

**PARTIAL MINUTES FOR THE
MEETING OF THE
GREENSBORO PLANNING BOARD
November 19, 2014**

The Greensboro Planning Board meeting was held on Wednesday, November 19, 2014 at 2:05 p.m. in the City Council Chamber, 2nd floor of the Melvin Municipal Office Building. Board members present were: Chuck Truby, Chairman; Marc Isaacson; Steve Allen, Richard Mossman, Seth Steele, Day Atkins, Richard Bryson and Celia Parker. City staff present included Mike Kirkman, Nicole Ward, and Sheila Stains-Ramp. Also present was Jennifer Schneier the Attorney for the Planning Board, Tom Carruthers from the Legal Department, and Virginia Spillman from Water Resources.

Chairman Truby welcomed everyone to the meeting and explained the procedures of the Planning Board.

LAND DEVELOPMENT ORDINANCE AMENDMENT

LAND DEVELOPMENT ORDINANCE AMENDMENT REGARDING SECTIONS 30-15-6 (DEFINITIONS), TO DEFINE ELECTRONIC SWEEPSTAKES OPERATION; 30-8-10.3, TO ESTABLISH SEPARATIONS BETWEEN USES; 30-8-1 AND TABLE 8-1 (PERMITTED USE TABLE), TO AMEND THE TABLE TO INCLUDE ELECTRONIC SWEEPSTAKES OPERATIONS; AND 30-8-7.2, TO AMEND THE LIST OF TYPICAL USE TYPES TO INCLUDE ELECTRONIC SWEEPSTAKES OPERATIONS. (RECOMMENDED)

Mike Kirkman presented the text amendment, stating that it establishes Electronic Sweepstakes Operations as a use allowed in certain districts so long as the use standards proposed in the amendment are met. He stated that this change was initiated by the Greensboro City Council in response to advice from the District Attorney that certain types of Electronic Gaming Operations may be within the letter of the law at the state level, and therefore would be considered a legal business. Prior to this advice, Electronic Gaming Operations were not a permitted use in Greensboro. During the brief period of time between the receipt of that advice and the Council's adoption of a moratorium, the use was allowed in commercial retail districts with a privilege license and any other standard requirements being met. Approximately 75 applications for privilege licenses for the use were filed in that period.

Mr. Kirkman noted that at their November 3rd meeting, City Council adopted a 30-day moratorium on any new sweepstakes operations in order to provide time for staff to bring forward changes to the Land Development Ordinance, including more specific guidance on the definition of the use and where it would be most appropriately located. City Council requested

that the use be specifically defined as a separate use within the LDO and that provisions limiting the number of operations at any one location be included.

Mr. Kirkman stated that the definition of Electronic Sweepstakes Operations is taken from the state definition and also was adopted in Article 13 of the City Code related to privilege licenses, so it is consistent with other definitions that are used in other parts of the Code as well as other jurisdictions across the state. He stated that the amendment classifies the use as an indoor recreation use. This use would be allowed in several zoning districts, specifically AO (Auto Oriented), UMU (Universal Mixed Use), C-M (Commercial Medium), CH (Commercial High) and CB (Central Business). These districts are typically located along major commercial corridors and are associated with significant levels of commercial related activities. This is similar in nature to what is related to other indoor recreation uses.

Mr. Kirkman noted the amendment sets a 200-foot spacing requirement from any property that is occupied by a place of religious assembly; elementary or secondary schools; a public park; or a residence; the 200-foot spacing is also required from any residentially zoned lot. These spacing requirements are similar to those used for separation of these uses from bars and nightclubs. He noted there is also a 1,000-foot separation between like establishments. He noted that research into what other jurisdictions are doing revealed a wide variation in spacing requirements across the state.

Mr. Kirkman stated that the use could be either a principal use of property or an accessory use of property. As an accessory use, the zoning districts where it could be allowed are the same as where it is allowable as a primary use. Given that the accessory use standards typically are based on there being some kind of association with the principal use, it is anticipated that this use would be accessory to retail uses and other high traffic uses. Accessory uses, as a limited part of the overall operation, are generally limited to no more than 30% of the gross floor area of the primary use, or comprising not more than 30% of the total volume of sales. Mr. Kirkman noted that the amendment defines an accessory Electronic Sweepstakes Operation with two or fewer machines as not subject to the spacing requirements otherwise required. These recommendations are based upon research into what other jurisdictions are doing, was done across the state of NC to see what other jurisdictions are doing and it appears that there are quite a few variations in regard to spacing.

Counsel Schneier noted that this is still a very fluid situation, with the City trying to be prepared no matter what happens in the number of court cases moving through the system. She stated that the day before the Planning Board meeting, the State Court of Appeals had found that the various forms of Electronic Sweepstakes Operations are all games of chance and no distinction between the various gaming establishments was necessary. She noted that the City is now in a holding

pattern and it is important to move forward on the amendments so there is clarification when a final decision is made in the next 30 days.

Counsel Carruthers stated that to this point there had been inconsistent opinions at the Superior Court level as to whether the latest version of the sweepstakes software is legal or not. Because some Courts have declared pre-revealed software games legal, in some counties, there was an unequal protection problem where there were differences in the counties' opinions. As a result, District Attorneys began announcing that they would not prosecute because they were fearful that they would be challenged under Equal Protection grounds. This led the Guilford County D.A. to reach the same conclusion.

Mike Kirkman stated that if Council adopted this amendment, any of the legally approved and licensed businesses that do not meet the requirements proposed would have nonconforming status, which mean that they could continue to operate as is until it ceased operations for a period of 12 months or more, and if it was replaced with a legal business the location could not reopen as an Electronic Sweepstakes Operation.

There being no speakers the public hearing was closed.

Mr. Isaacson moved to recommend approval of the amendment as presented by staff, seconded by Mr. Allen. The Board voted 8-0 in favor of the motion. (Ayes: Truby, Isaacson, Allen, Steele, Bryson, Atkins, Mossman, and Parker. Nays: None.)

APPROVAL OF ABSENCES:

Chair Truby acknowledged that the absence of Mr. Martin is approved.

ADJOURNMENT:

There being no further business before the Board, the meeting adjourned at 3:48 p.m.

Respectfully submitted,
Sue Schwartz
Planning and Community Development, Director
SSR/SWG