

**Town of Rockport Planning Board  
PUBLIC HEARING  
Wednesday, December 8, 2010 – 5:30 p.m.  
Rockport Opera House Downstairs Meeting Room  
Meeting Televised on Channel 22**

**Present:** Kerry Leichtman, Chairman  
Terry Mackenzie  
Thomas Murphy  
Sarah Price

**Also Present:** Thomas M. Ford, Planning Director  
Nancy Ninnis, Recording Secretary

**AGENDA**

**NEW BUSINESS**

1. **Pamela Spear and Jason Spear**, Park Street, Rockport, ME 04856  
**Request:** Preapplication meeting for a four-lot minor subdivision (Maple Grove). Represented by Landmark Corporation Surveyors & Engineers.  
**Property:** Park Street – Tax Map 35, Lots 71-1 and 71-2  
District #902 – Villages District  
District #908 – Rural District

**OTHER BUSINESS**

2. Review and Approval of Minutes

The meeting was called to order at 5:37 p.m.

**I. Pamela Spear and Jason Spear**

**Representation:** **Thomas A. Fowler**, Landmark Corporation Surveyors & Engineers  
219 Meadow Street, Rockport, ME 04856  
Tel: 207-236-6757; Fax: 207-470-7020  
**Property:** Park Street – Tax Map 35, Lots 71-1 and 71-2  
District #902 – Villages District  
District #908 – Rural District

**Request:** Preapplication meeting for a four-lot minor subdivision (Maple Grove).

**PRESENTATION:**

**Chairman Leichtman:** This is a preapplication meeting for a four-lot subdivision and I call the Board's attention to the definition of a Minor Subdivision: "Any subdivision containing four lots or dwelling units or less."

**Thomas Fowler:** I represent the Spear family for a preapplication meeting for Maple Grove subdivision located in the southwest corner of the Spear property abutting Park and Main Streets. The property is in two zoning districts with a portion of the four new lots in the Village District and the remaining land in the Rural District. Lot 1 is a 10-acre parcel that was previously divided from the larger parcel for Spear Automotive. Lot 2 is the 88-acre remainder parcel, Lot 3 is a 1.7-acre parcel in the southwest corner and Lot 4 is a 1-acre parcel in the southwest corner. As shown on the plan, the division to an abutter is exempt from subdivision review, and the family will retain a 50-foot wide right-of-way from Main Street to the remaining land. We plan to request a waiver from the requirement of a complete boundary survey of the remainder land [Subdivision Ordinance Article 6.3.D.3 – Minor Subdivision/Submissions/Application Requirements] and focus on the 5-acre parcel in the southwest corner of the property because the 88-acre parcel is not proposed for any development. We have submitted a request for a waiver of the stormwater management and erosion control requirements because the total impact of the new lots if fully built out to 33% lot coverage would equal 1.7%, which would be far less than the 5% of the area of the subdivision required by the Subdivision Ordinance [Article 6.3.D.24 and 25]. I invite the Board's comments and feedback in anticipation of submitting a complete application.

**Chairman Leichtman:** Preapplication review is informal, but I will moderate the discussion to troubleshoot the application to give the applicant notice of any problems or issues. The discussion may sometimes seem negative, but that is only because we are trying to help the applicant with any issues and the discussion is not negative in tone. The Town's Subdivision Ordinance is divided into two parts, minor and major. The Board has the right to waive any requirements that are not applicable and can also impose any requirements it feels are necessary. All discussion is leading toward the Article 11 Performance Standards, which mirror the State requirements. If the Board finds that the applicant has satisfied the statements posed in Article 11, we are obligated to vote in favor of the application. If the Board finds that the application is deficient in any way, we are obligated to vote no.

#### **BOARD QUESTIONS:**

**Ms. Mackenzie:** You referred to a 5-acre parcel. What does that consist of?

**Thomas Fowler:** It is the total aggregate area of Lots 3, 4, the right-of-way and the proposed sale to an abutter, which equals 5.1 acres.

**Ms. Mackenzie:** Not having walked the property with regard to the wetland areas, this is not the area with the stream running through it?

**Thomas Fowler:** There is a strict definition of what constitutes a stream. There are some drainage draws, definitely two in the wetland area, but they don't meet the criteria to qualify as streams.

**Ms. Mackenzie:** This is not the longer stream further down the road near the Spear house?

**Thomas Fowler:** Definitely not. That is on the other side of the hill near the automotive garage.

**Ms. Mackenzie:** Which lot is the abutter?

**Thomas Fowler:** Lot 81 on the corner of Park and Main Streets.

**Mr. Murphy:** My only question is regarding traffic, and I suggest the applicant obtain data from the Police Department, which regularly does studies on streets.

**Chairman Leichtman:** Application requirement No. 23 talks about the need for a traffic study, but that is for much more intense activity.

**Mr. Murphy:** I am just looking for general numbers.

**Thomas Fowler:** I can talk in general terms about single-family daily traffic rates, which is about ten a day for the standard nationwide average.

**Chairman Leichtman:** Right now this is not an intense subdivision, but if there is more intense use in the future, you should consider whether you have the sight distances for heavier traffic flow than is anticipated now.

**Thomas Fowler:** Right now the right-of-way is just planned for access to the 88-acre parcel.

**Ms. Price:** Right now the intention is that each lot will be for one home?

**Melissa Spear:** The lot to the abutter is being purchased so it won't be developed, and Lot 3 is the same for the neighbor across the street to provide view protection for both lots.

**Ms. Price:** The name Maple Grove implies a housing development.

**Thomas Fowler:** That is not the intent – we just needed a name for the project.

**Ms. Price:** In the future, could the owners keep subdividing the larger parcel?

**Chairman Leichtman:** Because of the five-year rule, they could carve off a lot every five years, making it a very slow process.

**Ms. Mackenzie:** What is the purpose of the lot containing the wetlands?

**Thomas Fowler:** I am not sure of the end use, but we will ensure that each is a viable lot with a test pit that can support residential development.

**Ms. Mackenzie:** There is no potential future buyer?

**Thomas Fowler:** The Spears have been talking with a neighbor about possibilities.

**Chairman Leichtman:** I am not familiar with the sale of land being exempt from the subdivision law. What is the documentation for that?

**Planning Director Ford:** It is part of the State subdivision law (M.R.S.A. 30-A §4401.4.D-6): “A division accomplished by the transfer of any interest in land to the owners of land abutting that land that does not create a separate lot does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person without all of the merged land, then the previously exempt division creates a lot or lots for the purposes of this subsection, unless the intent of transfer is to avoid the objectives of this section.”

**Chairman Leichtman:** The applicant has requested a waiver on the 88-acre Lot 2. I understand why because they are not contemplating any development. However, if any improvements take place on that land, even a single residence, we will require you to come before the Board with that information although typically Planning Board review is not required for the construction of a residence. Accordingly, the Board will consider waiving a boundary survey and delineation of wetlands.

**Melissa Spear:** We have no intention of doing anything on that parcel.

**Chairman Leichtman:** We will also waive No. 21 for a hydrogeologic assessment and No. 23 for a traffic impact analysis is not applicable. Is the Board comfortable with those waivers?

**Ms. Mackenzie:** Why is Lot 2 even part of the subdivision?

**Chairman Leichtman:** Because it is adjoining land.

**Planning Director Ford:** Because the definition of a subdivision looks at the entire parcel of land.

**Ms. Mackenzie:** I question why we have to include the large parcel in the subdivision.

**Melissa Spear:** That was also a question for me.

**Chairman Leichtman:** That part of the law was included because an unscrupulous developer could do that to manipulate the system and develop with less regulation by putting in ten minor subdivisions when what was really being created was a major subdivision. It forces the developer to play by the rules.

**Ms. Price:** Are these waivers typical?

**Chairman Leichtman:** Yes, especially on minor subdivisions.

**Ms. Price:** And I assume they are trying to save money.

**Chairman Leichtman:** The point is that they are not intending to use the land, which is why we will include that stipulation.

#### **PUBLIC COMMENT:**

**Susan R. Blake (129 Park Street):** I am abutter of Lot 4. Why is the hydrogeologic survey being waived?

**Chairman Leichtman:** It has to do with an inventory of the water going across the land, which is very important when major construction is involved, such as ten houses on a road with a level of infrastructure that would create impervious surface with significant impact.

**Susan Blake:** My septic system, which is right up against my property line, is my only concern because I had to get special permission to install it due to two underground streams that run all year long. I would like to have a hydrogeologic survey done because I will get more water on my property than I have now if there is any development, and I request that the Board not waive this requirement.

**Chairman Leichtman:** You are talking about Lot 4 where there may be a house?

**Susan Blake:** How many houses could go on there?

**Chairman Leichtman:** We could modify the waiver to include Lot 4. The whole idea is to not allow adverse impact on abutting parcels.

**Ms. Mackenzie:** I live in the area as well, so I understand your concerns about the underground streams. However, the question for me is whether in doing so we are imposing an extraordinary burden and expense on the applicant.

**Susan Blake:** If additional water is added to my property, I will lose my septic system.

**Chairman Leichtman:** A hydrogeologic assessment is for exactly this type of issue, so the issue is not whether a burden is imposed on the applicant. However, while I am hearing that this requirement is necessary, it need not be for the whole subdivision, but only where applicable. The lot being sold to the abutter is not being developed, so no change is being made on that lot. I assume all water is flowing toward Goose River.

**Brian E. Keefe (137 Park Street):** Although the stream is classified as an intermittent stream, because the soil is solid clay, the water stays on the surface. The water flows on the “T” portion of my property toward the garage on Main Street to a culvert and then dumps into the Goose River. I would also like to point out that the increase in traffic in that area has been astronomical and there is quite a slope there. There are also five test pits out there. Lot 4 is going to be sold right away, so there will be a house there very soon.

**Chairman Leichtman:** I am learning that this is a very sensitive area with an amount of water flow and impact on neighbors to an extent that we will want to see a building envelope on Lot 4.

**Brian Keefe:** The 50-foot right-of-way could provide the right and frontage to create an additional subdivision in five years.

**Chairman Leichtman:** They would have to come back to the Planning Board and, at that time, we will have to study the water.

**Thomas Fowler:** I understand the idea of a building envelope on Lot 4, but with regard to the hydrogeologic assessment, I am not sure we are all talking about the same thing. No. 21 states: “The Board may require a hydrogeologic assessment in cases where site considerations or development design indicate greater potential of adverse impacts on ground water quality. These cases include extensive areas of shallow to bedrock soils.” This refers to impact on septic systems. I think what we are talking about here is surface water flow. There are two defined wetlands and other places on the lot that are also wet even if they are not defined as wetlands. Accordingly, maybe it would be more appropriate to talk about drainage and how it works, which is different from a hydrogeologic survey.

**Susan Blake:** Until we know what is there, we won’t know what it will do.

**Ms. Mackenzie:** What about No. 24: “A storm water management plan, prepared by a professional engineer registered in the State of Maine in accordance with the Stormwater Management for Maine: Best Management Practices, published by the Maine Department of Environmental Protection. The Board may not waive submission of the stormwater management plan unless the subdivision is not in

the watershed of a great pond, the proposed subdivision will not involve grading which changes drainage patterns, and the addition of impervious surfaces such as roofs and driveways is less than 5% of the area of the subdivision.”

**Susan Blake:** No. 24 is stormwater and I think it is very important. Because the lots are so small and the land is wet, we don’t have septic system options and no public sewer is coming to this area.

**Ms. Mackenzie:** But can the Board waive this requirement?

**Planning Director Ford:** There are exceptions.

**Thomas Fowler:** “Unless ... the addition of impervious surfaces such as roofs and driveways is less than 5% of the area of the subdivision.” If the new parcels are built out to the maximum possible at 33% lot coverage, then the total area of new impervious surface would be only 1.7% of the subdivision.

**Ms. Mackenzie:** I am still concerned about soil disturbance during construction, stormwater management and drainage, as it could impact the stream itself.

**Chairman Leichtman:** The purpose of this discussion is to troubleshoot and I think we have covered all the issues. The applicant will need to satisfy these concerns and make a case for any waivers requested.

**Thomas Fowler:** I understand.

**Mr. Murphy:** If blasting is necessary to put in a cellar, we would need to know that because of possible impact on abutters.

**Thomas Fowler:** That is a pretty specific concern about something that is an unknown at this point. They may just want to put a house on a frost wall.

**Mr. Murphy:** I have heard reports from neighbors of blasting causing problems in other areas. If you know the land is sitting on ledge, this could be an issue.

**Thomas Fowler:** Does the Town have a blasting ordinance?

**Planning Director Ford:** It does in Section 813 of the Land Use Ordinance and I believe it has worked well.

**Chairman Leichtman:** There is a difference between a frost wall and a foundation. With a building envelope, whether or not the house has a finished basement could have a huge impact on water flow. We may have to consider imposing a restriction.

**Brian Keefe:** My well is 26 feet from my septic system, for which I have a waiver. If there is a negative impact, we have no other options. Access to Lot 4 will have to cross wetlands, which will impact water flow. I think the Board has to consider what would be coming in a second phase. The burden is on the applicants to prove that it will not unduly impact the neighbors in the future. We literally have two deep rivers in the Spring that the kids can swim in.

**Susan Blake:** When I bought my property five years ago, they had just put a well in. Before that it was artesian. When they were doing blasting for the high school, a lot of artesian wells failed and people had to put in drilled wells, so blasting could be a factor.

**Ms. Mackenzie:** Given the fact that there are a lot of issues requiring time and money to address, has the applicant given any thought to locating Lot 4 anywhere else?

**Susan Blake:** Could it go into conservation?

**Chairman Leichtman:** It is too small.

**Brian Keefe:** There is an existing right-of-way up there, and this would create a new road in the middle.

**Ms. Price:** I have a question about procedure. When we are told the intention for the use of a lot, how do we control that?

**Chairman Leichtman:** We could impose restrictions on approval, we could say that Lot 3 can never be developed or, if it is, the property owner has to come to the Planning Board, or we could say nothing. I suggest that the applicant talk with the abutters along the way, and I strongly recommend consideration of the suggestion about the relocation of Lot 4.

**Planning Director Ford:** For public and Board consideration, the next scheduled meeting is January 12, 2011. We are now in the middle of winter and will need to schedule a site walk, which should be done as soon as possible if we have a stretch of good weather before that date.

**Chairman Leichtman:** If the applicant knows when they will make their next presentation, we can arrange a site walk accordingly.

**Thomas Fowler:** No. 13 states that we should provide “contour lines at the interval specified by the Board.”

**Chairman Leichtman:** The Ordinance used to specify two feet and that is what we will require.

## **II. REVIEW AND APPROVAL OF MINUTES**

**Chairman Leichtman** made a correction to the motion on page 3.

**MOTION – Thomas Murphy/SECOND – Terri Mackenzie:** To approve the minutes of the Planning Board meeting of November 17, 2010 as amended. The motion was passed 4-0-0.

The meeting was adjourned at 6:47 p.m.

The next meeting of the Planning Board has been scheduled for Wednesday, January 12, 2011.

Nancy Ninnis  
Recording Secretary