

To: Members of the Board of Selectmen  
From: John Holt  
Re: Comments on Selectmen's Gravel Ordinance Working Draft#4  
Date: January 14, 2015

I begin by making a general observation regarding a fundamental difference between the current Gravel Ordinance and the Selectmen's Draft #4. Following that, my comments on specific matter will be offered in the order the proposed amendments appear in the draft.

**General observation**

*There is a fundamental difference between the ways in which the Selectmen's Draft#4 and current Gravel Ordinance conceive of the Gravel Operations area and it is that difference that has led to many of the recommendations of the Selectmen.*

*Both the Selectmen's Draft and the current Gravel Ordinance understand a Gravel Pit as being that portion of a Parcel for which a Gravel Permit has been obtained. However, while the current ordinance understands the entire Gravel Pit as the Gravel Operations area, the Selectmen's version understands only the unrestored/defoliated portion of the Gravel Pit as the Gravel Operations area. Presumably, in most instances the size of the unrestored/defoliated area within the Pit will be less than the size of the entire permitted pit. The Selectmen's draft bases monitoring well requirements on the size of the unrestored/defoliated area of the Pit whereas the current ordinance uses the entire Pit size in determining the number of required well. Again, presumably, this would mean fewer monitoring wells required by the Selectmen's draft.*

*Over the years, the PB has heard much testimony from operators that it is difficult/impossible for them to specify what areas of a pit they will work as different types of material may be found in different areas of the pit and as market conditions change demand for amounts and types of material. In addition, operators have insisted on the right to work anywhere they choose within the permitted area. In response to those realities, the Planning Board has felt that if an operator is given the right to operate anywhere within the permitted area then, from the ordinance's perspective, the entire permitted area must be considered as the Gravel Operations area. The size of the Gravel Operations area is thus known at the time of issuing the permit as by definition it is the size of the permitted pit. The Selectmen's understanding would be very difficult, if not practically impossible, to monitor because there would need to be continuing site visitation (more CEO time) and on-going measuring of the excavated/defoliated area as it changes over time within the life of the permit.*

**Comments on specific matters (in the order they appear in the Draft #4)**

**Section 3. Effective Date**

The last sentence about setbacks is not appropriate in this section as setbacks are dealt with in Section 8; moreover, the setback provisions of the Lamoine Gravel Ordinance in effect prior to March 1, 2013 are not identical with the ones proposed in Section 8. I would recommend this sentence be eliminated.

Section 6. Applicability

While the intent of the amendment to exclude excavation incidental to permitted construction projects makes sense, the amendment as written is much too vague and opens the door to abuse. Applicants owning parcels where gravel is extensive but where the parcels are located in areas of town where gravel operations are not permitted could seek a building permit and then remove significant amounts of gravel "to prepare the site" for the building and then even decide, after excavation, not to construct the building. Though I don't think any such amendment is really necessary (I know of no instance where a normal building project invoked requiring a Gravel Permit), but if one were added, I would recommend setting some upper limit, such as 1,000 yards, that a building project could excavate without being subject to the Gravel Ordinance; or, simply leave it up to the Planning Board to decide how much 'incidental' excavation is appropriate for any given project.

Section 7. Administration. Par. A. Permit required.

1) Par. A is in conflict with Section 6. For one thing, it speaks only of "excavation" as requiring a permit whereas Section 6 mentions additional activities of extraction, processing, storage and transportation.

2) Par. A refers to excavating 500 cu.yds. during any 1-year period whereas Section 6 does not mention the 1-year period. The amendment effectively changes the standard of applicability, enabling someone to excavate 500 cu.yds. annually without being subject to the Gravel Ordinance. The amendment would create confusion as to what the standard of applicability actually is. At the least, Section 6 and Section 7, par. A need to be consistent.

3) There is no need to reiterate here the amendment proposed in Section 6.

Section 7. Administration, Par. C. Application 1. New

The lengthy definition of New is problematic and inappropriate. It is the BLUO (see Table of Land Uses in BLUO), not the Gravel Ordinance, which determines what land in Lamoine is eligible for permitting for gravel operations. The BLUO language is quite specific and cannot be overridden by any language in the GO. A new pit is simply one which has not been permitted previously. Nothing more than that needs to be said.

Section 7. Administration. Par. D. Existing Conditions 2. Existing -New ix.

1) Since Par. D. 2. deals only with applications for new pits, the content of sub par. ix. should be limited to considering new pits, noting basically that documentation of the water table is required and that a well is required for each five acres and additional fraction thereof.

2) Any common sense reading demonstrates that excavation of less than 5 acres requires one well - that doesn't need to be stated separately.

3) Since no excavation has taken place (new pit) it is pointless to speak of excavated or defoliated land in this section of the ordinance

4) The requirement of an annual test is a performance requirement, not an application requirement. It should not be included in this part of the ordinance.

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Section 7. Administration. Par. D. Existing Conditions 2 Existing – New x.

Again, since this section deals with new pits which have not previously been permitted, there would be no 'unrestored areas'; thus, this table is out of place here in the application section. The proposed table, if kept, deals with performance standards and needs to find a place there (in the Groundwater Protection par of Section 8.)

Section 7. Administration. Par. D. Existing Conditions 3. Existing – Renewal iv.

The term "gravel operations" is not an equivalent of 'excavation/defoliation. Gravel operations is a much more inclusive term.

Section 7. Administration Par. F. Procedure

1) I fail to understand why the 1. *Review of Application for Completeness* needs to be amended. If the Planning Board seeks the assistance of the CEO in reviewing applications, it can ask the CEO as it already has the authority to do. There is no need to specify this in the ordinance. Why add another duty to the part-time CEO position when the Planning Board members will perform the same function anyway? Rather than facilitating the review of an application, it would only complicate and lengthen it.

2) There is no need to amend the 2. *Site Walk* paragraph.

3) Public Hearing. I consider public hearings essential for all gravel permit applications. In order to lessen expenses for the applicant, I would consider using first-class mail rather than certified mail for all notification purposes.

Section 7. Administration. J. Enforcement

1) Planning Board members should receive copies of the Annual Compliance Report. (sub par b)

2) Any violations should be ceased immediately by CEO order; if the applicant disagrees that an actual violation is occurring, the order can be appealed.

Section 8 Performance Standards. A. Setbacks

I strongly oppose the proposed amendments regarding reducing setbacks. Setbacks in the current ordinance were carefully recommended by the Planning Board in 2013 and should be maintained as is and as the citizens of the town endorsed when the 2013 Gravel Ordinance was adopted.

Section 8. Performance Standards D. Restoration

1) Since I oppose reduction in setbacks, sub par 1a is unnecessary.

2) Sub par 1.h. is unclear, would be difficult to administer, and is essentially unenforceable. Often the depth of gravel is such that it couldn't be excavated within a three-year permit period. In these instances a requirement for restoration makes no sense. I am skeptical that it could achieve its intended goal of increasing the pace of restoration. I would recommend its deletion.

3) Sub par. 3 a-c. might be better placed in the Application Section, although 3.c. would happen only after a permit was issued. The town's interest would best be served by

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requiring only 3.c., for this provides the actual funds needed, where 3a and 3b are merely 'promises' that would require considerable town effort to obtain actual funds if the permit holder reneged for whatever reason. I prefer a system which makes funds accrue to some sort of Restoration Fund administered by the town, as the current ordinance provides.

4) Sub par 3.d. It seems to me that payment of all real estate and personal property taxes, if it is added to the Ordinance, should be an application requirement (put in Section 7) rather than a performance standard. This would also make it clearer that no permit will be granted if taxes have not been paid.

#### Section 8. Performances Standard. H. Annual Report. 1.d. Water Quality

1) The table (found in Section 7 of the Draft #4) requires wells based on the size of "unrestored areas." According to proposed definitions amendments, "Unrestored Area" means "Gravel Operation Area". "Gravel Operation Area" is defined as that area within the permitted pit that actually has been defoliated and/or excavated. As I noted in my General Comment at the beginning of this document, the problem here is that the defoliated and/or excavated area within the permitted pit changes as the pit is worked within the three-year permitted time frame. It would be difficult/impractical to continually monitor and measure the development of a pit to determine the expansion of the "Unrestored Area" and whether or not additional wells may be required. The current ordinance recognizes that once a gravel permit is issued, the permit holder is free (and insists on the right) to excavate anywhere in the pit (such that the entire pit could be the operation area). Thus, it does not seek to identify a smaller 'operations area' within the gravel pit; it simply assumes that the permitted pit is the area the operator intends to mine during the life of the permit (hence the operations area) and bases the well number requirement on that.

2) I fail to see the logic in requiring a well for each 5 acres for unrestored areas of less than 5 acres, for pits 5-10 acres, for pits 10-15 acres and for pits greater than 20 acres, while then requiring pits 15-20 acres to have three wells instead of four. Is there something unique about pits 15-20 acres that warrants the 1-well reduction?

3) The purpose of water quality testing is to monitor the effect of gravel operations on the underlying groundwater. In regard to monitoring water quality, there is no logic in reducing the requirement for frequency of testing based on pit size. Testimony from Robert Gerber and others indicate that annual testing is a minimum. I would oppose reducing the frequency of required water quality testing.

#### 8. D. H 1.c. Water Table Elevation

This amendment proposes that the number of wells required to determine water table elevation is based on the size of excavated or unrestored land (Gravel Operations area), not, as in the current ordinance, on Gravel Pit size. Presumably this means that an operator could receive permit for a 20 acre pit but be required to have only one well if only 5 acres of the pit is to be worked. This method could only work if the permit holder were required under the terms of the permit to identify the limits of the "Gravel Operations" area and agree not to operate anywhere else in the permitted area. (Yet, if an operator were willing

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to make such a commitment, then why not seek a Gravel Permit for only the portion he intends to work in the permit period?)

As I noted several times, the current ordinance assumes that when an operator seeks a permit for a pit of particular size, then he has the right to mine any or all of that area and therefore is required to install wells based on that size. If the operator has a large parcel and intends to mine only a portion of it, then he should seek a permit only on that portion of the parcel he intends to mine during the life of the permit. The options, and their consequences, are the operator's decisions.

Section 9 Definitions

In light of my General Comment, I feel the proposed added definitions are unnecessary, but if they were to be added I would recommend they be more precisely defined:

Gravel Operation Area

Would be better written as follows: The term 'Gravel Operation Area' shall refer to that portion of the Gravel Pit which has been defoliated and/or excavated.

Unrestored Area

Would be better written as follows: The term 'Unrestored Area' shall mean the Gravel Operation Area.

If it is to be used in the document, the term 'defoliated' needs to be defined. Does it refer only to removal of trees and shrubs, or does it include removing of topsoil as well?