

LINCOLN BOARD OF SELECTMEN

APPROVED

MEETING MINUTES

JULY 1, 2019 – 5:30PM

LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN, NH

Board of Selectmen Present: Chairman OJ Robinson, Vice Chair, Tamra Ham, and Jayne Ludwig

Staff Present: Town Manager Burbank, DPW Nate Hadaway, Chief Ron Beard, Carole Bont, Town Planner, and Administrative Assistant, Jane Leslie.

Public Present: Rick Elliott, Debbie Celino, Jim Welsh, and Dave Beaudin

I. CALL TO ORDER

Vice Chair Ham called the meeting to order at 5:40 p.m.

Chairman Robinson arrived at 5:45 p.m.

II. REVIEW AND APPROVAL- MINUTES OF THE PREVIOUS MEETING

MOTION: "To approve the meeting minutes of June 17, 2019 as amended."

Motion: Tamra Ham

Second: Jayne Ludwig

Motion carries.

MOTION: "To approve the Non-Public meeting minutes of June 17, 2019 as presented."

Motion: Jayne Ludwig

Second: Tamra Ham

Motion carries.

III. RECOMMENDATIONS TO PLANNING BOARD & BOS FROM ZBA

The Board reviewed a letter from the ZBA dated June 19th (see attached) concerning the Sign Ordinance which stated it was not compliant with the 2015 US Supreme Court case of Reed vs. Town of Gilbert. The ZBA's contention was that the town's ordinance is no longer in step with federal law as interpreted by the U.S. Supreme Court because many aspects of the sign ordinance are not "content neutral." Another request from the ZBA was for the town to figure out a way to legally recoup copying costs associated with Planning Board and ZBA hearing preparation and application processes.

Chairman Robinson explained Reed vs. Town of Gilbert and how it relates to Lincoln's current Sign Ordinance. Robinson explained that this request is making the Selectmen aware that it is a ZBA recommendation that the Planning Board update the town's Sign Ordinance to align with federal law as interpreted by the U.S. Supreme Court.

The Board had a brief discussion on the second request to the Selectmen specifically, to find a way to legally retrieve copying costs associated with Planning Board and ZBA hearing preparation. Chairman Robinson provided several suggestions to remedy the excessive copying costs associated with Planning Board Hearing preparations and recommended the onus of providing copies to boards be on the applicant and not the town. Robinson recommended that the Planning Board re-visit their application fees and re-evaluate the costs associated with paper, preparation of abutters lists, and other time-consuming aspects of the Planning Board/ZBA process.

IV. JOINT BOS MEETING SCHEDULE (*Lincoln & Woodstock BOS upcoming meeting*)

Discussion

Selectman Ham reminded the Board that at the last joint meeting with Woodstock (April 15, 2019), both Boards had agreed upon July 2nd for their next joint meeting date. At that time, Woodstock BOS were

unaware that July 2nd was not one of their scheduled meeting nights and Selectman Ham is requesting the joint meeting be rescheduled to August 6th so that she can be in attendance (Ham noted she re-scheduled her plans to accommodate the July 2nd joint meeting). Ham suggested August 6th when she and Recreation Director, Tara Tower will both be available. Chairman Robinson noted that August 6th is National Night Out and he plans on participating in this event all day/night and does not feel this date will work. Woodstock has suggested the meeting be held next Tuesday, July 9th at Woodstock Town Hall (prior to their bi-weekly Selectmen's meeting).

Town Manager Burbank explained that it is critical that the Transfer Station roof be repaired, particularly because there is a very small window of time to do this repair as well as installing a scale. Selectman Ludwig agrees that this meeting must be held sooner than later and asked Selectman Ham if she could call into the meeting next Tuesday. Ham is concerned that the date needs to accommodate both herself and the joint department heads, and asked if they do meet without her that they do not make any decision(s) pertaining to the Recreation Department (Friends of Rec). Chairman Robinson explained that he would be comfortable attending next weeks' meeting with Woodstock and letting them know that Lincoln BOS would discuss joint interests however, would not be prepared to make any major decisions until Selectman Ham can be present (other than the Transfer Station roof and scale). Ham said she would be fine calling in next Tuesday if Woodstock has the equipment to accommodate a conference call. Robinson asked Town Manager Burbank to reach out to Woodstock explaining this discussion so they are aware of this prior to the July 9th joint meeting.

V. OLD/NEW BUSINESS

Public Works Update with Director Nate Hadaway

Public Works Director Nate Hadaway joined the meeting.

Route 112 (Main Street) State DOT Paving Project Update:

DPW Hadaway explained to the Board that the paving agreement for the hired contractor opened up and began today. At this point, the anticipated start date for the actual paving on Main Street (Route 112) is slated for August 16th (may begin sooner/later) and DOT is required to give DPW Hadaway two (2) weeks' notice prior to the commencement of the milling and paving. Hadaway clarified that this is a Department of Transportation (DOT) project and has nothing to do with Lincoln DPW. Hadaway described the various aspects of the project noting that there are four (4) separate bureaus involved (Bureau of Design, Bureau of Maintenance, Bureau of Traffic, and, Bureau of Construction) with this project and he will be independently working with each of them throughout the duration of the project. A discussion ensued on the specifics of the project (storm drains, tip downs, crosswalks, paving, etc.) and there will be pre-construction work prior to the actual paving. Selectman Ham asked which crosswalks are being moved/removed on Route 112. Hadaway explained that the crosswalk in front of the Gypsy Café will be removed and a new crosswalk will be placed between School Street and Union Bank; another new crosswalk is being put in up at Gordy's Restaurant. The crosswalk in front of Linwood Medical Center is also going to be removed due to *right turn conflict*.

Loon Mountain Sidewalk Project:

The Public Works sidewalk project up at Loon Mountain is nearing completion; the curbing is in and the base has been prepped. All that is left to be done is the installation of the three (3) tip downs and then to pave it.

Water Plant Media & Filters:

The Media & No. 1 filter at the Water Plant have been removed and replaced with new Media and the system is online today. DPW employees have been inputting infrastructure information into the town's

GPS Unit, and all of the catch basins have been cleaned and programmed into the GPS (location, elevations, etc.).

DPW Employee Certifications:

Zach Vigneault has received several certifications from New England Water Works Association: (1) certified Backflow Prevention Inspector/Tester, and, (2) certification in Water Treatment Plant Operations.

West Street Project:

Town Manager Burbank explained to the Board that Caulder Construction signed a contract today with the Town to do the drainage repair work at the intersection of Route 112 and West Street (most difficult and expensive aspect of the West Street project overall) and the work will begin on July 8th and last for approximately two (2) weeks (this work *must* be completed prior to the commencement of the State's roadway paving project). The remainder of the West Street project will be going out to bid shortly, and the town will then determine if there is enough money remaining to complete the project.

Review of the Water System Regulation and Sewer Use Ordinance

DPW Hadaway reviewed the ordinances and provided suggested updates to both the Water System Regulation and Sewer Use Ordinance. There was an in-depth discussion on both of the ordinances and the changes were noted accordingly with a final draft being submitted to the Board of Selectmen for approval at a future meeting in August.

DPW Hadaway departed the meeting at 6:55 pm.

The Pines at Forest Ridge Discussion with Rick Elliott

Town Planner Carole Bont joined the meeting at 7:00 pm

The Pines developer, Rick Elliott addressed the Board and provided them with a brief history and update on the current status of the retention ponds at the development. Elliott explained that in the spring work had been done on the ponds according to the revised plans, and at such time they had done an as-built to verify that the ponds were properly corrected and functioning according to their revised design. Elliott explained that the months of October thru May were the coldest and wettest months on record (snow and ice in May) and at that time Chief Beard had received a phone call that there was turbidity flowing into the brook (this was true). The turbidity was the result of a combination of the ice coming out; winter sanding, and Forest Ridge streets being swept. Elliott further explained the pro-active measures he had taken to remedy the turbidity issue and provided photos of the same to the Board. Elliott explained that the Pemi had been running 'dirty' for the past month and a half, and it only now that it is beginning to run clear. Elliott feels that somewhere along the Pollard Brook extension it is running dirty (he does not know where) but he is certain it is *not* from Forest Ridge. Chairman Robinson asked Mr. Elliott to clarify whether the water was *not* running dirty off of Forest Ridge, or, *not* running dirty off of *The Pines*. Elliott replied that it is *not* running dirty off of *The Pines*, but he had also gone through the rest of Forest Ridge and it is running clean (2-3 different places). Elliott explained that Town Engineer Ray Korber had asked for two (2) items: (1) a statement from The Pines engineer that the retention ponds were built according to design, and, (2) a statement from the engineer that the retention ponds were functioning according to design. The discussion continued about the state's recommendations to remedy the issue, as well as the steps the engineers are taking to redesign the ponds to function optimally. Elliott noted that at the current time, he has applications in with the State of NH and the Town of Lincoln, and everything else that the town has requested of Mr. Elliott has been complied with, and he is awaiting Planning Board approval to complete the project. The Selectmen exchanged questions with Mr. Elliott, and upon the conclusion of the discussion thanked him for attending this evening's Board meeting.

Town Planner, Carole Bont had a few outstanding items that she wanted to address with Mr. Elliott as follows: Bont confirmed that Mr. Elliott would *not* be completing an additional four (4) units (#17, #18, #19, and #20) which he agreed that he could *not* start. Bont explained that Mr. Elliott needed to complete Land Use Compliance Certificates for eight (8) units that have already been sold, and he owed the town money for eight (8) finished basements. Elliott responded that he would come into Town Hall to sit down with Bont and figure out exactly what he owed and pay at that time.

Mr. Elliott departed the meeting at this time.

Town Managers Report

Ladies Bathtub Swimming Area

Town Manager Burbank explained that the town received a phone call from a journalist (Jonathan Stull) who writes about nature and adventures in nature and has a blog on his website. Mr. Stull's website includes places for people to spend time outdoors all over the world, including Lincoln, NH. One of his spotlights included *The Ladies Bathtub*, and apparently a resident who lives near the swimming area found out about his website and reached out to him and requested that he take Ladies Bathtub off of his website because this is a private swimming area that is for residents and property owners only to swim and recreate. Stull called Town Hall to verify this was true, as he did not want to include the Ladies Bathtub if the access was limited to Lincoln residents. Burbank further explained there are parking issues with this swimming area, as there is limited public parking and subject to towing by the Riverfront Condos, however, he asked the Board to publicly affirm that Ladies Bathtub is a public swimming area and not private. Chairman Robinson discussed this issue with a life-long resident who stated that this has always been a public swimming area (to the best of their recollection), and Robinson noted if anyone can provide evidence to the contrary, they are welcome to bring it to the Selectmen's attention to discuss further.

Town of Lincoln's Eldest Resident

Lincoln's eldest resident, Rita Tamulonis passed away on Thursday, June 27th. Services are scheduled for tomorrow, July 2nd at St. Joseph's Church.

July 4th Parade and Municipal Business Hours

The Independence Day parade is scheduled to begin at 2pm (Thursday) in Woodstock and the parade route will proceed up Main Street to the Nordic. This year's theme is "*It's a Grand Old Flag*." All municipal offices will be closed on Thursday, July 4th and will be open on Friday (July 5th) from 8am to 1pm. The Town Clerk/Tax Collector's office will be closing at 12:30 pm on Friday.

Transfer Station Roof

Town Manager Burbank met with a representative from a spray foam company to discuss sealing the roof at the Transfer Station versus replacing the metal roof. Burbank has a call in with an engineer to discuss further, and he is waiting on a proposal from the company he met with.

One Love Brewery

Owners of the One Love Brewery are requesting a Planning Board Site Plan Review to extend their deck out 25' by 50' in width. One Love's current deck is encroaching on town leased land (the town did not pick this up previously), and further deck expansion will bring the deck closer to the town's gazebo that sits on the leased land. Town Manager Burbank noted that some of this was done previously when Fratellos leased the restaurant space (although the deck had been part of the entire structure for a long time, [1980's]) and asked the Board if they had any issues with this. Planner Bont explained that One Love is serving alcoholic beverages on this deck which is on town-leased land and this could be a potential liability issue. In addition, it was noticed that the verbiage on the lease agreement is incorrect on some pages (Lessor and Lessee are reversed) and the town is required to have insurance in the amount of \$500,000/ \$1,000,000

for bodily injury and property damage (per lease agreement signed in April, 1979, expiring in 2074). Selectman Ham added that because their deck is on town-leased land, One Love will have to add the Town of Lincoln as "*additional insured*" on their policy (with/without deck expansion approval). Town Manager Burbank commented that the Selectmen should first determine (prior to a Site Plan Review process) whether or not the town would like to lose any more park property to deck expansion. The Board was *not* in favor of the deck expansion or losing anymore leased land (Memorial Park) to One Love and agreed that the Town of Lincoln needs to be added as "*additional insured*" on One Love's insurance policy.

Town Planner Carole Bont departed the meeting at this time.

Other Business

Town's Legal Budget

Town Manager Burbank updated the Board on the town's current legal budget. With exception to The Landing lawsuit and the legal items associated with it (settlement amount and legal fees) this totals \$83k out of a budget of \$160k, which leaves the town overspent (by 1%-2%) for this budgetary line item (Budget Committee cut the legal budget last year from \$200k to \$160k).

Riverfront Park

Chairman Robinson asked when the tree-cutting and bulldozing of the land for the Riverfront Park will begin. Burbank explained that once Town Engineer, Ray Korber finishes up with the West Street drainage repairs, he will be setting his sights on the Riverfront Park.

Hoyle, Tanner Fire Flow Assessment Presentation

Hoyle, Tanner will be here on Monday, July 15th at 5:30 pm, Lincoln Town Hall Conference Room (preceding the Board of Selectmen's meeting) to present their findings to the Board and public. Robinson asked that the Ad Hoc Water Committee and Planning Board be noticed and provided both the *Got Big Water* report as well as the Hoyle, Tanner report so that they have this information prior to the presentation. Robinson also noted that the Ad Hoc Water Committee has not met for a while so that these reports could be compiled. Now that all reports are completed and submitted, they can schedule a meeting in the near future.

Robinson noted that he has read through the *Got Big Water* report and suggested that Chief Beard quantify some of the recommended changes and put a dollar amount to the changes/upgrades (water storage, dams, dry hydrants etc.) in a prioritized manner so that this can be discussed during the CIP process.

NH Supreme Court Decision (Levee ownership)

Selectman Ludwig asked if an appeal was filed on the NH Supreme Court ruling that the Town of Lincoln is *not* the "Owner" of the levee on the East Branch. Town Manager Burbank responded that no appeal was filed and this decision stands as law.

South Peak Resort Development Agreement

Chairman Robinson explained that there was an error with the date on the Amendment that was signed with the proposed developers (signed March 5th and should have been April 5th). This was corrected.

Public Participation

There was no public participation.

V. NONPUBLIC SESSION Pursuant to RSA 91-A: 3: II

The Board did not go into a Non-public session this evening.

VI. ADJOURNMENT

After reviewing the weekly payables and with no further business to attend to, the Board made the following motion.


MOTION: "To adjourn."

Motion: Tamra Ham

Second: Jayne Ludwig

Motion Carries.


The meeting adjourned at 8:45 p.m.


Respectfully Submitted,
Jane Leslie

Approval Date 7 / 15 / 2019


Chairman OJ Robinson

Selectman Tamra Ham


Selectman Jayne Ludwig



TOWN OF LINCOLN NEW HAMPSHIRE

PLANNING BOARD
ZONING BOARD OF ADJUSTMENT

P L A N N I N G & Z O N I N G D E P A R T M E N T

June 19, 2019

To: Members of the Planning Board and Board of Selectmen
Town of Lincoln
PO Box 25
Lincoln, NH 03251-0025

In re: Recommendations to Planning Board from ZBA

Dear Members of the Planning Board and Board of Selectmen:

As a Board, we have two concerns that we would like to recommend that you address:

1. Update the Sign Ordinance to Comply with *Reed vs. Town of Gilbert*:

During our recent review of the application for a Five-Year Extension for a Special Exception to continue an off-premise sign for Jean's Playhouse as part of an integrated sign plan, it came to our attention that the Town of Lincoln's Sign Ordinance is not compliant with the 2015 US Supreme Court case of *Reed vs. Town of Gilbert*.

As the ZBA we review requests asking for Special Exceptions for signs that do not comply with the Sign Ordinance, however, our ordinance is no longer in step with federal law as interpreted by the US Supreme Court because many of the parts of the sign ordinance are not "content neutral". We would respectfully request that you take steps to update the Town of Lincoln's Sign Ordinance to comply with the US Supreme Court's decision [in *Reed v. Town of Gilbert*, 576 U.S. ____ (2015), 135 S. Ct. 2218 (2015)].

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

June 19, 2019
Members of the Planning Board
Page Two

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.

2. Recoup the Cost of Copies by Increasing Fees for Applications for Appeals or By Some Other Means

At a recent hearing, the Town Manager Butch Burbank suggested that perhaps the Planner should not print out multiple copies of the documents emailed to individual board members in advance of the hearings, but rather the members of the board should read these documents on their computers. Members of the ZBA and Planning Board both indicated that their members prefer to see copies at the meetings to refer to at their meetings.

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. Member D'Amante suggests we look for ways to legally retrieve some of these costs such as a charging a standard fee up front or putting a copy machine in the hall. The ZBA asks that the Town find ways to legally retrieve some of these costs during the hearing and application process.

Thank you for your attention to these matters.


Sincerely,
Zoning Board of Adjustment


Chair Jonathan Ham



Raymond D'Amante


Delia Sullivan


Susan Chenard, Alternate


Vice Chair Paul Beaudin


Jack Daly


Myles Moran, Alternate

Margie Gozdiff, Alternate

July 1 , 2019

Board of Selectmen's Meeting

Please **PRINT** Legibly

Rick Elliott

(Print Name)

Jim Welsh

Debbie Celino

Rick Elliott

(Sign Name)

Jim Welsh

Debbie Celino

