

**LINCOLN ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING MINUTES  
WEDNESDAY – JUNE 5, 2019 – 6:00PM  
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

**APPROVED**

**Present:** Chair Jonathan Ham, Member Jack Daly, Member Ray D'Amante, Member Paul Beaudin, Member Delia Sullivan, and Alternate Susan Chenard

**Members Excused:** Alternate Myles Moran, Alternate – Vacant, Alternate - Vacant

**Members Absent:** None

**Staff Present:** Town Planner Carole Bont,

**Staff Excused:** Recorder Ellyn Franklin

**Guests:**

- **Lyn Osborne Winter (34 Papermill Drive)**, nonresident, resident of Whitefield, NH, managing director of Jean's Playhouse/North Country Center for the Arts, Jean's Playhouse, 10 Papermill Drive, Lincoln, NH 03251-1060
- **Robert Wetherell**, resident, 13 Bog Brook Road, Lincoln, NH 03251, Trustee of Jean's Playhouse/North Country Center for the Arts, Jean's Playhouse, 10 Papermill Drive, Lincoln, NH 03251-1060

**I. CALL TO ORDER** by the Chairman of Zoning Board of Adjustment; announcement of excused absences, if any, and seating of alternates(s), if necessary.

*Alternate Myles Moran was excused.*

**II. CONSIDERATION** of meeting minutes from:

- November 7, 2018 (Present: Chair Jonathan Ham, Vice Chair Don Landry, Delia Sullivan, Jack Daly, and Alternate Myles Moran)
- May 15, 2019 (Present: Chair Jonathan Ham, Member Jack Daly, Member Paul Beaudin)

**Motion to approve the November 7, 2018 meeting minutes as revised:** Daly

**Second:** Beaudin

**All in favor:** 3-0

**Motion carries.**

*Ray D'Amante and Paul Beaudin abstained as they were not present at that meeting.*

**Motion to approve the May 15, 2018 meeting minutes as amended:** Daly

**Second:** Beaudin

**All in favor:** 4-0

*Ray D'Amante and Delia Sullivan abstained as they were not present at that meeting.*

**Motion carries.**

**III. NEW BUSINESS** (Staff and Zoning Board Member/Alternates).

**A. Discussion re: Appointments to fill vacancies and ZBA Alternates**

**Motion to appoint Margie Gozdoff as an alternate member of the ZBA: Beaudin**  
**Second: Sullivan**  
**All in favor: 6-0**  
**Motion carries.**

**B. 6:00 PM. Special Exception for Sign – Extension of 5 Year Special Exemption  
Granted in 2014 for Off Premise Sign as part of Integrated Plan:**

**Tourist Attraction Property:** 34 Papermill Drive (Tax Map 112, Lot 017)  
(General Use District)  
Jean's Playhouse

**Owner of Tourist Attraction Property:** North Country Center for the Arts  
34 Papermill Drive  
PO Box 1060  
Lincoln, NH 03251-1060

**Appellant:** Lyn Osborne Winter,  
Manager Director for  
"North Country Center for the Arts/  
Jean's Playhouse"  
34 Papermill Drive  
PO Box 1060  
Lincoln, NH 03251-1060

**Off Premise Sign Property:** Main Street #D LO (Map 118, Lot 002)  
(Village Center District)

**Owner of Sign Property:** TFG Lincoln Properties, LLC  
c/o the Finch Group  
6111 Broken Sound Parkway NW #150  
Boca Raton, FL 33487-2774

Under the provisions of the Lincoln Land Use Plan, Article VIII, Section A, Paragraph 2, Appellant Lyn Osborne Winter, Manager Director for the tourist attraction North Country Center for the Arts/Jean's Playhouse" located at 34 Papermill Drive (Tax Map 112, Lot 017), requests approval of an extension for a Special Exception requests an extension for up to five (5) years for a Conditional Special Exception to have an off-premise sign on property in the Village Center (VC) District owned by TFG Lincoln Properties, LLC (Map 118, Lot 002) as part of an approved Integrated Sign Plan for a tourist attraction not located on the main road so part of the purpose of the sign is to point travelers to the attraction when the attraction cannot be seen from the main road under Land Use Plan Ordinance Article VIII, Section A, Paragraph 2.

On January 28, 2014, the "Request for a Special Exception" was approved with conditions:

"Within five (5) years (January 28, 2019) the applicant shall come back to the ZBA with an application for a more permanent sign or show good cause why Jean's Playhouse needs an extension to build a more permanent sign. If Jean's Playhouse receives a grant or funds to fix up the sign before the five years is up, Jeans Playhouse may come in and ask the ZBA to remove that condition."

No funds or grants to support the sign have been received. The Appellant requests an extension of the Special Exception to continue the use of the off-premise sign.

The Appellant appeared before the ZBA on Wednesday, May 15, 2019. She did not have written authorization from the owner of the lot TGF that hosts the off-premise sign. She was asked to return when she had the letter of authorization stating the property owner TFG Lincoln Properties, LLC, c/o the Finch Group has no objections to the sign. She submitted the letter of authorization which was forwarded to the ZBA.

**ACTION:** Acceptance of the application as administratively complete by the ZBA.

**ACTION:** ZBA may conduct a public hearing, or schedule a public hearing at some future date established during this meeting.

**ACTION:** Approval of request for extension of Special Exception, approval with conditions, or disapproval by the ZBA.

**Discussion:**

Member Sullivan asked Appellant Lyn Winter, Managing Director of Jean's Playhouse [North Country Center for the Arts (NCCA)]/ what her plan was for replacement signs. Appellant Winter replied that they are going to put up the same banners as in prior years which are "flat or fixed." They do not have plans to change anything about the signs except the banner when the production changes; the content of the banners are going to cover several different productions at the same time.

Member Daly said that at the last ZBA meeting the Planning Board did not have a signed authorization from the owner of the property in order to go forward. Member Beaudin said Jean's Playhouse did not have the required property owner's signature on the application. The property owner of the land where the off-premise sign is to be located is the property owner who is supposed to sign off on the application. The signed letter of authorization and support by the owner is attached to the application now so the Planning Board can hear and address the application.

Member Beaudin said he knows the directional/advertising sign for Jean's Playhouse is needed but he does not know how the US Supreme Court's decision [in *Reed v. Town of Gilbert*, 576 U.S. \_\_\_\_ (2015)] vs. affects business sign ordinances. He believes that "content neutral" is meant to regulate wording and does not concern, as much, about the location, the dimensions, or the number of signs, etc. There are a lot of inconsistencies in the current regulations of the signs the applicant currently has and wants.

Planner Bont said if you have to ask what kind of a sign it is and what the sign says in order to determine its dimension and location, then the sign is not a "content neutral" sign.

Shute, Muhaly & Weinberger LLC, San Francisco, CA

**What are “content based” regulations?** According to Justice Thomas, who penned the majority opinion, a regulation “is content based if [it] applies to particular speech because of the topic discussed or the idea or message expressed.” *Reed*, 135 S.Ct. at 2227. Because the ordinance at issue in *Reed* had different size, height and duration requirements for political signs than it did for signs providing directions to an assembly or other event, the Court concluded it was “content based” and therefore subject to “strict scrutiny.” Unable to discern any compelling government interest in the differing rules adopted by the Town, the Court found the ordinance invalid. The Court’s ruling in *Reed* means that any sign ordinance with different rules for different categories of signs is “content based,” as long as the categories are defined by the content, topic, or subject matter of the sign’s message. For example, an ordinance that allows “political” signs to be twelve square feet, but limits “temporary directional signs” to six square feet, is content-based. So is an ordinance that prohibits signs without a permit, but provides an exception to this permit requirement for historical markers, real estate signs, address signs, etc.

[https://www.smwlaw.com/files/Reed\\_v\\_Gilbert.pdf](https://www.smwlaw.com/files/Reed_v_Gilbert.pdf)

Member Beaudin opined that one example of what he believes is “content neutral” is the Sign Ordinance portion of the Land Use Plan Ordinance (LUPO) where it says you can only have four (4) signs for every one (1) business, and only one (1) off-premise sign, and only one (1) portable sign. Member Beaudin said the ZBA should write a letter to the Planning Board and request the Planning Board look at the Sign Ordinance and change the Sign Ordinance to match the Supreme Court decision in *Reed v. Town of Gilbert*.

Member Sullivan said she would agree to give the Jean’s Playhouse sign an extension for two (2) or three (3) more years, but she feels like there is room for compromise on the sandwich board signs. The Land Use Plan Ordinance or zoning ordinance says only one (1) off premise sign is allowed, but she knows Jean’s Playhouse is a tourist attraction located off the main road. Planner Bont agreed that Jean’s Playhouse is not findable without the directional signs.

Member Daly said Lyn Winter on behalf of Jean’s Playhouse is before the Zoning Board of Adjustment (ZBA) to request a five-year extension for Jean’s Playhouse’s Special Exception for an off-premise sign, which he believes the ZBA should give them. He believes that Jean’s Playhouse is “a different animal” from the private for-profit companies that others on the ZBA are citing as good examples for more permanent signage as Jean’s Playhouse is a nonprofit tourist attraction business off the main road.

Member D’Amante said, he thinks this ordinance is broken in its application, so the Town needs to take some action. The Planning Board can revise the sign ordinance to create a new level playing field and the ZBA can proceed from there. But in the meantime, the ZBA should grant the five-year extension for the Special Exception for an off-premise sign to Jean’s Playhouse for the main reason: Jean’s Playhouse is not findable. Member D’Amante said, “So we shouldn’t hamper them with too restrictive of a time restraint.”

**Motion to approve the proposed sign for the five-year period: D’Amante**

**Second: Daly**

**All in favor: 6-0**

**Motion carries.**

Member D’Amante said just because the Appellant gets a longer time period does not mean that should be a time period of inactivity. He suggests it be their goal to promote Jean’s Playhouse

by having it look great as soon as possible, over the next 12 months – a year.

Chair Ham agrees that there needs to be some change and improvement in the appearance of the sign within the next 5-year period.

Appellant Osborne Winter agreed that they will make necessary improvements, however she reminded the Board Jean's Playhouse does not own the sign, so she feels constrained with the discussion of permanence regarding the sign.

Member D'Amante would like the record to reflect that he has provided legal counsel to Jean's Playhouse in the past but he no longer is involved in that position, and has not been for a long time.

**Motion to approve Jean's Playhouse's special exception for five more years: Ham**

**Second: Daly**

**All in favor: 6-0**

**Motion carries.**

**Motion to have the ZBA send the Planning Board a letter requesting the Planning Board look at the sign ordinance and attempt to make it comply with the US Supreme Court case of Reed v. Town of Gilbert, as well as address some signage issues currently in the Town of**

**Lincoln: Beaudin**

**Second: Sullivan**

**All in favor: 6-0**

**Motion carries.**

Member Beaudin suggests that all the Boards come together and find a solution to the printing costs.

Member Daly would like to find out how we can charge for search time for documents.

Member D'Amante thinks the Town should just increase its copying fees.

Member Beaudin asked if we could we take a look at the "hard costs" of providing the copies themselves rather than the employee costs for researching the files and start from there.

Planner Bont explained the current unsatisfactory process for sharing property assessment cards with applicants, realtors and others. If an applicant comes into the office and asks for an assessment card, the applicant pays \$1 per card up front and then staff prints out the card and gives it to the applicant. However, if the applicant calls in from California and asks the Town to email him the cards, the Town still has to print out the assessment card incurring the printing costs, but then the Town does not get its money back when the Town scans and then emails the card to the applicant because the applicant does not forward the money to the Town in advance for the assessment cards. The reason an applicant asks the Town if we would email the assessment cards was to avoid paying that cost. We are looking into putting all of the assessment cards on line. The Town used to do that, but when the Town went to a different website provider, the cost of providing assessment cards online was no longer included in the package deal and the cost increased to an additional \$2,700 a year.

Member D'Amante suggests we look for ways to legally retrieve some of these costs such as a charging a standard fee up front of putting or a copy machine in the hall.

Planner Bont will forward the ZBA's request that the Town find ways to legally retrieve some of these costs during a hearing and application process.

#### IV. OTHER BUSINESS

**Ray D'Amante made a motion to express our appreciation for the generations of those still living and those gone before who served the world on D-Day.**

**Second: Beaudin**

**All in favor.**

**Motion carries.**

**V. PARTICIPATION AND OTHER BUSINESS:** Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

*There was no public participation.*

#### V. ADJOURNMENT

**Motion to adjourn at 7:10 pm: Beaudin**

**Second: Sullivan**

**All in favor: 6-0**

**Motion carries.**

Respectfully submitted,  
**Ellyn Franklin**, Recorder

Date Approved: June 19, 2019

  
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Jonathan Ham, Chairman