

**TOWN OF LOVELL  
PLANNING BOARD  
MINUTES OF THE REGULAR MEETING  
JUNE 2, 2010**

**Members Present:** All members of the Planning Board were present (Walter Grzyb, Joel Hardman, Ron Masse, Bill McCormick, Kevin McDonald, Ed Ryan and Dean Stearns).

Also present was Lovell CEO, Ron McAllister.

Noting that a quorum of the Board was present, Chairman Ryan called the meeting to order at 7:02 pm.

**APPROVAL OF THE MINUTES OF THE MAY 5, 2010 REGULAR  
MEETING**

A motion was made by Mr. Hardman to approve the minutes of the May 5, 2010 Meeting that had been distributed to the Board previously. There being no discussion, the motion was approved unanimously by those of the Board eligible to vote on this matter.

**ITEM #3 – CONDITIONAL USE APPLICATION.  
HARWOOD APPLICATION RE FARRINGTON SHORES  
SUBDIVISION LOT #4**

Chairman Ryan explained that the expected application that was discussed on an introductory basis at the last meeting was not an agenda item for this meeting because the documents that had been requested informally at the Board's April meeting had not yet been received.

Mr. McCormick stated that the Harwood's had preliminarily agreed to a proposed transaction whereby approximately 50 of the northern most acres of Lot #4 would be sold to the GLLT, whose Sucker Brook Preserve abuts this property. In addition, the bulk of the approximately 13 remaining acres of Lot #4 would be the subject of a conservation easement agreement between the Harwood's and the GLLT.

Chairman Ryan commented that even the transaction with the GLLT required the approval of the Planning Board. As a result, the Applicant still had to adhere to the tenets of the Lovell Subdivision Regulations and submit the basic documents that had been previously requested by the Board. Chairman Ryan did say that he did not expect this task to be onerous and that, in all likelihood, the hearing would focus on determining, establishing and providing the necessary documentation for recording the new lot lines.

**ITEM #4 – OLD BUSINESS. WATERBODY ACCESS**

Chairman Ryan asked Dean Stearns to discuss any recent developments of this ongoing Board project to determine where, and the extent to which, there are public access points to Kezar Lake. Mr. Stearns indicated that most recently, he and Mr. Bois, a former Planning

Board Member, and others had focused on a sliver of water frontage in the Northwest Cove of Lower Bay for which the Timberbay Shores subdivision pays the property taxes. The focus on this area as a potential public access point was based primarily on anecdotal information that had been received purporting that the initial intent of the developer at the time of the Timberbay Shores subdivision was that this landing was for public access to the Lower Bay. In addition, there are numerous residents who have indicated that the landing there was used for many years by local residents, without challenge, and that the area had been maintained by the Town of Lovell, at the Town's expense. Despite these claims, to date, the review of deeds and other legal documents by Messers. Stearns, Bois et al has not produced any such legal rights.

Mr. Stearns went on to indicate that he had reviewed his findings with Town of Lovell attorney Buzz Pratt who was helpful and had some thoughts regarding further research that could and should be undertaken to bring this task to some definitive conclusion. Attorney Pratt was hesitant to take on any such work, which he estimated could cost several thousands of dollars, without being retained to do so by his client, the Town of Lovell (Selectmen).

Chairman Ryan concluded the discussion by asking whether the Board felt that it would be worthwhile to ask the Selectmen to attend the Planning Board meeting in either July or August to review with them the work that had been done and to solicit their views on what might be the next step to be taken and by whom. Obtaining the basic agreement of the Board to proceed with the meeting, Chairman Ryan asked Mr. Stearns to contact Mr. Bois to see who of those claiming to have used this access point in the past would be willing to write letters attesting to that fact and for Mr. Stearns to pull together what ever historical use type information that he thought might be helpful.

#### **ITEM #4 OLD BUSINESS – ROADSIDE SALES OF GARDEN PRODUCTS**

Chairman Ryan indicated that the inclusion of this item on the Board agenda was precipitated by the discussions that the Board had over several meetings regarding signage in the Town of Lovell.

After a long discussion on the subject, it appeared that the Board was not interested in trying to control the occasional and often sporadic roadside sale of garden products, etc. and that their chief concern had to do with the safety of the consuming public while patronizing these roadside entities.

A number of times throughout this discussion, members of the Board cited the person selling corn on the North bound side of Route 5 for three or four weeks in late summer as an example of a situation that provided ample public benefit, that does not need further regulation per se but yet was deemed unsafe. The lack of adequate shoulders on both sides of Route 5 at the selling location forces stopped customer vehicles on both sides of Route #5 to encroach slightly on the right-of-way and forces customers to have to cross the road at the point where the speed limit is substantial and the stopped vehicles could be a dangerous distraction to passing drivers and the customer pedestrians.

The sense of the Board was that this is not a Board issue and that the sheer variety of items being sold in this manner, the variety of the selling locations, and the random timing and frequency are all variables that render a one-size or even a two-size-fits-all type of legislation virtually impossible and would in effect cause the Planning Board and the Lovell CEO to get mired down in trying to control minutiae and every aspect of everyday low key personal commerce. As such the Board believed that this situation is best handled using the common sense and vast experience inherent in a “boots on the ground” methodology that would be carried out best by the Lovell CEO rather than through some rigid legislation which still has to be conscientiously enforced to be effective.

#### **ITEM #7 OTHER – HOME OCCUPATION, ARTICLES II & VIII**

Mr. McCormick had expressed the view that there appeared to be some disconnect or at least some misunderstanding of the definition and standards of the “Home Occupations” provisions of the Lovell Zoning Ordinance. The basic question posed by Mr. McCormick was, what is the intent of the Lovell Zoning Ordinance as it relates to Home Occupation? And would the words in the Ordinance be effective in accomplishing those goals? Stated simply, does the Home Occupation in question have to be conducted by a resident of the property or can anyone carry on a home occupation in any residential structure of his/her choosing. Is the operative word in the Home Occupation designation, Home? And is the meaning of that word just a reference to a type of physical structure or does Home have the more common usage found in any standard dictionary of “a place where one lives”.

Mr. McCormick indicated that a cursory review (i.e. not an exhaustive study) demonstrated that in the State of Maine, and for those towns that have their zoning ordinances linked to the Maine.gov website, by a very wide majority, these municipalities have included a provision in their definition of Home Occupation that the person conducting the business must be a resident in the home in which the occupation is carried out. Many have gone further and state in percentage or square footage terms the amount of one’s home that can be devoted to the ‘home occupation’.

Further, Mr. McCormick noted that in 2006, with the introduction of Type I and Type II Home Occupations into the Lovell Ordinance, very specific wording that had been in the zoning ordinance definitions of Home Occupation at least as far back as 1998 i.e. “*The use of a dwelling unit or structures accessory to a dwelling unit for gainful employment.*” Was inadvertently dropped out of one of the drafts and went unnoticed, until now.

Chairman Ryan asked that this issue be tabled and carried to the next regular meeting of the Board on July 7, 2010. The request was so moved, seconded and unanimously approved by the Board.

#### **ITEM #7 NON-AGENDA ITEM – CONFLICTS OF INTEREST**

Mr. McCormick requested that Chairman Ryan initiate a discussion for the purpose of clarification and education of the Board, regarding the meaning and application of the following terms: conflict of interest, a perception of a conflict of interest, recusal, and abstention, as they apply to the Planning Board and the conduct of its role.

A full discussion of all aspects of the subject followed, which appeared to result in an elevated level of understanding and the rational of these concepts and their applicability to the work of the Planning Board. For purposes of this discussion, it was suggested that the Board consider as a reasonable and starting bench mark upon which potential conflict of interests could be measured, The Maine Municipal Association definition, i.e. “ **The conflict between the public obligation and the private interests of a public official.**”

No action was taken on either of the issues listed under ITEM #4 and 7 above, nor were any required or contemplated.

There being no further business, Chairman Ryan asked for and received a motion to adjourn, which was unanimously approved at 8:40 p.m.

Respectively submitted by,

William J. McCormick, Jr.  
Planning Board Recording Secretary