

**CAMDEN PLANNING BOARD
MINUTES OF MEETING
March 21, 2012**

PRESENT: Chair Chris MacLean; Members Jan MacKinnon and Lowrie Sargent; Town Attorney Bill Kelly; Don White, Select Board Liaison to the Planning Board; and CEO Steve Wilson

ABSENT: Members Richard Householder and Kerry Sabanty; Alternate Members Sid Lindsley and Nancy McConnell

The Meeting was called to order at 5:10 pm.

- 1. PUBLIC COMMENT on NON-AGENDA ITEMS:** No one came forward.
- 2. MINUTES:** The Minutes of February 16, 2012 will be reviewed at the next meeting of the Board.

4. SUBDIVISION: PRE APPLICATION MEETING

Request for Waiver of Joint Review

Maple Grove Subdivision: Map 229 Lot 5; and Map 230 Lot 9: Rural 2 District (RU-2):
Maine Farmland Trust: Simonton Road

This item was taken out of order to accommodate the Applicant who had to attend the Rockport Planning Board meeting later that evening.

Maine Farmland Trust (MFT), property owner, and Melissa Spear Dove, prospective buyer, were represented by Tom Fowler of Landmark Corporation, authorized agent. Mr. Fowler informed the Board that Ms. Dove holds an option to purchase back an 8.3-acre parcel of her family's former farm, now owned by MFT. The Trust's land is within an approved 4-lot subdivision that lies partially within the Town of Rockport (part of Lot 1, and Lots 2, 3 and 4); and, partially within the Town of Camden (the remainder of Lot 1); the 4-lot Maple Grove Subdivision was reviewed and approved by the Town of Rockport. The proposal to break off a roadside lot from MFT's Lot 1 creates a new Lot 5 within the subdivision.

They are here for a Pre-application Meeting for a 5-Lot Major Subdivision, and have submitted a Site Inventory Map, a Conceptual Sketch Plan and a Site Location Map; all required by the Subdivision Ordinance. Also submitted are several requests for waivers of Subdivision submission requirements to be reviewed at this Pre-application Meeting.

Waiver of Joint Review:

Because Ms. Dove's lot will be entirely within the Town of Rockport, and because MFT's Lot 1 is protected as farmland, one of the waiver requests submitted is a waiver of the State Subdivision Law's requirement for Joint Review for subdivisions which cross town boundaries. The same waiver request will be submitted to the Town of Rockport's Planning

Board as well, and after discussions with the Rockport Town Planner, Mr. Fowler is of the understanding that the Rockport Board will probably endorse this request.

Mr. Fowler provided language regarding waivers of review from the State Subdivision Law at 30-A M.R.S. §4403 (1-A): “If any portion of a subdivision crosses municipal boundaries...The reviewing authorities in each municipality, upon written agreement, may waive the requirement under this subsection for any joint meeting or hearing.” The Applicant asserts that the project represents a complete lack of development within Camden, and an extremely limited impact upon Camden. Landmark has prepared a written agreement for the Camden Planning Board to sign if they agree to the waiver of review.

History of Conveyances:

2008: 10 acres on Park Street conveyed to JCS, LLC (The Spear Garage parcel): Because the property was conveyed to a corporation at more than half of the fair market value, it is not considered exempt from subdivision law.

2010 – 2011: Working with Landmark, Maple Grove Subdivision was created consisting of Lot 1 – the remainder land, which was retained by the owner, Pam Spear; Lot 2 – the Garage parcel; Lot 3 (1.7 acres on Main Street) was conveyed to A. Brainerd who lives directly across Main street; and Lot 4 (1.0 acres on Park Street) was conveyed to Brainerd and a Main and Park Street abutter (Gilley). At the time, Maple Grove Subdivision was reviewed only by the Town of Rockport: opinions on whether or not this review procedure was handled correctly vary; all conveyances have been executed and recorded.

March/April 2011: Landmark came to both the Camden and Rockport Planning Boards to discuss the creation of a possible new Lot 5 that would consist of land exclusively within Camden that would be created by striking the line along the town’s boundaries; that deal fell through and discussions with the Board ceased.

September of 2011: MFT purchased all of Lot 1 from Pam Spear and granted an option to Melissa Dove to purchase back 8.3 acres; this option brings them back to the Boards this evening.

In creating Lot 5, Landmark’s intention is to bring the same Preliminary and Final Plans for the Subdivision to both Rockport and Camden Planning Boards seeking approval from both Towns to finalize the subdivision.

Discussion:

The Chair asked Attorney Kelly for his perspective: Mr. Kelly replied that it is very rare where a single tract of land that is under single ownership and crosses town lines is proposed for subdivision. But, it is clear that the State anticipated the situation because the Subdivision Law, at Title 30-A§1-A: Joint Meetings, specifically governs the review procedure involved: “If any portion of a subdivision crosses municipal boundaries, all meetings and hearings to review the application *must* be held jointly by the reviewing authorities from each municipality...The reviewing authorities in each municipality, upon

written agreement, may waive the requirement under this subsection for any joint meeting or hearing.”

The concern Mr. Kelly has is that in the future, a Title Attorney could say that the title is flawed. Because the lots created to date were not reviewed according to Statute, they were illegally created. He believes that to prevent this, the *entire* subdivision needs to be reviewed and approved by each Town - either jointly or, if an agreement is reached to waive joint review, separately. The Chair agrees that they are dealing with an illegal first approval, and asks Mr. Kelly if each Town has approved them independently, because they can't reach an agreement on Joint Review, are Ms. Dove and MFT protected, or are they still at risk of title defects? Mr. Kelly believes that if Camden proceeds to review the entire subdivision and applies its criteria to the land within Camden, that this might cure the defect. The Code Officers in each town would appear to be *estopped* from issuing a letter that there is an illegal lot if the Planning Boards of each town have looked at all the facts and all the lots as they lay on the face of the earth, and approved them. It is not the best method, and it does not appear to have been anticipated by the Statute, but it probably a fix; the risk is on MFT and Ms. Dove.

In reviewing the entire subdivision, the Board can consider the entirety of the effect of the Subdivision on Camden, but probably cannot review what is germane only to the lots that are entirely within Rockport – things like access to the lots, etc. They can look at impacts like erosion, stormwater or traffic (Criterion #19 of Title 30-A § 4404 #19), but the scope of their review is limited to the land in Camden where they have jurisdiction. Mr. Fowler agreed that Camden would be looking perhaps at possible traffic impacts, but he can think of no other impact; stormwater is not an issue because it is all confined to Rockport. Mr. Kelly noted that if the Board is concerned about the impact of future development of the Rockport lots on the Camden parcel, they could condition their approval to articulate concerns that might have been raised if they had been part of the initial review – whatever those concerns might be.

Mr. Sargent noted that Rockport declined the request by Camden to hold Joint Review previously, and Mr. Fowler responded that this is where there is disagreement over whether or not the initial review was conducted properly; this Application is an attempt to cure any perceived errors. He is of the opinion that there should be one Final Plan with two sets of signatures.

Mr. Kelly continued: If Joint Review is completely waived as the Applicant has requested, there will be separate hearings and reviews in Camden, and if there is a single Plan, there would need to be two signature blocks, with specific references to the approval authority of each Board, and annotations to the specific Order issued by each Board. It is also possible that there are two Plans: If so, there must be some cross-reference from one Plan to the other; and, in either case the Order of the Board could actually be recorded with the Plan as Sheet #2 so it is clear to anyone doing title work what happened here.

Mr. Sargent informed Mr. Kelly that one of the things that bothered Camden last time was that without full Joint Review, it would be possible that engineers, for example, might give answers to different questions in each town during review. This means, in effect, that the Boards are acting on different information. He wondered if that is of concern to Mr. Kelly, and Mr. Kelly replied that the distillation of the facts is reported in the Board's Order; the

Order outlines exactly what facts Camden used to make their decision. It is possible that the Camden Board might also wish to consider a Condition of Approval stating that Camden gave approval based on the understanding that all representations made to Camden were substantively the same as those made to Rockport. The Statute *did* anticipate separate hearings, and it is possible that different information will be heard. But substantively, it should be the same, and the Final Plan will be exactly the same -- that is some guarantee for both towns.

Mr. Fowler said his understanding of the process is that if both Towns agree to waive, there will be separate hearings and separate review; if both agree that they want Joint Review that is what happens; and, if one or the other refuses, then review must be conducted jointly. Mr. Kelly stressed that the agreement to waive must be in writing – not by Motion, and that agreement can be drawn up by either town.

The Decision:

Ms. MacKinnon: She believes it is simpler to waive joint review, especially because there is no development taking place in Camden.

Mr. MacLean: He wants to proceed to Joint Review as a guarantee that both Boards are presented with exactly the same submissions, receive exactly the same evidence, and hear the same public comments at Public Hearings. Mr. Kelly suggested that they could hold all evidentiary gathering meetings and hearings jointly, but conduct separate deliberations. The Chair liked that approach since it would guarantee that the application was reviewed according to Camden's Ordinance. Mr. Kelly noted that *if* reviews are separate, and Camden reviews all five lots, Rockport ought to do the same; he does not believe the Statute anticipates different levels of separate review when joint review is waived when identical Final Plans are signed by both Towns.

Ms. MacKinnon: She agrees with that compromise: Joint Review limited to evidence gathering meetings and hearings.

Mr. MacLean: He thinks this is a fair balance, and Mr. Sargent agrees.

Mr. Kelly recommends that the waiver be written to say that it is a waiver of all joint review *except for* evidentiary hearings or public hearings; that makes it clear that the boards deliberate separately, but hold all meetings where any evidence is presented jointly.

The Subdivision Plan:

In Mr. Kelly's opinion Lot 1 is not a subdivision lot, but remainder land – the land remaining after subdivision for which no sale or development is proposed. He would not have numbered Lot 1 as such, but left it as a single tract of remainder land. He also would not have included Lot 2 within the subdivision because it was created and conveyed long before the subdivision was created. He wonders if the owner realizes the constraints that will be placed upon his property if it is included as part of the subdivision. The owner of the land should actually be here as a co-applicant because he is the only one with the authority to include that

property within the subdivision. Mr. Fowler explained that Lot #2 was included in the original Maple Grove Subdivision when the Town of Rockport took the conservative position that the lot should be included because: 1) It had not been conveyed to a blood relative; 2) It was sold at more than 50% of fair-market value; and 3) It had been conveyed within the same five-year time frame as Lots #3 and #4; the determined that it was not exempt from subdivision review. The Spear family agreed with this assessment, and it was included on the Plan. Mr. Kelly suggests that someone speak to the owner of this lot and explain what he is giving up by being part of the subdivision, which is the right to divide his lot next year instead of starting a new five-year clock; maybe he doesn't care. Mr. Fowler replied that he does not think it is an issue; the lot is owned by Jason Spear, son of the original owner and Ms. Dove's brother. Mr. Wilson noted that Mr. Spear should be made aware that if he wants to subdivide his lot he will have to come back before for subdivision review. He could probably provide the Camden Board with a letter giving his permission to include his lot in the Subdivision, and that would suffice. Mr. Kelly stated that he is still not persuaded there is a reason to include Lot #2, and that only Mr. Spear has the authority to agree to that action. But, if Mr. Spear gives Landmark a letter of agency to serve as co-applicant on his behalf, and agrees to submit his land to the jurisdiction of the subdivision law, then it is there.

The Procedure:

Mr. Fowler will go to Rockport and explain that Camden wants to hold Joint Hearings but deliberate separately. Mr. Kelly clarified Camden's understanding of the process:

- All meetings *except for* evidentiary hearings are to be held separately – pre-application meetings in Camden and what other meetings Rockport may call for, and all deliberations will be held individually in each Town;
- The agreement will state that there will be a single Plan to be signed by both Boards;
- Joint notices would have to be issued by agreement for the jointly-held Public Hearing;
- The Agreement will state that no evidence can be gathered by either board outside of a Joint Hearing – evidence is representations for the purpose of approval; and,
- A clause will be added to the Agreement that says that either town has the option to re-open the Public Hearing to address a major issue; *or* either town can submit written questions to be answered in writing and shared with both towns.
- The Joint Evidence Gathering Hearing will have to be noticed in the paper. Given the rising cost of these notices, both towns will share in a single joint notice and share in the costs.

The Chair believes that Camden should not take any action on the Application before them this evening until it is clear that they have a written agreement with Rockport. Mr. Fowler asked if that meant that the Board will not be considering any of the waiver requests prepared for this evening's meeting; the Chair responded that they will wait until everything is firmed up with Rockport.

Mr. Kelly agreed and will draft the Agreement and, at the Board's direction, either:

- 1) Send the draft to each of the three sitting Board members individually to edit and return to him without deliberating amongst themselves. That edited version would come to the full Board for approval and signing at their next meeting; or
- 2) Send the draft to the next meeting of the Board for review and editing. This draft would be returned to him, and not approved and signed until the following Board meeting.

The Board agreed to the first option noting that the absent Board members should find that it is very clear-cut what is going to happen, especially since this issue has been discussed previously.

Mr. Fowler asked if the Camden Board will be back on their regular schedule of meeting days next month, hoping to avoid any conflict of meeting times. Rockport usually meets the 2nd Wednesday of the month only. The Camden Board will meet on the 5th of April and sign the Agreement, and if it is then signed by the Rockport Board on April 11, a Joint Hearing could be scheduled for the first meeting in May. Mr. Fowler confirmed that there is no time constraint, just a consideration of costs to the Applicant.

Where the hearings are held can be negotiated, but it is fine with the Camden Board if the Public Hearing takes place on May 9 in Rockport; Mr. Fowler will convey that message to the Rockport Board and let Mr. Kelly know if there needs to be further discussion in this regard. Mr. Kelly tossed the idea of a Site Walk into the discussion; Camden could propose that the Public Hearing on the 9th of May be convened, and, if it is determined that a Site Walk is needed, a date for a Site Walk could be set and the hearing continued to a “location and a date certain” at that time.

3. SITE PLAN REVIEW: PUBLIC HEARING:

Megunticook Lake Woodside Home: Map 103; Lot 27: Rural 1 District (RU-1)
139 Beaucaire Avenue LLC: 140 Beaucaire Avenue

The owners were represented by Applicants and authorized agents: Emma Kelly, a Landscape Architect with Richardson and Associates, and Andrew Hedrich of Gartley and Dorsky Engineering and Surveying who prepared the Erosion and Sedimentation Control Plan for the project. They are here this evening to continue review of the proposal to construct a driveway and residence off the Start Road that will involve grading and filling in excess of 40,000 SF and requires Site Plan Review.

Ms. Richardson noted that they have a new set of revised Plans submitted 2/29/2012: SP.1 is now the Master Plan with all information on one sheet; and SP.O has all the other required information. Mr. Hedrich noted that they were here for consideration of Section 6, Approval Criteria #s (1), (2) (5) and (10). The information submitted in the original narrative citing the erosion and sediment control information said that this information could be found on Plan SP.10 – that information is now included on SP.O. As the Board goes through the Approval Criteria they should keep that in mind. SP.O is the Cover Sheet and includes abutter’s names and addresses and the Locus Map. Mr. Hedrich informed the Board that they also have a copy of the DEP Stormwater Permit-by-Rule that was submitted 3/09/2012; they expect approval before the end of the month.

Ms. Richardson proceeded to provide an overview of the project as a single family home; a garage with guest apartment; two sheds – one existing along Beaucaire Avenue and one proposed writers studio; and two parking areas – one off Start Road and one adjacent to the garage. Retaining walls and a set of stairs are shown, and the possible locations of septic fields are noted.

In addition the Applicant has submitted the following documents in support of the Application:

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|---|--------------------------|
| ‣ Town of Camden Application for Site Plan Review | Dated: January 26, 2012 |
| ‣ Site Plan Content Narrative | Dated: February 2, 2012 |
| ‣ Approval Criteria Narrative | Dated: February 2, 2012 |
| ‣ Deed | Dated: April 15, 2011 |
| ‣ Tax Map with driveways | Dated: February 2, 2012 |
| ‣ Permit Application (NRPA Stream Crossing PBR) | Dated: November 16, 2011 |

(f) *The bearing and distances of all property lines of the property to be developed and the source of this information. The Board may require a formal boundary survey when sufficient information is not available to establish on the ground, all property boundaries.*

→ The Applicants were informed that the Ordinance calls for the addition of bearings and distances to the actual Site Plan.

Those have been added to this Plan (see legend).

(o) *Location and type of exterior lighting.*

→ The Applicants were asked to remove all references to lighting from the Site Plan.

All references to lighting have been removed from SP.1.

MOTION by Mr. Sargent seconded by Ms. MacKinnon that the Plan is now complete subject to final receipt of the DEP Permit which is anticipated within seven to ten days.

VOTE: 3-0-0

The Chair opened the Public Hearing for comments from the public:

Polly (a.k.a. Mary) Saltonstall: 159 Beaucaire Avenue – directly across the road:

- She, and most of the neighbors, is most concerned about changes to stormwater that may result. She cannot understand why DEP does not require stormwater flow calculations for permits like this one where the potential for run-off into the lake is so great.
- She asked if the hay bales and other erosion controls were temporary, or if they were to be left in place. She is concerned because there is not a lot of undergrowth in the area to capture run-off, and even though the plan shows plantings, she is concerned that the controls may be removed before the plantings are established to do their job.
- Although she understands the Board is not going to consider lighting, the neighbors are concerned what the lighting might mean to their dark neighborhood.

Mr. Hedrich and Ms. Richardson responded:

- DEP does require Stormwater Management Plans in severely threatened watershed like Lake Megunticook when there is over 20,000 SF of new impervious surface being created; they are well under at 15,000 SF. But, they have take steps beyond those that are required to control run-off – every single aspect of the Plan from the design of the road, to ditching and landscaping is all geared to improving the conditions in the area, not making it worse. The road especially has been designed so the water sheets across the lot, not channels down long ditch runs.
- All soils will be protected until they are re-vegetated and that vegetation is well-established. Only then will the controls be removed so water can sheet instead of being channeled by the hay bales.
- The exact lighting design has not been established, but the owner’s goal is to only have the minimum amount of exterior lighting that is needed for safety. Beyond that the owner’s wish is to have none. She will pass along the comments from abutters as to why that is appropriate to the neighborhood.

No one else came forward and the Public Hearing was closed.

SITE PLAN APPROVAL CRITERIA:

(1) Preserve and Enhance the Landscape

The landscape shall be preserved in its natural state insofar as practical by minimizing tree removal, disturbance of soil, and by retaining existing vegetation during construction. After construction is completed, landscaping shall be designed and planted to define, soften, or screen the appearance of off-street parking areas from the public right-of-way and abutting properties and/or structures and to minimize the encroachment of the proposed use on neighboring land uses.

MOTION by Ms. MacKinnon seconded by Mr. Sargent that #1, Preserve and Enhance the Landscape, has been satisfied due to the Sediment and Erosion Control Plan, and the re-planting and re-vegetation plans shown on SP.1, the fact that the fill is sheeted and shored around the bridge abutments, and the fact there were rocks put in place during construction to prevent damage to large trees.

VOTE: 3-0-0

(2) Erosion Control

Filling, excavation, and earth moving activity shall be carried out in a way that keeps erosion and sedimentation to a minimum, including:

- (a) preservation and protection of natural vegetation where possible
- (b) keeping duration of exposure of disturbed soils to as short a period as possible and stabilizing the disturbed soils as quickly as practicable.
- (c) use of temporary vegetation or mulching to protect exposed critical areas during development.
- (d) use of debris basins, sediment basins, silt traps or other acceptable methods to trap the sediment from stormwater runoff.
- (e) no storage of fill materials within 50 feet of the banks of any stream, intermittent or perennial, or water body.

(f) no removal of topsoil from any lot, except for that removed from areas to be occupied by buildings, paving, or other surfaces that will not be re-vegetated.

MOTION by Mr. Sargent seconded by Ms. MacKinnon that Section 6.2, Erosion Control, has been satisfied based on the Sedimentation Control Plan, and on personal review of the site conditions. The site was very tidy, and there is no reason to believe that the Applicant will not continue to be as vigilant as they have been in the past.

VOTE: 3-0-0

(5) Surface Water Drainage

Adequate provision shall be made for surface drainage so that removal of storm waters will not have an unreasonably adverse effect on neighboring properties, downstream water quality, soil erosion or the public storm drain system. Whenever possible, on-site absorption of runoff waters shall be used to minimize discharges from the site. Drainage facilities shall be designed for a twenty-five year storm frequency.

MOTION by Mr. Sargent seconded by Ms. MacKinnon that the Application satisfies #5, Surface Water Drainage because the grade on the site has not changed and what existed as drainage patterns before construction will continue to exist; there is minimum intrusion into the wetlands so they can continue to do their job to filter run-off; and because of the terrain and design of the road.

VOTE: 3-0-0

(10) Special criteria for Piers, Wharves, Breakwaters... Bridges over 20 feet in length and other uses projecting into water bodies requiring site plan approval under the terms of this Ordinance. In addition to the above approval criteria, the site must be demonstrated to be suitable for the proposed use according to the following special criteria.

(a) The project must not cause undue erosion on or near the site.

(b) The proposed use must not cause degradation of marine life in or near the area. The Board may ask for an examination and statement by a qualified marine biologist regarding the impact of the project, and that statement shall show no significant adverse impact on marine life.

Discussion: Mr. Hedrich reminded the Board that they originally submitted a permit from DEP for the bridge abutments – they found no endangered species or habitat. The design of the bridge intentionally kept the abutments far above the stream to avoid impact to the stream bank. In addition, they have provided erosion control to protect these abutments.

MOTION by Mr. Sargent seconded by Ms. MacKinnon that the Applicant has satisfied Criterion #10, Special Criteria in regard to the bridge on the driveway which is over twenty feet long because all of the abutments for the bridge are well outside of the watercourse and have been installed under DEP approval: it will not cause any undue erosion on the site and it will not cause any degradation of marine life because it does not obstruct or intrude into any of the marine area.

VOTE: 3-0-0

MOTION by Ms. MacKinnon seconded by Mr. Lindsley that regarding the Application for Megunticook Lake Woodside Home the Applicant has satisfied all of the relevant Approval Criteria and therefore we approve the Application.

VOTE: 3-0-0

DISCUSSION:

1. Minor Field Adjustments: There were none

2. Future agenda items:

Non-conforming uses: The CEO had prepared summaries of other town's ordinance provisions dealing with non-conforming uses.

Ms. MacKinnon is willing to discuss a proposal for an amendment based on the Town of Southwest Harbor's. She would like to tie the ability to get an expansion to an improvement on the property; she does not think it is unreasonable and that there should be some leeway. Mr. Wilson replied that the ZBA can only grant a variance if there will be a loss of value if they cannot expand.

Mr. Wilson also found examples that allowed a one-time limited expansion similar to the Shoreland Zone expansion rules.

Mr. Sargent suggested that they could set conditions – like the result is less non-conforming than it was before -- you get an expansion if you make improvements. That is like Contract Zoning, and it is something like that could work here. Ms. MacKinnon would like to hear from other people who have had similar non-conforming issues to see if they could be accommodated by a process like that.

Mr. Sargent would like to do a follow up to the MUBEC discussion with the State representatives, and he would like to follow up with the pre-meeting discussion the Board had with Bill Kelly regarding the Board's limited ability to review Performance Standards. Mr. Kelly had stated they did not have that authority unless it was expressly given within the Ordinance, and it was not given for piers and wharves; the Board had no authority to conduct that review. Mr. Wilson would like to research the issue further because Camden's review of piers is so different than towns he is familiar with and he is not sure what is intended. He will do research and let them know what he finds.

Mr. MacLean would like to discuss moving the second April meeting because it coincides with school vacation; that will wait until more members are present.

Due to the fact that so many members were absent, the majority of the items up for Discussion were deferred.

There being no further business before the Board they adjourned at 7:15 pm.

Respectfully submitted,

Jeanne Hollingsworth, Recording Secretary