

**TOWN OF LOVELL
PLANNING BOARD
MINUTES OF THE REGULAR MEETING
December 2, 2009**

Members Present: Paul Bois, Walter Grzyb, Joel Hardman, Bill McCormick, Bryan Molloy, Ed Ryan and Dean Stearns.

Also present was Lovell CEO, Ron McAllister.

Members Absent: None

Noting that a quorum of the Board was present, Chairman Ryan called the meeting to order at 7:00 PM.

It was also noted that Ms. Sandra Masse, a resident of Lovell residing on West Lovell Road, was also in attendance as a guest.

APPROVAL OF THE MINUTES OF THE NOVEMBER 4, 2009 REGULAR MEETING

A motion was made by Mr. Stearns to accept the minutes of the November 4, 2009 Meeting that had been distributed to the Board previously. Chairman Ryan noted that in the first paragraph of **Item #7** relating to the Olinski Property, the deadline for the work described therein should be noted as being October 15, 2009 not November 15, 2009.

As a result, the context of the Eastman phone call as it relates to the status of the work vis-à-vis the deadline should be changed to “**was missed**” from the current “**expected to be missed**” connotation.

There being no further discussion, Mr. Stearns amended his motion to approve the Minutes of the December 2, 2009 Regular Meeting of the Board, as amended. The motion was approved unanimously by the Board through a show of hands.

ITEM #4 – OLD BUSINESS. REVISIONS TO SECTION 9.9 OF THE LOVELL ZONING ORDINANCE – DRAFT #3

Chairman Ryan explained that after the November Board Meeting, he had sent a memo on this subject to JT Lockman of SMRPC, to provide him with a number of additional changes that primarily related to a “tiered approach” preferred by the Board and the synchronization of the draft to clearly reflect this approach. Due to a number of personal issues, Draft #4 could not be completed in a timely enough fashion to be distributed to the Board prior to this meeting. Chairman Ryan indicated that a quick review of this draft disclosed that there was not a complete meeting of the minds on precisely what a “tiered approach” would look like when stated in Ordinance format.

Referring back to Draft #3 dated November 2, 2009, Chairman Ryan asked the Board's view of the revised Paragraph 9.9.B wherein a change of a pre existing (i.e. existing prior to the adoption of the ordinance March 2, 1996) Conditional Use could not be ***substantially expanded or altered*** was changed to ***expanded by more than 400 square feet in floor or land area.***

After due discussion, the Board expressed the view that the static 400 feet was too highly formulated, and almost meaningless. The Board clearly preferred that the limit of expansion be relational and stated in the form of a percentage of the existing use, increase in the number of employees, traffic generated or any other meaningful measure in a given situation. After further discussion, the sense of the Board concluded that the current verbiage of ***substantially expanded or altered*** continues to be appropriate and provides the desired flexibility to look at each such expansion and/or alteration on a case-by-case basis, preferring to rely on the judgment developed through a reasoned approach rather than some arbitrary one-size-fits-all methodology.

Pre Application Process. The next item in Draft #3 that Chairman Ryan wanted the Board to consider was the Conditional Use Application Procedure. He explained to the Board that currently, he generally meets with an Applicant regarding the requirements of a proposed Conditional Use Application. Under the proposed changes in Draft #3, CEO McAllister and the Chairman would have this pre application conference with the applicant. The Board commented that Draft #3 doesn't mention the Board Chairman being a part of the pre application process. Mr. McCormick made the point that, in his view, the Draft had the procedure correct and that the Chairman of the Planning Board should refrain from counseling applicants privately because of the perception/expectation that what ever counseling received could be considered the final word on the subject by the applicant. This potential situation could place the Board in the uncomfortable position of having to publicly contradict the conclusion of its chairman or finding itself in the position of having to debate with its chairman rather than the applicant. The Board clearly saw the pre application procedure as properly in the hands of the CEO and emphasized the need for the CEO to be open and forthright in the process and conclude each counseling session with the caveat that he has provided the applicant with his best thinking on the matter but that it was entirely possible that the Planning Board could see it differently. The Board further viewed the potential of reversing what the CEO counseled as the normal system of checks and balances of two independent semi judicious municipal agencies having slightly different interpretations of the same point.

Public Hearing. Chairman Ryan noted that Draft #3 provides that ***"If the Planning Board finds that the proposed use or structure is likely to have significant impacts on the neighborhood because of increased traffic or other factors, it may hold a public hearing...."*** This is versus the very direct requirement in the current Ordinance that ***"The Planning Board shall hold a public hearing...."***. He explained that the proposed change is really just a codification of what the Board has been doing and now officially provides the Board with the option of exercising judgment as to when a public hearing would be required or deemed to otherwise be beneficial to the Conditional Use Application procedure. The Board seemed to be in agreement with the Draft #3 provision and saw little benefit to reverting back to the rigidity of the existing ordinance.

At this point, since there had not been sufficient time for any member of the Board to have read, let alone study, this five-page document that was distributed at the meeting, Chairman Ryan suggested that this agenda item be tabled until the January 6, 2010 regular meeting of the Board.

Hearing no objections, this agenda item was accordingly tabled.

ITEM #4 OLD BUSINESS. WATERBODY ACCESS

Mr. Stearns updated the Board on the status of the research that he and Mr. Bois had started a number of months ago into the rights that the Town of Lovell has regarding access to Kezar Lake through a right-of-way at Severance Lodge and another through Timber Bay Shores at Northwest Cove.

Mr. Stearns reported that he and a relative, Al Stearns, had gone back to re-review the records at the Town Office and at the Registry of Deeds in Fryeburg to ensure that no nuance or subtlety had been overlooked in the first review. During this review they did come across a document entitled “*Certificate of Restricted Covenants, Common Easements, Exceptions and Reservations as related to Timber Bay Shores*” which clearly stated that “**This conveyance also includes a right to use and enjoy all common areas.... for the common benefit of lot owners in Timber Bay Shores.**” Mr. Stearns also spoke to an Allen Bennett, a member of the Lovell Planning Board at the time of the Timber Bay Shores sub-division, who recollected that the common areas were only for the benefit of Timber Bay Shores lot owners. Mr. Bois said that he believed there was a provision in one of the documents relating to the responsibility of the lot owners to maintain the access facility and that Town employees did all of the maintenance for many years in the 90’s and even after that. A suggestion was made for Messers. Dean and Bois to look back on the Town’s financial records and see if it could be determined whether, or the extent to which Town funds were used to maintain the facility.

The next step would be to present the research documentation to Town Attorney, Buzz Pratt, in order to get his views on whether additional research could/should be done to be able to definitively establish the fact that the access rights of the Town were anticipated and contemplated in the transaction and that the non recording of this intent was an oversight.

Mr. Stearns reminded the Board that the work regarding the access at Severance Lodge was still being researched. Since the timing of this work and the time that it might take to research the Town expenditures regarding the maintenance of the Timber Bay Shores access point, a specific date for the completion of the work was not established although Mr. Stearns said that they would most probably report the status to the Board at its February meeting.

ITEM # 4. OLINSKI PROPERTY AT FARRINGTON POND SHORES UPDATE

Chairman Ryan reported that he and CEO McAllister visited the Olinski property and noted that all of the replanting stipulated on the Gorrill-Palmer Consulting Engineers plan dated May 22, 2009 (Amendment to Lot 5 to the Farrington Shores Subdivision) for the Olinski Property was completed and with what appeared to be good healthy stock. In addition the Board has received a letter from Mr. Eastman, the landscaping contractor, confirming that the required replanting had taken place and recommended that certain measures be taken by the Olinski's to assure that the newly planted trees survive the winter.

Chairman Ryan also noted that the Board resolution required that all of the Stipulations required by the Board at its June Meeting had to be satisfied before a Certificate of Occupancy could be issued by CEO McAllister. To that end, CEO McAllister was asked to call Mr. Haskell, the Consulting Engineer on the project from Gorrill-Palmer, and request such a confirmation as well as the photographs of the property showing the base line data for purposes of the annual CEO inspection which is also required by the resolution.

Mr. Molloy inquired as to whether the Olinski's would be subject to fines for the violations of the Zoning Ordinance that requiring the stipulations mentioned above. CEO McAllister stated that no fines have been levied at this point. After further discussion, Chairman Ryan stated that the Planning Board had no enforcement capabilities regarding fines and that since the resolution of the Olinski violations involved the Lovell Selectmen, the Town Attorney and the Town CEO, the final decision regarding fines rested with those entities.

The matter has been tabled until the January meeting of the Board.

ITEM #6 – NEW BUSINESS. REVIEW OF SECTION 7.14 OF THE LOVELL ZONING ORDINANCE, SIGNS AND LIGHTS

Chairman Ryan reported that he had communicated with Mr. JT Lockman and requested examples of what other similarly situated towns in Maine are doing with regard to this subject matter. However because, as stated earlier, JT Lockman could not provide the information in time for this meeting, Chairman Ryan suggested that this agenda item be tabled until the Board's next regular meeting.

There being no objection, this item was tabled until the next regular meeting of the Board on January 6, 2010.

ITEM #7 OTHER. NON-AGENDA ITEMS

As a private citizen, Bryan Molloy asked for an update on the two matters that he has been questioning for the past six months or so.

In both instances, Mr. Molloy has questioned the inconsistent application of the Lovell Zoning Ordinance that requires a Conditional Use Permit.

In the Kezar Lake Marina instance, the issue is that the storage of trailers in a residentially zoned district has increased from the amount that would have been grandfathered under the adoption of the Ordinance in 1996. Mr. Molloy has stated that he has evidence of the increase in both the land used for storage and the number of trailers being stored. This information was gathered through his own observations of the number of trailers being stored and the observations of others, and from computer images provided by GOOGLE EARTH, etc. for a determination of the actual land being utilized to store trailers.

The issue was left to CEO McAllister to contact the owners of the Marina to see what relevant information they might have or could develop. And for the CEO to review his own files, if any, regarding the history of the Marina. CEO McAllister was also to revisit the need for the Marina to file a Conditional Use Application.

In the Masse flower stand case. Mr. Molloy believes that a Conditional Use Permit Application should have been filed and heard by the Planning Board, so that issues, primarily related to safety, home occupations and shore land zoning could have been addressed once and for all.

In response to questions by Chairman Ryan, Mrs. Masse, who was in attendance for the entire meeting, said that she had been prepared to file a Conditional Use Application but was told that she really didn't need one. She said that she would be happy to file an application(s) for both her cut flower business and the storage of Boat trailers on her residentially-zoned property at some point prior to her next selling season.

The Board did not take any action on non-agenda items.

There being no further business, Chairman Ryan called for a motion to adjourn, which was made, seconded and unanimously approved at 8:48 pm.

Respectfully submitted,

Bill McCormick
Planning Board Recording Secretary

