

Town of Lamoine, Maine

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Gravel Ordinance Work Group



Final Report to the Board of Selectmen

In January 2014, the Board of Selectmen appointed a volunteer panel to review the Lamoine Gravel Ordinance which had been enacted in March 2013. Following that enactment date, suit was filed against the Town of Lamoine by several property owners that held gravel extraction permits in reaction to several aspects the new ordinance. As part of an agreement to withdraw the suit, the Selectmen formed this panel. Initially termed a "task force", the name was changed to "gravel work group". A process document to define the tasks for this committee was finalized by the Board of Selectmen and is part of the record.

Appointed as members were Donald Bamman, Jay Fowler, Perry Fowler, Michael Jordan, David Legere, Richard McMullen, Stephen Salisbury and Valerie Sprague. Initially Selectboard chair Jo Cooper chaired the meeting. Following a change in the Selectboard chairmanship, Gary McFarland agreed to chair the meetings. Administrative Assistant Stu Marckoon served as the recording secretary and administrative liaison for the group.

Meetings were held on the following dates:

February 27	March 20	April 17
May 1	May 15	June 5

Detailed minutes are on file at the Lamoine Town Office and also posted on the Town of Lamoine website.

During the process of these meetings, the work group agreed on four major aspects of the Lamoine Gravel Ordinance that warranted review. The group further agreed that it would make no specific recommendations to the Board of Selectmen, but would offer a range of options to the Selectmen from which the Selectmen could conclude what amendments to the Gravel Ordinance, if any, might be offered to the voters. It should be noted that during this process, three amendments to the March 2013 ordinance were approved by the annual town meeting in April, 2014.

The work group requested and received approval from the Board of Selectmen to engage professional hydrologist Robert Gerber to assist with water monitoring matters.

The four major topics of discussion were:

- Setbacks
- Restoration/Reclamation
- Water Quality and separation
- The permitting process

To follow are the discussion options for each major topic

Setbacks

1. Those with an economic interest in gravel mining expressed a desire to grandfather the allowed setbacks that existed prior to the March 2013 ordinance.
 - a. The 2011 ordinance setbacks were 50 feet, potentially reduced to 10-feet with written abutter permission and a minimum of 25-feet from cemeteries.
 - b. The 2014 amendment allowed a reduction to 50-feet provided the pit had received site plan review permitting, has written abutter permission, and other provisions, including reclamation prior to permit expiration.
2. Setbacks from natural resources need to be better defined.
 - a. The 2014 ordinance requires a 250-foot setback from the following areas: *high-water line of any great pond, river or saltwater body, and the upland edge of a coastal or freshwater wetland* - adding the language “as defined in the Lamoine Shoreland Zoning Ordinance” would repair the ambiguity.
3. Possible mirroring the DEP setback requirements in the ordinance
 - a. The DEP Setback requirements are outlined in state statute in 38-MRSA § 490)
4. Several express sentiment that the 100-foot setback protection should be maintained for residences, public roads, churches and schools.
5. Create separate review criteria and operational requirements for large pits vs. small pits. There was discussion about reduced water testing needs for small operations.

Restoration & Reclamation

1. Create a policy at the Select Board/Planning Board level for acceptance and distribution of restoration funds paid to the town per cubic yard of material involved.
 - a. The 2014 ordinance requires pit owners to submit \$0.05/cubic yard removed to be placed into escrow for use in the restoration process. The ordinance lays out some basic steps of how the money is administered but it lacks a lot of direction. There was some sentiment that the Selectmen could develop a more formal policy incorporating what the intent of the ordinance language is
2. Create an incentive to restore more excavated area – have less “open” areas.
 - a. Possibly develop a plan to require restoration requirements for those areas that have already been excavated to the limits before expanding into unopened parts of the operation.
 - b. Allow a “restore as you go” option and forego payment into the escrow account
 - c. Not grant a “renewal” until such time as all restoration proposed in the previous permit is documented as completed.
 - d. Structuring permit fees to provide an incentive to have as little un-restored area as possible
3. Possibly do away with restoration funds as the amount in the ordinance (\$.05/cy) doesn't necessarily match actual restoration costs.

- a. It was noted that if 10,000 cubic yards were removed, that would only generate \$500.00 toward the restoration fund. The estimated cost to restore an acre is about \$4,000.
- b. Possibly create other options for guarantees for restoration including having the town named on a performance bond similar to the state requirement.
- c. The town has no authority to reclaim private property without an easement from the owner to do so. Therefore, even if the pit were never reclaimed and there were "\$x" in the escrow fund, there is no authority to make distribution and have the pit restored without specific permission.
- 4. Require restoration to be complete before Planning Board renews permit.
 - a. There is nearly universal acceptance of this provision from all work group members.
- 5. Allow for viable restoration alternative beyond a return to a natural state (i.e. – turning an excavated area into a tree farm, residential subdivision, blueberry fields, etc.)

Water Quality and Separation

- 1. Determine what the number of water quality monitoring wells should be and how frequently water quality tests should be conducted.
 - a. Mr. Gerber recommended quality monitoring, if done correctly, would locate wells both up and downstream from the operation, that these wells should be tested initially on a quarterly basis for 3-years and then semi-annually in perpetuity.
 - b. The recommendation in "a" above would be cost prohibitive to small operations.
 - c. The recommendation also was that a single, qualified person compile and analyze the data from the water quality monitoring report.
 - d. The current ordinance requires annual quality tests and that one well is sited for every 5-acres of permitted area.
 - e. There are no provisions in the current ordinance for statistical analysis of the data gathered from the required test parameters, nor is there any type of consequence should water quality deteriorate.
- 2. Better define the water quality test parameters.
 - a. A list of test parameters is contained in the present ordinance language.
 - b. The Town of Lamoine currently tests wells around the closed landfill for a different list of parameters to determine the contamination level.
 - c. Contamination from gravel extraction is extremely rare. Mr. Gerber said the more likely source for contamination would be a spill, either accidental or intentional due to vandalism.
 - d. There are some potential impacts on water quality to do result from gravel removal according to Mr. Gerber, namely elevated levels of arsenic, iron and manganese.
- 3. Determine the number and type of separation wells per pit size (whether to 5-foot depth or groundwater depth).

- a. The present ordinance requires a 5-foot separation between the floor of the pit and saturated material (groundwater). State law has the same requirement, and Mr. Gerber answered that a 5-foot separation was an adequate filtering layer.
- b. It was recommended that separation monitoring be accomplished by drilling at least 10-feet below the groundwater level to determine the depth to groundwater as opposed to drilling a 10-foot well and if it comes up “dry” calling that adequate separation.
- c. The one level monitoring well per 5-acres ratio seems to be acceptable. There perhaps needs to be clarification that the "per 5 acres" refers to excavated and un-reclaimed land. The present language infers that if, for instance, 30-acres were permitted, and only 2-acres were actually excavated, six wells would be required, scattered through the unexcavated area.

Permitting Process

1. Creation of a streamlined renewal process for operations that have received an initial permit.
 - a. The present ordinance makes no differentiation between initial permits and renewals. Essentially this creates a site plan review application every three years with no certainty that the operation would be renewed.
 - b. The Planning Board could be queried about which aspects of permitting an extraction operation should be required every three years. Certainly it would include:
 - i. Map of entire previously permitted area showing the currently excavated area, the previously excavated area, the areas previously excavated that have been restored, and the area proposed to be excavated and restored during the next 3-year cycle.
 - ii. Annual excavation reports showing the amount taken from the operation in the permit cycle.
 - iii. Water separation level reports
 - iv. Water quality reports
 - v. Proof of payment to restoration escrow fund
 - vi. Any notices of violation issued by the CEO and/or DEP and the steps taken to correct such violations.
 - vii. Payment of the permit fee established by the Board of Selectmen.
 - viii. The previous reclamation plan and certification that the plan has been executed.
 - c. A renewal would not allow for expansion beyond that area that was originally permitted either under site plan review or the gravel ordinance.
 - d. Review criteria potentially limited to compliance with ordinance and permit conditions previously granted.
2. Determine the information required for new gravel applications that would not be necessary on renewals
 - a. See items 1(b)(i-vii) above

- b. "Floating" pits – i.e. moving operations on the same parcel of land into areas that were not proposed for excavation in the initial permit – shall not be allowed. If a parcel of land (i.e. 20 acres) received a permit, the entire acreage shall be considered the gravel excavation area, potentially with a limit on how much excavated an un-reclaimed area may exist within that permitted area. If the land were larger than the 20-acres used as an example, say 50-acres, the excavated area would not be able to move anywhere within that 50-acre parcel of the permit holder's choosing.
3. Creation of an expansion application process or determine whether it falls under a new or renewed permit process.
 - a. The town meeting in June 2014 approved an amendment to prohibit "new" gravel pits in the Rural and Agricultural Zone. It needs to be defined whether an expanded pit would be considered a new pit.
 - b. For operations on the same lot of land but which have not been identified under the initial permit, an expansion of the operation would fall under the same guidelines as a new permit.
4. Better define what is permitted to be excavated and what is required if the excavation area should change within the permitted acreage.
 - a. See 2(b) above in regard to floating pits. The bottom line is that a permit holder must initially submit the plan for the entire parcel for the entire life of the operation with plans every three years for what has taken place and what will take place.

Other – Clarify the scope of the ordinance. There is concern that a large building project that excavates more than 500-yards of material would require a gravel permit because of the amount of material removed.

The Gravel Work Group took great efforts to hear all sides on this issue during its sessions, receiving public comment during the latter parts of each meeting. The group realizes there are very strong and passionate feelings about the gravel mining industry and its impact on the town. Obviously the group does not advocate what seems to be the desire of some to entirely shut down all gravel mining, nor does it advocate giving carte blanche to the mining industry to operate without significant local oversight.

Some of the provisions of the new gravel ordinance, especially those involving water quality monitoring, require staff analysis which the town government infrastructure is not able to provide at this time.

There are parts of the new ordinance where the performance standard requirements may not produce the desired end result. One example is the restoration fund. Though the town may collect money and deposit it in escrow for the purposes of restoration, there is no authority for the town to contract for such restoration efforts.

Great care is urged if it is the intent of the Board of Selectmen to craft revisions to the ordinance to protect the often competing interest of the town and its residents and the gravel mining industry.

We hope you find this final report useful and are under no illusion that this will be the final word on gravel in Lamoine.

Respectfully submitted,

Donald Bamman

Jay Fowler

Perry Fowler

Michael Jordan

David Legere

Richard McMullen

Stephen Salisbury

Valerie Sprague

Gary McFarland, Chair