

**TOWN OF DUCK
PLANNING BOARD
MID-MONTH MEETING
October 23, 2012**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Tuesday, October 23, 2012.

Present were: Chair Joe Blakaitis, Vice Chair John Fricker, Ron Forlano, Tim McKeithan and Marc Murray.

Absent: None.

Also present were: Director of Community Development Andy Garman, Council Liaison Chuck Burdick, and Permit Coordinator Sandy Cross.

Others Present: None.

Absent: None.

Chair Blakaitis called to order the Mid-Month Meeting of the Planning Board for October 23, 2012 at 6:30 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Discussion of Regulating Internet Sweepstakes Uses

Chair Blakaitis noted that Director Garman had forwarded to the Board two legal opinions from Town Attorney Hobbs.

Director Garman stated that he had sent the Board information from Town Attorney Hobbs that contained some general background information that was sent to him on electronic gaming operations and their proliferation in order to give the Board an idea of the concerns that other states and communities have experienced. He stated that Town Attorney Hobbs sent a revised copy of the draft ordinance, which was based on some research he had completed, referencing a court case in the City of Lumberton where the courts upheld the City's imposition of licensing fees on the operations. He added that Town Attorney Hobbs took the definition from their ordinance and put it in the draft ordinance. He felt it was a good revision and was consistent with the white paper that was in the Board's packets. He went on to review the draft ordinance with the Board, noting that the Board needed to decide which district(s) the use could be allowed to operate.

Council Liaison Burdick asked if the internet sweepstakes café served liquor on the premises of the Sanderling Inn, it excluded them even if the café was in a side building. Director Garman believed it would exclude them. Council Liaison Burdick asked if they were excluded only if liquor was served in the building where the machines were located. Director Garman stated that the draft ordinance indicated that it was on the premises of electronic gaming operations.

Chair Blakaitis suggested that the Board decide on which zoning district the internet sweepstakes cafés should be allowed. He asked the Board if they wanted the use permitted in only the Village Commercial District or in all three zoning districts.

Regarding the provision of the ordinance that would revoke the zoning permit for the business if a violation occurs; Member Murray asked if it was the zoning permit for the gaming machines or for the entire business. Director Garman thought that the way the draft ordinance was written, the business would be shut down.

Chair Blakaitis asked the Board which zoning district internet sweepstakes cafés should be allowed. Vice Chair Fricker stated that he was in favor of it being in the C-2 District. Chair Blakaitis asked what the disadvantage would be in allowing them in the Village Commercial District or any other district. Member Forlano felt that the way the draft ordinance was written, it was pretty self-limiting. He added that they could be put in any of the districts. He pointed out that most of the businesses in the Village Commercial District were maxed out with regard to parking, so it would be almost impossible to put them in.

Council Liaison Burdick thought the tone of the Council discussion was that they wanted to do all they could to minimize the possibility of an internet sweepstakes café coming to Duck. He thought if they could be banned by Council, it would be done, but Town Attorney Hobbs advised Council that they could not outright ban them. He added that Council was looking at limiting them. Member Murray noted that if the Town made it impossible, it was basically banning them. Director Garman stated that, based on this comment, he would recommend allowing them only in the general commercial zoning district. He thought that the general commercial district by its nature, was more appropriate for this type of use than a neighborhood (C-1) or village (VC) commercial zoning district. He thought if the Board was looking for a legitimate reason for having them in one district versus another, it would be more legitimate to have them allowed them in a general commercial district as opposed to a neighborhood commercial district.

Vice Chair Fricker asked if the C-2 district was considered the general commercial district. Director Garman stated that it was. Vice Chair Fricker clarified that Director Garman favored having them in the C-2 district only because the Sanderling Inn probably would not want the cafés. Director Garman stated he was correct. He added that it was unlikely that the Sanderling Inn would want to have them. Vice Chair Fricker noted that if they did want them, it would not reflect negatively on the reputation that the Village area had. Chair Blakaitis added that they would probably not open them to the public and would have them just available for guests.

Chair Blakaitis felt that the Board was trying to be as restrictive as possible. Director Garman stated that he had suggested the C-2 district because the impression he received from Council was that it was their objective to restrict them as much as possible. Vice Chair Fricker noted that the Planning Board was charged with creating an ordinance that was as restrictive as possible

without outright banning the use. Director Garman stated that he was amazed at the number of cafés in Moyock. He thought they must be extremely lucrative. Vice Chair Fricker asked if there was a different environment that surrounded those types of establishments. Director Garman thought that it lent itself to a gambling atmosphere and addiction.

Member Murray stated that if the Board was charged with creating an ordinance that will do everything but ban internet sweepstakes cafés, then he would be in favor of having it move forward. He added that he was skeptical that it would be the scourge of the Town by allowing them. Council Liaison Burdick stated that Duck had its own image as a family oriented town. He added that the Town did not want this type of gaming appearing in Duck. Director Garman stated that Currituck County was seeing a proliferation of these types of businesses, adding that it does change the character of the community. Chair Blakaitis agreed with Member Murray's comments and did not think that Duck could ever become like Currituck County since it would be restrictive in that it would only allow two machines and two parking spaces. He added that he did not see it getting to the level that was being seen in Currituck County.

Member Forlano asked what would happen to the ordinance if the State Supreme Court allowed internet sweepstakes cafés. Director Garman stated that the Town could only do what the State allows. He added that if the State decided to allow them unfettered, Duck's ordinance would become null and void in theory, but in most cases, the State would not take away local authority to limit the use. Member Forlano asked if the Town was opening itself up for a legal battle in the future. Vice Chair Fricker stated that if the Town outright banned them and the State said they were legal and could not be banned and the Town did not change the ordinance, it would open the Town to legal issues. He added that the Board was not discussing outright banning them, so if the State said they were legal, the Town could restrict them. Director Garman noted that the State had not indicated either way, adding that the court case that was going before the Supreme Court had to do with a free speech issue. He stated that if the Supreme Court upheld that part, someone else could adopt a different ordinance that would have to go through the courts for the separate issue to be decided.

Member McKeithan asked if the Board should be concerned with the flip side. He asked what would happen if the Sanderling Inn comes back and indicates that they were not happy with the Town allowing the use on their property and nowhere else. Chair Blakaitis noted that only the zoning district was singled out and not the Sanderling Inn. Member McKeithan thought the Sanderling would question why they were being singled out. He felt it was putting a cloud over the Sanderling property.

Chair Blakaitis asked if the Board could say that they do not want the cafés in the C-1 district. Vice Chair Fricker asked where they would be allowed. Chair Blakaitis noted that the Board was discussing the Village Commercial and C-2 districts. He wondered if one zoning district could be excluded. Council Liaison Burdick thought there would be unhappy property owners if it was allowed in the C-1 district. Chair Blakaitis thought the Board was against allowing the use in the C-1 district. He asked again if one of the districts could be eliminated. He noted that the Board seemed to be in favor of C-2 and making it as restrictive as possible. Member Forlano agreed, adding that he would be in favor as long as it was not too restrictive. Director Garman stated that Town Attorney Hobbs' opinion was that the Board would want to make it restrictive

and felt that the draft ordinance was a good approach and a good way to proceed as it was the way most communities have proceeded with regard to their zoning regulations.

Vice Chair Fricker clarified that it would mean restricting the use to less than all three of the commercial districts. Director Garman stated he was correct. He thought it would be fine to limit the use to the C-2 district. He didn't feel, from a legal standpoint, there was any advantage to allowing the use in more than one zoning district. Vice Chair Fricker agreed.

Chair Blakaitis asked the Board who was in favor of restricting the use to the C-2 district. All but Member Murray were in favor.

Member Murray stated that he was unsure about restricting the use to the C-2 district alone. He stated that he wanted to be fair, but noted that there were businesses in the Village Commercial District that everyone enjoyed in the summer season. He added that he would like for these businesses to stay open year round for the residents, but felt it was unreasonable to have that expectation. Director Garman stated that the businesses have not been asked how they felt about the internet sweepstakes cafés yet. He added that some businesses may not like the fact that the Town could allow them. Council Liaison Burdick agreed with Member Murray that this type of use could be profitable for businesses in the off-season, but added that it did not fit in with the character of Duck. Director Garman didn't think there was any expectation that the use should be allowed. Member Murray understood, but wondered why the character needed to be protected instead of prohibiting things that may affect the character. He wondered where it stopped. Vice Chair Fricker stated that it was good that the Board had opposing views on the issue. Member Murray thought the use could be limited to one machine and one parking space in order to make it more restrictive.

Vice Chair Fricker stated that the Town had a brand to be a family-friendly, wholesome community and felt it was within the Council's discretion to direct the Board to be prohibitive. He added that he understood Member Murray's point of view, but he did not think it should trump the issue. Chair Blakaitis stated that the Board had discussed franchise businesses a few years back and a similar conversation was had because the Town was unable to outright ban the businesses. He added that the Town was told what they accomplished was doubtful legally, but noted that there had not been any problems.

Chair Blakaitis directed the Board to continue the discussion of the draft ordinance. Director Garman and the Board went on to review and make changes to the draft ordinance.

Vice Chair Fricker moved that the Planning Board recommend to Town Council the approval of the draft ordinance 12-08 as prepared by Town Attorney Hobbs with the changes discussed by the Planning Board to Paragraph B(7)(a), (d), the omission of subparagraph (i), and the changes to subparagraph (j) as they are set forth in Part 4 of Town Attorney Hobbs' proposal.

Chair Blakaitis asked if the motion should be more specific about the C-2 zoning district and not so much about Part 4. Director Garman stated that Part 2 and 3 should be eliminated entirely from the draft ordinance. He added that the only section that would remain would be Part 4 as well as the changes that were made to Part 4 based on the discussions by the Board. Vice Chair Fricker clarified that Part 1 and Part 4 would remain in the ordinance. Director Garman stated

that Part 1, 4, 5 and 6 would remain. Member Murray asked if the language in the Definition section would not be changed referencing internet cafés. Vice Chair Fricker thought that the only thing in the Definition section would be phrases that contain the word “sweepstakes”. Director Garman noted that they were referenced as a number of different things. He added that the terms could mean electronic gaming operation and would have to meet the criteria listed in the beginning of the definitions.

Vice Chair Fricker amended his motion and moved that the Planning Board recommend approval to Town Council the adoption of Sections 1, 4, 5, and 6 of draft ordinance 12-08 with the changes to Part 4, mainly subparagraphs a, d and j and the elimination of i. Member McKeithan seconded.

Motion carried 5-0.

NEW BUSINESS

None.

APPROVAL OF MINUTES

None.

OTHER BUSINESS

None.

STAFF COMMENTS

Director Garman stated that staff was working on the acknowledgements for Jon Britt and Randy Gilbreath for their service on the Planning Board.

BOARD COMMENTS

None.

ADJOURNMENT

There being no further business to discuss, Vice Chair Fricker moved to adjourn the meeting. Member McKeithan seconded.

Motion carried 5-0.

The time was 8:00 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman