Thank you for your letter of July 16, 2014. As you are aware the Board of Selectmen received this communication just prior to the meeting of July 17, 2014 and did not have the opportunity to read and discuss it at that meeting. The meeting schedule for the summer is once a month, and the Board discussed formulating a response at the meeting on August 14, 2014.

Let us address the questions and concerns one by one. It might be helpful to first provide a more thorough time line of the events that led up to you letter. Much of your timeline is correct. There are some events that have had a major impact on the decisions the Selectmen and the town have had to make.

You letter correctly notes that a new gravel ordinance was passed in March, 2013. At that town meeting the Planning Board took note of some flaws in the ordinance and shortly after passage several gravel operators filed suit against the town, alleging an illegal taking of property.

The permit expiration and renewal time line is essentially correct, however, while the permitting process was taking place with the Planning Board, the town attorney with guidance from our board was negotiating with the plaintiffs in the suit referenced above. One of the results was appointment of a working group to review the gravel ordinance. The appointment of that group, with the potential to offer guidance to the Board of Selectmen and others that could result in amendments to offer to the voters of Lamoine, resulted in the plaintiffs withdrawing the suit. As you are well aware, the working group wrapped up its activity in late June with an extensive report to our Board.
Earlier in June the voters of Lamoine approved of an amendment to the Building and Land Use Ordinance that effectively bans new gravel mining operations for much of the town, which has resulted in a separate suit.

The permits granted for the several gravel mining operations were granted in January, 2014, retroactive to the expiration dates and conditional upon installation of monitoring wells. Several of the permitted mining areas installed those wells by the May 1, 2014 deadline, but three did not install and/or test all of the wells. The ongoing review of the gravel ordinance raised the possibility that changes to the monitoring well requirement could be proposed to the town, which potentially could make installation and testing of the wells required in the current ordinance unnecessary. Upon seeking advice from our town attorney in this matter, the Board entered the consent agreements to which you refer with the three gravel mining operations in question.

As of this writing, the Board of Selectmen is working on potential revisions to the Gravel Ordinance to possibly offer to the town meeting in the near future.

Now to the specific questions.

*What grants the Selectmen the authority to modify a town ordinance passed legally in our form of town government?* – The answer to this question is that the Selectmen have no authority to modify an ordinance directly. The ordinance, as amended at the 2014 town meeting, remains in place. The Selectmen are responsible for placing any modifications before a town meeting (either an open meeting or referendum) and the voters at a town meeting are ultimately responsible for any modifications.

*How does it better serve Lamoine to offer consent agreements to “avoid litigation and attendant expense” rather than to uphold the ordinances?* This is a very fair question to ask, and each member of the Board of Selectmen considered the very same question when conferring with the town attorney when the consent agreements were offered. The consent agreement process is a method of upholding an ordinance, bringing issues that violate an ordinance into compliance. The three agreements in question are essentially about the same issue – water monitoring wells. The Board has a range of options when it comes to enforcement. The consent agreements recognize that significant progress toward the new water monitoring requirements were made and that there is a potential that there could be a significant change in those requirements that could be offered to the town. There is an assurance in the agreement that whatever water monitoring requirement is “on the books” will be adhered to by a date certain. On the advice of the town attorney in regard to the legal requirements, the Board felt this was a reasonable option.

*Why did the Selectmen enter into these consent agreements with no opportunity for the public to learn about the terms or to comment upon this course of action?* The Board of Selectmen is charged with enforcing the ordinance. The Board utilized its town attorney to make sure the agreements were proper. One of the jobs of the Selectmen is to enter into agreements. Most of these involve contracts such as
employment contracts or things like snow plowing, building construction – any of a variety of things. The agreements are approved in a public meeting, as these were on June 26, 2014. Many members of the public (including most of those listed in the letter to which we are responding) were in attendance. There was extensive discussion before the Board voted to enter into the consent agreements. The board did exercise its option to consult privately with the town attorney in a properly held executive session prior to the public vote. The Selectmen were advised that consent agreements were common in municipalities to offer temporary resolutions.

*Why did the Selectmen choose to ignore the Planning Board, which worked hard to develop reasonable ordinances and monitoring standards?* This question seems to be more of a statement. The Board of Selectmen does not ignore the Planning Board and tries to go to great lengths to keep the lines of communication open. The two boards may not agree politically on some matters, and the roles of the two boards are different – the Planning Board is the permitting authority, the Selectmen are the enforcement authority. The Planning Board also helps to develop ordinances and frequently submits suggestions to the Selectmen for ordinance changes, and the Selectmen pass these suggestions to the voters at town meeting. We cannot recall any recent Planning Board ordinance submissions for town meeting vote that have been ignored by the Board of Selectmen.

*Why did the Selectmen rely on the advice of others about the number of test wells over that of Dr. Gerber, recently hired at Town expense to advise the Gravel Work Group, who stated the minimum requirement for test wells should be at least one per each five acres?* We are not sure to what you refer in this question. Dr. Gerber’s report to the Gravel Work Group was provided to us and referenced in the group’s final report. The Board of Selectmen continues to work on potential amendments to the Gravel Ordinance and the board has yet to even address the water quality monitoring issues in that work.

*Why is the leveling of fines for non-compliance considered an inappropriate action by the Selectmen when it is the only Town board given the power of enforcement?* Again, we are not sure to what you refer in this question. In the case of the present consent agreements, fines were not proposed, partly because of the current state of the work in progress of the gravel ordinance. In past matters, fines have been a part of the consent agreement. You might recall the gravel ordinance violation involving a parcel of land adjacent to Douglas Highway that mined without a license. The town collected significant fines in the 1990’s. Several land use violations in recent years that involved building without the required permit involved fines.

We understand there are a lot of passionate opinions that relate to the regulation of gravel mining in Lamoine. We also understand that no matter what might result from the ongoing work to refine the gravel ordinance there will be people who are not happy with the proposal. The challenge to the Board, and ultimately to the citizens of Lamoine, is to balance what are reasonable expectations for the gravel mining operators, with a reasonable expectation that our local environment will be protected.
We hope this response answers the questions that were posed to the Board of Selectmen. We are under no illusion that there will be complete agreement with the board's actions, but as a Board, the actions that have been taken, we believe, serve the overall best interest of the community.

Sincerely,

[Signatures]

The Lamoine Board of Selectmen