

**MEDINA TOWNSHIP ZONING COMMISSIONERS
REGULAR MEETING
AUGUST 17, 2010**

REGULAR MEETING

Chairperson Strogin called the regular meeting of the Medina Township Board of Zoning Commissioners to order at 7:35 p.m. Board members Overmyer, Erickson, Szunyog, Apana and Strogin were in attendance. Alternate Board members Boris Williams and Matt Payne were also in attendance.

The Zoning Commission minutes from their July 20, 2010 meeting were approved as written. The Trustees have scheduled site plan reviews to be heard on September 2, 2010 at 7:00 p.m. A letter would be sent to the applicants when the Trustees would hear their site plan/signage requests.

CONTINUANCE

Internet Sweepstakes & Cafe-2767 Medina Rd. (Plaza 71)

Chair Strogin stated this agenda item was tabled last month because the applicant was not able to be in attendance at the Zoning Commission's July meeting and asked to be tabled.

Mr. Henry Anderson Jr. represented West Bank Social Club dba Internet Sweepstakes & Café. Mr. Anderson stated the nature of the business is that one buys a "card" for \$20.00. This card could then be used to buy time on the internet, send faxes or play games on the internet. If the individual wins a sweepstake at the end of the night they can cash their card in and receive their funds.

Chair Strogin stated she stopped at a similar business in Brunswick called "Lucky Penny" to see how such an operation runs because there has been some issues raised as to if this type of business is considered gambling. ZI Ridgely interjected she has been waiting for an answer from the Pros. Office regarding these types of businesses but it has been taken out of the civil division and moved to the criminal division of the Pros. Office.

Mr. Anderson stated the \$20.00 on the card represents "sweepstakes points". Chair Strogin interjected that she was told at the Brunswick operation that the \$20.00 card not only represented sweepstakes points but long distance phone minutes. Mr. Anderson stated that was correct. Chair Strogin stated the games she saw at the "Lucky Penny" were very similar to the games at the casinos in Las Vegas and questioned how they could not be considered gambling. Chair Strogin continued that the owner of the "Lucky Penny" told her that she could play her \$20 worth of points on her card but even if she lost the \$20 worth of long distance minutes would remain. Chair Strogin then asked Mr. Anderson if his proposed operation would run the same way? Mr. Anderson stated yes it would be duplicated in operation. Chair Strogin again asked Mr. Anderson in the case of the scenario that she lost the points on the card would she at least retain the long

distance minutes? Mr. Anderson stated no. Chair Strogin stated that was what she was told by the individual running the “Lucky Penny”. Mr. Anderson stated one could go out on free sweepstake sites, which meant the individual could play for free and still win. Mr. Anderson stated there were two different types of sweepstakes. One is where you buy the \$20.00 card and swipe the card. There are 6 different sites one can go on. The individual could then play because of the \$20.00 card that was purchased and if the sweepstake came in that matched one of the individual’s numbers; they would win that “prize” or sweepstakes. Chair Strogin asked again if the points were lost off the card were the long distance phone minutes still available? Mr. Anderson stated as far as he was aware the answer was no. He added he could get a confirmation on that but as far as he was concerned the answer was no. Chair Strogin stated that was not what she was told by the owner of “Lucky Penny” in Brunswick. She added that retaining the \$20.00 in long distance calls was the reason why she could understand how this was not considered gambling because one would purchase a card potentially lose all their points but still retain the long distance minutes on the card.

Mrs. Szunyog stated she was unfamiliar with the technicalities of what was involved in gambling or a business such as what was being proposed. She then asked if the games were games of skill? Mr. Anderson stated no it was random. Mrs. Szunyog asked what kind of “prize” could be won? Mr. Anderson responded it would depend if one would play a \$.00.1 game or a \$.25 game etc. Chair Strogin stated that was her concern. There is supposed to be “no money” involved. The card was to carry “points” but even if an individual lost all their points the long distance call time was still to be there as was explained to her. Mr. Anderson stated he was told no. He added that maybe the business in Brunswick went through another distributor for their machines.

Chair Strogin asked if individuals were allowed access to the internet? Mr. Anderson stated yes. Chair Strogin asked if there was any filter to block access to certain sites? Mr. Anderson stated there was a block so no pornographic sites could be accessed. Chair Strogin then asked about the real poker sites? Mr. Anderson stated those were all blocked sites as well.

Mr. Overmyer asked if he could make the assumption Mr. Anderson’s operation was similar to the one located in Brunswick? Mr. Anderson stated yes and he has been to several locations that offer this form of entertainment from Garfield Hts. to Sandusky and they were all run the same way. Chair Strogin stated the gentleman running the “Lucky Penny” in Brunswick stated he had been to court in Toledo and it has been upheld that he was not gambling. Chair Strogin stated the issue she had was that Mr. Anderson stated the \$20.00 of long distance calling was lost once all the points were lost on the card and that was not what the gentleman in Brunswick told her. She understood she would lose the long distance calling minutes once she started to make calls. Mr. Anderson stated he could find out in the morning as the company that services the machines he was

purchasing were located in California. He added he was always under the impression that if the points on the card were lost then the calling minutes were lost as well.

Mr. Overmyer asked if the points on the card converted to cash if one wanted to cash the card in? Mr. Anderson stated not the first \$20.00 but anything after that could be redeemed in cash dependent on the games that were played.

Chair Strogin asked ZI Ridgely when she went to "Lucky Penny" if the owner told her that if an individual purchased a \$20 card and lost all the points they still retained the \$20.00 worth of calling minutes? ZI Ridgely responded she never asked the owner that. Chair Strogin stated she was told that even if she lost the points she would retain the \$20.00 worth of long distance calling minutes. Those would not be lost until she started to make calls, use the internet or fax. She commented that if the long distance calling minutes were retained even if the points were lost she could understand why it would not be considered gambling.

Mr. Overmyer stated the issue is that the Commission was relying on assumptions. However if these businesses were located in other areas he felt the backer of these enterprises were probably reasonably certain that these operations were permissible. Chair Strogin stated there were individuals who would make as much money as they could until they were legally shut down.

ZI Ridgely asked if Mr. Anderson would charge tax to his customers? Mr. Anderson responded that the only place he knew that did was in Vermillion. ZI Ridgely stated the gentleman from Brunswick stated he pays sales tax. Mr. Anderson stated Vermillion was the only location he knew of that charged tax to its customers. All the other locations pay the sales tax themselves.

Mrs. Szunyog asked about the Toledo case. She suggested finding that ruling and see if this proposed operation was identical to the operation in Toledo that had a ruling from the court. If so then a precedent would be set. She then asked if there was some state agency that controlled gambling and couldn't they give the Township the answer?

Chair Strogin stated she still had the issue that if \$20 card was purchased and all the points were lost as well as the \$20 worth of long distance calling how could it not be considered gambling? Chair Strogin then read the court ruling on the Toledo case. "Conclusion of law-in order to find the defendant guilty of a violation of the State of Ohio gambling laws, the Court must find there is a chance, prize or consideration. The Court finds that the consideration for the purchase of the phone card only was never in jeopardy. The element of risk is absent in this case in as much as the purchaser of the phone card risks nothing. If the purchaser does not win a prize, he still retains the full purchase price of the phone card. There is a chance of a prize or award in playing the

game. The element of risk is missing. The element of consideration at best is compromised...The Court finds the defendant not guilty of gambling..."

Mr. Anderson stated he would need to contact the vendor he was purchasing his machines from to make sure the machines are set up that way. He added there is a financial investment in this operation of \$60,000-\$70,000 and he would not jeopardize himself in running an illegal operation.

Chair Strogin asked ZI Ridgely what the Prosecutor's Office verbally her about such operations? ZI Ridgely stated that the criminal division of the Pros. office told her that if the operation was found illegal then they would pursue shutting it down. ZI Ridgely asked Mr. Anderson the name of his vendor? Mr. Anderson stated he did not remember. ZI Ridgely stated "Lucky Penny" vendor was out of Canada and was called Gametronics. Mr. Anderson stated all the vendors were basically the same.

Chair Strogin stated these are not games of skill but random. Every time you press a button there is a series of registered sweepstake numbers. For example, if you play for X amount of time and accumulate 500 points you could swipe your card. If one of those 500 is an instant sweepstakes you win money.

Chair Strogin asked the two Trustees in attendance if the Commission should table the approval of this business until it is known that Mr. Anderson's vendor is in compliance with the concept that the \$20.00 of long distance calling minutes remaining even if all points are lost on the card or should the Commission approve the business and have Mr. Anderson provide that information to the Trustees? The Trustees could then overturn the decision if the operation did not run in that manner.

Trustee Gardner asked if the Commission could just make a motion to approve base on the "card" retaining the \$20.00 of long distance calling minutes? Mr. Anderson interjected that the value would be lost if the individual used time on the internet or faxed. The Commission stated they understood. Mrs. Szunyog asked where ZI Ridgely got the Toledo court ruling? ZI Ridgely stated the owner of "Lucky Penny" Mr. John Cash.

Mr. Apana stated he was not comfortable voting on this without having all the facts. Mrs. Szunyog agreed. Mr. Overmyer stated thought he could frame a motion based on what the Trustees suggested. He added that if this operation is illegal under the State code then it would not be up to the Township to take it to the Pros. Office.

Mr. Erickson stated since there were additional locations in the State of Ohio and they were illegal, the Pros. Office would move forward to shut the operation down. Also he added that he felt the Commission should be focusing the issue of if the proposed use was permitted in the shopping plaza it was proposed to go in. Mr. Anderson stated he would

find out from his vendor and put it in writing that the card will not lose its value for long distance calling if the points are lost unless it is used to access the internet or fax.

Trustee Jarrett asked Mr. Anderson if he had signed a lease agreement as of yet? Mr. Anderson stated no. Trustee Jarrett asked if any equipment had been purchased? Mr. Anderson stated he had some equipment from another venture that could be used for this operation such as chairs, couches and lights. Trustee Jarrett asked what a 30-day delay would mean to this proposed operation? Mr. Anderson stated someone else could come in and start a similar business before he could get approval. The Commission told Mr. Anderson that would not occur due to the submittal process that had to be followed to be heard by the Commission. Mr. Anderson stated he was already delayed 30 days because he could not get all the documentation from New York until today. Chair Strogin stated for the record that was not the result of the actions of the Commission.

The Commission decided to take a short recess to allow Mr. Anderson the opportunity to contact his vendor in California.

The Commission then moved on to the next agenda item.

Valley Mitsubishi-2825 Medina Rd.

Mr. Ross Chapman and Ms. Michelle Stebner represented Valley Mitsubishi. Mr. James Briola from Northcoast Sign and lighting was also present to represent the signage request. Mr. Briola stated he was before the Commission this evening to request a 46.87 sq. ft. wall sign. Mr. Briola continued they would move the existing storefront sign on the building and replace it with a new sign of equal size. The sign would consist of the name and the logo. This business has 52 ft. of linear frontage.

Mr. Erickson made a motion to approve a wall sign for Valley Mitsubishi located at 2825 Medina Rd. not to exceed 48.6-sq. ft. as presented. It was seconded by Mr. Apana.
ROLL CALL-Erickson-yes, Apana-yes, Szunyog-yes, Overmyer-yes, Strogin-yes.

Alter Reality Games-2795 Medina Rd. (Plaza 71)

Mr. Bradley Hoisington represented Alter Reality Games. Mr. Hoisington stated the nature of the business is selling collectable cards, miniature games and board games. He added they have a location in Lakewood as well. Mr. Hoisington stated their business started out selling sports card but the quickly changed with the selling of Yugio and Pokémon cards and a game called Magic the Gathering that is a very intellectual game of skill and strategy.

Mrs. Szunyog made a motion to approve the change of use for Alter Reality Games to be located at 27695 Medina Rd. (Plaza 71) as submitted. It was seconded by Mr. Overmyer.
ROLL CALL- Szunyog-yes, Overmyer-yes, Erickson-yes, Apana-yes, Strogin-yes.

Mr. Hoisington stated he also before the Commission to request 48-sq. ft. wall sign. The business has of 48 ft. of linear frontage.

Mr. Overmyer made a motion to approve a wall sign for Alter Reality Games not to exceed 48-sq. ft. as presented. It was seconded by Mrs. Szunyog.

ROLL CALL-Overmyer-yes, Szunyog-yes, Erickson-yes, Apana-yes, Strogin-yes.

Mr. Hoisington stated he would also like to request a 1.48 sq. ft. replacement panel to be placed on the existing identification sign.

Mr. Erickson made a motion to approve a 1.48-sq. ft. panel for Alter Reality Games to be placed on the existing identification sign as presented. It was seconded by Mr. Apana.

ROLL CALL-Overmyer-yes, Apana-yes, Erickson-yes, Szunyog-yes, Strogin-yes.

Medina Farmer Market-4184 Pearl Rd.

There was no one present this evening representing Medina Farmer Market.

Mrs. Szunyog made a motion to table the approval of a ground sign for Medina Farmer Market located at 4184 Pearl Rd. due to non-respresentation until the Commission's next monthly meeting on September 21, 2010. It was seconded by Overmyer.

ROLL CALL-Szunyog-yes, Erickson-yes, Apana-yes, Overmyer-yes, Strogin-yes.

Con't-Internet Sweepstakes and Cafe

Mr. Anderson stated he was able to contact his vendor in California and Chair Strogin was correct. Once an individual purchases a card even if they lose their points they do not use the value for the long distance calling minutes unless they make calls, access the internet or fax. Mr. Anderson stated the vendor told him they put extra points on the card in order for an individual to play games and to have a chance to win a sweepstake. Mr. Anderson continued an individual could play free games or they could purchase points on the card to access the internet to play the 50-60 games available but that would mean paying for internet time.

Mr. Overmyer drafted potential language for a motion from the court case, but the rest of the Commission stated as drafted it proved to be confusing and cumbersome. Mr. Overmyer stated he drafted the motion before Mr. Anderson came back with the information and added that if the Commission wanted to approve the use as presented the discussion of the board and applicant were on the record.

Chair Strogin stated the Commission just needed to approve a use that would be permitted in the shopping plaza. She added her concern was that she did not willingly want to approve a business that may have the potential to be illegal. Chair Strogin agreed that the discussion of the Commission and the applicant is part of the public regard and felt the Commission could precede with approval as presented.

Trustee Jarrett asked the age restriction to play? Mr. Anderson stated 18 yrs. old and over. Trustee Jarrett asked how that was validated? Mr. Anderson by drivers license which would be photocopied. He added the lawyers were working on this issue right now. Mr. Anderson stated the other way this could be handled would be to put the individual's picture on the card that is purchased.

Mr. Apana made a motion to approve the site plan for Internet Sweepstakes and Café to be located at 2767 Medina Rd. (Plaza 71) provided the usage of the phone card by the applicant is accurate and follows the ruling of the Toledo, Ohio court case as presented. It was seconded by Mr. Overmyer.

ROLL CALL- Apana-yes, Overmyer-yes, Erickson-yes, Szunyog-yes, Strogin-yes.
Mr. Anderson asked if he could begin doing interior modifications/renovations prior to going before the Trustees? Chair Strogin stated that Mr. Anderson could do interior renovations but could not open for business. She added that there was always the potential the Trustees could overturn the recommendation of the Commission so Mr. Anderson could proceed but it would be at his own risk.

MISC.

Having no further business before the Commission the meeting was officially adjourned at 8:45 p.m.

Respectfully Submitted,

Kim Ferencz Zoning Secretary



A handwritten signature in black ink, appearing to read "Kim Ferencz". Below the signature, the text "Kim Ferencz Zoning Secretary" is printed.

Alliss Strogin, Chairperson