

**Town of Rockport Planning Board  
PUBLIC HEARING  
Wednesday, January 19, 2011 – 5:30 p.m.  
Rockport Opera House Downstairs Meeting Room  
Meeting Televised on Channel 22**

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

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

**AGENDA**

**OLD BUSINESS**

1. **Pamela Spear and Jason Spear**, 20 Park Street, Rockport, ME 04856  
**Request:** Four-lot minor subdivision review (Maple Grove) (continued from the December 8, 2010 meeting). 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

**NEW BUSINESS**

2. **Village at Rockport, LLC**, 689 Commercial Street, Rockport, ME 04856  
**Request:** Subdivision preapplication meeting to create 39 housing units through the reconfiguration of existing units and the development of additional units at the former Spruce Ridge Inn. Represented by Gartley & Dorsky Engineering & Surveying.  
**Property:** 689 Commercial Street – Tax Map 10, Lot 55  
District #907 – Mixed Business/Residential District

**OTHER BUSINESS**

3. Review and Approval of Minutes

**SITE WALK**

12:00 Noon Spear subdivision – meet on Main Street across from Artisan Boatworks

The meeting was called to order at 5:35 p.m.

**Chairman Leichtman:** Because public comments and Board discussion on the second agenda item could be lengthy, we will reverse the order of the two agenda items and hear the preapplication request first.

**I. VILLAGE AT ROCKPORT, LLC**

**Representation:** William B. Gartley  
Gartley & Dorsky Surveying & Engineering  
59B Union Street, P.O. Box 1031, Camden, ME 04843  
Tel: 207-236-4365; Fax: 207-236-3055  
**Property:** 689 Commercial Street – Tax Map 10, Lot 55  
District #907 – Mixed Business/Residential District

**Request:** Subdivision preapplication meeting to create 39 housing units through the reconfiguration of existing units and the development of additional units at the former Spruce Ridge Inn.

**William Gartley:** I am here with Andrew Herrick and owner Tony Casella.

**Chairman Leichtman:** In my capacity as Assessor I recently had conversations with Tony Casella, but not about this property, and that will not affect my decision on this project.

**William Gartley:** I have provided some additional material as a result of a reassessment of what it will take to develop this project and the timeframe for construction. Sheet C-0 is entitled “Pre-Application Master Plan and shows a total of 39 units. However, we will first be requesting approval for Phase 1 as shown on Sheet C-1 consisting of Building 3, to be renovated to 3 units, and Building 5, which will be renovated to 6 units. Complete development of the 39 units will be dictated by the market. Phase 1 will include the 9 units shown, the pool and Building 4 cabana house. We have provided elevations for Buildings 3, 4 and 5. Building 3 is already starting to take shape to look like this elevation.

**Mr. Murphy:** Can you explain why you can start work and put up a sign prior to Board approval?

**William Gartley:** Tony Casella worked that out with the Code Enforcement Officer and Planning Director. These units are already there and we are actually reducing the number of units.

**Tony Casella:** We have a permit to renovate the building, but not to sell the units as condos. We can advertise for reservations, but cannot yet sell them.

**William Gartley:** We have identified test pits. There are good soils on the whole site and each building will have its own septic system. There is adequate well water for what we require. With regard to parking, the Ordinance requires two parking spaces per unit. We now have space for seventeen including one handicapped space and we would like to ask the board to move forward with seventeen instead of eighteen. Because these are small units, each will probably have only one car.

**Chairman Leichtman:** The Ordinance does allow us some latitude.

**William Gartley:** We have the Department of Transportation Entrance Permit from the previous owner and have confirmed that no change is needed. No other permits are required.

**Mr. Alexander:** Will you eventually complete everything shown on Sheet C-0?

**William Gartley:** Yes, the game plan is to complete the project as planned. The last piece will be completely new buildings, but for now we are only requesting approval of Phase 1.

**Chairman Leichtman:** We are not approving the master plan, so the developers can always change the project in the future.

**Ms. Mackenzie:** This will represent a decrease from the most recent use.

**Tony Casella:** The two buildings in the rear are not used at all and will be vacant for now.

**Ms. Price:** Could you explain the soils map?

**William Gartley:** We used the County Soils Survey, which gives an accounting of what the soils are to get a general feel for the property, but it is the test pits that matter. We were pleasantly surprised to find that the soils here are very good.

**Mr. Murphy:** As we are being requested to reduce the parking requirement, I want to understand clearly what is being requested on Sheet C-1.

**Chairman Leichtman:** The purpose of the preapplication meeting is to troubleshoot the application, so I would remind the Board that it is okay to be negative.

**Ms. Mackenzie:** It is helpful that the property has already been developed. Were there any problems in the past with previous owners?

**Tony Casella:** The only problem was a clogged drain that created a water issue, but that has been fixed.

## **PUBLIC COMMENT:**

**Ted Skowronski (705 Commercial Street):** I live next door. When the Photo Workshop rented to students parking was an issue, but the previous owner didn't do very well unfortunately. I see no problem with this first phase. I did do a walkthrough with Tony Casella and was able to discuss any problems or questions that came up.

**Chairman Leichtman:** Even though this phase consists of two buildings with nine units, it is a major subdivision. We can vote now on a parking waiver or Board members may request more information.

**Mr. Alexander:** I would prefer to wait to vote.

**Chairman Leichtman:** One less space doesn't seem to be a problem, as there seems to be plenty of room. We will schedule a site walk for the next time you come back to the Board.

## **II. PAMELA SPEAR AND JASON SPEAR**

**Representation:** **Mark W. Ingraham and Michael J. Sabatini**  
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:** Four-lot minor subdivision review (Maple Grove) (continued from the December 8, 2010 meeting).

**PRESENTATION:**

**Chairman Leichtman:** The preapplication meeting was held on December 8, 2010 and we took a site walk on January 12, 2011. I wish to also make the following statement. It is understandable that abutters to a proposed project would be apprehensive about how that project will impact them. During the preapplication meeting we heard from abutters on Park Street about ongoing problems they have with water and that they have fears that this project will make these problems worse. We as a Board heard these concerns and told the developer's representative at the preapplication meeting that the plan they present to us will need to satisfactorily address these issues. We also spent a considerable amount of time at the site walk getting an understanding of the topography relative to the location of existing homes and the proposed lots.

Tonight we will hear a presentation from the applicant's agents, which will be followed by a determination on the application's completeness and then Board discussion on the application materials. This will be followed by public comment and then a vote to approve, approve with conditions or deny the application. I want to remind, or inform, everyone present that the Planning Board Bylaws require that all interested parties be given an opportunity to be heard, that members of the public wishing to address the Board shall wait until the Chair asks for comment, and when recognized shall limit remarks to the issue under discussion.

**Michael Sabatini:** We are here for minor subdivision approval for four lots, two of which are not being developed. The garage lot is already developed and the remainder parcel is 87.6 acres. We need approval for Lots 3 and 4 near the corner of Park and Main Streets, as they are intended to be sold. Lot 3 fronts on Main Street and is across from Artisan Boatworks. Lot 4 fronts on Park Street and is just uphill from Susan Blake's property. There will be two conveyances to abutters. We have provided wetland and septic system test pit information. We have received information on other existing wells, as stormwater was a big issue at the preapplication meeting. We did a topographic survey to see where the surface water is draining. The wetlands delineation indicates the location of swales. We did a couple of things on the plan to address any problems on Lot 4. Any foundation must outfall toward the road, down the swale and into the Town drainage system so it won't impact the Blake and Keefe lots. The driveway location must be within fifty feet of the Blake property line to cut off surface water and direct it to the Town drain. There is already a swale paralleling the lot line, which will help. We are requesting the waivers as shown on the new plan:

1. Waiver of topographical data on Lots 1 and 2.
2. Wetlands delineation on Lots 1 and 2.
3. Complete boundary for Lot 4.

We are creating two new lots in excess of the minimum lot size of 20,000 square feet in District #902. We feel our plan is reasonable and it creates an important solution to a financial situation for the applicants. The Spear family would like to place some covenants on the lot, which generally are as follows, but will need to be reviewed by their attorney:

1. The premises are to be used for residential building only.
2. No mobile homes or trailers are permitted except as required for construction.

3. The owners of occupied or unoccupied lots shall at all times maintain their property in an orderly manner.
4. The right-of-way will be maintained by the Spear family and is permitted to be used by the lot owners.

### **BOARD QUESTIONS ON APPLICATION:**

**Ms. Mackenzie:** I have a question about the language in the deed for the original parcel that might not show up on the plan, but might still exist.

**Mark Ingraham:** When the time comes, I can respond to that.

**Mr. Murphy:** Can you clarify why the sale to Gilley is not part of the subdivision?

**Chairman Leichtman:** Because it is the sale of land to an abutter. It is enlarging an existing lot, not creating a new lot.

**Mr. Murphy:** The Board will have no say over how it is developed?

**Chairman Leichtman:** No. It is only restricted by the terms of the Land Use Ordinance for District #902.

**Planning Director Ford:** It is part of the State Subdivision Law in the Definitions section at 30-A M.R.S.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.”

**Mr. Murphy:** I note the portion of the section that reads unless the intent is to avoid the objectives of the law

**Planning Director Ford:** But it cannot be transferred within five years.

**Chairman Leichtman:** With regard to completeness, we have received a memo from the Fire Chief. We have been asked to waive a number of requirements and I call the Board’s attention to Subdivision Ordinance Article 14.1-Waivers Authorized that deals with waivers: “Where the Board makes written findings of fact that there are special circumstances of a particular parcel proposed to be subdivided, it may waive portions of the submission requirements, unless otherwise indicated in this ordinance, provided the applicant has demonstrated that the performance standards of this ordinance and the criteria of the subdivision statute have been or will be met, the public health, safety, and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of the comprehensive plan, the land use ordinance, or this ordinance.” Section 14.4 states further: “When the Board grants a waiver to any of the improvements required by this ordinance, the final plan, to be recorded at the Registry of Deeds, shall indicate the waivers granted and the date on which they were granted.”

We will now review the application per Subdivision Ordinance Article 6.3.D-Minor Subdivision/Submissions/Final Plan. I will reach each of the 31 items and we will discuss them if any issues arise.

1. Okay
2. Okay

**Chairman Leichtman:** With regard to the request for a waiver of No. 3 for a complete boundary survey on the remainder land Lot 1, we discussed at the preapplication meeting waiving contours, wetland delineation and any requirements. We would look favorably on this request because this area of the property does not matter for the project and it would create unnecessary expense for the applicant. However, we can create a condition that there will be no further development on Lot 1 without the applicant coming back to the Board for review and approval. This would include the development of even a single-family dwelling unit, which would otherwise be allowed.

**MOTION – Kerry Leichtman/SECOND – Thomas Murphy:** To waive minor subdivision requirement No. 3 for remainder land Lot 1 on the condition that no development will take place on Lot 1 without the permission of the Planning Board.

<b>VOTE:</b>	John Alexander	Yes
	Kerry Leichtman	Yes
	Terri McKenzie	Yes
	Thomas Murphy	Yes
	Sarah Price	Yes

The motion was passed 5-0-0.

4. Rights-of-way/easement – discussion:

**Ms. Price:** At the preapplication meeting Brian Keefe mentioned that there is an existing right-of-way, but I didn't see it in the deed included in the package of materials.

**Mark Ingraham:** There is a farm road, walking paths and trails, but there is no deeded right-of-way that we are aware of.

**Ms. Mackenzie:** That was my question as well. Do any of these easements or rights-of-way impact these lots in any way?

**Mark Ingraham:** The last page of the current deed to Ivis Cripps and Pam Spear talks about the property being subject to the following:

1. Quarry water rights and easements
2. Well use rights and easements
3. Lease with option to purchase
4. Mining leases

The first deals with water coming from the quarry to the golf course and I think there is a pipe on the ground that may impact only Lot 1.

**Ms. Mackenzie:** Does the right-of-way referenced in the deed over land now or formerly of Eric Evans to Annis Road in Camden connect Park or Main Streets to Annis Road and impact these lots?

**Mark Ingraham:** No, I believe Chesley Cripps left a strip at the back of the land that affects only the rear of Lot 1.

**Chairman Leichtman:** We need to make sure this becomes part of the record.

**Michael Sabatini:** We can submit those deeds to the Planning Office.

5. Deed restrictions – discussion:

**Chairman Leichtman:** With regard to No. 5, approval will be contingent on the restrictive covenants being memorialized in a legal document as presented to the Board. If a building envelope will be required, will that be considered a deed restriction or just part of the plan?

**Planning Director Ford:** Part of the plan.

6. Okay

7. Water supply systems – discussion:

**Chairman Leichtman:** The Planning Director indicated that there may be a problem with No. 7(c): “When water is to be supplied by private wells, evidence of adequate ground water supply and quality shall be submitted by a hydrogeologist familiar with the area and/or evidence from wells on a minimum of three adjacent properties.” We have statements from Bowen Marshall and Roy Gilley and from Alex Brainerd, who is across the street. Is across the street adjacent enough? To me “adjacent” means touching, but No. 9 specifically states “adjoining.”

**Michael Sabatini:** In the context of well water, ground water doesn’t know the road exists and it is pretty close proximity. Alec Brainerd’s property is pretty close to where a well will be placed.

**Chairman Leichtman:** We have some options. We can waive requiring a third property owner or we can include a contingency that a third property owner must be provided.

**Michael Sabatini:** Jason Spear lives on Park Street and his shop is Lot 2.

**Jason Spear:** We have plenty of water at the house and shop. The quality is excellent and it has never run out. Quantity has never been an issue.

**Chairman Leichtman:** Have those living in this area ever experienced problems with water during dry periods?

**Response:** No.

**Chairman Leichtman:** As a contingency, we will requirement Jason Spear’s statement to be submitted in writing as part of the application process.

8. Okay

9. Okay

10. Okay

11. Okay

12. Okay

13. Contour lines – discussion of waiver:

**MOTION – Kerry Leichtman/SECOND – Thomas Murphy:** To waive minor subdivision requirement No. 13 for contour lines on remainder land Lot 1 and Lot 2 on the condition that no development will take place on Lot 1 without the permission of the Planning Board.

<b>VOTE:</b>	John Alexander	Yes
	Kerry Leichtman	Yes
	Terri McKenzie	Yes
	Thomas Murphy	Yes
	Sarah Price	Yes

The motion was passed 5-0-0.

14. Okay

15. Location of adjacent sewers, water mains, culverts – discussion:

**Ms. Price:** The application response states that there are no known sewers or water mains on the parcel. Are we assuming that there are none?

**Michael Sabatini:** We show drains, a power line and a culvert on Main Street. We do not show private ones.

**Mr. Alexander:** Is there a discussion about a culvert being expanded?

**Michael Sabatini:** The one going down Park Street toward the corner?

**Mark Ingraham:** It runs underground, so there is no way to expand it.

**Michael Sabatini:** It is already 18 inches.

**Ms. Price:** A culvert was referred to on the site walk.

**Michael Sabatini:** It collects water uphill of the driveway.

**Mark Ingraham:** It is in Brian Keefe’s backyard and on Susan Blake’s property. It is not on the plan because it is not on the subject subdivision property.

**Ms. Price:** No. 15 refers to “adjacent” property.

**Planning Director Ford:** An adjacent property owner can prohibit a surveyor from going onto his property and may not want it shown on a plan. Public Works Director Stephen Beveridge is here and the Board can request his input.

**Chairman Leichtman:** Can you tell us what is in place for drainage?

**Public Works Director Beveridge:** I have been with Public Works for 24 years and will begin with some history. Park Street was a state road until 1970. There was a big culvert built by the State that

was a State structure until a few years ago. There is a catch basin with a 2-foot opening header and 18-inch pipe by the Gilley property to the adjacent property that was designed for a 50-year standard that has never given any problem. Since 2007 we have had two 25-year storms, one 50-year storm and one 100-year storm. That culvert, with a little maintenance, should handle a 50-year deluge. I checked it today at 10:00 a.m. because of this interest and it is running less than one-third full. I discussed this extensively with Tom Fowler and others, and it is my conclusion that it should be adequate. Because it is currently draining the field as well as the roadside, a driveway in there will aid it in working.

**Chairman Leichtman:** Is there any history of any problem with these?

**Public Works Director Beveridge:** I have seen water backed up at the culverts, but never over. Because of snow banks, water was channeled over the driveway in April during a 100-year storm, so we did some regrading. That was not a structural failure, but because of the snow banks.

**Chairman Leichtman:** Would a new driveway have also helped them?

**Public Works Director Beveridge:** It would improve anything downstream because the water would have turned in. It was built to drain from the field to handle ditch water from the top of the hill.

**Mr. Alexander:** You're saying the proposed driveway and drainage system will improve the situation.

**Public Works Director Beveridge:** Properly installed putting a bar in the field to channel water with a minimum 18-inch culvert should take a lot of pressure off Susan Blake's septic system because the water would have to come to the road rather than meandering across the field to her lot.

**Chairman Leichtman:** If I am hearing you right, the addition of a driveway will aid Susan Blake's problem.

**Public Works Director Beveridge:** I feel confident that it would be a better situation for surface water and would aid downstream properties adjacent to the road.

**Chairman Leichtman:** Do we need to include a contingency for any driveway that may be installed?

**Public Works Director Beveridge:** Once a permit is pulled, I stay involved until driveway construction is complete to help manage the Town's resources. That is normal operational procedure.

**Planning Director Ford:** The property will also get an E911 entrance permit that will be delineated with green flags. Steve Beveridge will inspect it and write up a chit for the culvert dimensions.

**Public Works Director Beveridge:** Any curb cut entrance is managed by Public Works.

**Mr. Alexander:** Is there something that can go wrong in the process and be overlooked?

**Chairman Leichtman:** If there is a normal operational process, I don't think there will be a problem. Are there any questions for Steve Beveridge?

**Susan R. Blake (129 Park Street):** Every year there is ice blocking the entrance to the 18-inch culvert so that water goes up over and through my yard and into Brian Keefe's basement. Last year we broke through the ice dam on my property and dug a channel to the road. I would be concerned if a driveway is put in and the culvert is made longer with enclosed pipe.

**Public Works Director Beveridge:** The next time that happens you should call me because it is my department's responsibility to take care of it. The Town has 1,300 18-inch culverts and people tend to plow driveways over the end. Normally water channels into the culvert under the snow.

**Brian E. Keefe (137 Park Street):** The culvert does get blocked with ice. We shovel it out, which helps. There is a catch basin to on the left side of my driveway and we try to keep it cleaned out. My concern is when the driveway is put in. The natural swale of the wetland aims directly at my septic system and there can be two feet of water in it.

**Susan Blake:** There is a private culvert that takes water off the field.

**Public Works Director Beveridge:** If it is private I am not aware of it.

**Brian Keefe:** My septic is in the middle of the lot. The swale comes through, and when water comes off the field, it goes in two different directions.

**Chairman Leichtman:** The driveway will only have an affect in the front and not the back?

**Public Works Director Beveridge:** Yes.

**Mr. Murphy:** That is why I asked about the conveyance to Gilley and whether the Board would have any say over it.

**Chairman Leichtman:** We were considering having the building envelope bring the house closer to the road, so I think it wouldn't make your situation worse.

**Public Works Director Beveridge:** I believe that is correct.

**Michael Sabatini:** Where Test Pit 4 is, the area in front of it drains to the road and the area behind it drains to Susan Blake and Brian Keefe.

**Public Works Director Beveridge:** The swale misses Gilley's garage by eight or nine feet.

**Susan Blake:** If they put in a driveway, will they put a culvert under it and will it be an open culvert?

**Michael Sabatini:** Yes.

**Susan Blake:** I need a swale along my property line to make sure nothing else happens to me.

**Public Works Director Beveridge:** There will be a question until we know where the house is and how long the driveway is.

**Mr. Alexander:** Can you restate the question and what the answer is?

**Public Works Director Beveridge:** Whether it is closed or not, a standard driveway culvert with a swale to connect the culvert to the existing catch basin structure. Will there be a swale? I don't know, but I recommend one.

**Erin M. Brainerd (410 Main Street):** Will this be a normal driveway?

**Public Works Director Beveridge:** For a single dwelling it will be like any other driveway, 24 feet wide maximum, which is a culvert type situation.

**Brian Keefe:** It will lead to someone putting in a swale.

**Public Works Director Beveridge:** Typically we offer the service of buying a culvert from the Town and we install it because we want it put in correctly and we have to maintain it. We do nine out of ten new culverts in Town at the owner's expense.

**Chairman Leichtman:** The Board's obligation is to make sure we don't make the situation worse, not to correct the problem.

**Ms. Mackenzie:** My question is what our responsibility is with regard to the back culvert.

**Public Works Director Beveridge:** The Town has no bearing on private culverts. We can only work within the legal right-of-way of fifty feet.

**Brian Keefe:** My concern depends on the length of the driveway. The longer it is, the more likely my property will be affected.

**Chairman Leichtman:** It is a delicate balance. With two competing septic systems, what may benefit one may harm the other.

**Mark Ingraham:** The potential building site is on the high side on either side of the wetlands, no less than 100 feet off Park Street because of fill requirements, so I don't see a driveway shorter than 100 feet.

**Mr. Sabatini:** We can specify drainage toward the road.

**Susan Blake:** If my septic system goes under water after the driveway is put in, to whom should I send the bill?

**Planning Director Ford:** There is no way short of Noah's flood that your septic system would go under water.

**Susan Blake:** I have hired a geologist and a hydrogeologist to measure current conditions. Should any damage occur, to whom should I send the bill?

**Chairman Leichtman:** We have many professionals giving us their professional opinions and at some point we will get to a comfortable position with those opinions that will assure us that that will not happen, but I understand what you're saying.

**Mr. Murphy:** We are an Ordinance compliance board and have to weigh the Ordinance against the information provided by the applicant and interested parties. If all the subdivision requirements have been met, we have to approve the application even if we have qualms.

**Chairman Leichtman:** We can add requirements if we think they are necessary. We can go beyond just filling in the blanks.

**Mr. Alexander:** Have your experts indicated that this will make your situation worse?

**Susan Blake:** Their work is not yet completed, but they have suggested off the top of their heads that there isn't a real swale between my septic system and the proposed driveway. To be safe, there should be at least a three-foot swale, but I want to make sure that if something happens, I don't have to pay for it.

**Chairman Leichtman:** Is a driveway a swale?

**Michael Sabatini:** The uphill side is.

**Mark Ingraham:** Water from the field will be cut off at the driveway.

**Susan Blake:** I am on the downhill side.

**Mr. Murphy:** I understand the need for a secondary swale from the 20-foot ash.

**Chairman Leichtman:** Isn't the driveway itself a secondary swale?

**Alec E. Brainerd (410 Main Street):** It sounds like there have been a lot of unfortunate water issues and the proposed house will act like an umbrella that will help somewhat. The logical place to build the house is so the driveway will be beneficial to those downhill, but I am not sure it will solve all the problems.

**Brian Keefe:** If the driveway is constructed correctly, there will be a swale on both sides of the driveway because it will be higher than either side.

**Michael Sabatini:** On the downhill side it may have to be specifically created.

**Brian Keefe:** There will be less water than if there were nothing there.

**Ms. Price:** If the intention is to minimize the impact downstream, that would mean a lot.

**Chairman Leichtman:** There has to be no negative impact.

**Ms. Price:** Can we include that goal in our contingency? If that doesn't happen, will someone be responsible?

**Chairman Leichtman:** We are trying to create a condition so that no matter who puts in the driveway, it will have no negative impact.

**Ms. Price:** We are trying to second guess the driveway design, but we can make implicit what we are trying to achieve.

**Chairman Leichtman:** We are obligated to be sure where there is going to be development, not where the land is untouched.

**Brian Keefe:** The grey area is the lot to be conveyed to the Gilleys because as a sale to an abutter it is out of your jurisdiction.

**Janis J. Gilley (141 Park Street):** I would like to clarify that we also have water issues on the corner. We are not interested in doing anything that will make our water issues worse, and would be happy to do something that will make all the water issues less terrifying. My husband grew up in the house on the corner and wants to look out on that field. Our plan is to restore the house on the corner, and we would not put time and money into that project if it would ruin what he's doing. We can't repair what is happening on the land above. We have similar issues to Brian Keefe and Susan Blake and don't want the situation to get worse for any of us.

**BREAK**

**Chairman Leichtman:** We were in the process of review of the application and made a diversion to take advantage of Steve Beveridge's presence. I would like to bring this part of the discussion to a close and go back to review of the application. We will require a building envelope to be established so we will know where the house is going to be. Is the applicant willing to do that?

**Michael Sabatini:** We understand that the abutters have several concerns regarding drainage from the subdivision. Accordingly, we have placed limitations on the development of Lot 4 to minimize the impact of stormwater on the Blake and Keefe properties, and we will include a swale on the downhill side.

**Susan Blake:** That works for me.

**Chairman Leichtman:** I think the building envelope addresses your concern. A house located in the back of the lot would be better for you, but would not make your condition worse. At the very worst, it would not change your condition.

**Brian Keefe:** The house would act like an umbrella, pushing the water in two directions. A house closer to the road would be better for me. If it further back, no one can answer that.

**Chairman Leichtman:** If the Board approves this application, we will make the swale a condition of approval.

- 16. Okay
- 17. Okay
- 18. Okay
- 19. Okay
- 20. Okay

21. Hydrogeologic assessment – discussion:

**Chairman Leichtman:** I made a note that we are not concerned with ground water quality, but quantity, so I don't think we need a hydrogeologic assessment. We don't need to waive this requirement because it says "may."

**MOTION – Kerry Leichtman/SECOND – Thomas Murphy:** A hydrogeologic assessment is not applicable in this situation.

<b>VOTE:</b>	John Alexander	Yes
	Kerry Leichtman	Yes
	Terri McKenzie	Yes

Thomas Murphy                      Yes  
Sarah Price                              Yes

The motion was passed 5-0-0.

- 22.    Okay
- 23.    Okay

- 24.    Stormwater management plan – discussion:

**Chairman Leichtman:** No. 24 states in part :”The Board may not waive submission of the storm water 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.” This application does not meet any of those thresholds and the purpose is to solve what we just solved, so I think it is appropriate to waive this requirement.

**MOTION – Kerry Leichtman/SECOND – Thomas Murphy:** To waive minor subdivision requirement No. 24 for a stormwater management plan.

**VOTE:**            John Alexander                      Yes  
                 Kerry Leichtman                      Yes  
                 Terri McKenzie                      Yes  
                 Thomas Murphy                      Yes  
                 Sarah Price                              Yes

The motion was passed 5-0-0.

- 25.    Erosion and sedimentary control plan – discussion:

**Chairman Leichtman:** No. 25 states in part: “The Board may not waive submission of the erosion and sedimentation control 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.” A lot of that doesn’t apply to this application.

**Susan Blake:** There might be a change in the drainage situation when a house is built there.

**Mr. Murphy:** But is not within the watershed of a great pond.

**MOTION – Kerry Leichtman/SECOND – Thomas Murphy:** To waive minor subdivision requirement No. 25 for an erosion and sedimentary control plan.

**VOTE:**            John Alexander                      Yes  
                 Kerry Leichtman                      Yes  
                 Terri McKenzie                      Yes  
                 Thomas Murphy                      Yes  
                 Sarah Price                              Yes

The motion was passed 5-0-0.

- 26. Okay
- 27. Okay
- 28. Okay
- 29. Okay

30. E911 Ordinance lot numbering – discussion:

**Chairman Leichtman:** Thomas Fowler sent an email about the lot number and it is not necessary until a driveway is put in.

**Brian Keefe:** The portion in Camden that abuts this property is for sale. Section 6.2.C.3-Procedure states: “Notify the clerk and the review authority of the neighboring municipalities if any portion of the subdivision abuts or crosses the municipal boundary.”

**Planning Director Ford:** I have been in contact with Steve Wilson, Camden’s Code Enforcement Officer. He is meeting with Camden’s Planning Board Chair today. It is on their radar screen and similar to our involvement with Rockland on the Samoset project. We will anticipate a memo from Camden. If the Board votes tonight on this application, a condition of approval would be a response from Camden that they have no objection.

31. Okay

**MOTION – John Alexander/SECOND – Terri Mackenzie:** To accept as complete the application of Pamela Spear and Jason Spear for four-lot minor subdivision review (Maple Grove) as shown on Subdivision Plan prepared by Landmark Corporation Surveyors & Engineers dated December 29, 2010 on property at Park Street located at Tax Map 35, Lots 71-1 and 71-2 in Districts #902 and #908.

<b>VOTE:</b>	John Alexander	Yes
	Kerry Leichtman	Yes
	Terri McKenzie	Yes
	Thomas Murphy	Yes
	Sarah Price	Yes

The motion was passed 5-0-0.

**Chairman Leichtman:** The remaining part of the process is discussion of the application, and I think we have done most of that already. Accordingly, we will take general comment to see where we stand.

**Brian Keefe:** I would like more clarification. The minor subdivision ordinance doesn’t specify the scale of the plan, but site plan review does require a specified scale.

**Chairman Leichtman:** Article 6.3.C – Submissions/Final Plan states: “The subdivision plan for a Minor Subdivision shall consist of two reproducible, stable-based transparencies, one to be recorded at the Registry of Deeds, the other to be filed at the municipal office, and three copies of one or more maps or drawings drawn to a scale of not more than one hundred feet to the inch.” The scale on this plan is 150 feet. Does the scale of the map interfere with review of the plan?

**Brian Keefe:** Section 1304.1 of Site plan review in the Land Use Ordinance states a scale of not less than one inch equals 40 feet. Maybe you need to clarify the difference between the two ordinances.

**Mark Ingraham:** Because of the size of the property, it would not be reasonable to make the scale smaller, so we showed separate viewpoints. Do we need to ask for a waiver?

**MOTION – John Alexander/SECOND – Thomas Murphy:** To accept as presented the scale as shown on Subdivision Plan prepared by Landmark Corporation Surveyors & Engineers dated December 29, 2010 because the size has not prevented the Board from easily reading all necessary detail.

<b>VOTE:</b>	John Alexander	Yes
	Kerry Leichtman	Yes
	Terri McKenzie	Yes
	Thomas Murphy	Yes
	Sarah Price	Yes

The motion was passed 5-0-0.

**Chairman Leichtman:** Sarah, do you have further questions about the test pits?

**Ms. Price:** No.

**Brian Keefe:** Is the 50-foot wide right-of-way strip going to be incorporated into those two lots?

**Chairman Leichtman:** I think it stays as part of Lot 1. Are there any questions for the applicant about the materials.

There were no questions.

**Chairman Leichtman:** I will now review the criteria listed under the Subdivision Ordinance Article 11 Performance Standards concurrently with the State standards under the subdivision statute of Title 30-A M.R.S.A. Section 4404, taking any comment from Board members as I go through the list: “The performance standards in this article are intended to clarify and expand upon the criteria for approval found within the subdivision statute – 30-A M.R.S.A., §4404. In reviewing a proposed subdivision, the Board shall review the application for conformance with the following performance standards and make findings that each has been met prior to the approval of a final plan. Compliance with the design guidelines of Article 12 shall be considered to be evidence of meeting the appropriate performance standards. Proposed subdivisions not in compliance with the design guidelines of Article 12 may be considered, but the applicant shall provide clear and convincing evidence that the proposed design will meet the performance standard(s) and the statutory criteria. In all instances the burden of proof shall be upon the applicant to present adequate information to indicate all performance standards and statutory criteria for approval have been or will be met.” Per Article 6.2.F – Minor Subdivision/Procedure, “If the Board finds that all the criteria of the Statute and the standards of Article 11 have been met, they shall approve the final plan. If the Board finds that any of the criteria of the statute or the standards of Article 11 has not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the criteria and standards will be met by the subdivision.” Any Board member who votes against the application must disagree with the Findings of Fact and state why.

### **11.1 The proposed subdivision will not result in undue air or water pollution.**

**A. The proposed subdivision shall not discharge wastewater to a water body without a license from the Maine Department of Environmental Protection.** No wastewater discharge is planned in this subdivision.

**B. Discharges of storm water shall be treated to remove oil, grease, and sediment prior to discharge into surface waterbodies. When the subdivision is within the watershed of a great pond, the storm water shall be treated in order to remove excess nutrients.** Implementation of Best Management Practices during residential construction will ensure prevent erosion and sedimentation to the Town drainage system and the Goose River. This project is not in the watershed of a great pond and therefore does not require a nutrient (phosphorus) removal plan.

**C. Applicable State and local health and water resource rules and regulations shall be adhered to.** All state and local health and water resource rules are being adhered to. For example, septic test pits have been located in accordance with the Maine Plumbing Code.

**11.2 The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision.** This project is not within an area planned to be served by public water supply nor is public water available. Water will be supplied to the proposed lots by private wells. Evidence of adequate ground water supply of good quality is based on information from adjacent property owners summarized in Attachment 4 to the application.

**11.3 The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used.** The subdivision does not plan to utilize an existing water supply system.

**11.4 The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.** As single-family lot development occurs on these lots in the future, the contractors will be required to comply with the Best Management Practices set by Maine DEP, as they would be on all projects. These BMP's ensure that erosion and sedimentation is controlled during and after construction. No topsoil is planned to be removed from the subdivision. Many of the contingencies of approval address this standard.

**11.5 The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.** As described under submittal requirement No. 28, no road construction is proposed as part of this subdivision. Possible driveway locations have been examined by both Landmark Corporation and the Town of Rockport Public Works Director and determined to be adequate for access to Main and Park Streets. Lastly, the possible addition of up to 2.04 trip ends in a peak hour is insignificant in relation to the existing traffic on Park and Main Streets. Therefore, no impact is anticipated to these public roads.

**11.6 The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are to be used.** The subdivision will be served by individual private subsurface disposal systems. Test pits dug by Kenneth G. Stratton, Licensed Site Evaluator #157, document that each lot, including the conveyance to the abutter, has a viable subsurface wastewater disposal system location.

**11.7 The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.** Household solid waste will likely be disposed of at the Midcoast Solid Waste Corporation's facility in Rockport. This represents an insignificant addition to the waste stream at this facility.

**11.8 The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.**

**A. Preservation of natural beauty and aesthetics.** No tree clearing is necessary in the newly created lots in this subdivision because they are all located in open fields. The 902 Village District is designated by the Comprehensive Plan as a growth zone. Therefore, screening is not required. This proposed subdivision focuses lots and growth within the Village District portion of the property and plans no new development in the Rural District portion of the property in accordance with the Comprehensive Plan.

**B. Retention of open spaces and natural or historic features.** The proposed subdivision is not located in an area designated as open space or greenbelt, or unique by the Maine Natural Areas Program, or historic. Therefore, this standard does not apply.

**C. Protection of significant wildlife habitats.** The proposed subdivision is not located in an area of Significant Wildlife Habitat. Therefore, this standard does not apply.

**D. Existing public rights of way to the shoreline of a water body.** There are no existing public rights of access to shoreline on this subdivision. Therefore, this standard does not apply.

**11.9 The proposed subdivision conforms with the duly adopted Subdivision Ordinance, Comprehensive Plan and Land Use Ordinance of the Town of Rockport.** The Subdivision Ordinance, Comprehensive Plan and Land Use Ordinance of the Town of Rockport have been closely followed in the layout of the Maple Grove Subdivision. The proposed lots and single family residential use meet the dimensional requirements and performance standards of the zoning ordinance and are consistent with the existing development in Simonton Corner. In addition, this modest addition of two lots meets the intent of the Comprehensive Plan, which establishes the Village District around Simonton Corner as a growth area.

**11.10 The subdivider has adequate financial and technical capacity to meet the standards.** Costs for this subdivision are minimal because it is a minor subdivision and no infrastructure is proposed. The applicants retained Landmark Corporation and Kenneth G. Stratton, who are qualified and experienced in subdivisions, to compile their application and represent them during the approval process.

**11.11 Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.** Maple Grove Subdivision is not within the watershed of a pond, lake or great pond, or within 250 feet of any great pond or river, and therefore will have no impact on any of these waterbodies or their shorelines. Residential development may impact a portion of the freshwater wetlands on Lot 4, but will be well below the 4,300 square foot permitting threshold for a Maine DEP Natural Resources Protection Act Permit. These freshwater wetlands were identified by the wetland delineator as low value wet meadow type wetlands.

**11.12 The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.**

**A. Ground Water Quality.** Landmark Corporation believes that a hydrogeologic assessment is not necessary for this minor subdivision. To that end, documentation of the soil's ability to safely dispose of wastewater has been provided in Attachment 3 to the application. In addition, anecdotal evidence from a minimum of three adjacent properties has been provided (in Attachment 4) to document that there currently exists a healthful supply of drinking water on this parcel. Due to the non-intensive nature of the proposed development (greater than twice that allowed by zoning) and the evidence presented of adequate existing conditions, ground water quality will not be adversely affected by the proposed subdivision.

**B. Ground Water Quantity.** Proposed groundwater withdrawals, for single-family residential use, are not anticipated to affect the quantity of groundwater in the subdivision or surrounding area, which is currently adequate. Evidence of adequate quantity is provided in Attachment 4. In particular, the Brainerd residence, which is a downhill neighbor to the subdivision, currently enjoys positive pressure into their domestic water system. Domestic water well installation on this subdivision will not adversely affect the quantity of groundwater in the surrounding area.

**11.13 If the subdivision, or any part of it, is in a flood prone area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation.** A portion of Lot 1 is located in a Flood Prone Area surrounding the Simonton Quarry, as defined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map (FIRM). This lot is not planned for any development and therefore no restriction on construction is shown on the plan.

**11.14 All freshwater wetlands in the proposed subdivision shall be identified on any maps submitted as part of the application, regardless of the size of these wetlands.** All freshwater wetlands, delineated by Kenneth G. Stratton in accordance with the *Corps of Engineers Wetland Delineation Manual* and located by Landmark Corporation, are identified on the subdivision plan.

**11.15 Any river, stream or brook within or abutting the proposed subdivision shall be identified on any maps submitted as part of the application.** One stream, located on Lots 1 and 2, is shown on the subdivision plan.

**11.16 The proposed subdivision will provide for adequate stormwater management.** Because this subdivision proposes no new infrastructure and proposes only single-family residential construction on the lots, this subdivision is far below the minimum thresholds for stormwater management permitting as defined by Maine DEP. However, several methods of stormwater management have been provided to allay the concerns of abutters downstream of Lot 4. These methods, including directing discharge of foundation drains and limiting the location of a driveway, are described in more detail in submitted requirement No. 24 and are noted on the subdivision plan. This standard is also addressed in the approval contingencies.

**11.17 If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland, none of the lots created within the subdivision shall have a lot depth to shore frontage ratio greater than 4:1.** None of the proposed lots in the subdivision have shore frontage.

**11.18 The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond’s phosphorus concentration during the construction phase and life of the proposed subdivision.** The proposed subdivision is not in the watershed of a great pond.

**11.19 For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.** The proposed subdivision is located entirely within the Town of Rockport.

**Ms. Mackenzie:** Standard No. 11 refers to the property being within 250 of any river, stream or brook. Should the plan show the location of Goose River in relation to Lot 1 or 3, or is it 250 feet away?

**Planning Director Ford:** The applicant has stated that it is not within 250 feet.

**Michael Sabatini:** It may be close to 250 feet, but the standard also includes the words “unreasonably affect.”

**Chairman Leichtman:** It is therefore not applicable. Are there any other issues or anything we have not considered?

**Brian Keefe:** You have done the best you can with a complicated lot.

**Chairman Leichtman:** These Findings of Fact relative to Town of Rockport’s Subdivision Ordinance Article 11-Performance Standards are identical and applicable to State of Maine Planning and Land Use Law Title 30-A M.R.S.A. Section 4404, numbers 1 through 19, and shall be accepted as Findings of Fact for both.

**MOTION – Thomas Murphy/SECOND – John Alexander:** To approve the application the application of Pamela Spear and Jason Spear for four-lot minor subdivision review (Maple Grove) as shown on Subdivision Plan prepared by Landmark Corporation Surveyors & Engineers dated December 29, 2010 on property at Park Street located at Tax Map 35, Lots 71-1 and 71-2 in Districts #902 and #908, contingent on the following:

1. The restrictive covenants being memorialized in a legal document as presented to the Board.
2. Submission of appropriate deeds to the Planning Office.
3. Jason Spear’s statement on water quality and quantity to be provided to the Planning Office in writing.
4. No development will take place on Lot 1 without the permission of the Planning Board.
5. Add information on the swales to the Drainage Notes on the subdivision plan.
6. A response from the Town of Camden Planning Board that it is not interested in reviewing the application.

<b>VOTE:</b>	John Alexander	Yes
	Kerry Leichtman	Yes
	Terri McKenzie	Yes
	Thomas Murphy	Yes
	Sarah Price	Yes

The motion was passed 5-0-0.

**Planning Director Ford:** Landmark Corporation will revise the subdivision plan and members of the Board can stop by the Planning Office to sign it when it is available.

### **III. OTHER BUSINESS**

**Chairman Leichtman:** Terri Mackenzie will replace John Alexander as the Planning Board's representative to the Ordinance Review Committee at its February 2011 meeting.

**MOTION – Thomas Murphy/SECOND – Terri Mackenzie:** To approve the minutes of the Planning Board meeting of December 8, 2010 as amended. The motion was passed 5-0-0.

The meeting was adjourned at 8:17 p.m.

The next meeting of the Planning Board has been scheduled for Wednesday, February 7, 2011.

Nancy Ninnis  
Recording Secretary