

**TOWN OF LOVELL
PLANNING BOARD
MINUTES OF THE SPECIAL MEETING
NOVEMBER 18, 2010**

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

Members Present: Members of the Planning Board present were: Joel Hardman, Bill McCormick, Kevin McDonald, Chairman Ed Ryan, and Dean Stearns. Members absent were Walter Grzyb and Ron Masse

Also present was Lovell CEO, Ron McAllister, Lovell Town Attorney, A. Kingman Pratt, and Lovell Selectman Turf Ramsden.

**ITEM #3 CONDITIONAL USE APPLICATIONS
MS. MARQUIS AND MS. FARNHAM CONSIGNMENT SHOP**

Chairman Ryan referred to the Conditional Use Permit Application of Ms. Marquis and Ms. Farnham and signed by Ms. Farnham dated November 5, 2010 that had been previously distributed to the Board. By way of background, Chairman Ryan explained that this was a follow-up application to the initial application that was signed by Ms. Marquis and dated June 28, 2010. He noted that no action was taken by the Board at its initial hearing of that Application at its July 7, 2010 Regular Meeting because it was the view of the Board at that time that the application was incomplete and didn't meet the requirements enumerated on the application form. Chairman Ryan attributed this deficiency to his belief that the Applicants were not provided the second page of the form.

Chairman Ryan also said that he had sent a letter to the Applicants dated October 4, 2010 explaining the non-action by the Board and offered them his assistance in completing the form. He also included information as to how he could be reached.

Since the Board had not heard from the Applicants in over six weeks and there was an element of anxiety arising on the Board's inaction, Selectman Ramsden had volunteered in the interim to meet with the Applicants. He reported back to the Board that neither Applicant had received a copy of Chairman Ryan's letter, and that he had helped them complete the form that was then submitted to the Board as the November 5 Application that the Board is now to act upon.

It should be noted that neither Applicant could find the time to attend this special meeting of the Board.

Based on the information included in the Application, his own research and the understanding of Selectman Ramsden, Chairman Ryan summarized the pertinent facts of the Application:

- The Lot upon which this structure sits is 4.4 acres,
- The building housing the operation has a footprint of 880 sq. ft.,
- The business to be operated therein (although the actual square footage devoted to this function has not been designated) “is an inside yard sale/second hand shop”,
- The specified use is a permitted conditional use in the Limited Commercial District, the District in which this lot is sited,
- Parking requirements. According to the Lovell Zoning Ordinance, Section 7.8.C.3, such a facility using the entire footprint of the building, would require 5 parking spaces. Based on the total lot size, it was Chairman Ryan’s view parking should not be an issue.

Members of the Board expressed a concern regarding this application establishing a new and very low standard relating to the overall quality and completeness of this type of Permit Application in the future. Attorney Pratt explained that he didn’t believe so since there was such a wide diversity and uniqueness in each such application.

Mr. McCormick then asked Attorney Pratt for guidance regarding the testimony that was provided relating to the initial Application at the Board’s July meeting, by a party-in-interest to this transaction that was contradictory to the information being provided in this application. Attorney Pratt counseled that given the passage of so much time with neither action nor complaints concerning the initial application, the Board should consider this a brand new Application and ignore the initial submission.

Chairman Ryan explained that at this point, the primary issue before the Board centered on whether the Board viewed the Application to be substantially and significantly complete enough to schedule a Public Hearing on the Application. If so, he asked that a motion be made to that effect. Such motion was made by Mr. Stearns and approved unanimously by the Board through a show of hands.

Since Section 9.9.D. of the Ordinance requires a public hearing has to take place within 35 days of the date that the Board determined that it had received a complete application and with the holiday season being hard upon us, the Board agreed that the Public Hearing should be held on December 8, 2010 at the Town Office at 7:00 PM.

With that motion approved, the next issue was the process required by Section 9.9.D.1. of the Ordinance whereby the Applicant must notify all property owners within 200 feet of the subject lot, of this Application and the scheduled Board Public Hearing, by certified mail, return receipt requested. Chairman Ryan indicated that, based on a short conversation that he had with one of the Applicants, it did not appear that the Applicants were inclined to carry out that requirement.

The Chairman then asked Attorney Pratt how the Board could proceed with this Application if the notification process is not met per se by the Applicant. He questioned whether, or the extent to which, numerous mitigating circumstances could have some impact in determining the practicality of this requirement. In this regard, Chairman Ryan mentioned (i) all of the acrimoniousness and argumentation that this transaction has caused over the last five months, (ii) the Application deals with such a benign activity, (iii) under normal circumstances and with the same spirit of cooperation that has accompanied the numerous Conditional Use Permit Applications over the years, this application would have been clearly approvable with a minimum of stress and strain on all of the participants in the process, (iv) there is no detrimental impact to the intent and purpose of the Ordinance and (v) there is virtually no potential for this Application to establish a useful referenceable precedent in the future.

After much discussion, Attorney Pratt concluded that the notification process was a critical step and could not be ignored. He felt that under these extenuating circumstances, an acceptable alternative would be for someone other than Planning Board Members to personally visit the 6 or 7 specified property owners with a waiver to be prepared by Attorney Pratt (a copy of which is attached hereto and incorporated herein in its entirety by reference), whereby each property owner would be asked to sign the form acknowledging that he/she is aware of the Public Hearing to be held on this Application and the date, time and location thereof, and that he/she waives his/her right to any further notice of such meeting. Attorney Pratt further recommended that if the property owners were seasonal residents, it would be permissible to mail the waiver to them and if there were any waivers that were not returned, the Public Hearing could still be held and that any approvals that may result from that Hearing would be qualified thusly, ***“...except to the extent that any of the property owners within 200 feet objects to the Permit during the next 30 days (or other reasonable period, under the circumstances)...”***

Both CEO McAllister and Selectman Ramsden, as non-Board members, volunteered to undertake this task.

There being no further business, a motion was made to adjourn at 7:46 PM and was approved unanimously by the Board through a show of hands.

Respectfully submitted,

William J. McCormick, Jr.
Lovell Planning Board Recording Secretary