

PLANNING COMMISSION MINUTES
October 11, 2010

MEMBERS PRESENT

Mr. Laramore
Mr. Griffith
Mrs. Pritchett
Mr. Scearce
Mr. Jones

MEMBERS ABSENT

Mrs. Evans
Mr. Jennings

STAFF

Clarke Whitfield
Ken Gillie
Christy Taylor
Renee Blair

The meeting was called to order by Chairman Griffith at 3:00 p.m.

I. ITEMS FOR PUBLIC HEARING

1. *Special Use Permit Application PLSUP2010000109, filed by Alvin Toomes, requesting a Special Use Permit to allow indoor commercial recreation in accordance with Article 3M: Section C, Item 4 of Chapter 41 of the Code of the City of Danville, Virginia, 1986 as amended at 2852 Riverside Drive, otherwise known as Grid 1710, Block 006, Parcel 000001 of the City of Danville, Virginia, Zoning District Map. The applicant is proposing to operate an internet café.*

Ms. Blair read the Staff Report. Ten (10) notices were mailed to surrounding property owners within three hundred (300) feet of the subject property. Two (2) respondents were unopposed to the request; zero (0) were opposed to the request.

Open the Public Hearing.

Present on behalf of the request was Mr. Alvin Toomes. Mr. Toomes stated in reference to what Major Burke said, they are not slot machines. When I talked to him, our conversation had nothing to do with slot machines whatsoever. I do not know why you have that in your statement. We did talk about the legality of it.

Mrs. Pritchett asked what have you done in the interim since you were here in September?

Mr. Toomes responded more paperwork and I have brought some in today. I discussed this with Major Burke.

Mrs. Pritchett asked with whom?

Mr. Griffith responded Major Burke with the Police Department.

Mr. Toomes stated it is my understanding from him, in order to make it legal, I will need to rent another building. According to the discussion we had, if you do win a Sweepstakes, you cannot cash them in at the place you buy them. We discussed that as the legal aspect of it. My deal was that I would need to rent another building. As far as the games and all, we discussed it as gambling if the proprietor of the store makes money off of it; but if you have another store to pay winnings that legalizes it. There is nothing in the games whatsoever that has anything to do with slot machines.

Mrs. Pritchett stated I believe that was just one (1) aspect of the gambling, but maybe I misread it.

Mr. Griffith asked my understanding from the Code was that any type of machine that is going to pay out Sweepstakes or pay out whether it is video poker, slot machines, or any of those. They are all lumped into the same category. It all falls under that. I think when he said slot machines, he was lumping all of those various types of machines into one (1) generic category. Would that be your understanding Mr. Whitfield?

Mr. Whitfield responded yes.

Mr. Toomes stated that is how we got off on collecting a prize, that you cannot do it in the same facility that you purchased it at.

Mr. Griffith stated I do not know about that.

Mr. Toomes stated you cannot come back and redeem your prize at the place of purchase.

Mr. Griffith asked do you know anything about that Mr. Whitfield?

Mr. Whitfield responded I think part of that has to do with the Sweepstakes. There is part of the law that makes it where you cannot redeem your prize at the same place. If you redeem your prize at the same place where you buy it, then it is considered illegal gambling.

Mrs. Pritchett asked is my understanding correct? Did Major Burke say as long as you do not redeem your prize at that location, then this is considered legal? Did he make that statement?

Mr. Toomes responded he stated that it was illegal to redeem a Sweepstakes prize at the same location you purchase it at. Even at McDonald's, if you win an order of fries there, it should be illegal to go to the counter and order them. It is the same way with the Virginia scratch off's. If you buy them at one (1) store, you are supposed to redeem them at another.

Mr. Jones asked is that the situation?

Mr. Whitfield responded I do not think he is saying that makes it legal. I think he is saying that is one (1) aspect of the illegality. Clearly, you have things like internet poker that could be played that would be gambling and just because you are able to redeem your prize in that place does not make that legal. I think that mainly applies to the Sweepstakes and not to the whole entire aspect of the business.

Mrs. Pritchett asked these things that Mr. Whitfield is talking about are the kind of things that you would be offering through machinery at your place of business. Is that correct?

Mr. Toomes responded there is no internet gambling. If it was internet gambling, you would have to log on just like at home with your own credit card and do whatever you would do at home. With a Sweepstakes game, you have a certain game that you play to win a Sweepstakes prize or for free. This has nothing to do with worldwide internet. That part there does not.

Mr. Jones asked what are some of these games? What are you going to offer to the public that comes in and wants to play a "game?" What are some of these games going to be? Can people actually win money by playing these games?

Mr. Toomes presented documents describing the VS2 Café Sweepstakes System rules to the Planning Commission members.

Mr. Toomes stated this is why you cannot redeem your stuff at the location you come to.

Mr. Jones asked is this one (1) copy?

Mr. Toomes responded yes.

Mr. Griffith stated I guess part of that question, I mean this is something that is new. To my knowledge this is the first time a request has come before this body. It is something new to us, and I think we are trying. You have not provided us as much information in your application as I would like to see. We are trying to get some information from you to help us better understand what it is that you want to do.

Mr. Laramore stated I think we were very specific last meeting that you were to get this information that you have here and meet with the City, so they could present us with a form as we see here. We would have a better view to what you are doing. Did you meet with the City?

Mr. Toomes responded I met with Major Burke about an hour and a half last Monday.

Mr. Laramore asked was your consensus from him that he thought what you are proposing was legal?

Mr. Toomes responded no, he did not. That is when we got into the discussion about if you win a prize and the legality of it.

Mr. Jones asked concerning the parking, how many machines were you planning to have?

Mr. Toomes responded twenty (20).

Mr. Jones asked for twenty (20) machines would they need seven (7) parking spaces or eight (8) if it is three (3) per machine?

Ms. Blair responded correct.

Mr. Jones asked there are currently thirty-six (36) parking spaces covering the thirty-five (35) required for the existing retail operations. Are you saying there is no room for his parking?

Ms. Blair responded there is currently one (1) space available for a new operation.

Mr. Jones asked is there no place he can come up with parking in the area?

Ms. Blair responded they would have to re-configure the parking area.

Mr. Griffith asked are you saying that of the thirty-six (36) parking spaces that are available, thirty-five (35) of those are being used by the two (2) retail stores that are there?

Ms. Blair responded yes, when you have a change of use that would trigger something new. They are legal non-conforming as is. The parking lot is. If another retail operation comes, parking spaces would be sufficient. It would be legal non-conforming. For a change of use from retail to an internet business or business services, that would trigger new parking requirements to bring them

up to Code and current regulations. That would be thirty-five (35) being used of the thirty-six (36) existing.

Mrs. Pritchett asked so he would need at least seven (7) more spaces?

Ms. Blair responded correct.

Mrs. Pritchett stated there is not adequate parking, so that would throw out anything.

Ms. Blair stated without a reconfiguration of the parking area.

Mr. Griffith asked is the parking lot structured so that it could be re-configured to take care of the parking?

Ms. Blair responded it would be very difficult because of the way the parcel is laid out. It is surrounded on three (3) sides by street.

Mr. Jones asked does that mean that no other business could go into this facility because there is no parking for anything else?

Ms. Blair responded correct, a change of use would alter the legal non-conforming status.

Mr. Gillie stated you cannot have anything that is more intense than what was already there before. It was a retail facility, so continuation of a retail facility would keep that same non-conforming status. You could not convert it to say something like a restaurant or something else like that, because the numbers would jump up. As long as they keep the same basic number of a use that had the same parking requirements as before, yes it is allowed to go in there; but what Mr. Toomes is asking for and if someone else came in with a restaurant or something that required additional parking, no they could not do that unless they re-configured the parking lot, tried to come up with additional space, or tore some of the building down. There are options available, but as it is right now there is just not enough space to allow for this proposed use; because it is an increase in what would be required.

Mr. Griffith asked if a retail establishment went in there, that would still be legal non-conforming and the current parking would be adequate?

Mr. Gillie responded correct. You have two (2) years from the time that a legal non-conforming use leaves for another one to come back in and maintain that same status.

Mr. Griffith asked was it a retail operation there?

Mr. Gillie responded I think it was actually Beauty Supply that was the last one there. I think it went from auto parts to Beauty Supply possibly, but it has been a retail establishment. You have two (2) years to put in a new retail establishment and continue with that same parking requirement. They cannot do anything that jumps the numbers up.

Mr. Jones stated I still have concern with the gambling part, but have you looked for another site where you would have enough parking, so this would not be a problem?

Mr. Toomes responded to tell you the truth, this is the first time I have realized that there was no parking spots available. You have a hair salon on one (1) side and a shoe store on the other. That

gives fourteen (14) or fifteen (15) spots for each one and that only leaves one (1) spot for a store in the middle. I have not looked at anymore locations, because I was not aware that parking was an issue. I am going to have to look for another store anyway. If you pass it here, I would have to have two (2) stores anyway.

Mr. Laramore stated in looking at these pages, probably some confusion from Major Burke and this is true for all of these, but I will show you one (1) of them. *Sizzlin' 7's* presents a video representation of a nine (9) reel, eight (8) line slot theme game. It goes on to say the Sweepstakes entries employ a traditional slot theme. That may be where the confusion is.

Mr. Toomes stated a slot machine is where you pull an arm down to play the game.

Mr. Laramore stated I think he was saying he would include slot machine type games. That is probably what he means.

Mrs. Pritchett stated I just feel like we cannot approve this because first of all the parking would not be adequate for this particular space; and as far as I am concerned, when you are looking at another space, if you came back to this Commission requesting this, I would feel like we would need some authoritative figure to have signed off, saying that it is not considered illegal gambling.

Mr. Toomes asked would a letter from the Attorney General work?

Mrs. Pritchett responded an attorney, Major Burke, Commonwealth Attorney, whatever, but I personally feel like we cannot approve this because of the parking situation.

Mr. Whitfield stated just as a matter of information to you, I did talk to Mr. Newman, the Commonwealth Attorney. He told me that because of the chance of prosecuting someone, he does not issue letters of opinion or hypothetical's; because he feels that it may, at a later date, if in fact he had to prosecute for an illegal operation that would prejudice his office. His office may have to withdraw and bring in a special prosecutor. One of the things we have talked with Mr. Toomes about is getting a letter from Mr. Newman and Mr. Newman is not going to issue that. I perfectly understand why he would not want to do that. He certainly would not want to have his office essentially taken out because of some prejudice that may occur because of that letter.

Mr. Jones asked can he go to the Attorney General of the State and get an opinion?

Mr. Whitfield responded I do not believe he can. Typically, a legislator or somebody like the Commonwealth Attorney has to go to the Attorney General. I do not believe that he would be able to.

Mrs. Pritchett asked I guess then my question would be if this is something Mr. Toomes decides to pursue, can you give an opinion?

Mr. Whitfield responded yes, if it comes back to it. Probably what I need to do is go ahead and start working on an opinion, so I can provide the Commission with an opinion.

Mr. Jones asked do you know if this activity takes place in other parts of the State?

Mr. Toomes responded yes. There is one (1) in Martinsville right now that is close by.

Mr. Jones asked is it going to be set up the same way?

Mr. Toomes responded yes. There is one in Blacksburg.

Mr. Jones asked do you know Mr. Whitfield, with these places that he is saying, if that conflicts with the Code of Virginia 18.2-325?

Mr. Whitfield responded I would have to see the specific circumstances.

Mr. Griffith asked did you say that Blacksburg and Martinsville both have them?

Mr. Toomes responded yes. Those stores also have the same VS-2 system that I have.

Mr. Laramore asked what kind of system?

Mr. Toomes responded VS-2.

Mrs. Pritchett asked if you were to do something in Danville, would this be your first operation in Virginia?

Mr. Toomes responded yes.

Mrs. Pritchett stated you had indicated previously that you had something similar to this in North Carolina.

Mr. Toomes stated I want to go to Martinsville also; but the man that has a store there, he is also a customer of VS-2. He approached them before I did. In Martinsville, in order to get your permit, you just go in and sign up. I had already went and done that, but when I contacted them about getting the system someone else had beat me to it.

Mr. Whitfield stated the difference over in Martinsville is the Zoning Code does not have a provision for this type of indoor recreation. We have a little bit more detailed Zoning Code, and I think that is why they were able to go and do that in Martinsville. There was no need to approach the City at that point. Now if they are operating illegally, I am sure the Henry County or the Martinsville Police Department will monitor that.

Mr. Toomes stated there are also two (2) stores in Lynchburg. They have been there since the first of the year.

Mr. Gillie stated I have not heard that they have been operating in Lynchburg. This is the first I have heard of that and so is it in Blacksburg. We have had contact with Martinsville about the potential of them operating. We can check other localities if it is Planning Commission's request. We understand that the ones that were operating in Virginia Beach may have closed down. My understanding is they are leaving North Carolina because it has been deemed illegal in North Carolina. They are looking at operating here in Virginia. At this point, I am unaware of other localities. The list serve that we are a part of, which is the Virginia Planning offices, most of the ones I have spoken with have yet to allow them. I have not heard of an operation that is actually there, if they are operating in Martinsville, we can check into it. I have not heard Blacksburg, and I have not heard Lynchburg. My last conversation with anyone, which was about two (2) months ago, was they were kind of the same thing we were. Most of them were considering them commercial indoor recreation facilities, they would need a Special Use Permit, and they would have to go through the process. I have yet to hear that anyone has gone through the process. If he has other information

that could be provided for us that they are actually in operation, we would love to see it. At this point, we do not have that information.

Mrs. Pritchett stated I guess depending on what we decide here and whether Mr. Toomes wants to pursue this in any format, Mr. Toomes would have to communicate with the Planning office as well as the City Attorney. I am not even sure where we are as far as a motion.

Mr. Griffith stated we do not have a motion. We are still in the Public Hearing.

Mr. Toomes stated I can call Ms. Blair and give her the stores with the VS-2 systems that are operating in Virginia and give her the locations and Cities that they are in. There are quite a few of them that are in Virginia through this system, not counting the other three (3) companies that offer the same kind of games. This happens to be the Company to go with and there are three (3) more companies that offer the same games.

Mr. Griffith asked do you buy the software or do you lease the software from them and put it on a computer?

Mr. Toomes responded no you rent it.

Mr. Griffith stated that is what I am saying you either buy or you rent the software from these various companies and install it on your computer.

Mr. Toomes responded they come do it.

Mr. Griffith asked so it is installed on a computer in your business?

Mr. Toomes responded correct.

Mr. Griffith stated and then I come in and play.

Mr. Toomes stated of course you can still go straight to the internet if you want to.

Mr. Griffith asked do I have to pay to play these games? It is not free.

Mr. Toomes responded you get to start off for free. You can play if you want to for free, and then if you want to continue to play, you buy internet time.

Mr. Griffith asked in order for me to win a Sweepstakes, do I need to pay money?

Mr. Toomes responded no.

Mr. Griffith stated I guess I have missed something. I can just walk in and out of the goodness of your heart, you are going to have a computer there, and I can go play and win something. I do not understand how you are going to make any money.

Mr. Toomes stated as you come in the door, you have the option of going and logging on. Of course, you have to log on to a terminal. You have to fill out a thing for your ID and stuff like that then. You get a pin number. You have to log in and put time on your machine that day to start with and if you hit something, you get a hit. If you continue to play, you have to buy internet time.

Mr. Griffith asked do I have to give you a credit card or something?

Mr. Toomes responded no.

Mr. Griffith asked I do not do anything to get time on the machine?

Mr. Toomes responded not when you first walk in, no sir.

Mr. Whitfield asked how many times can you play for free before you have to start paying?

Mr. Toomes responded it all depends on the amount of time you put on the machine.

Mr. Whitfield asked so you have a certain amount of time. How much free time do I get when I first walk in the door?

Mr. Toomes responded then again, it all depends on if you go like a quarter's worth of time or fifty (50) cents worth of time, whatever the amount of time you want to start with.

Mr. Whitfield asked do I get a certain amount of free time?

Mr. Toomes responded yes. That is what I mean; it calculates how much time you have by how you want to use it.

Mr. Whitfield asked do you tell me how much time I have when I walk in the door?

Mr. Toomes responded it would have on there how much time you have.

Mr. Whitfield asked how much time normally would you get? Say I want to play the Sweepstakes. I could play that for free to begin with right?

Mr. Toomes responded correct.

Mr. Whitfield asked how long could I play that?

Mr. Toomes responded I do not know what it would be to tell you the honest truth, I do not.

Mr. Whitfield asked pardon me?

Mr. Toomes responded I do not know how much time. It starts off with a dollars worth of time up to five (\$5.00) dollars worth of time.

Mr. Whitfield asked but, how much free time do I get?

Mr. Toomes responded that is how much it would be. One (\$1.00) to five (\$5.00) dollars worth of time.

Mr. Griffith asked is five (\$5.00) dollars what you are implying to be free time? I do not have enough information. If I am going to get a dollars worth of free time, it does not sound like to me that it is free.

Mr. Jones asked if I want to go in and check my email account and use your computer, are you going to charge me?

Mr. Toomes responded yes. It would be around twenty-five (.25) cents or fifty (.50) cents to check your email.

Mr. Jones asked do you have any idea how much time I would get for twenty-five (.25) cents?

Mr. Toomes responded no, I do not have any idea what you would get.

Mr. Jones stated I have gone to Internet Café's in Europe and usually they start off at five (\$5.00) dollars or so for maybe ten (10) or fifteen (15) minutes. You are saying you are going to have twenty-five (.25) and fifty (.50) cent times.

Mr. Griffith asked would that be two (2) minutes or five (5) minutes? What time frame are we talking about?

Mr. Toomes responded I do not know how to answer that.

Mr. Griffith asked if you are doing this in North Carolina, and I am assuming you are doing a similar thing down there. If I walk in down there, and I want to check my email, do you know how much I pay to check my email? Is it based on length of time?

Mr. Toomes responded I would have to pull up the sheet when you log in to see what you did.

Mr. Griffith asked to see how much time I get?

Mr. Toomes responded yes.

Mr. Whitfield asked so email might be different than say Sweepstakes?

Mr. Toomes responded correct.

Mr. Whitfield asked so where the email might be twenty-five (.25) cents, not necessarily, it is going to be more for the Sweepstakes. Is that right?

Mr. Toomes responded the Sweepstakes could be a nickel.

Mr. Whitfield asked could be a nickel? Alright, I understand that it is the amount of time; but is it per play as well? Is it per times I play the game as well? Is it a combination of the number of times I play the game as well as the amount of time that I am on there?

Mr. Toomes responded correct.

Mr. Whitfield stated if I got on there, played one (1) time, and got off then that might be a nickel.

Mr. Toomes stated then you just have a nickel.

Mr. Whitfield asked what if I get on there and play seventy-five (75) times over a period of two (2) hours? Am I paying at that point? What point am I paying and how much am I paying?

Mr. Toomes responded you are only paying if you are on there and say you have five (\$5.00) dollars worth of time, but your time ran out in an hour and a half (1 ½). You may have to buy another dollars worth of time to have enough time to finish what you are doing.

Mr. Whitfield asked when I first walk in there, I do not have to pay anything?

Mr. Toomes responded correct.

Mr. Whitfield asked when I walk out, I may have to pay something?

Mr. Toomes responded no. There is a terminal that you have to clock into. If you want five (\$5.00) dollars worth of time, you will put five (\$5.00) dollars in the machine. You will use your pin when you get to a terminal. If it takes you thirty (30) minutes to do what you are doing for your five (\$5.00) dollars, or if it takes you an hour and a half (1 ½) for your five (\$5.00) dollars, then that is all that it is. If you need to do more and your time has run out, then you will have to go back to the machine.

Mr. Whitfield asked I have got that part, but where do I get my free time?

Mr. Toomes responded we log it onto you as you walk in the door.

Mr. Whitfield asked I think that is what we are all struggling with. How much free time do I get before I have to, say buy the five (\$5.00) dollars worth of time?

Mr. Toomes responded it all depends on what you are doing in that length of time that you are on the computer.

Mr. Whitfield stated so when I walk in, you cannot necessarily tell me how much free time I have. You can just tell me that there is going to be some free time.

Mr. Toomes stated you can get anywhere from one (\$1.00) dollar to five (\$5.00) dollars worth of free time on whatever you are doing within that length of time.

Mr. Whitfield asked you cannot tell me that when I walk in the door. You do not know whether or not I have free time until the terminal understands and gives you a report of what I have done. Is that right?

Mr. Toomes responded no, you get the free time as soon as you sign on.

Mr. Whitfield asked how much?

Mr. Toomes responded anywhere from one (\$1.00) dollar to five (\$5.00) dollars.

Mr. Jones asked how will you make money? Where do you get your income from by this operation?

Mr. Toomes responded by selling the time. Selling the Sweepstakes time, internet time, faxes, copies, and stuff like that.

Mr. Jones stated I still have problems and I understand the gambling aspect of it; but the way that the parking is and I know that you were not understanding or told about this parking. I do not see

how we can recommend approval of this unless you find another place that can handle the parking; and then you can come and talk about free time, and the Sweepstakes.

Mr. Toomes stated like I said, I did not understand that parking was an issue; because when you drive by, you see all of the parking that is there. I rode by there before I came here today and you could probably ride by there right now and see fifteen (15) or twenty (20) empty spots.

Mr. Griffith stated I do not doubt there will be empty parking spaces; however the requirement that has been set forth by the City is that there are a certain minimum amount of parking spaces required. It may be that they are filled up or not filled up, but they have set a minimum standard. You were here at our meeting last month and one (1) of the items we had, we changed the parking requirement for one (1) particular business class because it was determined that they did not need what we were requiring at the time. That is not the case with this. We do have a minimum parking requirement, which cannot be met.

Close the Public Hearing.

Mr. Gillie requested the documents that Mr. Toomes presented for record.

Mr. Scarce read a statement of conflict of interest.

Mr. Jones made a motion to recommend denial of Special Use Permit Application PLSUP2010000109 as submitted. Mrs. Pritchett and Mr. Laramore seconded the motion. The motion was approved by a 4-0-1 vote (Mr. Scarce Abstained).

II. MINUTES

Mrs. Pritchett made a motion to approve the minutes from the September 13, 2010 meeting. Mr. Laramore seconded the motion. The minutes were approved by a 5-0 vote.

III. OTHER BUSINESS

Mr. Gillie stated City Council followed your recommendations on all items forwarded to them. They denied the request to rezone on Twin Oaks. They approved the other rezoning and Special Use Permit Applications that you had forwarded on.

Mr. Gillie stated we are expecting our final draft of our Comprehensive Plan later this week. Once we get it, staff will go through it, check it out, and make sure everything is as we recommended it, and then present that to Planning Commission; and hopefully, go out to the citizens again for neighborhood meetings sometime late this year or the first of next year. We know that this time of year, it is getting close to the holiday season and it is a little difficult to have those public hearings. It is more likely going to be the first, early in 2011 when we will have that, but the draft should be here probably by the end of this week. Get ready for a Comprehensive Plan book to come to you. It probably will not be as thick as the last one.

Mr. Griffith asked will we get a copy of these?

Mr. Gillie responded yes. We will get it and go over everything to make sure nothing got messed up; there are no typos, or anything else. Once we have done that, if everything is acceptable, we will be forwarding that to Planning Commission to look at.

With no further business, the meeting adjourned at 3:45 p.m.

APPROVED