/Bamman that the application meets the relevant standards in Section K 3(b) 1-5. Vote: 5-0.

2. Review Standards on which the application was **found not to be in compliance**.

Review Standard #1 Preserve and Enhance the Landscape

Holt (Donaldson) moved to find that the application meets this standard.

Gallagher read a statement that began with the letter submitted by Dr. Hal Borns, University of Maine, dated December 29, 2012. In Gallagher's judgment, testimony from Dr. Borns, Dr. Brutsaert, and found in earlier hydrogeological analysis by Mr. Gerber determined the "essential" part the esker/Cousin's Hill plays in protecting the aquifer upon which so many residents of Lamoine depend. In his view, "damage to the aquifer would be irreversible". Citing a map published by the University of Maine entitled "Maine's Ice-Age Trail", Gallagher pointed out the Cousin's Hill is identified as an important "historical and geological" marker of the geologic past. This, he believes, makes Cousin's Hill a "unique natural feature". Given the requirements of this Review Standard, Gallagher concluded, the proposed expansion cannot be justified.

Bamman stated that there is no question that this site is "an outstanding landmark" but wondered if that was sufficient reason for denial.

Donaldson noted the extensive size and scale of the proposed excavation and the over-60-year expected duration of the operation. In light of the fact that many citizens expressed concern about the size and long-term disturbance to this site, to the fact that the site is adjacent to a number of residences and to the historic center of the community, Donaldson argued that he did not find that the application sought to preserve the site "in its natural state insofar as practicable". He referred to the application's Erosion Control Plan section and to conversations in earlier meetings in which the applicant and consultants expressed interest in revising the application in order to "progressively" excavate an area of the site and then revegetate it prior to moving on to the next area of excavation.

Holt, also reading from a submitted statement, found that the proposed expansion "will profoundly alter the topography of this whole large area". The "big issue is the removal of the hill itself... a natural feature" that can be seen from many parts of Lamoine and the surrounding area. He further argued that the esker is a "unique part of Lamoine's unique geology" and thus must be preserved. (See statement.)

Tadema-Wielandt commented that one "only has to read the first sentence of this Review Standard" to realize that the proposed use is impermissible.

Vote on the motion: Affirmative: 0 Negative: 5

Review Standard #3 Vehicular Access

Holt (Bamman) moved to find that the application meets this standard.

Holt raised the concern that the three proposed vehicular entrances surpassed the number permitted under the ordinance. Standard 3.b.2 sets the maximum at 1 entrance for a site with fewer than 1500 vehicles per day. Standard 3.b.7 states that each legally recorded lot existing at the time of the adoption of the Site Plan Ordinance shall be permitted one direct access. Given that there were two lots on this site, two entrances are permitted. Salsbury pointed out the the MDOT has approved all three entrances.

Vote on the motion: Affirmative: 0 Negative: 4 Abstaining: 1 (Gallagher)

Review Standard #10 Groundwater Protection

Holt (Bamman) moved to find that the application meets this standard.

Citing his earlier testimony, Gallagher stated that this gravel operation “will unalterably change the nature of the aquifer... Destroying the remaining esker would finally eradicate our glacially produced aquifer”. (see statement)

Bamman indicated that he was “pretty confident” with the expert testimony and study that the groundwater would be protected.

Donaldson asserted that the application did not include the two conditions recommended by Robert Gerber (see April 29 hearing) and that the proposal had insufficient safeguards without at least these two conditions.

Holt summarized the expert advice given to the Board: Summit and Ransom reports indicate that, with proper steps, excavation can be made safe; Dr. Brutsaert clearly concludes that gravel excavation pursuant to this proposal will be unsafe. Holt suggested placing a condition on any permit issued that would require monitoring of water table levels throughout the life of the project and that it be located close to the area of excavation at all times. (see statement)

Vote on the motion: Affirmative: 2 Negative: 3 (Gallagher, Holt, Donaldson)

Review Standard #6 Comprehensive Plan

Donaldson (Holt) moved to find that the application meets this standard.

Holt reviewed the fact that the Comprehensive Plan describes Lamoine as “essentially a residential community” and that most of Lamoine is zoned Residential-Agricultural, a classification where heavy industrial uses such as gravel extraction of this scope are not usually permitted. Noting that the Comprehensive Plan advocates a mixture of land uses “in balance” with one another, Holt pointed out that the proposed gravel extraction expansion is in an area where 40 – 60 residences are located. Noise and traffic impacts will be impossible to limit. Testimony at the public hearing clearly demonstrated the concerns of citizens about the co-existence of residential uses and the gravel extraction proposed. (see statement)

Donaldson echoed the points made by Holt, pointing out again that the sheer size, scope, and future duration of the proposed use violates the fundamental values set forth in the Comprehensive Plan as guides to the community's future development. Gallagher expressed agreement, noting that the proposed expansion will tip the balance in this region of Lamoine "away from residential". Bamman stated that the "downtown" area of Lamoine (Lamoine Corner) "will be impacted no doubt.

Vote on the motion: Affirmative: 0 Negative: 3 (Gallagher, Holt, Tadema-Wielandt) Abstaining: 2 (Donaldson; Bamman)

In response to Bearor's request for the reasons for the two abstentions, Donaldson indicated that he felt the meaning of the Review Standard itself "is not clear enough" and Bamman stated that the Comprehensive Plan "is not clear enough".

3. Standards found not to apply: The Planning Board found that the following Review Standards do not apply to this application:

#2 Relation of Proposed Structures to the Environment

After a brief discussion, a motion to find that the application meets the standard (Holt; Bamman), the withdrawal of that motion (Bamman, then Holt), Holt (Tadema-Wielandt) moved to find that this standard does not apply to this application. Approved by vote of 5-0.

#4 Parking Motion by Gallagher (Donaldson). Vote: 4-0 (Tadema-Wielandt)

#5 Off-Street Parking (5-0; motion by Holt/Bamman)

#7 Exterior Lighting (5-0; motion by Holt/Gallagher)

#14 Sewage Disposal (5-0; motion by Holt/Bamman)

#15 Utilities (5-0; motion by Holt/Bamman)

#19 Advertising Features (5-0; motion by Holt/Gallagher)

Donaldson read off the results of the review. Holt then suggested that conditions might be appended to some standards that would make it possible for those standards to be met. Bearor agreed.

Review Standard #3 Vehicular Access. Holt (Bamman) moved to reconsider the Board's vote on this standard. After discussions with Mr. MacQuinn in which he agreed to reduce the number of entrances to 2, Holt (Bamman) moved that the application meets Review Standard #3 with the condition that there be only two (2) vehicular entrances from Rte. 184.

Vote on the motion: Affirmative: 5 Negative: 0.

Review Standard #10 Groundwater Protection. After some discussion about possible conditions for approval of this standard, the applicant and members of the Board agreed that that the two "grading plan" recommendations from Summit

Environmental Consulting, Inc. (p. 8 of Supplemental Hydrogeologic Assessment, December 2013); the two conditions recommended by Robert Gerber (p. 3 of report submitted to John Holt, Lamoine Planning Board Chair on March 27, 2014) and the Board's condition that water table monitoring reports be submitted every six months that indicate clearly the level(s) of any water tables monitored by each well. Holt (Donaldson) moved to reconsider the Board's earlier vote on Review Standard #10. Vote: 5-0.

Holt (Bamman) moved to find that the application meets Review Standard #10 with the following conditions:

1. Revise the Grading Plan to reflect a 5-foot separation from the deep water table;
2. Maintain excavation to an elevation of no deeper than 155 feet msl within 1200 feet of Cold Spring where perched water supporting Cold Spring is present;
3. When the pit bottom is excavated to within 15 feet of the currently-estimated groundwater table position that new monitoring wells must be installed over a wider area and that one year of monthly water levels be taken in those new wells (except biweekly during March, April, and May) to determine the final position for purposes of determining the final allowable bottom elevation of the pit.
4. In the event the clay layer of interest (that forms the perched water table flowing toward Cold Spring) is intercepted farther to the west than is currently known, then the mining plan shall be altered to stop any further mining in this area to depth and the edge of any deeper excavations be shifted westward to beyond the edge of the clay layer.
5. Water table monitoring reports must be submitted every six months that indicate clearly the level(s) of any water tables monitored by each well.

Vote on the motion: Affirmative: 4 Negative: 1 (Gallagher)

Holt announced that Harold MacQuinn, Inc.'s application for a Site Plan Review Permit has been denied.

b. Gravel Extraction Permit Application, Harold MacQuinn, inc. Expansion of gravel operations (Map 3 Lots 31 & 33).

The Planning Board's consideration of the Review Criteria from the Lamoine Gravel Ordinance yielded the following findings:

1. Criteria on which the application was **found to be in compliance.**

#2 Erosion/Sedimentation. (5-0; motion by Holt/Donaldson)

- #5 Public Ways (4-1, Gallagher voting in the negative based on high volume of truck traffic and absence of turning lanes on Rte 184; motion by Donaldson/Holt)
- #8A Excavation (5-0; motion by Holt/Bamman)
- #8B Screening (5-0; motion by Holt/Bamman)
- #8C Groundwater (5-0; motion by Holt/Bamman)
- #8D Restoration (5-0; motion by Holt/Bamman) Donaldson noted that the Erosion Control Plan (p. 157) does not clearly state that all final slopes will be no steeper than 2.5:1.
- #8E Transportation (5-0; motion by Holt/Bamman)
- #8F Access (5-0; motion by Holt/Bamman)
- #8G Hours of Operation (5-0; motion by Holt/Bamman)
- #8H Noise (5-0; motion by Holt/Bamman)
- #8I Report Required (5-0; motion by Holt/Bamman)

2. Criteria **approved with conditions.**

3 Will not unreasonably result in water pollution, nor affect adversely existing ground water, springs, or ponds.
 Moved by Holt (Donaldson) to find that the application is in compliance. Holt raised the same issues discussed by the Board during the Site Plan Review deliberations relating to Review Standard #10 and suggested that the Board attach the same five conditions to this permit. Bearor indicated agreement with this strategy on behalf of the applicant. Holt (Bamman) moved to attach to this permit the identical five conditions to those attached to the Site Plan Review. Vote to approve: 5-0.

Vote on the main motion: Affirmative: 5 Negative: 0

3. Review Criteria on which the Planning Board **found the application to be not in compliance.**

Review Criterion #1 Will not unreasonably result in unsafe or unhealthful conditions.

Holt (Bamman) moved to find the application in compliance.

Gallagher read from a prepared statement to make the case that the excavation of Cousin’s Hill “will have a profound effect on the health and welfare of our community”. Citing testimony to that effect from the public hearing, Gallagher concluded that the “destruction of the hill” has prompted fears among townspeople regarding the value of their properties, the quantity and quality of their groundwater, the continuing degradation of the environment and the reputation of the town as a healthy community. He further noted that when the applicant had been invited on February 11, 2013 to address these concerns, Mr. MacQuinn had declined either to address

them or to amend the application in any way. Gallagher concluded that he “cannot vote yes” on this criterion. (see statement.)

Bamman commented that, in his original consideration of this criterion, he “hadn’t thought about this in this broad way before”.

Donaldson voiced a similar conclusion, noting again the enormous scale and expected 60+ year duration of the proposed excavation. He raised two specific concerns that create a reasonable risk to safety and health: the risk to the quantity and quality of groundwater in the aquifer, given the status of the aquifer as the town’s sole water source; the risk posed by the statement on page 157 of the application that all final slopes would not be graded to 2.5:1 or lower (such slopes would be attained only “where practical”).

Holt concurred with Gallagher’s and Donaldson’s conclusions, adding that the removal of such a geologically and historically significant feature of the Lamoine environment will inevitably change the fundamental conditions within the community.

Vote on the motion: Affirmative: 1 Negative: 4 (Gallagher, Donaldson, Bamman, Holt)

Review Criterion #4 Will conserve natural beauty in keeping with the restoration provisions of this ordinance.

Moved by Holt (Bamman) to find the application in compliance.

Gallagher, reading from a prepared statement, explained his understanding that “natural beauty” is a “socially constructed” phenomenon, meaning that “‘beauty’ is ... quite literally constructed by the culture or social system” – in this case, by our community. Gallagher concluded that “the hill is a fundamental part of the environment... [and of] the visible structure of the environment. Its destruction would be an attack on the community’s sense of health [and the] aesthetic essence of the hill...would disappear into a pit of ugliness.”

Holt noted that applying this criterion is always difficult for the Board as it seems impossible to meet it. (see statement.)

Donaldson stated that he finds the application insufficiently specific to address the purpose of this criterion. The extraction operation will remain unrestored over a period of 60-70 years or longer, presenting the community and surrounding area a prolonged view of an enormous open pit. He noted that the Erosion Control Plan specifies what appears to be “progressive” steps to stabilize the excavation surfaces on an “area” by “area” basis. He wondered why the Restoration Plan did not accommodate this strategy and provide a way to limit the amount of excavated acreage to a more reasonable and possibly aesthetically pleasing minimum. This possibility was discussed with the applicant in early meetings regarding this application.

Bamman stated that there was no way to ever restore this property to its natural beauty once the proposed excavation has occurred.

Vote on the motion: Affirmative: 1 Negative: 4 (Bamman, Tadema-Wielandt, Gallagher, Donaldson)

Review Criterion #6 Will not adversely affect surrounding properties
Moved by Donaldson (Holt) to find the application in compliance.

Holt stated that the noise of excavators, trucks, and other equipment in the pit and the truck traffic along Rte 184 and near Lamoine Corner will be continual and will affect the quality of life and the property values in the neighborhood immediately adjacent to the proposed expansion. He further noted that these impacts are likely to extend to non-adjacent properties on the Mill Road. Altogether, the “most densely populated” section of the town of Lamoine will be negatively affected in this regard. (see written statement.) Gallagher cited repeated public hearing testimony from neighbors and citizens that raised these same concerns about the proposal. He mentioned, as well, the testimony that referenced a real estate agents statement that the town’s reputation as a residential community would be further diminished if a project of this size and duration were approved. (see statement)

Vote on the motion: Affirmative: 1 Negative: 3 (Holt, Gallagher, Donaldson); Abstaining: 1 (Bamman)

Holt summarized the review by stating that the application was found to be in compliance on all Review Criteria save for #1, #3, #4, and #6. The application was thereby denied.

The Board, by earlier vote, agreed to find the application in compliance on Review Criterion #4 if in the future it meets the following five conditions:

1. Revise the Grading Plan to reflect a 5-foot separation from the deep water table;
2. Maintain excavation to an elevation of no deeper than 155 feet msl within 1200 feet of Cold Spring where perched water supporting Cold Spring is present;
3. When the pit bottom is excavated to within 15 feet of the currently-estimated groundwater table position that new monitoring wells must be installed over a wider area and that one year of monthly water levels be taken in those new wells (except biweekly during March, April, and May) to determine the final position for purposes of determining the final allowable bottom elevation of the pit.
4. In the event the clay layer of interest (that forms the perched water table flowing toward Cold Spring) is intercepted farther to the west than is currently known, then the mining plan shall be altered to stop any further mining in this area to depth and the edge of any deeper excavations be shifted westward to beyond the edge of the clay layer.

5. Water table monitoring reports must be submitted every six months that indicate clearly the level(s) of any water tables monitored by each well.

It was the sense of the Board that, given the lateness of the hour, the remainder of the agenda for this meeting should be continued at a later time. Holt announced that the meeting would be adjourned until Tuesday May 27 at 7 p.m.

The regular June Planning Board meeting was rescheduled to Wednesday, June 11 at 7 p.m. to accommodate conflicts some Board members had with the original date.

9. Next Meetings:

May 27 7 p.m.

June 11 7 p.m.

10. Adjourned at 10:10 p.m.

Respectfully Submitted,

Gordon Donaldson, Secretary