



Lamoine Board of Appeals

606 Douglas Hwy
Lamoine, ME 04605
(207) – 667-2242
town@lamoine-me.gov

Minutes of May 14, 2014

Chair Griff Fenton called the meeting to order at 6:30 PM

Present were: Board of Appeals members James Crotteau, Hancock “Griff” Fenton, Jon VanAmringe, Constance Bender, Jay Fowler; Administrative Assistant Stu Marckoon, Planning Board chair John Holt, Appellant’s agent Steve Salsbury, Appellant’s attorney Ed Bearor and Code Enforcement Officer Michael Jordan.

Minutes – April 14, 2014 – Jim moved to approve the minutes as presented. Jon 2nd.
Vote in favor was 5-0.

Gott v. Lamoine Planning Board – Chairman Fenton read a brief summary of the case and thanked both the appellants and the planning board for timely submissions.

Appellant’s Case – Attorney Bearor placed a big plan for the Gott project on an easel. Mr. Salsbury gave a brief description of the plan. Jon asked if the upper line was the existing grade. Mr. Salsbury explained that the existing grade was roughly the heavy black line on the plan. He said the plan was that a berm and trees planted on top of it would give a visual screen and by lowering the bank, the neighbors would look out over the top of the building.

Mr. Bearor said the Planning Board reviewed the application and granted a commercial building permit. He said that of the 18 review criteria in the Site Plan Review Ordinance, the Planning Board found in favor of all but one. He said he has written a memo on his thoughts. He said Mr. Gott is in the gravel business, but is also a contractor and runs a trash disposal company. He said the building project would be used to store and repair equipment. He said if Mr. Gott had proposed to do this on existing land, he still would have had to clear the same amount of area for the same use. He said the Planning Board would have had to review tree removal and soil disturbance which would occur no matter what was done.

Mr. Bearor said the gravel industry is neither in the public’s favor nor in the Planning Board’s favor at present. He said Mr. Gott had applied for a gravel permit for the same parcel before and was turned down. He said Mr. Gott is not precluded from removing gravel for a building. He said this is similar to building something like Home Depot in Ellsworth, but this project would remove less than 25-percent of the gravel that was proposed to be removed from the rejected gravel permit application, and it would occur in a very short period of time. Mr. Salsbury said it would take about 12-months. Mr. Bearor said it’s not a long range plan like a gravel operation would be.

Mr. Bearor said the access road is not located near any residences, and the neighbors won’t see and probably won’t hear the operation. He said the ordinance should be looked at as a whole. He said what is proposed minimizes the encroachment on neighboring uses. He said he doesn’t think the neighbors will know they are there. He asked why it would not be denied if it were built at existing grade. He said there is no impact on the abutting landowners, and does not believe the Planning Board made the

correct decision. He said he does not believe the proposal violates the standard on which the permit was denied. He said he keeps hearing that the purpose of the Site Plan Review Ordinance is to protect the public health, safety and welfare. He said he's looking for some balance. He said the Planning Board has blinders on when it comes to the gravel business. He said at the end of a year people will see a nice building from the front and nothing from the rear. He said the Planning Board decision should be reversed.

Planning Board's Case – Planning Board Chair John Holt said the Appeals Board received a copy of his written remarks. He said the reason that the Appeals Board is here is to listen to an appeal that the Planning Board misapplied Site Plan Review Ordinance Review Standard J1. He said he's not sure the project is relevant to appeal. He said the issue cited is that 70,000 cubic yards of extraction to prepare for a building site. He said the appeal identified 5 things and he has responded on behalf of the Planning Board. He said the Planning Board does not believe they erred in the interpretation of the ordinance.

Rev. Holt noted there was an omission on the map; a 10-foot buffer between gravel pits. He said the access road would go through that buffer. He said the buffer has not been maintained and part of it would be removed by this project. He said the Planning Board looked at the entire picture and voted unanimously to deny the permit on that basis.

Questions from Board of Appeals – Jim asked if the proposed removal of 70,000 cubic yards was all sand and gravel. Mr. Salsbury said it was a mix of sand, gravel, clay and dirt. Jim said if that was all that the appellants were going to do, they would need a permit. Mr. Salsbury said that was correct, but the project would go on for an eternity. Jim asked how big a hole is proposed. Mr. Salsbury said about half an acre. Jim said that would be about 40 x 40 x 32. Jon said the footprint is about 20,000 square feet. A discussion of various measurements followed.

Griff asked about the building height. Mr. Salsbury said it would be 20-feet. Jim said this is a substantial amount of removal of gravel, sand and clay. He said the appellants tried to get a gravel permit previously and asked why this is not an end around that. Mr. Bearor said the amount of material removed by this project would be 80-percent less than was proposed by the gravel operation. He said it makes sense to have everything on a similar level for the impact on abutting properties. He said the proposed operation warrants that much area for activity.

Jim said the Planning Board was concerned about the amount of gravel removal and denied a permit two years ago. Mr. Bearor said this application should not be coupled with that. He said removal is half of the equation. He said what is left is better. Jim asked how the Appeals Board could ignore the gravel permit issue. Mr. Bearor said if a building is a large building such as Wal-Mart, a gravel permit is not needed. Jim said if someone wants to pull out 280,000 yards of material to build the same thing, that doesn't make sense. He asked where the town draws the line. Mr. Bearor said if the town doesn't know, the appellants don't know. He said if this were a Wal-Mart distribution facility, this type of proposal is pretty common, and they don't need a gravel permit. Jim asked whether the Board should look at things differently if a gravel permit was

requested before. Mr. Bearor said yes; the board should not look at one's intent. He said the Planning Board has to take an application on its face. He said it would be this application.

Jon asked whether it was 20% or 25% of the original amount of gravel that would be displaced. Mr. Bearor said the 25% figure was correct.

Other – Code Enforcement Officer Michael Jordan said 500 yards is not a very large amount of gravel. He said 90% of the housing projects would need a gravel permit because more than that is excavated during the building process. He said they don't need a gravel permit to construct a house. He said there is a lot of past history on this issue. He asked why the appellants would want a higher slope to access the adjacent lot. He said the project would take place over a 12-month period, and if all projects that moved over 500 cubic yards of gravel were required to get a gravel permit, it would halt all building in town.

Appeals Board Questions – Resumed – Jon asked Rev. Holt to clarify why this project needs a gravel permit. Rev. Holt replied because the gravel ordinance says so. Jon said he's trying to resolve that in his mind. Rev. Holt said the 500-cubic yards of removal kicks in the Gravel Ordinance. He said the Planning Board did not deny the permit because of the gravel permit issue. He said they denied the permit because removal of 70,000 yards of material is not appropriate.

Griff read standard J1 as follows:

1. Preserve and Enhance the Landscape.

The landscape shall be preserved in its natural state insofar as practicable by minimizing tree removal, disturbance of soil, and retaining existing vegetation during construction. After construction is completed, landscaping shall be designed and planted that will define, soften or screen the appearance of the development and minimize the encroachment of the proposed use on neighboring land uses.

Environmentally sensitive areas such as aquifers, significant wildlife habitat, wetlands, steep slopes, floodplains, historic buildings and sites, existing and potential archaeological sites and unique natural features will be maintained and preserved to the maximum extent.

Griff asked what amount of disturbance of soil will allow someone to get a permit. He said there is no guidance in the ordinance and he needs to know how this was done. Rev. Holt said his general response is that it would be better for someone to put something on top instead of excavating down. Griff asked how far is too far. Rev. Holt said it would depend on the topography. Griff said there are no guidelines in the ordinance to determine what is acceptable. Rev. Holt said the Planning Board has a 5-member board to look things over and it is a collective decision. Griff said there are court cases that he has looked at. He said it appears 5-people are legislating for the

entire town. He said an applicant needs to know what to do to accomplish a successful application. He said it is not up to 5-people to legislative when no one knows. He said other parts of the ordinance are clearly defined and gave an example.

Griff says he has a question about minimizing areas and how that is defined. He said if the standard is to minimize, it needs a standard, and there is no guideline for it. He asked how anyone could comply with what is in the ordinance. Rev. Holt said the complaint is against the Site Plan Review Ordinance, not the Planning Board. Griff said that is important in the future.

Jim said that problem would require an ordinance as big as a way. He said the ordinance leaves it to someone to determine what minimal means. He said no ordinance can be written to cover everything. He said it's similar to the legislature making laws and leaving it up to the police to determine what the law means. He said that is what's happening here. He said the Appeals Board and the Planning Board are stuck with the law. Griff said he agreed, but it makes it difficult for anyone to try to comply.

Jay said a big amount is a matter of opinion. He said the old Wal-Mart store in Ellsworth saw 800,000 yards of material moved, and the new Wal-Mart and Home Depot project in Ellsworth moved millions of yards. He said 70,000 yards is minimal and it's much better to hide the project than to put it on top of a hill. He said he could understand rejecting a permit on a 50-foot setback violation, but beautification is difficult to understand.

Jay said he attended a Maine Municipal Association class the previous evening and it was a big eye opener and it was a good session. He said there is no way to define what is being talked about. He said the Planning Board seems to be getting into a loophole of people trying to promote a way of life and now he feels like the bad guy. He said it's taking one little thing and using it against gravel operators. He said the application as proposed would be a lot better than sticking the building on top of a hill.

Griff asked about the purpose of the ordinance. Mr. Bearor defined the purpose and said the Site Plan Review Ordinance also says to balance the right to use the land with the rights of others. He said the law court cites standards in an ordinance with an eye to the purpose. He said the purpose tells how to apply the standards.

Griff asked what the purpose was for the building. Mr. Salsbury said it was a 3-bay garage for loaders and trucks and for major maintenance. Griff asked it would be used for winter storage. Mr. Salsbury said that was correct, along with the existing building. Griff asked if that would change the noise and traffic generated by the trucks. Mr. Salsbury said it would mean they don't have to drive the trucks to Southwest Harbor for repair and storage.

Connie asked if the building was in addition to the 20,000 square foot parking lot. Mr. Bearor said the building is included within the 20,000 square foot footprint. Griff asked what would happen with the gravel. Mr. Salsbury said some would be trucked off and sold and some stored on site. Mr. Bearor said a lot of the material is not gravel. Mr. Salsbury said some of it is clay which doesn't sell and that would be used for restoration of the pit on the adjacent lot.

Rev. Holt said the Planning Board's concern was for the project as a whole, and that is what the Planning Board has done. He said the particular concern of the Board of Appeals is whether the Planning Board erred. He said it's easy to get concerned regarding an evaluation of whether it's a good idea or not.

Griff said the real issue is with standard J1, and it is important to understand where the building is and why it's proposed to be on the same level as the other part of the lot. He said J1 is the overriding issue.

Griff closed the hearing at 7:25 PM.

Griff said he was curious as to the feeling of the rest of the board whether it would be beneficial to see the property and if that might shed light on whether the proposal removes too much material. He said the Planning Board says 70,000 cubic yards of material does not minimize soil disturbance.

After a brief discussion, the board favored paying a visit to the site this evening. They departed the town office and conducted a site visit led by Mr. Salsbury with all of those in attendance at the hearing with the exception of Rev. Holt.

After the site visit, Jim moved to recess the meeting until 6:30 PM on June 4, 2014 to make a decision on the appeal. Jon 2nd. **Vote in favor was 5-0.**

The meeting stood in recess at 7:50 PM.

Respectfully submitted,

Jon VanAmringe, Secretary

jev:sem