

**TOWN OF LOVELL  
PLANNING BOARD  
MINUTES OF THE REGULAR MEETING  
September 3, 2008**

**Members Present:** Paul Bois, Walter Grzyb, Steve Korth, Bill McCormick, Dean Stearns and Chairman Ed Ryan. Lovell CEO, Ron McAllister, was also present.

**Members Absent:** John Donnelly

Noting that there was a quorum of the Planning Board present, Chairman Ryan called the meeting to order at approximately 7:33 PM.

**APPROVAL OF THE AUGUST 6, 2008 MINUTES**

A motion was made by Mr. Korth to accept the minutes of the August 6, 2008 meeting that had been previously distributed to the Board. The motion was unanimously approved by the Board.

**ITEM #3 - CONDITIONAL USE APPLICATIONS  
SULLIVAN PROPERTY, SULLIVAN ROAD**

Chairman Ryan indicated that the last time that this conditional use application was discussed (July 2, 2008 Meeting, on an informal basis), there were a number of documents wanting in the Application: a property survey, the property deeds, and a letter from Mr. Sullivan to the effect that his daughter, Janet Wadsworth, had full authority to act on his behalf before the Planning Board on this matter.

In Ms. Wadsworth's absence, her representative, Mr. Jon Bliss of Bliss & Associates, Inc., indicated that the requested documents were delivered to the Board and that he had also submitted to the Board a letter from a Mr. Stanley J. Tupaj, Designated Broker at Dutton Real Estate, indicating and concluding that he reviewed the plans "...to raise the buildings for the purpose of installing a frost wall. It is my opinion that upon the completion of this work, there will not be an increase of more than 50% of its current value."

Chairman Ryan offered the copies of the deeds for the Board's perusal and indicated that he had read them and did not find anything worthy of note in them.

Mr. Bliss noted for the record that the survey of the property did determine the boundaries of the property and the location of the structures on the property although two of the structures would not be impacted by the subject Conditional Use Application. Mr. Bliss summarized the Applicant's intent to move cottage Number 3 back from the lake about 10 feet and slightly to the North and that Bunk Room # 4, would be moved behind Cottage #3. He noted that this would not materially change the distance of the Bunk

Room from the lake, but that the move would benefit the visual perspective of the property from the Lake.

Mr. Bliss went on to note that it was not the intention of the Applicant to raise the structure to the target elevation of one foot above the 100 year flood high water mark, as required by the *Lovell Floodplain Management Ordinance*, relying on the 50% increase in value limitation and exemption cited in Mr. Tupaj's letter. Mr. Bliss also made the point, that to meet the target elevation, the structure would be six to seven feet above the existing ground level.

There was a substantial and prolonged discussion of the 50 % exemption. The specific provision in *Article XIII of the Lovell Floodplain Management Ordinance – Definitions - 34 Substantial Improvement* states in part:

“ Substantial Improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement”

The apparent intent being that *Article VI* of the same ordinance - *Development Standards* only applies to “new construction and substantial improvements”. And therefore, the target elevations included therein would not be applicable to any improvement that is less than substantial, as defined.

The Board questioned (a) the value of a structure that is in a floodplain and that has actually been flooded a number of times and to varying extents over the recent past; (b) the methodology that one might use in calculating compliance with this provision; and (c) the functionality and validity of a seemingly generally accepted unwritten interpretation that this 50 % exemption could be used each and every year, ad infinitum. Since this exemption is the pivotal issue dictating that which can legally be done to the structure, it was suggested by the Board that Mr. Tupaj's letter be revised such that it at least deals with the specific requirements of the Ordinance.

Although Mr. Bliss believed that the Board was “splitting hairs”, he agreed to obtain such a letter from Mr. Tupaj.

Chairman Ryan proceeded to go through the specific requirements of *Article III – Application For Permit*, generally found things in order and noted under *Section I* that the Board still needed a written certification that the elevations shown on the application are accurate.

Mr. McCormick requested that the Board make a finding that the proposal in the Application to move the Cottage #3 back only 10 feet does in fact represent a move-back from the lake to the greatest practical extent. He indicated that he had made a site visit and noted that the amount of congestion on the site, the existence of irregular property lines and the location of septic systems make additional significant setback impractical. CEO McAllister concurred with Mr. McCormick's conclusion.

Mr. Bois made a motion to approve the application as presented, but conditioned on the satisfactory receipt by the Board of the following items: \$100 fee, site elevations and a certificate of their accuracy, and a revised letter dealing with the 50 % exemption regarding “substantial improvement”.

With the exception of Mr. Korth, who abstained, the Board voted unanimously to approve the motion and its attendant conditions.

#### ITEM #4 – PLANNING BOARD RULES BOOK

The Board continued its conversation with Mr. Bliss regarding the issues surrounding trying to measure setback requirements from the edge of a traveled portion of a traveled way rather than the centerline, which was begun at the regular meeting of the Board in July. Mr. Bliss’ concern was more from a practical than a theoretical perspective. He explained that all the Ordinance was attempting to accomplish was to establish a specific setback from a road. Why would a landowner have to incur the expense, which could be considerable in certain circumstance, to do that measurement? Mr. Bliss is of the view that every interested party could measure a setback distance from the center of the road (even a rural dirt road) and be within a foot or so each other. The same from the edge of the road as it is, or was or should be is problematic. To ensure that some minimum setback is maintained, the Rules could be amended to 85 feet or even 100 feet so that everyone can be reasonably comfortable that at least the intended minimum stipulated setback is being maintained.

Given Mr. Bliss’ concerns, and echoed by the Lovell CEO, Chairman Ryan asked for a sense of the Board as to whether we should further explore an amendment to the Planning Board Rules. Mr. Grzyb suggested that we proceed to work with SMRPC to obtain examples of how other communities in our region are dealing with this issue.

With the exception of Mr. Korth, who abstained, the Board voted unanimously in agreement with Mr. Grzyb’s suggestion.

#### ITEM # 7 – OTHER –NON-AGENDA ITEMS

##### HARMON PROPERTY -- 33 FOX COVE RD.

Mr. Bliss then asked to be able to proceed with this Conditional Use Application for this property that involves relocation and a new foundation under a structure located in the floodplain.

Chairman Ryan informed Mr. Bliss that the Board would not formally hear that application for a Flood Hazard Development Permit, because the application was received after the agenda for the September meeting had been set and posted.

Mr. Bliss was unaware that such a formal deadline existed and wanted to know, for future reference, what the filing deadline is for documents to be submitted prior to the meeting at which the application is to be heard. Chairman Ryan indicated that historically, the Board has basically attempted to follow the guidelines set forth in *Article 4 -- Administrative Procedure of the Lovell Subdivision Regulations*. Basically, an agenda is set and posted 10 days prior to the meeting. In addition, non-agenda items may be heard at the conclusion of all agenda items, but the Board will not take any action on any application not appearing on the agenda.

As a result, this Application was tabled until the next regular meeting of the Board on October 1, 2008.

#### JOHNSON PROPERTY -- 42 NORTH LOWER BAY ROAD

Mr. York, of Nate York Construction, representing the owners of the Johnson property, realizing after hearing the Harmon application, that his client's application would not be heard this evening either, summarized the project for the Board as one to raise the building, which is in the floodplain, to add a new foundation and miscellaneous "fill-in" type additions of approximately 250 square feet. It is his clients' preference not to have to move the building back from the lake. Mr. York did cite a number of reasons why it would be preferable not to move the building including drainage and parking issues but indicated that it would be much more informative to the Board if the owners made that part of the presentation to the Board at its next regular meeting.

Chairman Ryan did remind Mr. York that an application for a Flood Hazard Development Permit would also be necessary for that meeting.

#### BENDER PROPERTY – 485 WEST LOVELL ROAD

Mr. McCormick reported on a site visit he made to the Bender property (Kinapac Lodge) at the request of Lovell CEO Mc Allister to look at a number of trees that Mr. Bender had requested he be permitted to remove based on the advice of a new arborist that he had hired named Price. According to Mr. Bender, the arborist recommended that three trees be removed as being dead/diseased, crotched or otherwise dangerous. One of the very large trees is hard against the cottage known as the "Refuge" and had not been the focus of the earlier site reviews. The other two trees are directly behind the Lodge building and were the subject of a fair amount of discussion and certified as healthy by B.H. Keith Associates, the group that had been hired by the Benders initially.

Mr. Bender noted that in addition to the three problem trees he pointed to another 3 or 4 trees that are not immediately adjacent to the Lodge area that also have problems and would be taken down at the same time since they were going through all the expense to get a crane in to remove the problem trees. Having no

basis whatsoever to counter the arborist opinion, Mr. McCormick and CEO McAllister concurred with the tree removal plan.

The highlight of the visit was the Lodge Building. To be more precise, the non-existence of the Lodge Building. This structure, which had been the subject of hours of discussion and the center and only focal point of the entire Bender Application, had been razed. The concrete foundation wall closest to the lake was still there but completely back filled with dirt, which in all likelihood would probably impact the functionality of the “poreable basement” included in the approved Permit. There was no building debris in the area. When asked what happened to the building, Mr. Bender indicated that they found termites and couldn’t save the building. He also said that the CEO and the Planning Board Chairman were aware of the changes that had to be made.

As a result of this report, a question was raised on the validity of Board procedures and official record keeping in situations like this, where the Board heard this application over many meetings, hired independent experts as consultants, etc. etc. with the end result that the project that was actually undertaken has only a passing coincidental likeness to the work and documents that the Board actually approved. In effect negating and rendering useless the work of the Board and doing it all without any documentation of anything. It should be noted that this record deficiency also extends to the Lovell Board of Appeals that also made its decision based on the application that was submitted to the Planning Board. In both instances, it is hard to understand how all of this could have happened within the confines of our existing laws.

After a lot of discussion, Chairman Ryan indicated that this was a disturbing event of which he had no knowledge prior to Mr. McCormick’s report. He said that he would take it upon himself to investigate this matter further, and to consult with the Town Attorney and others. He would take whatever actions he deemed appropriate and would re-convene the Board for a special meeting if necessary, but otherwise report back to the Board at its next regular meeting on October 1, 2008.

There being no further business, Chairman Ryan asked for a motion to adjourn, which was made, and unanimously approved by the Board through a show of hands at 9:02 P.M.

Respectively submitted,

Bill McCormick  
Planning Board Recording Secretary.

