

D-R-A-F-T
Town of Rockport Planning Board
Wednesday, October 8, 2014 – 5:30 P.M.
Rockport Opera House Downstairs Meeting Room
Meeting Televised on Channel 22

Board Present: Chair John Alexander, Tony Bates, Terrie MacKenzie, Thomas Murphy, James Ostheimer, Sarah Price, and John Viehman

Board Absent: None

Staff Present: Code Enforcement Officer Scott Bickford, Videographer Tom Goodwin, and Recording Secretary Deborah Sealey

Chair John Alexander called the meeting to order at 5:37 P.M. and reviewed the agenda.

I. Old Business

A. Application of Maple Grove Subdivision for Final Subdivision Approval for a parcel identified as Map 35 Lot 71-1 in Districts 902, 908 and 1400.

Prior to the meeting, a member of the public said he had not received proper notification of this meeting. Chair Alexander said there had been a previous meeting about this subdivision. CEO Scott Bickford said notification to abutters was sent out before the pre-application or preliminary meeting; after that, it was the responsibility of abutters to follow meeting schedules. The Chair confirmed that notices were sent only once.

Tom Fowler of Landmark Corp. and Adam Bishop, project manager for Maine Farmland Trust [MFT], represented the applicant. Chair Alexander asked Mr. Fowler to explain the differences between tonight's plan and that presented in June. Mr. Fowler responded that the PB had asked that 4 items be included on the final plan: 1) all applicable requirements of the Camden Subdivision and Land Use Ordinances, 2) the applicable conditions and restrictions for Lots 1, 8, 9, & 10, 3) that a condition be placed on Lot 6 stating that it is subject to a federal land conservation easement, and 4) that a condition mandated by the Floodplain Management Ordinance be noted. For each item Mr. Fowler explained how it had been met and pointed it out on the plan.

Other differences between the preliminary and final plans were related to shape and size of Lots 8, 9, and 10 (all in Rockport), Mr. Fowler said. Lot 8 had been planned from the beginning as a very large single-family house lot, which had now increased from 32 to 33 acres. Lot 1 had increased from 46 to 47 acres. A Purchase & Sales Agreement made with an abutting property owner maintained Lot 9 at 10.6 acres. Mr. Fowler said there would be no buildings requiring excavation or division on Lot 9. Lot 10, which had consisted of 8 acres, had been reconfigured to 6.2 acres. MFT had a Memorandum of Understanding to convey Lot 10 to Coastal Mountain Land Trust [CMLT] as an undeveloped lot with public access. No division of the lot would be allowed and CMLT would manage the quarry.

Mr. Fowler said Lots 1 and 8 would be under severe development restrictions by deed, while Lots 9 & 10 would be restricted, but would not have conservation easements. Lot 6 would be the only lot with a conservation easement.

Chair Alexander said the CEO had noted four issues that needed to be raised. The first was that the majority of one lot passed into Camden, and its Rockport component did not meet the 130,000 sq. ft. minimum lot size. Secondly, Lot 9 did not meet road frontage requirements. One of the lots had access only from Camden, and Lot 10 had no access road. The Chair had consulted with Town Attorney Bill Plouffe and MMA lawyers, who had both supported the arguments put forth by Mr. Bickford.

Thomas Murphy read a 10/1/14 letter from Assessor Kerry Leichtman, who said Lots 1, 6, and 9 were insubstantial parcels. Chair Alexander said he was happy to see the conservation plans, but the PB was in a bind at this moment. Mr. Fowler said MFT's attorney had drafted a memo in which he asserted that Lot 6 met the minimum lot size as a whole (both Camden and Rockport parts), Lot 9 would be sold to an abutter, and there was access to Lot 1. Mr. Fowler distributed copies of this memo to board members.

Mr. Fowler said the Rockport staff was asking if the Rockport piece of Lot 6 had to meet the minimum lot size on its own. He said Town Attorney Plouffe had stated it did not because Rockport's Land Use Ordinance did not make a municipal boundary a lot line. Thomas Murphy said one of the prime things the PB should not do was make something non-conforming or more non-conforming and Lot 6 did not meet minimum size standards. Ms. MacKenzie said that a town boundary line did not affect a lot line; rather, that was accomplished by deed description. She felt strongly that suggesting the town boundary line was a lot line was not a proper objection.

CEO Bickford said when the lot became divided and was less than 130,000 sq. ft., the new line might be too close to the driveway and would become non-conforming. Mr. Murphy said this could also put the town in legal jeopardy if it were taken to Superior Court. There was extended discussion.

CEO Bickford said Lot 9 did not meet road frontage requirements. Mr. Fowler agreed, but said after it was conveyed to the abutter the combined parcel would be conforming. He said perhaps it could have been combined prior to subdivision, but the Rockport and Camden planners had said it should be put on the table. Mr. Fowler concluded by saying the applicant was asking the PB to approve a lot that would be joined with another parcel. Tony Bates asked why the line didn't come straight out to the road. Mr. Fowler responded that it had not come to the road so it did not create the illusion of a buildable lot. Ms. MacKenzie asked why there was no deeded access through Jason Spear's property. The CEO replied that would have created a back lot that would have required a private way approval. He added that he did not believe the PB could waive frontage.

Ms. MacKenzie said there were no written legal deed descriptions in the packets. Mr. Bishop said he could provide the deed wording. Another lengthy discussion took place.

Mr. Fowler said the fact that Lot 1 had no access from Rockport was immaterial because it had legal access from Camden. Chair Alexander asked if Lot 10 had legal access. Mr. Fowler responded that it did not, but there was a Memorandum of Understanding to sell the piece to CMLT. Lot 10 was one of two pieces the applicant wanted to make non-buildable.

Chair Alexander asked for public comment. Doug Sensenig, Executive Director of CMLT, said his group was in agreement with the Nature Conservancy for a deed transfer of the Simonton Quarry Preserve within the next month. Simonton Quarry Preserve would be joined to Lot 10. When Erin Brainard asked who would ultimately own Lot 10, Mr. Bishop said it would be CMLT.

Chair Alexander said some of these issues asked the PB to ignore parts of Rockport's ordinances. Approving the application could cause problems in the future, and denying it could cause the applicant to appeal. To avoid these scenarios, he suggested the applicant do something about the lot crossing the town line and come back to the PB.

Tom Cox said Lot 6 would be subject to the agricultural conservation easement restrictions. He said this was farm and residential land and asked if a smelly agricultural enterprise would be permitted. Mr. Bishop said the state, by means of the Right-to-Farm Law had authority over towns as to what type of farming was allowed,

Chair Alexander asked if the board was satisfied with the discussion and wanted to move on to review the application. Mr. Murphy said the board would sometimes make contingencies to keep things moving, but in this case there were too many issues. Ms. MacKenzie said the two landlocked non-conforming lots were the problem for her. She asked what was needed to clarify and support that Mr. Leichtman and Mr. Bickford were wrong: what would settle it for the board so a right and fair decision could be made? Tony Bates asked that copies of the attorney's letters to MFT be supplied to the board.

Chair Alexander said the five issues discussed needed to be addressed and come back to the PB. Mr. Fowler said very little had changed since June, when the preliminary plan was approved with four issues to be addressed. Mr. Murphy reminded him that the board did not approve preliminary plans. Mr. Fowler responded that the applicant had done the four things the PB requested in June and had reasonably expected final plan review this evening.

Ms. Price asked what would satisfy the CEO. Mr. Bickford replied that we had home rule, applicable here, and he was bothered that a small triangular piece of land could not be redesigned to be conforming.

ACTION: Thomas Murphy made a motion, seconded by Tony Bates, to stop the discussion.
Carried 7-0-0

ACTION: Thomas Murphy made a motion, seconded by Tony Bates, to table this application until such time that the issues that are presented before us make it possible to allow the plan to be considered complete.

Carried 7-0-0

Chair Alexander apologized for the problem and, for purposes of clarity, listed the issues still unresolved, as follows:

- 1) The large lot that crossed into Camden did not meet the 130,000 Sq. ft. requirement
- 2) One lot did not meet the road frontage requirements
- 3) One lot has no access in Rockport, with just a ROW in Camden
- 4) Lot 10 had no access road
- 5) The PB needed the documentation referenced from various lawyers
- 6) Sideline setback on the road created by having Lot 6
- 7) Lot 1 deed language regarding access from the Camden side

B. Application of Pen Bay Healthcare for Site Plan Review for converting the existing No. 6 fuel oil boiler plant to a dual-fuel system (propane and No. 2 fuel oil) on a parcel identified as Map 6, Lot 155, and located at 6 Glen Cove Drive in District 909.

Chair Alexander said this application involved the simple installation of propane tank A Site Walk had been held earlier this evening and the review would be less involved than usual.

Hank Dunn of Energy Systems Group introduced Tom Fowler of Landmark Corp., Rob Court, President of Maine Energy, and Eric Frederick, COO of Pen Bay Healthcare. Mr. Fowler said this conversion to a dual-fuel system required the installation of a 30,000-gallon tank and its accessories in the center of the Pen Bay campus. The driveway had been improved to support truck movement and letters from the Fire and Police Chiefs were on record. Mr. Fowler went on to list other submittals made in support of the application. DEP's Beth Callahan had recently sent a letter saying the fuel system was exempt from permitting. The State Fuel Board had inspected the site and issued a permit.

Ms. Price asked if Plans C-1, C-2, and C-3 were all part of the official Site Plan. CEO Bickford said they were and could be marked accordingly. Ms. MacKenzie asked if approving the plan as written would mean also approving the temporary construction road as permanent. Mr. Bickford said it did not. Chair Alexander asked Mr. Fowler to note on the plan that the road in question was an emergency access road only.

Ms. Price asked if the applicant was asking the PB to waive the landscape plan. Mr. Fowler replied that the Site Plan could be considered the landscape plan, even though the existing landscaping was sufficient. Ms. Price then asked for the required digital plan, which Mr. Fowler said he would provide. Ms. Price also asked for a note on the plan that said as much vegetation as possible would be retained to act as a visual buffer from the childcare building. Mr. Fowler responded by saying existing vegetation would be maintained as practicable to provide buffering around the tank site.

ACTION: Tony Bates made a motion, seconded by James Ostheimer, to approve the Application of Pen Bay Healthcare for Site Plan Review for converting the existing No. 6 fuel oil boiler plant to a dual-fuel system (propane and No. 2 fuel oil) on a parcel identified as Map 6, Lot 155, and located at 6 Glen Cove Drive in District 909 with a note that addressed the landscape issue and a note that the construction road is only for emergency use and we waived the need for a landscape plan.
Carried 7-0-0

II. New Business

A. Application of Kay Tolman for Subdivision Pre-Application to establish a four-lot subdivision on a parcel identified as Map 13, Lot 115-3 and located on South Street in Districts 908 and 914.

Surveyor Mark Ingraham of Landmark Corp. and the applicant's son, Andrew Kavanaugh, represented the applicant. Mr. Ingraham said the parcel under subdivision consideration consisted of 15 acres, with approximately one-half in fields and one-half wooded. He pointed out on the plan the steep slopes from the middle to northern sections of the land. Mrs. Tolman wanted to create 4 lots: two would have frontage on South St. and the two in the rear would be accessed by a private way.

Tony Bates asked if the private way would be contiguous and Mr. Ingraham explained that it would pass through one of the lots. Chair Alexander asked if there were any issues with this lot. The surveyor responded that it was the remnants of a farm and there were some wetlands in the northern tier, but they were not a problem. Passable soils had been found on all four lots.

Chair Alexander asked that a Site Walk be scheduled with the Planning Office.

B. Application of Rockport Granite for Pre-Application Site Plan Review for a landscaping materials storage area on a parcel identified as Map 25, Lot 131 and located at 457 West Street in District 907.

Chair Alexander stated that this application was for a Change of Use from a private home to a commercial venture of landscaping and materials storage.

Tom Fowler and Joel Lufkin of Landmarks Corp. and property owner Joshua Carle appeared before the PB. Mr. Fowler said the gist of the project was the Change of Use, with the goal of creating a stockyard and employee parking. A derelict house had been burned and its garage remained.

The provided plan delineated fresh water wetlands. Lot coverage was estimated at 30%, with 50% allowed. A driveway from Rte. 90 had been permitted by DOT.

Chair Alexander was concerned that the residential parcel at the back of the property was accessed only across Mr. Carle's land and he asked if the neighbor had been notified of his intentions. Mr. Fowler said that Mr. Carle had agreed to put a fence along the property line. Chair Alexander asked that written confirmation of this arrangement be submitted with the final plan. Ms. MacKenzie noted that the applicant had no power to force a letter from his neighbor.

Tony Bates asked CEO Bickford if he had concerns about access to the back lot. Mr. Bickford responded that it was more than appropriate for the owner to put a private way across his property. Mr. Fowler said the applicant wouldn't put in a ROW until the land might be split up because it would be hard to know exactly where it would be wanted. A brief discussion of access implications ensued.

III. Approval of Minutes

ACTION: Thomas Murphy made a motion, seconded by Terrie MacKenzie, to approve the minutes of the 9/10/14 meeting as corrected.
Carried 6-0-1 (Mr. Alexander abstained)

ACTION: Sarah Price made a motion, seconded by Terrie MacKenzie, to approve the minutes of the 8/3/14 meeting.
Carried 7-0-0

IV. Adjournment

The meeting adjourned at 8:05 P.M.

Respectfully submitted,

Deborah Sealey
Recording Secretary