

**Town of Zebulon
Joint Public Hearing
June 11, 2018**

Matheny: Robert S. Matheny, Mayor
Clark: Beverly Clark, Commissioner
Bumgarner: Don Bumgarner, Commissioner
Strickland: Curtis Strickland, Commissioner
Moore: Annie Moore, Commissioner
Beck: R. Dale Beck, Commissioner
Markland: Lisa Markland, Town Clerk
Spriggs: Julie Spriggs, Senior Planner
Baxter: Shannon Baxter, Planning Board
Johnson: Laura Johnson, Planning Board
Blount: Gene Blount, Planning Board
Ray: Larry Ray, Planning Board
Richardson: Ian Richardson, Applicant's Attorney
Hayworth: Tim Hayworth, Police Chief
Wagner: Joe Wagner, Applicant
Hampson: Toby Hampson, Town Attorney
M/F: Male/Female Speaker

Matheny: Call the meeting to order. Welcome everyone here this evening. This is a joint meeting of the Planning Board, seated to the front, and the Town Board, for the purpose of a public hearing. Just a few comments on the public hearing. This is a quasi-judicial hearing, which is an evidentiary hearing, meaning that evidence rather than just simply remarks are to be presented. Similar somewhat to a court proceeding. You might think of me being the judge and these people as being the jury.

All persons giving evidence must state their name, address, and be sworn in or affirmed. And decisions are to be made on the evidence presented, not hearsay or unsubstantiated personal opinion. If anyone is concerned about being able to consider any testimony, then you need to ask our attorney, sitting here to my right, and he will issue an opinion.

After each speaker is finished then questions might first be asked by the boards, and then cross-examination by anyone in the audience that is an interested party, which is

a—defined as an entity who has recognizable stake in the outcome of the matter. So once the hearing is closed, then there's no further evidence can be presented, and no one can go out on their own and do investigation either. So what you hear tonight is what you can consider.

I need to ask if any board member has any ethical conflict or relevant to evidence, or ex parte conversation. So I'll ask that of both boards, if you've had any such conversations.

Strickland: I've heard conversations about it but—

Matheny: You were not a party to them?

Strickland: I didn't know this was—you know, being in a small town, everybody knows more than you know. And I've heard conversations about this coming to town before I ever got any paperwork, so.

Matheny: Are you of the opinion that it influences your—

Strickland: No.

Matheny: —opinion? Okay. All right. If so, you would need to ask to be recused. Anyone having a fixed opinion on the matter needs to do the same and undisclosed ex parte conversation, which was just disclosed, so it has been shared. And I would say there's no ex parte communications on this matter until the final decision is made by this board. So when you leave tonight, if the Planning Board makes their recommendation, you still can't go out and have ex parte communication on the matter. If so, you put it in risk.

If anyone has a financial interest in the outcome, they also need to be asked to recuse. So hearing none of this from anyone, we will proceed with—I'll open the public hearing issue 2018-03 and ask for staff report.

Markland: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you
God?

Spriggs: I do.

Markland: State your name and address, please.

Spriggs: Julie Spriggs, 1003 North Arendell, Zebulon, North Carolina 27597.

Good evening. Might I ask that the staff report, the agenda, and the attachments be entered into the record for the hearing. Tonight we are hearing the case for the Special Use 2018-03, Vending Plus. It's for an internet café or sweepstakes at 1405 North Arendell Avenue.

On your screen, you see that the request is by Joe Wagner. The property owner is LNP, Incorporated. The site address is stated as 1405 North Arendell Avenue. It is a parcel of about a half an acre. The current use of the office space is vacant. The existing zoning is heavy business. And the trips generated will be less than 100, so a TIA is not required. And we'll get to that during the transportation section.

So to north of the site, we have Parrish Realty. To the east to the site, we have Old Heritage Properties, which is Sheetz, which is commercial. To the south of the site, we have DVM Services, not to be confused with the Department of Motor Vehicles, DMV. This is DVM. And then to the west, we have Parrish Reality again. So this is the property. And try the—oh, no. Don't think this one's working. I'll use the mouse.

So in red, we have the parcel. The office building is not for the whole parcel; it's for only about 25% of the building. Here we have Sheetz. You have Bojangles'. Down this way you have the credit union. This is the data center. Thank you, Lisa.

For the required findings of fact, the Board of Commissioners will need to make a finding of fact on the four parts listed: that it will not materially endanger the public health, safety, or welfare; that the special use will not substantially injure the value of adjoining or abutting property; that the special use will be in harmony with the area in which it is to be located; and that the proposed special use will be in general conformity with the ordinances, policies, land-use plan, thoroughfare plan, or any other plan officially adopted by the Board of Commissioners.

So for the findings of fact, tonight you will hear from the applicant. The applicant bears the burden of presenting evidence sufficient to enable the board to make the required findings of fact. And if you hear from opposition tonight, the opposition also bears the burden of presenting evidence that a standard set out above will not be met.

The zoning is a—of a special-use district. It is to promote the greater land-use compatibility, which allows conditions to be applied to a site that makes it conform with the harmony and the surrounding areas. The surrounding areas of the property in question tonight is heavy business. The heavy business districts are designed to accommodate the widest range of commercial activities. And the proposed special-use district is located on a parcel and is surrounded by parcels zoned for such a use.

Next, you see the map here. The red hatching here. And let's try this. Yep. So here is the parcel and then the dark blue surrounding is all heavy business. And to the northeast, you see this is Wakelon Townhomes. And that's RMF-SUD. But for the surrounding properties, everything is zoned heavy business.

For the land use, the comprehensive plan suggests that the parcels around the area should be highway business. Highway business is the most intensive form of commercial

development. It does have the largest size and traffic generation. The footprints usually exceed more than 50,000 square feet, but in this case, it does not. It is—the proposed special use is and does conform to the intent of the comprehensive plan. I don't want to read the whole slide to you since it is being entered into the record. But the staff report goes into more detail. And of course, you can always ask questions if you need to.

Again, the red hatch is the parcel in question for the special use. And the HB now stands for “highway business,” not heavy business. You can see the table to the side.

Markland: I'm sorry. [INDISCERNIBLE]

Spriggs: For the transportation staff report, the transportation—

Markland: Can you wait a second—[OVERLAPPING]

Matheny: Wait one minute.

Spriggs: Sure.

Matheny: Hold one minute please.

Spriggs: Sure.

[INAUDIBLE]

Matheny: I understand. Okay. Don needs to be excused. His wife has taken a fall. So.

[INAUDIBLE]

Matheny: Continue.

Spriggs: All right. Thank you. For the transportation report for the staff report, the Multimodal Transportation Plan shows improvements to the section of Pippin Road and near the proposed site—sorry, that should say North Arendell, not Pippin Road—to be consistent with the 96 study. The town has secured a LAPP, which is considered the Locally Administrated Projects Program. I always trip over that. Funding from CAMPO, which

is the Capital Area Metropolitan Planning Organization, and the North Carolina Department of Transportation. There's a lot of letters up there. So the LAPP funding from CAMPO and NCDOT, the plans are being finalized right now and the budget discussions are ongoing about that project.

The town's code of ordinances requires that a traffic impact analysis be submitted for anything—any development that will have over 100 trips. The TIA is not required as the use will not add over a hundred trips during the weekday peak hour. And this is the adopted transportation plan that was just updated recently. And you can see the red in front of the parcel here. This is the 96 study corridor, and the parcel in question is right about there.

For the Greenway, Bicycle, and Pedestrian Master Plan, there is some improvements along North Arendell Avenue, which will be some sidewalks. These improvements are incorporated into the 96 study. For the transportation and greenway fees, there are improvements required at site plan review and approval, and that will be based on the 96 study and design. A fee-in-lieu will be collected rather than actual construction and installation of any required improvements.

And a transportation impact fee will be required; however, since there is a project that fronts the parcel and the project is one of the town projects, the capital improvement project, they will receive a dollar-per-dollar credit. So if the fee-in-lieu is a thousand dollars and the TIF is 500, they will receive their \$500 credit, which means they don't have to pay the transportation impact fee. Of course, those fees are not calculated at this time. That is just an example. But they will be receiving a dollar-per-dollar credit for the transportation impact fee.

The water and sewer allocation policy. The building the sweepstakes will occupy has been in business before and already has allocation granted for the site. So no additional allocation is being requested.

The North Carolina General Statute ordinance requirements. The State Statute 14-306.4 prohibits the conduction or promotion of a sweepstakes through the use of an entertaining display, including the entry process or the reveal of a prize. Any sweepstakes establishment must provide evidence that it is operating legally. And as violations of this law are misdemeanor and felony charges, law enforcement personnel, not planning staff, such as our code enforcement officers, will enforce compliance with state statutes.

I will save this for at the end so I can finish my staff report. And then I'd like to call Chief Hayworth up to speak on the enforcement of the sweepstakes. And if you don't mind waiting for him till the end, before we call the applicant up.

Matheny: So you want to call him forward at the end?

Spriggs: At the end please. If it—

Matheny: Okay. Well, he stood up. I'm wasn't sure he heard [LAUGHS] what you were saying.

Hayworth: [INDISCERNIBLE]

Spriggs: I decided to wait. I'm sorry. I want to keep on going. Let me get to where—for the town ordinance, the town ordinance is 152.1466. This does describe some conditions that have to apply to sweepstakes in order to comply with our ordinances and policies. So the hours of operation are Monday through Thursday from 7:00 a.m. to 11:00 p.m., and Friday and Saturday from 7:00 a.m. to midnight, and Sunday from 1:00 to 8:00. This is not a 24-hour-per-day, seven-day-a-week operation. Our ordinance does limit that.

Our ordinance does limit the view of the building. So the—all 20 terminals that are allowed on site must be viewed from the street. So there can be nothing blocking the doorway or nothing blocking the windows. So if somebody walks by, they have to be able to see all the terminals without entering the building. So no screens, curtains, blinds, partitions, or other obstructions shall be placed between the entrance to the room where the games are played and the rear wall of the room, so that a clear view of the interior may be had from the street. That's what that means. There is—if someone is standing outside, such as a police officer, he needs to be able to address and see the whole room and all the terminals before he enters, or she.

There must be an adult, 18 years of age, older—or older managing the business on the premises at all times during the hours of operation. And the max number of terminals, machines, or computers for any operations business is 20. This includes the fishing games where there's multiplayer. So if a fishing game has eight terminals, like eight players and eight chairs, then that counts as eight terminals of the 20.

To continue, no alcoholic beverages can be served on the premises, and there should not be more than one internet café in the same property, or in the same building, or structure or portion thereof. And no internet café shall be located within a thousand feet of the front door of any other internet café, school, adult establishment, or specially oriented business. And no one under the age of 18 may enter the premises.

This is—and I don't know if you can see it—because the black line is a thousand feet radius of the property here. And all the parcels in yellow are the parcels that are some part of—within that 1,000 feet. Now, here, at Wake—central to—Wakefield Central Baptist Church there is a preschool, and this is Zebulon Elementary School. The

way the ordinance classifies the school and the preschool is that the preschool is not considered part of a school system.

I have called this preschool. They only have children for three hours a day or less. And they do not serve food. The way that we classify that is as a childcare center or a daycare center, and that is not classified as a school. Therefore, the parcel in question—since this is not considered a school, but more of a daycare—is within the 1,000 feet. This is—there is no school proper, as we define kindergarten and higher, in the 1,000 feet. So the school here, which—what we would consider the actual school, is outside the buffer zone.

Important limitations on imposing conditions. The board is allowed to impose conditions; however, they must have a purpose and they must include standards that the conditions will address. And it has to be a substantial evidence in the record to support the conditions. And the conditions that impose an exaction must be reasonably related and proportionate to the impact of the development.

A condition cannot be imposed because if council thinks it would be a good idea, or because it is desired by neighbors. Again, it has to have some form of substantial evidence tied behind it. Any condition that is imposed must be intended to bring the permit into compliance with standards that are included in the ordinance. And all conditions must be based on meeting a relevant standard in the ordinance. And the conditions must be reasonably related to that standard.

Staff has no additional prose—proposed conditions above what is in the internet café ordinance. And site plan review by a technical review committee is required, and that will check for parking, driveway aisle widths, with the fire response for the clearing

of the building. It will include landscape buffering. It will include signage. The normal TRC review for what a site plan consists of.

So for the findings of fact—the zoning, the land use, the transportation, the Greenway, Bicycle, and Pedestrian Master Plan, the water and sewer allocation, and the ordinances—staff says that it complies. And the staff recommendation is that the application was completed properly. Property notification, signage, and legal advertising requirements were met for the property. We do not make recommendations for the special-use permit until after the hearing so we can hear all the evidence. The requested action from the board tonight is to refer the case to the Planning Board. And at the Planning Board meeting, our requested action is that they recommend the case back to the Board of Commissioners.

Again, the Board of Commissioners should motion to approval or denial of the case for any one of the findings that we went over earlier. And again, these are the findings: that the proposed special use will not materially endanger the public health, safety, or welfare; that the proposed special use would not substantially injure the value of adjoining or abutting property; the proposed special use will be in harmony with the area in which it is to be located; and the proposed special use will be in general conformity with the ordinances, polices, land-use plan, thoroughfare plan, and any other plan adopted by the Board of Commissioners.

And so your choices tonight, I'll leave up here. But I'd like to call Chief Hayworth to the stand now to finish the staff report for the police.

Hayworth: I thought—I'll just keep those [INDISCERNIBLE].

[INAUDIBLE]

Hayworth: Do I need to do—

Matheny: Yeah.

Markland: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Hayworth: I do.

Markland: State your name and address please.

Hayworth: My name is Tim Hayworth, 1001 North Arendell Avenue, Zebulon, North Carolina.

I am Tim Hayworth. As I said, I'm the police chief here in Zebulon, and I have been the police chief here for the last 18 years. This is my—also my 30th year in law enforcement all together. So I've had a lot of time to investigate a lot of different sorts of crimes. And also, to build a relationship with police chiefs across the state.

When this particular item came up on the agenda, and Ms. Spriggs contacted me about speaking tonight, I—immediately, I was concerned with the location, the site location of this particular internet sweepstakes. The site location, which why I was concerned with it is, you know, we already have an operating internet sweepstakes location in Zebulon. However, that location, now, the police has not had a large presence at that particular internet sweepstakes site that's already operating. I feel that—comfortable with saying that we have very low crime there. We had a safe job there where a person broke in, stole the safe, and—but at the same time, they also did a safe job on a neighboring business as well.

But the difference is, is I believe that that particular location is not—it's not on the main thoroughfare. Even though it's on Gannon Avenue, it is a very secluded location. And the vast majority of business people, people coming through town, actually

don't even know where it's at. It's not a place that I think attracts a lot of cross-through business. So I believe it's a lot different than a place that's going to be located on North Arendell Avenue. And now, I base that—not just saying this is my belief, but on the fact that I've been the police chief here 18 years, and I'm very familiar with our crime trends in the city and different locations around not only the Town of Zebulon, but also Wake County.

So what I did, I wanted to gather some data. I reached out to police chiefs across the state and asked them if any of them wanted to comment or give me any sort of data related to internet sweepstakes in their jurisdictions. And I heard back from some of them. And I have some copies of these that I have. Actually, Ms. Spriggs has them with her.

But the Morrisville Police Chief Andrews, she responded to me that they currently don't have an internet sweepstakes in her jurisdiction, but she is a former Durham police captain, and in her time in Durham, she dealt a lot with internet sweepstakes. And her advice to me is that we were probably going to see a sharp increase in criminal activity as a result of this location. Her email is included there.

Secondly, I heard from Chief Laura Fahnstock from the Fuquay-Varina Police Department. I'll let those go around and then I'll kind of catch you up with those.

Hampson: And, Chief, just for the record, I want to clarify that these documents and this evidence, this particular evidence related to reports from other municipalities is not being necessarily offered as—for the truth of the matter. Sir, that it's being offered as the basis upon which you formed your own opinions involving—

Hayworth: Exactly.

Hampson: —this particular matter.

Hayworth: Yes. I used these items—this is information from other police chiefs to me, to help me form my expert opinion on this particular location and on this particular crime possibility.

Hampson: So let me just caution the—both the Planning Board and the Board of Commissioners that these documents are not considered necessarily a sort of pure evidence of what could or might happen at this particular site. These are being used simply as the basis upon which the chief is drawing the opinions he will eventually—he's drawn.

Hayworth: Thank you, sir.

Hampson: Thank you.

Hayworth: The second one is from Chief Fahnestock from Fuquay-Varina Police Department. She did state that they did not have a large amount of crime at those locations. In fact, she says they generally police their own establishments. However, that they had, at the time of her email, which is dated May the 29th—they had just had an armed robbery at their location of their sweepstakes in Fuquay-Varina where over \$3,000 was stolen and a gun was involved.

I did also have a—some information from Roanoke Rapids Police Department. I don't believe that was included in that stack of paper, was it, Julie? And we elected not to include that particular document in there. They talked about crimes going back to 2013, but it was not as organized as I would like to present it to you. But I did speak with the chief from Roanoke Rapids, who discussed the crime in the internet cafés in his location.

I did receive just a—to be fair—I did receive—one police chief sent me an email who stated that they had seven—this is the Louisburg police chief—said that they had

seven locations in Louisburg and that they did not have a large amount of problems. They had very few problems in Louisburg. And he actually went on to state that the—our particular applicant—I don't know this, I don't know our applicant—but he stated that the particular applicant that is applying here owns a site in Louisburg and is cooperative with the police department, helpful, and has actually even employed off-duty police officers to help work security at that site.

The Burlington Police Department, however—included in the documents I gave you—the Burlington Police Department spoke to the fact that in the past 20 months they had had 49 crime reports at sweepstake operations, 15 of those since the beginning of 2018. These crimes were—13 of these crimes were directly dependent upon the operations of the sweepstakes. So directly related to the sweepstakes operations. They included a murder and several robberies with a firearm.

The Burlington police chief stated—and actually their crime analysis unit sent this document that you have—that since April of 2018, they have had 13. Four which were violent, three involved firearms, and two incidents where firearms were discharged with the intent to kill. And then also, there's an article from the paper in Burlington where the police discuss about their fears about crime in that particular area.

This area on North Arendell Avenue is a high-traffic area. A lot of cars, a lot of people. This is becoming—quickly becoming one of the fastest-growing areas in Zebulon, not only business-wise, but also residentially. Not only is it a high-traffic area, where a lot of people drive by this location, but also, it—speaking from a law enforcement matter, it also provides multiple areas of egress. And while if there's a fire

in the building we want lots of egress, if we're looking at a potential crime spot, we do not. Meaning, there's a lot of getaways. There's a lot of places to get away.

Last year, in our budget with the town, I presented what I call "corridor crimes," which is crimes that are directly related to 64, 264, and its relationship with Raleigh and I-95. And this area is in an area that would be directly impacted by our corridor crimes.

With all this in mind, I believe that the establishment of a sweepstakes café at this particular area, based on the data that I found and based upon my knowledge of the crime trends in Zebulon and in Wake County, and the growth of that particular area, I believe that it would cause an impact for the police department that would adversely affect our patrol, staffing, and also our follow-up investigative staffing.

And then to speak to the investigation standpoint, this issue of officers conducting an investigation there is still one that's being litigated. And I find that it's very, very hard to actually—once an internet café is established, it's very hard to police those establishments. It's very hard to go in and find if they are actually operating illegally. That is my opinion based upon my knowledge and training and education. So, questions, I guess?

Matheny: Okay. First of all, it would be questions from either board. Yes?

[INAUDIBLE]

Baxter: Shannon Baxter. Do we currently, Chief, have the police infrastructure, in your opinion, to deal with worst-case scenarios that might crop up with the establishment of a sweepstakes café right now?

Hayworth: I think it would be a hardship. I think we could—I think we can handle things that come down the pike, but I think it's—we already operate, oftentimes, at a minimum staffing, and it's just hard to keep a full staff. And I believe it would create a hardship.

Baxter: Thank you.

Hayworth: Thank you.

Matheny: Other questions from the board, either board? Okay. Any questions from any interested party that would like to cross-examine the chief?

Richardson: [INDISCERNIBLE]

Matheny: Yes, sir. Go ahead and stand up and come to the podium. And let's get you sworn in and—

Markland: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Richardson: I do.

Markland: State your name and address please.

Richardson: Ian Richardson, 325 Braxman Lane. I'm the attorney for the applicant.

Matheny: Okay.

Hayworth: It's been a long time since I've been cross-examined.

Richardson: Wouldn't you agree that the best evidence of whether the sweepstakes here in Zebulon is going to cause an increase in crime is to look at the sweepstakes that's already operating here in Zebulon?

Hayworth: No, I don't.

Richardson: Okay. Why not?

Hayworth: Because I believe it's—the area is a totally different area. In the area that the sweepstakes is currently operating in is not related to our—what we call “corridor crime,” and the crimes that come off of 64 in this particular area, it's not that high of a traffic area. And in fact, not even vehicular traffic is very high in the other location. I think it is definitely two different locations, and it's apples and oranges.

Richardson: Okay. And you passed out some information about Fuquay-Varina, I believe you said Durham, and maybe Burlington. Is that correct?

Hayworth: Right.

Richardson: And did you, in talking to those chiefs, did you confirm that the areas that they're reporting crimes are analogous to this area here in Zebulon where this is—
[OVERLAPPING]

Hayworth: I did not.

Richardson: You did not. Okay. And you chose not to include anything from Louisburg, correct?

Hayworth: I actually believed I had it in. I do have an email from Louisburg. That's why I mentioned it. I did want to make sure that the parties involved knew that Louisburg did state that they did not have problems with their locations. And particularly the applicant that they believe is the person applying here. I'm not sure if that's—it's the same person or not. But you I'm sure know.

Richardson: Okay. And I believe that's all I have.

Hayworth: I thank you, sir.

Matheny: Anyone else wishing to cross-examine the witness? Thank you, Chief.

Hayworth: Thank you, sir.

Matheny: Okay. Now is there anyone that has questions for the first witness, Julie?

Spriggs: I do have one other thing. I did talk to the assistant town manager on the phone from Louisburg. I do have an email that I followed up with him. And I'd like to give that. It is not from the police chief, but it is from the assistant town manager who is also the code enforcer. So I want to pass that out at this time.

Matheny: But these can't be cross-examined.

[INAUDIBLE]

Spriggs: And that email states that they have not had any issues with this five or six, seven sweepstakes that they have in town, that they've had no code violations. That they've been a good business for the town. So that was the only information I had from any other town correspondence. But I wanted to add that into the record since the chief, his email from Louisburg didn't get entered; I wanted to make sure that we entered in mine that said that they were a good business to have.

Hampson: Well, and again, let me—I would suggest that since, obviously, this person from whom the email came is not available for cross-examination, and not here, and this would otherwise be hearsay. However, I think what we can do is admit it, again, for the very limited purpose of corroborating the testimony as it related to the Louisburg inquiries.

Spriggs: Yeah.

Hampson: And so, again, this isn't considered pure evidence. Just like the other documents, you can't rely on them specifically—

Spriggs: Correct.

Hampson: —and solely, but they are to be deemed kind of either as corroborative of the chief's ultimate opinion, or corroborative of that testimony, but that's it.

Spriggs: Yes.

Matheny: Okay.

Spriggs: Yes. It's not a hard-in-fact statistic. And this is not anything else besides just a documentation of a phone conversation I had. With that, that does conclude my staff report. And I'm ready for questions—

Matheny: Okay.

Spriggs: —if anybody has any.

Matheny: Questions from either board for Julie? Yes, ma'am?

Baxter: Shannon Baxter. Going to the handout that you just gave us, this email thread and the subsequent letter, what does it mean, the third bullet point down, that says, "Allows special incentives such as free food on weekends"? Are you saying that the sweepstakes is providing free food as an incentive, or that they are not providing free food as an incentive?

Spriggs: The Louisburg Planning Department allows them to have food on the weekends to incentivize people to come to the business.

Baxter: So—

Spriggs: So they do allow that.

Baxter: So, do we—

Spriggs: We do not.

Baxter: —allow those kind of special incentives—[OVERLAPPING]

Spriggs: We do not.

Baxter: Okay. Thank you.

Matheny: Okay. Any other questions from the board, either board?

Strickland: Julie—

Matheny: [INDISCERNIBLE]. Wait a minute.

Strickland: [INDISCERNIBLE]

Matheny: Wait a minute. Dale, go ahead.

Beck: What effect does the parking with the thoroughfare plan there?

Spriggs: So the parking is going to be on the rear. And as part of the 96 study, what we're doing is the front parking here will be cut off and on Hendricks Drive, here, there will be a service road back here to this parking lot area here. So there will be a service road to the parking lot in the back and the parking will be—[OVERLAPPING]

Beck: Who's responsible for the service road?

Spriggs: Right now, the service road is part of the LAPP program, and so the town is taking that responsibility on. And it will—if they decide to do that project. If the town decides not to do that project, the parking in front will be allowed.

Matheny: Anything else Dale?

Strickland: Julie, internet café, where did that come from?

Spriggs: You mean the term itself?

Strickland: Yeah.

Spriggs: It's a term that's—basically, with the sweepstakes and internet café, the internet café is how we define the business itself. But it's where somebody can go to a business or establishment and get on a computer that has internet access and play video games.

Strickland: Well, why I asked you that was we got a maximum of 20 terminals. Is there a minimum?
Can I put one in my store, my convenience store—

Spriggs: We have—

Strickland: —and call it an internet café?

Spriggs: We have, in our uses table, we allow up to four internet-type machines before they—

Strickland: To be a café?

Spriggs: Yeah, before they are considered an internet café. So if you have less than four machines, it's a secondary use. And if you have 4 to 20 machines, it's a special use for the primary use of the building.

Strickland: And why did you—can you explain this? It's a General Court of Justice letter from Colon Willoughby. It's kind of vague to me. What are they getting to in this letter, or why did you send it out?

Spriggs: I sent it out because it is correspondence we had along with the internet sweepstakes, the internet cafés or sweepstakes. This has been an ongoing debate on whether or not they are considered legal. And since 2013 or so, there have been court cases. And Toby can speak if I'm incorrect here. But they have been going back and forth with the appeals on the cases. And going—changing the specifics of the software on the legality of the games.

And so, right now, for the state statutes, what it is, is that if you meet the State Statute 14-306.4 for the entertaining displays and the payout and the pre-reveal requisites for your software, then you can be considered a legal internet café or sweepstakes. And so what that letter is, is—the state has decided that it is an ALE and a law enforcement case, and that it is a misdemeanor or felony charge if you are found to be in violation of the General Statutes. And so it's not a code enforcement issue from the planning standpoint. It is a law enforcement issue.

And so that's why I included it. Because as of 2013, it became kind of embroiled in the courts and it's more of a law enforcement position to make sure that the business is operating legally than it is a code enforcement issue.

Strickland: I was just—why I was wondering, when we come to, you know, this decision, is it—do we make a decision whether it's legal or not legal? That's why I couldn't exactly get this letter.

Matheny: Yeah.

Strickland: Why it was sent and if—is this going to determine anything, whether it's—the gaming is legal or illegal? So—

Matheny: We're going to allow the attorney to answer that question.

Spriggs: Yeah.

Hampson: Yeah. And I'm happy to do that. I think, you know, number one, the state of play is that an internet café is a viable special use in the highway business. So from that standpoint, in this petition, these boards are not determining whether or not internet cafés specifically are legal or not, because they are an approved special use under our ordinance. What this board is doing is determining whether this particular application for this site meets the findings of fact for special-use permits set out in the ordinance.

I think really what then-District Attorney Willoughby's letter—it's more of putting folks on notice, that if you are going to operate an internet café, you need to aware that if you are operating that in an illegal manner that you are subject to potential enforcement by the requisite law enforcement authorities.

Strickland: Okay, thanks. I was just—it was in the packet and I was just wondering how does it play into our decision-making on—you know, I was just questioning the letter, actually.

Hampson: Yeah. And I'm not sure it has a particular, necessarily, direct relevance to these boards' deliberations, but I think it's always important to understand that there is—if in the event an operation were performing illegally, that they would then be subject to subsequent law enforcement action.

Matheny: Okay. Other questions for Julie?

Ray: Yes. I do. I'm a little bit confused about the term "school" as it's used in this ordinance. This ordinance specifically calls out the 1,000-foot rule. Also, against sexually oriented businesses. If you look at that ordinance and our code ordinances, the school issue is covered in much more detail, and does talk about private and public nurseries, daycares, all kinds of schools. Is the term "school" used in this one to cover all of that?

Hampson: Well, I think if—you heard Julie's testimony, as the planning staff, tasked with interpreting the ordinance, that it did not include that kind of—[OVERLAPPING]

Ray: Who's interpreting it?

Hampson: Your—that's the evidence from your planning staff, is that's the way it's interpreted.

Ray: Because if you refer to an existing ordinance that covers it in this kind of detail, and you use that term on another ordinance, it would seem to me that they should both cover the same thing.

Matheny: And that may be true in another forum, but in this forum, her testimony is that it does not apply.

Ray: It seems like it's an opinion-based thing.

Matheny: That's the—our staff's testimony. Okay. Other questions? Other questions from interested parties? Okay. All right. Thank you, folks. Now I'll ask for anyone wishing to speak in support of the petition.

Markland: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you
God?

Wagner: I do.

Markland: State your name and address, please.

Wagner: Joe Wagner, 2100 Shepard School Road, Zebulon 27597.

Richardson: And is it all right for me to ask him some questions?

Matheny: Certainly.

Richardson: All right. Mr. Wagner, why did you decide you wanted to open this internet café in
Zebulon?

Wagner: It's a good business opportunity. It's close to my house. And there's one only one other
one in town.

Richardson: Have you been into that other one in town?

Wagner: Yep. It's our habit to go and look at other places.

Richardson: Have you observed any crime there?

Wagner: No. No, it's actually a nice place.

Richardson: And what do you plan to do if crime becomes an issue at this location, if it's approved?

Wagner: I've been at the other location for a year and we've had no crime, no problems. We've
got law enforcement there on the weekends and we're open 24 hours a day, seven days a
week. So this one only allows us to stay open practically a short amount of time, so, I
mean, I don't see no problem. And also, across the street, you got Sheetz and it's all lit
up like a light bulb. So, I mean, I don't see no crime problem at all, I don't personally.

Richardson: And it's your intention to certainly comply with the law, correct?

Wagner: A thousand percent.

Richardson: And if this starts to present a headache for you because people are committing crimes or robbing you or something like that, you probably won't be in business very long, will you?

Wagner: If it causes me any headache, I'm going to shut it down and go back to my other store.

Richardson: And what about if the legislature were to provide some more clarity, to the councilman's point, about the legality of these things? You don't intend to ever operate if they're illegal, correct?

Wagner: If anybody has any problem with anything I'm doing at all, I don't want to do it. Period. So, you know, if we don't get along, we don't agree, then I'll do whatever it takes to make everybody happy. And if I can't, then we'll just go another route.

Richardson: And you attest to everything that you've submitted in your application, that it's true, correct?

Wagner: Yes, sir.

Richardson: To the best of your knowledge?

Wagner: Yes, sir.

Richardson: I have no further questions.

Matheny: And questions from either board?

Strickland: I've got a question.

Matheny: Okay, Curtis.

Strickland: Mr. Wagner?

Wagner: Yes, sir.

Strickland: As far as security, I did a lot of background on the sweepstake today. You don't go to machines with money, right?

Wagner: I couldn't hear you.

Strickland: Do you—if I want to buy time on a terminal, do I go to the cashier and buy a card? Is that how that works?

Wagner: There's several different ways. Some of them, you buy time. Some of them, you buy a card. It depends on how you set it up.

Strickland: What I'm getting at, is it cash money or is that machines?

Wagner: This is a hundred percent cash business, just like the convenience store across the street. There's nothing to be hidden there.

Strickland: Is your cashier in a cage?

Wagner: Is my cash in the cage?

Strickland: Cashier in a cage?

Wagner: Yeah. She's in a cage, but she does walk out on the floor.

Strickland: I don't think I'm really getting my point across here.

Wagner: Okay.

Strickland: Are you sitting at a terminal? If I'm playing the internet—if I'm playing a game—

Wagner: Yes, sir.

Strickland: —am I sitting with a cash winning at my side or do I have to go to the cashier? What I'm getting to is crime situation with people coming in, armed robbery—

Wagner: Right.

Strickland: —if you're setting up to cash in at your machine, it's so easy to—I want to know, is there cash really in the play—in that area where the terminals are?

Wagner: And I want to be honest, and you can do it two different ways. Some people have cash, where they put them directly in the machines, and some of them have them at the

window. So I personally have it both ways at my other sweepstakes. But you can go to the window and pay, or you can pay at some of the machines. So I have it both ways. It depends on, you know, what the customer likes in that spot. But once again, it's a cash business, you know?

Strickland: I got you on that, yeah.

Wagner: So—yeah, but I'll do it—if there's a way that's preferred by this town, I'll do it the way it's preferred.

Strickland: Okay. Thank you. That's all I got.

Matheny: Thank you, Curtis. Other questions from either board?

Blount: Gene Blount

Wagner: Yes, sir?

Blount: Can two people play on one machine at the same time, playing a game against each other?

Wagner: Once again, if you got what they call the "fish tables," eight people can play. If you've got what you call the "standups and terminals," as they were calling it, it's one person per machine.

Blount: Are you going to be having fish tables?

Wagner: Probably not, because they only allow 20. So if I put on fish table in, it's like 50% of the room is eight. So—

Blount: I understand.

Wagner: —yeah.

Blount: Now, if you—two gentlemen playing beside each other, playing the same game—

Wagner: Yes, sir.

Blount: —and they wish to wager a bet?

Wagner: That's not allowed.

Blount: How do you prevent it?

Wagner: You—well, it's kind of like this, if the football game is on—comes on—the game comes on tomorrow night, you call your buddy up and bet, I mean, I can't be right there to hear every one of them, but I can prevent it if I hear it. So—but most people that come to play, they're very quiet. They don't want to be bothered. They want to sit there in peace and just play. So, I mean, I've never had that issue come up.

Blount: If the roads change—

Wagner: Yes, sir.

Blount: —how are you going to improve the back of the building and the parking?

Wagner: If the business is profitable, and everybody's happy, I'm going to do whatever it takes to make all my surrounding neighbors happy and I'm going to fix the road. If I have to pave it, I'll pave it.

Blount: Thank you.

Wagner: You're welcome.

Matheny: Other questions from either board?

Baxter: Shannon Baxter. So am I understanding correctly that this is similar to something like Dave & Buster's, or how is this different?

Wagner: Dave & Buster's. Is that like—is that the other guy's café?

Baxter: No.

Wagner: Okay. I don't know what Dave & Buster's is.

Baxter: Okay. So is this—you put money into a machine—

Wagner: Right.

Baxter: —and then you're playing some kind of video game.

Wagner: That's exactly right.

Baxter: And you're not receiving any kind of incentives or cash benefits or any kind of rewards from those games that you play?

Wagner: You can win a prize. Yes, you can.

Baxter: Okay. And what are those prizes?

Wagner: They're rated on the machine. According to what people play, however many spins, however many—it's—you know, there's a lot of different internet games. And I mean, I'm—I guess the only way I know to say it is I'm going to be identical to the rest of them you know.

Baxter: Okay.

Wagner: Yeah.

Baxter: So smoking is allowed in your buildings?

Wagner: I do allow smoking as long as whoever I'm renting from does, and we put what they call a "smoke eater" in it.

Baxter: And what does that do to make sure the patrons are being safe?

Wagner: It sucks the smoke up into the air and it pushes out clean air. It filters the smoke.

Baxter: Okay. In your application, you stated that one of the benefits is that people can get together and socialize at your establishment. How do people normally socialize at an establishment of this type when it's computer-based?

Wagner: I'm going to try to say this the best way I know. They—a lot of people like to go to different ones as—just like—I'll tell you how. Saturday night, people get together and

they go bowling, a lot of people get together and they go to sweepstakes together and do the same thing.

Baxter: Okay. How have the market values of the surrounding buildings been affected since opening your Louisburg location?

Wagner: I'm open beside the Domino's Pizza and I wish I had a letter. I've tripled his business.

Baxter: You tripled his business?

Wagner: I tripled his business.

Baxter: And how are you sure that it was your sweepstakes—[OVERLAPPING]

Wagner: It's in the same building. I rent it from him and he told me. He's my—he owns the Domino's and I'm the same building, and he told me personally that I tripled his business. But we also know it, too, because all of all our people that come play go right next door and buy pizza there.

Baxter: Okay.

Wagner: But is it guaranteed to do that? No, if that's what you're asking me. I'm not guaranteeing to do that.

Baxter: So you stated in number three on page three of eight in your application that you were trying to help yourself by bringing people to the area to shop and eat and have fun. So are you going to be selling food or what else are you going to be—

Wagner: I'm not going to be doing nothing but running the sweepstakes and hopefully people will come and like it. And then they'll—if there's a shopping area nearby, they'll shop because they've come to my sweepstakes in Louisburg. They've heard about it. Or from Raleigh and other places they'll come and, you know, hopefully, they'll go across the street and spend money at the Sheetz. But I'm only going just to be running the business.

And I've been here—my daughter has been in school here since first grade. So, I mean, I'm just trying to improve it.

Baxter: Okay. So how many people from out of the area do you bring to—into the Louisburg location? Because that was one of the things that you stated as a benefit that you're going to bring to Zebulon. So how many people from the Louisburg area—outside of the Louisburg area come to that particular location? Do you have those number with you, sir?

Wagner: No, I do not.

Baxter: Okay.

Wagner: I employed six, so I know they come. I can—[OVERLAPPING]

Baxter: Are they spending money at your location, or they're just coming in because—to work—
[OVERLAPPING]

Wagner: They're actually working there. When they do get off, they play. But people go from here to Raleigh to—I mean, whenever they go to Raleigh and tell people about our place, they bring a big group back with them. I can't—there's no way I could ever tell you the numbers. I can just tell you people come from all over because they talk about how good our place is.

Baxter: All right. So how are—do you plan on ensuring that your business is operating legally, as stated in the Statute 14-306.4?

Wagner: I'm going to go by the laws and put in exactly what they ask me to put in—what I'm told to put in in that situation.

Baxter: All right. Thank you very much.

Wagner: You're welcome.

Matheny: Okay. Other questions from either board?

Moore: I have a question.

Matheny: Okay. Annie.

Moore: You said they would win a prize. Is—what kind of prize? Is that money or what?

Wagner: That's normally a cash prize.

Moore: Okay. How long can they play?

Wagner: It depends on how much money they spend or how much time. It's all based on how much money they spend, if they get lucky and win as soon as they put the money in. But we also give away cash prizes also, free. So they can win a cash prize or they can—what—we do drawings, too, so we give away free prizes, also.

Moore: So that's on the weekend, too?

Wagner: Most of the time, we do that on the weekend, for the weekend crowd, because a lot of people work Monday through Friday, so they can't get there. So we try to do it when everybody can get there instead of during the week.

Moore: Okay.

Matheny: Gene.

Blount: If you have 20 terminals—and I'm a little confused about a couple of things, okay?
Would that be a maximum number of 20 persons playing at any time?

Wagner: That would be—if you've got 20 terminals, only 20 people can play, not unless they partner up and say, "I'll give you \$2. I'll give you \$2."

Blount: [INDISCERNIBLE]

Wagner: I don't want to get myself in a trap here.

Blount: Does that also mean you could have 10, 15, 20 more people watching the others play?

Wagner: Well, we don't allow that because people don't like people standing over people's shoulders. I'm not going to say one or two people might come in because, say, an elderly lady likes to go play and she has to have her driver. You know? You know, I don't mind. Those people are just hanging around, we don't like that because if they're learning how, they tell us, that's fine; we've got no problem with it. People don't like people standing over their shoulders, so we kind of keep it to a minimum.

Blount: Every person that comes in the door, do you check their ID to make sure that they're—
[OVERLAPPING]

Wagner: Yes, sir. They have to. They have—we scan it, make a copy of it, and we keep it on record.

Blount: You make a copy of every person that comes in?

Wagner: Yes, sir. Sure do.

Blount: And you have security in the business only on the weekends?

Wagner: I only do it when we do our big giveaways because that's when we're so crowded. Because, I mean, like I said, you know—like with 20 terminals here, we might not have five people during the week until we get built up. You know, if it—if I see I need security seven days a week, I'll put them there.

Blount: In Louisburg, how many terminals do you have there?

Wagner: About 65 or 70.

Blount: Sixty-five or 70 terminals?

Wagner: Sixty-five or 70 spots people can actually sit down and play. Yes.

Blount: And so when you have a crowd, how many people would have with that many terminals?

Wagner: I'd say our normal big crowd would be 30 to 40 people.

Blount: Okay.

Wagner: All at one time.

Blount: And how much is the maximum occupancy that you have in there with the fire department?

Wagner: I think it's 50 or 60, but I—right now I don't have it in front of me. And I opened up a year ago, so I don't remember. I don't want to say nothing and y'all hold me to it and be telling a lie.

Blount: How many do you have in the building you're looking at now? That you're asking for the special-use permit.

Wagner: Well, I'm assuming that it's more than 20. And I don't know. But I can tell you, we've only got 20 terminals, so I think we're going to be fine.

Blount: Okay, thanks.

Wagner: If we need more room, we can get more room. Yeah. I think we're safe there.

Matheny: Laura.

Johnson: Yeah. That's my question, what happens—you say you don't like people hanging around, so what happens when, say, 40 people come to play and you only have 20 terminals?

Wagner: Well, that's where we're going to have to make a, you know? It's normally like this—if that happens, that's going to be the best thing in the world. I'm going to be so happy; I don't know what to do because I'm going to give them a ticket, I'm going to give them money to come back, or whatever. But it's normally like this: people learn the places and they say, "This guy's only got this many games." Like if I have eight of one game and eight of another game, they say, "He's only got eight of them games." And they see

there's eight people there and they leave and go somewhere else because that's the game they like to play. There's not many people going to come in and not play the same game. They're coming to play, so if they're full, they'll leave.

Matheny: Other questions from either board?

Strickland: Do you have room for more than 20 in that building?

Wagner: Excuse me?

Strickland: Do you have room for more than 20 machines?

Wagner: I could extend it out, I think. I think the landlord said if we needed it, but I don't think that it's going to matter because—

F: [INDISCERNIBLE]

Wagner: —I'm only using enough for what we need.

Strickland: Okay.

Wagner: Because they're not going to allow it.

Matheny: Yeah, 20.

Wagner: I'm not going to put no more than 20 in the building no matter what.

Strickland: I know. I know that. But is—I was just wondering if you were going to apply for more machines or if you could even do it?

Wagner: I don't think I can.

Strickland: [INDISCERNIBLE]

Wagner: I would love to, but I don't think you can.

Matheny: [INDISCERNIBLE]

Wagner: I think y'all's—

Matheny: You can't.

Hampson: The ordinance caps it at a maximum of 20.

Wagner: [INDISCERNIBLE]

Strickland: So we would have to do what to change?

Matheny: We'd have to modify our ordinance.

Strickland: That's what—[OVERLAPPING]

Wagner: I got you. Yeah. I don't blame you.

Strickland: Okay.

Matheny: Okay. Other questions from either board? Okay. Any questions, cross-examinations from anyone in the audience, or with an invested interest in it? Okay. Hearing none then, thank you, sir. Appreciate it. Is there anyone else that wishes to testify? Okay. Well, hearing none, we will refer the matter to the Planning Board.

I need, as a final statement, to remind the board that only evidentiary testimony can be considered. Personal opinion, hearsay, and statements not relevant to this specific issue cannot be considered in making the decision. Also, personal investigation by a board member cannot be considered. The decision must be made based solely upon substantiated evidence presented in the public hearing. And again, ex parte communication is not allowed. So zip it [LAUGHTER] until this board makes a recommendation.

And I know one time in the past we had a Planning Board member, none of you, that thought that once y'all had made your recommendation you were free to talk about it, and that's just simply not the case. So with that being said, is there anything else that you have?

Hampson: No. I think unless there's any other evidence, I think that you can close the public hearing.

Matheny: Right. Well, I see no other—further evidence or anybody indicating that there is. So I'll close the public hearing. We'll refer the matter to the Planning Board for their recommendation. And I'll ask for a motion to adjourn this board.

Clark: I'll make a motion to adjourn.

Moore: Second.

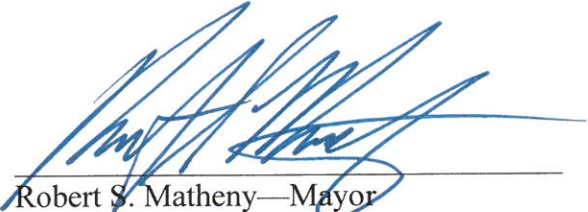
Matheny: So adjourned.

[INAUDIBLE]

[END RECORDING]

7/11/18

Date



Robert S. Matheny—Mayor



Lisa M. Markland, CMC—Town Clerk