

Sumter City-County Planning Commission

March 26, 2012

OA-12-01, Internet Sweepstakes, Electronic Gaming and Simulated Gambling Devices (County)

I. THE REQUEST

Applicant: Sumter County

Request: An amendment to the Sumter County Zoning and Development Standards Ordinance defining Internet Sweepstakes, Internet Cafes, Sweepstakes Parlors, and other business using electronic gaming and simulated gambling devices.

II. BACKGROUND

Beginning in the fall of 2011, the Planning Department and Business License Department, among others, were contacted by prospective business owners wishing to open new establishments. These establishments were described by the applicants as “internet cafes,” “sweepstake promotions” and “internet sales.” Initial review indicated that this use was not specifically or clearly described in the Zoning Ordinance. Moreover, the descriptions offered by the business license applications did not fully describe the activities on site. After researching news articles, peer jurisdiction activities, industry websites, and upon a visit to an internet café in Manning SC, we offer the following as a summary description:

The sweepstakes establishments appear to be primarily engaged in promoting a near gambling experience for their patrons. So at its very basic, the use is an adult amusement activity. Customers pay a fee to purchase internet minutes, a phone card, or some other so-called product. Payment allows for the customer to be entered into a sweepstakes promotion. Some variations provide customers with an opportunity to “donate” to a charity in exchange for sweepstakes entries (it is not clear how much or what portion is set aside for charities). Regardless, the customers are then signed on to a computer terminal or machine with the express intention of playing computer simulated, electronic gambling-like games. These games are casino or gambling themed as are their names, by example: Lucky Shamrocks Poker, Super Bonus Kangaroo Keno, and Mr. Money Man (Attachment 1). By playing the game, the customer is

offered the opportunity to reveal the results of the sweepstakes. The sweepstakes results are predetermined, we are told, and include cash payouts in the thousands of dollars.

While it may or may not be illegal gambling, prohibited under SC State law, the businesses appear to strive to create an atmosphere where customers feel like they are gambling. And it is in this context that significant land use and public policy issues are introduced. The argument made by proponents that the sweepstakes are only utilized to promote the sale of internet time or some other product is unsubstantiated. Customers may purchase a product but devote their time to playing the simulated slot, poker or keno game.

Numerous observations from media outlets echo the same storyline: customers patronize these uses to play simulated casino-style games in the hopes of winning sweepstakes prizes (Attachment 2). The purchase of internet time or phone card or “donation” to a charity is an afterthought.

Upon these findings Staff proceeded to the Planning Commission and County Council, requesting a moratorium to study the public policy issues associated with this new use (new to the Sumter community, at least).

III. STAFF ANALYSIS

Land Use

After due deliberation, we conclude first that this use presents serious and potentially negative land use impacts on the Sumter community. The creation of new, gambling-like atmosphere within the community places these types of uses in the same category as liquor stores, adult uses, and video poker establishments: they should be considerably regulated in order to protect the adjacent property owners and community at large from their negative influences. As the Zoning Ordinance states in Article 5, uses in this category require special review because they are in fact “unusual in nature” (Section 5.b.3).

This Staff disposition was bolstered on March 19, 2012 as the Sumter County Sheriff and the City of Sumter Chief of Police released a joint position statement on the matter citing “grave concerns about the legality” of the proposed uses. Their serious concerns included potential petty criminal activity, potential for fraud and organized crime, money-laundering, and addiction. Related to land use and zoning impacts they emphasized needed regulations addressing, age, alcohol, security, proximity to neighbors, hours of operation, law enforcement oversight, and the size of the businesses (Attachment 3).

For these uses requiring special review, Sumter has used several tools related to managing or mitigating their land use effects on the community and adjacent properties. The primary approach has been to ensure there is adequate separation between the proposed use and incompatible surrounding uses. So, the County requires a distance separation as shown in Table 1 for certain uses. Separation from other similar adult oriented uses is necessary to ensure clustering is discouraged, as a “red light” district might be. It is also necessary to keep the use

far away from other uses where there is a clear public health, safety, and welfare disconnect: schools, residences, parks, churches, for instance.

Second, the County has employed the Special Exception Review process to ensure that adequate public notice and opportunity for input is provided to adjacent property owners. All uses requiring special exception approval, under South Carolina State Law, must undergo the highest level of scrutiny culminating in a decision by the Zoning Board of Appeals.

The Zoning Board of Appeals or BZA, is a joint Board appointed by the County and the City. The BZA, when reviewing Special Exception applications is tasked with making sure the request meets all of the conditions and standards of the zoning ordinance. In order to approve such as use, it must also find that the use is in “substantial harmony”—is it compatible?—with the area and it must find that the use will not have a negative effect on surrounding properties.

We think this test is the appropriate level of review for the electronic gaming, sweepstakes, and simulated gambling operations proposed in Sumter.

Below is how the Zoning Ordinance treats other uses scrutinized for their potential impacts on the welfare of the community.

Table 1. Use Separation

Use	Classification	Zoning Districts	Distance
Bingo	Special Exception	GC & LI	150 ft. Church, School, Park
Video Poker*	Conditional Use	GC & LI	500 ft. Church, School, Park
Adult Uses	Special Exception	GC	1000 ft. Residence, Church, School, Park, Adult Use
Liquor Store	Special Exception	NC, LC, GC, LI, AC 500	300 ft. Residence, Church, School, Park
Drinking Places	Special Exception	NC, LC, GC, LI, AC 500	300 ft. Residence, Church, School, Park
Tattoo Parlor	Special Exception	GC & LI	1000 ft. Church, School, Park, Tattoo Parlor

**Note: Video Poker is no longer a legally permitted use*

Development Standards

The land use impacts of this industry are best mitigated through the adoption of reasonable development standards by category. This way, impacts such as parking, signage, hours of operations, size, and licensing, can be placed in an objective, calibrated context. As a starter, let’s review a series of development standards adopted by peer jurisdictions that have chosen to strictly regulate the use in an adjacent State:

Table 2. Sample North Carolina Jurisdictions

Place	Review	Parking	Size	#Terminals	Hours	Distance	Other
New Hanover, NC	S	1/100 s.f. or 1/2 terminals	None	10 Max	8-12 everyday	500 ft.	Annual review and \$600 max cash payout
Wilson, NC	S	1/terminal	None	25 Max	None specified	1 per multi-tenant space	No window tinting
Warren County, NC	S	1/100 s.f or 1/2 terminals	None	20 Max	8-10 weekday 8-12 Weekend	500-house 2000-Adult 2000- Church, school, park	N/A
Concord, NC	P	1/terminal	None	20 Max	10-12 everyday	500-house 1500-adult	1 district only; 200 ft. setback in gateway corridors; no window tinting
Moorsville, NC	P	1/terminal	2000 s.f. max	5 Max	9-6 Mon.-Sat.	1600-house, adult, church etc.	N/A

North Carolina is an appropriate measure as many jurisdictions there saw an influx of sweepstakes related business in 2010 and 2011. So they have been through a period of moratorium and ordinance amendments just ahead of the State of South Carolina. For Sumter, consideration of this matter should include the following zoning issues and development standards:

- **Clear Definition**
- **Zoning District Placement**
- **Review of other marginally Clear definition**
- **Zoning District Placement**
- **Review of other marginally desirable uses**
- **Level of Zoning Review**
- **Hours of Operation**
- **Parking Requirements**
- **Distance Prohibitions**
- **Age Limitation**
- **Individual Machines and Accessory Uses**
- **Limitations on Size or Number of Terminals**
- **Licensing and Additive Fee Structure**

Definition

Based on research, we offer the following draft definition:

Electronic Gaming Operations: Any business enterprise, whether as a principal use or an accessory use, where persons use electronic machines, including but not limited to computers and gaming terminals, to conduct games of chance, actual or simulated, including sweepstakes, and where cash, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined results. This term includes, but is not limited to internet cafes, internet sweepstakes, cybercafés, sweepstakes promotions, or sweepstake parlors. This does not include any lottery approved by the State of South Carolina.

Zoning District Placement

Where should these uses locate? This is a simple enough question. However, in recommending individual districts, the County should consider whether they should be in major commercial corridors, community entryways, near neighborhoods, and/or in industrial districts.

We recommended that the use be permitted in the General Commercial (GC) zoning district and the Light Industrial-Warehouse (LI-W) District.

Level of Zoning Review

Determining the level of zoning review is important. Does the use require minimal review or maximum scrutiny? In Sumter County, all uses are allowed by one of three measures:

Permitted—Upon meeting the minimal zoning district conditions, the use is permitted by right. There are no additional criteria, conditions or regulation; no public hearing or; additive Staff review. It is listed as “P” in the ordinance.

Conditional—Staff reviews the use request according to additional criteria in the zoning ordinance. A separate application and fee is required. Staff may approve, approve with conditions, or deny. The Staff decision may be appealed to the Board of Zoning Appeals.

Special Exception—This level requires a separate application/fee and review and approval by the appointed Board of Zoning Appeals. Notice to adjacent properties, posting of the property, and a public hearing before the BZA is necessary prior to a decision. Many special exceptions in the zoning ordinance (like those in the table above) include specific additional criteria that must be met. Moreover, the BZA may take into consideration the public input and determine whether or not the proposed use is compatible with surrounding properties. The BZA may approve, approve with conditions, or deny. The BZA decision may be appealed to Circuit Court.

Consistent with the other adult-oriented uses we recommend the use be permitted only upon special exception review and approval.

Hours of Operation

Often, businesses which operate late into the evening create additional issues such as noise, law enforcement attention, loitering, or other nuisance issues. One applicant has stated that the hours

of operation could normally be 8:00 a.m. to 2:00 a.m. Allowing exceedingly late hours is asking for public safety problems. We recommended the following:

Monday thru Thursday: 8:00 a.m. to 10:00 p.m.

Friday and Saturday: 8:00 a.m. to 12:00 a.m.

Sunday: Prohibited

Parking Requirements

These uses appear to demand a high amount of parking. Consideration should include a parking requirement per square foot. Even better might be the approach taken by peer jurisdictions—based on a per-terminal or machine basis. For instance, if an establishment has 20 terminals, then 20 spaces must be provided. In the instances where the businesses want to locate in an existing, multi-tenant space such as a shopping center or strip retail building, a full parking study will be required to determine if there are available existing spaces. What we have seen from our peers in North Carolina is a parking requirement between 1 and 2 spaces per terminal. Let's take an example assuming a 3,500 sq. ft. facility with 20 terminals/computers:

3,500 s.f. facility w/ 1/1 requirement=20 spaces

3,500 s.f. facility w/ 1/2 requirement=10 spaces

3,500 s.f. facility w/ 1/50 sq. ft. (like Video Poker)=70 spaces

3,500 s.f. facility w/ 1/200 sq. ft. (like an Arcade)=18 spaces

The per terminal approach is clear and predictable. The Sq. ft. approach is too variable, in our opinion especially if the number of terminals is not regulated. Can 20 terminals fit in the 3,500 sq. ft. space? Or perhaps 50 can fit in the same space? Changing the square footage does not drive the parking—it's the number of terminals!

One (1) parking space per terminal, machine, playing station, or monitor plus one additional space for business employee.

Distance Prohibitions

The Zoning Ordinance uses distance to separate unwanted uses from their incompatible counterparts. Video Poker, when legal, was required to be 500 feet from adjacent churches, schools or parks. It may benefit the community to also include a distance from residential uses and perhaps even from businesses serving or selling alcohol. If there is a concern about the uses clustering, a distance requirement from similar establishments would accomplish this separation. We think separation from incompatible uses is a good tool for preserving community character. However, in some commercial corridors like Broad St., Guignard, and 521N/521S, residential uses abut the commercial district bringing residential uses very close to established commercial ones. We note that the greater the separation adopted, the more challenging it will be to locate these uses. We recommend an approach similar to the Liquor Store and Bar's:

300 feet from any dwelling, Church, public or private school, park, liquor store, or bar, and 1000 feet from any other electronic gaming establishment. This distance shall be measured by a straight line from structure to structure, or structure to property line for park and zoning district.

Size and Numeric Limitations

The City of Charlotte has drafted regulations limiting the size of individual businesses to 3,500 sq. ft. In Chadbourne and Reidsville NC, local ordinance limits the number of terminals to 20 and 25, respectively. Is there a benefit to the community to addressing maximum number of terminals or a maximum sq. ft. size of a business? We think so. Large scale establishments have greater impacts on parking and adjacent neighbors. Larger establishments mean larger cash on hand and greater opportunity for conflict. To keep it simple and effective:

Electronic gaming establishments shall be limited to a maximum of 20 computer terminals, machines, playing stations, or monitors.

Availability of Alcohol

Should alcohol be served? It is apparent that most jurisdictions addressing the sweepstakes uses take a firm stand on the availability of alcohol in these locations. In the jurisdictions sampled, the sale of alcoholic beverages is expressly prohibited anywhere the simulated gambling devices are offered—so no machines would be allowed in bars, liquor stores, convenience stores or grocery stores that sell beer and wine or restaurants that serve alcohol.

The sale, purchase, or consumption of alcohol is prohibited.

Age limitation

Can anyone patronize the establishments or is there a restriction of age? At the very basic, patrons spend money in the hopes of winning money. This practice is generally accepted as NOT being appropriate for those under the age of 18 or 21.

Anyone under the age of 18 is not permitted in the establishment.

Individual Machines and Accessory Uses

How should we regulate or deal with individual machines? Can one or two be placed in a bar or convenience store or liquor store? There, they would be seen as an accessory use and still requiring some consideration. Allowing accessory machines/terminals in bars or convenience stores will be a virtual impossibility to review or enforce. In addition, as the business applicants have stated for the record that their intention to sell internet minutes (using the sweepstakes for promotion of some product), we see no reason for the machines to be placed as accessory uses in a convenience store or a bar. Therefore, one business with one machine constitutes a primary business and must meet all of the conditions adopted.

Individual machines as accessory uses shall not be permitted.

Licensing

Is our local permitting prepared to review, license and investigate these uses? Is there a community benefit to charging additional licensing, establishment, or individual terminal fees on a monthly or annual basis? A number of jurisdictions charge a terminal fee in a diverse range of dollar amounts as a cost for the industry of doing business. Darlington SC, is considering a \$500 per computer station fee. Lumberton, NC assesses a \$5,000 per location and \$2,500 per terminal fee. These would be collected on an annual basis perhaps either as part of business fee license

collection or tax collection. A list of North Carolina jurisdictions and their respective fee schedule can be found in Attachment 4.

We recommend consideration of a distinct fee schedule for electronic gaming businesses to account for the increased enforcement needs related to public safety, zoning, and revenue. The question of whether this is permissible under state law requires additional review.

Other

This framework should not be considered all-inclusive. Additional issues may arise during the review and zoning amendment process. Moreover, the issues included herein do not address building code requirements, non-conforming sites, law enforcement/public safety review, or future judicial or legislative guidance. There are other categories which have been addressed by other jurisdictions that would also require additional research:

- Signage, Neon and Window Tinting
- Security Measures and Owner Background Checks
- Limitation on the total number of businesses permitted in the community
- Limitation on the total number of machines under one ownership group
- Annual Zoning renewal
- Per terminal square footage requirement(for spacing and fire safety/occupancy)

In addition, one applicant has provided specific input on recommended development standards. They are included as Attachment 5.

Caveat

Nothing herein and no Zoning Ordinance amendment may preempt any Federal, State, or Local Law Enforcement agency from enforcing Federal, State and Local Laws.

V. ZONING ORDINANCE AMENDMENT LANGUAGE

Note: This section reflects the Planning Commission Action of March 26, 2012

- Amend Article 10 by adding the definition:

Electronic Gaming Operations: Any business enterprise, whether as a principal use or an accessory use, where persons use electronic machines, including but not limited to computers and gaming terminals, to conduct games of chance, actual or simulated, including sweepstakes, and where cash, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined results. This term includes, but is not limited to internet cafes, internet sweepstakes, cybercafés, sweepstakes promotions, or sweepstake parlors. This does not include any lottery approved by the State of South Carolina.

- Amend Article 3, Section 3.i.4. by inserting:

j. Electronic Gaming Establishments (SIC 7999)

and renumber subsequent...

- Amend Article 3, Section 3.k.4. by inserting
l. Electronic Gaming Establishments (SIC 7999)

and renumber subsequent...

- Amend Article 3, Exhibit 5 by inserting

<i>Uses</i>	<i>GC</i>	<i>LI-W</i>	<i>SIC Code</i>
<i>Electronic Gaming Establishment</i>	<i>S</i>	<i>S</i>	<i>7999</i>

- Amend Article 5, Section 5.b.3.k. by deleting current entry for Video Poker and replacing with the following:

k. Electronic Gaming Establishment

- 1. The use shall not be located within a 300 ft., measured from structure to structure, from any residence, church, school, park, playground, liquor store or bar, and shall not be located within 1,000 ft. from any other Electronic Gaming/sweepstakes establishment.*
- 2. Hours of operation shall be limited in the following manner:*

Monday to Friday-- 9:00 a.m. to 2:00 a.m.
Saturday-- 9:00 a.m. to 12:00 a.m.
Sunday-- Prohibited
- 3. Parking required: 1 space per sweepstakes terminal and 1 employee space*
- 4. The maximum number of terminals per establishment: 20*
- 5. No one under 18 years of age permitted*
- 6. No alcohol shall be consumed, served or available for purchase on premises*
- 7. A primary use is a sweepstakes establishment with 1 or more machines. A primary use must meet all of the requirements of this section. Individual machines shall not be permitted as an accessory use.*

VI. RECOMMENDATION AND DRAFT MOTION

Staff recommends approval of the zoning ordinance amendment adding the new electronic gaming use and its specific condition to the Sumter County Zoning Ordinance as presented in the Staff Report dated March 26, 2012.

I move that the Planning Commission recommend approval of OA 12-01 based upon the recommendations contained in the Staff Report.

VII. PLANNING COMMISSION RECOMMENDATION

At a special meeting of the Planning Commission on March 26, 2012, the Commission forwarded OA 12-01 to the Sumter County Council with a recommendation of approval. After a lengthy discussion on the recommended conditions the Commission agreed on the following.

- Add the Use as a Special Exception in GC and LI-W.
- Amended the suggested hours of operation.
- Deleted the condition related to specific license fees and directed Staff to continue researching a reasonable fee structure. The Commission asked for a better understanding of the additional costs of providing services for these uses. Although they agreed that perhaps additional fees were justified, the fees should be based on the true costs of providing enforcement, review, and other services.
- As a whole the Planning Commission voted unanimously (9-0) to pass the Ordinance Amendment on to the Council with a positive recommendation. Three of the conditions included some individual dissent that should be noted:

Distance—Commissioner Sandra McBride preferred the distance requirement be increased from 300 ft. to 500 ft. to better protect adjacent properties.

Terminals—Commissioner Jimmy Davis preferred allowing a maximum of 60 terminals instead of 20.

Parking—Commissioner Jimmy Davis preferred allowing a parking ration of 1 space per 3 terminals.

- One proponent of the industry, Mr. Terry Land spoke on behalf of the other applicants. He stated that the industry wanted a lower parking rate (1 space per 3 terminals), a higher terminal number (min. 30 max. 100), longer hours of operation including Sunday, and lower licensing fees. He also stated that no measurement for separation of houses should extend beyond the General Commercial District (GC).

VIII. COUNTY COUNCIL – MARCH 27, 2012 – FIRST READING

The Sumter County Council at its meeting on Tuesday, March 27, 2012, gave First Reading approval of this request with the following change:

- *Parking required from 1 space per 1 sweepstakes terminals and 1 employee space to 1 space per 2 sweepstakes terminals and 1 employee space*

ZONING ORDINANCE AMENDMENT LANGUAGE

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2. *Hours of operation shall be limited in the following manner:*
 - a. *Monday to Friday-- 9:00 a.m. to 2:00 a.m.*
 - b. *Saturday-- 9:00 a.m. to 12:00 a.m.*
 - c. *Sunday-- Prohibited*
3. *Parking required: 1 space per 2 sweepstakes terminals and 1 employee space*
4. *The maximum number of terminals per establishment: 20*
5. *No one under 18 years of age permitted*
6. *No alcohol shall be consumed, served or available for purchase on premises*
7. *A primary use is a sweepstakes establishment with 1 or more machines. A primary use must meet all of the requirements of this section. Individual machines shall not be permitted as an accessory use.*

IX. COUNTY COUNCIL – APRIL 10, 2012 – SECOND READING / PUBLIC HEARING

List of Attachments

1. Zoning Enforcement Memorandum, dated January 31, 2012
2. Selected Media Articles
3. Sumter County Sheriff and City of Sumter Police Chief Joint Law Enforcement Statement, dated March 19, 2012
4. Sample Selection of Licensing Fees, State of North Carolina
5. Applicant (Ceth Land on behalf of Michael Ryles) email of suggested conditions, dated March 16, 2012 and March 26, 2012