

City of Norton
PLANNING COMMISSION
Tuesday, April 10, 2007

The Planning Commission of the City of Norton, Ohio, convened for a public meeting in Council Chambers of the Safety Administration Building. Chairperson Mark Spisak called the meeting to order at 6:07 p.m.

I. ATTENDANCE:

PRESENT: Mark Spisak, Todd Houser, Marguerite Abbott, Janet Jacobs, John Conklin

ALSO PRESENT: Jeff Pritchard, Director of Planning and Community Development
Russ Arters, Superintendent of Building and Zoning
Pat Ryan, Building and Zoning Inspector

IV. PUBLIC APPLICATIONS:

None.

II. OLD BUSINESS:

A. 2007 Planning and Zoning Commissioner Training Workshop:

Mr. Pritchard announced that Mr. Todd Houser presented a session on Storm Water Management at the 2007 Planning and Zoning Commission Training Workshop on Friday, March 30, 2007. He said that it was a very good and informative session and he thanked Mr. Houser.

III. NEW BUSINESS:

A.) Discussion regarding Game of Skill Machines:

Chairperson Spisak said that Mr. Russ Arters and Ms. Pat Ryan of the Building Department would be presenting information regarding game of skill machine facilities to the Commission that night. He then turned the floor over to them.

Mr. Arters said that within the last year game of skill machine facilities are becoming more prevalent in this area. He said that recently an application was submitted to the Building Department for remodeling a building on Cleveland Massillon Road for this type of facility. He said there were approximately fifty machines proposed for it. Mr. Arters believed that it would be a good idea for Norton to set regulations on the facilities like other municipalities. He mentioned that Norton Council recently approved a six-month moratorium on game of skill machine facilities. He explained, however, that this application was submitted before that. Mrs. Marguerite Abbott asked for the owner's name. Mr. Arters said his name is Mr. Fi Chen. He went to school in Massillon, and is a prominent businessman in Marietta. He owns game of skill facilities in Tallmadge and is trying to locate one in New Philadelphia. He added that there is another game of skill machine facility that wants to locate on Greenwich Road, near Medina Line Road and they can not be denied, so regulations are needed. He said that there were already two facilities in Norton; one on Barber Road and one on Wadsworth Road. Mr. Arters said that the owner of the game of skill facility on Barber Road came from Georgia and he hired someone here to manage it. He added that someone from Texas recently contacted him and asked for the Ohio regulations.

Mr. Arters noted that a copy of Tallmadge's ordinance was sent to the Planning Commission and a copy of Barberton's proposed ordinance was presented to them that night.

Mrs. Abbott wondered what type of games would be in the facilities. Mr. Arters said they were slot machines with push buttons to choose matches. The proposed facility for Cleveland Massillon Road will have game of skill machines called the Nudge Master. If matches are made then a prize is won. Mrs. Jacobs wondered what type of prize would be given. She was concerned that it would be considered gambling if money was a prize. Mr. Arters said that there would be various prizes, one being money. Mr. Jeff Pritchard explained that the Attorney General's office is questioning whether or not these games are considered gambling because they are designed to use skill instead of chance.

Mr. Pritchard said that since there has been an explosion of these types of facilities throughout Ohio, he also believed that Norton needed to establish some regulations. He commented that essentially every community is trying to get some type of regulations established to help guide these facilities in terms of location, use, appearance, machines, fees, etc. He was concerned with charging fees, though, because these issues have been going to court on a regular basis. Mr. Pritchard felt that Norton needed a good legal reason for charging a fee in case a legal challenge arises. He said it would be difficult to go before a judge and give the reason that 'everyone else is charging a fee, so we do'. He explained that different variations of reasoning a fee could be considered. Some type of inspection should also be considered for these facilities. Such as inspecting each machine as to whether or not it is a legal operating machine, or inspecting their requirements during their review process. But whatever regulations are established, they have to be good sound legal regulations so that Norton can feel comfortable going into a court procedure if a legal challenge arises.

Mr. Pritchard said that the Commission might need to review the information presented that night or additional information pertaining to this issue. He suggested that this should be an introductory meeting, unless they felt comfortable proceeding that night.

Mrs. Abbott wondered how money was involved since this was a skilled game. Is time purchased on a machine? Mr. Conklin asked if they buy tokens and the tokens feed the machines. Mr. Arters said he did not know the answer but he introduced Mr. Art Dowling in the audience, and said that he might be able to answer those questions.

Mr. Art Dowling, 9884 Wooster Pike, Seville, Ohio 44273, approached the Commission and stated that the Ohio Revised Code addresses game of skill machines and types of prizes in Section 2915.01. (See attached.) He said that description of prize is anything of value. He also explained that the game of skill machine is similar to a slot machine, except that the player has to participate. In other words you insert money, you push a button and then you have to make moves to win or lose.

Mrs. Abbott asked for the exact location of the proposed facility. Mr. Arters said it would be in the plaza across the street from the Norton High School. Mrs. Abbott commented that it would be near the 41:11 Café. Mr. Arters said that the age limit was 18 years and over and will be security monitored. Mr. Spisak wondered if the age limit was a state regulation. Mr. Arters said he would assume it was. He said the one on Barber Road has been in business about seven months and the police have been there only once, due to a break in. Mr. Arters commented that Mr. Greg Carris, Norton Chief of Police, said that there have been no problems at that facility. He added that this facility serves free snacks and non-alcoholic drinks to those who are playing the games. Mr. Arters stated that the owner of the proposed skill game on Cleveland Massillon Road owns other businesses in Tallmadge. He requested information from the owner regarding the proposed game of skill machine facilities and he asked the Secretary to make copies of that documentation for the Commission. (Copies were made and distributed immediately following adjournment.)

Mr. Conklin said that the Tallmadge ordinance and the Barberton ordinance seemed similar. He wondered if there were any differences. Ms. Ryan said she just received the Barberton proposed ordinance at the beginning of the meeting, but she did notice a couple of differences. Such as under 'Inspection' the Tallmadge ordinance calls for the Police Chief to inspect at least four times a year, and Barberton states that the Director of Safety or his designee should inspect it. She said she would have to review and compare them and make a list of differences. She added that she was also researching a catch-all-phrase such as 'any means of activation', so it would cover possible future changes.

Mr. Conklin said that if a fee was charged for the game of skill facilities, he felt it might cause legal problems.

Mr. Pritchard said that from his perspective there would need to be a good legal reason in order to be able to defend them in a legal challenge. He said this is currently a troubled industry and he thought there will soon be some court rulings some time this year that might clarify much of the issues and questions at this time. But in the interim, whether or not a fee is charged, some type of regulations need to be established. Mr. Pritchard suggested contacting Mr. Mike Lyons, Law Director, for his opinion regarding an appropriate fee, if one is desired. It appears at this point in time that Tallmadge's fee, whether or not it's right, has been an accepted. Each community can address it on their own merit.

Mr. Pritchard explained that the reason for the moratorium is for proper siting and proper regulation of these types of facilities.

Mrs. Jacobs wondered if the regulations were to ensure that these facilities would not turn into a gambling business.

Mr. Pritchard said that could be the justification for raids on some of the facilities in Stark County. He believed that there was more concern pertaining to the regulatory aspect instead of the legal aspect, but it is also important.

Mr. Conklin mentioned that Section 1292.02(a) describes adult arcades. Mr. Pritchard said that the Norton code was geared toward an arcade-type facility more than a game-type facility. Ms. Ryan said that some of the definitions would have to be rewritten.

Mr. Spisak was concerned with the avenue of appeal within the Tallmadge ordinance. If a violation occurs, the license is pulled and then a citizens review board is set up. He did not think that would be the right way to handle it. Mr. Spisak felt that there should be an administrative right-of-appeal before entering the court system. Mr. Pritchard agreed.

Ms. Ryan said that Barberton's proposed ordinance states that a licensing appeal board of three residents would be appointed by the Mayor with a term of four years that would hear the appeal within ten days of the violation.

The Commission felt that there was a need for regulations because it is something that might get through the cracks of our present ordinances. Mr. Pritchard said that in his opinion, a lot of information has been provided to the PC and they should take the time to become familiar with the matter. He said that Ms. Ryan did the research on this issue so if they had any questions during their review they could contact her. There was further discussion in regards to how the Planning Commission should proceed. The Planning Commission requested that the three staff members present that night, return to the next meeting.

Mr. Arters showed the Planning Commission the floor plans of the proposed game of skill facility on Cleveland Massillon Road. He said the interior of the building would be remodeled and should be a nice place. Mrs. Abbott asked about the hours of operation. Mr. Arters said it would be open from 10:00 a.m. to 1:00 a.m. He said that there was no set hours in the Norton Codified Ordinances, so they could be open 24 hours, 7 days a week. Mrs. Jacobs noted that the proposed regulations for Barberton have a time limit from 7:00 a.m. to 1:00 a.m.

Mr. Spisak asked if these businesses would draw outsiders. Mr. Arters said they probably would because the bingo halls do.

Mrs. Jacobs wondered if the City would be responsible for policing these facilities to ensure everything is handled legally. Mr. Pritchard said that currently it depends on city regulations. Mrs. Jacobs asked if the financial books and/or the machines would be inspected. Mr. Arters said that there is no authority to inspect those types of things. He said that it would be similar to the Fire Department inspecting businesses. Once the Building Department turns a business over to the Fire Department they are in charge of writing violations for anything on the inside such as lights, cords, etc. They are the maintainers of the final product.

Mrs. Abbott asked about checking identification. Mr. Arters said that would be the responsibility of the manager of the business. He thought that if a report is made that minors are being allowed inside then the Police Department could make an inspection pertaining to that matter. Mrs. Jacobs stated that the Police Department should have the right to go in anytime. Mr. Arters said they probably could. Mr. Dowling said that they come into the bingo hall anytime. He said though, that the Attorney General's office has regulations over the bingo hall, but not the game of skill businesses. There are enforced strictly through local law.

Mr. Dowling thought that there are approximately five or six southern Ohio cities that have set regulations. Mr. Pritchard said that many communities have referred to the Tallmadge ordinance when establishing their regulations.

Mr. Conklin wondered if Tallmadge had been challenged. Mr. Pritchard said not to his knowledge.

There was discussion of how to legally regulate the uses of these facilities. Mr. Pritchard said one way would be to determine a particular location that they are permitted, which would still be within the legal bounds. Restrictions can be attached to it, which would also be within the legal rights. Since this would be a zoning issue, a judge would not overrule a local jurisdictional viewpoint.

Ms. Ryan said that her home township dealt with sexually oriented businesses, which is a permitted use. She explained that their Prosecutor advised that after boundaries are set, as long as a reasonable amount of businesses are allowed, then legally they would be justified. If the designated space fills up then there is no more room. These permitted uses can not be prohibited, but they can be restricted and/or regulated.

Mr. Dowling commented on the different opinions of the past Attorney General's office and the current one in regards to game of skill machines. Basically the Attorney General will not get involved until a proposal that would clarify game of skill machines is put into place. But there are more important issues to be considered so it could be awhile before a proposal is compiled. Mr. Dowling suggested that the Commission members attend the next Barberton Council meeting because they will be discussing this matter.

There was discussion regarding tax issues that would be associated with these facilities.

Mrs. Abbott asked Mr. Dowling for his occupation. He said that he managed the Norton Fireman's Bingo Hall. He said that for 30 years he has been a fundraiser for charitable foundations.

Mr. Spisak wondered if bingo and games of skill machines attracted different patrons. Mr. Dowling said yes.

Mr. Pritchard said that his conversations with the Attorney General's office is that if a city gets into a legal situation they would have to be the primary entity in the court system. So municipalities are establishing regulations so there is some local jurisdiction with law and ordinances in place.

Mr. Conklin asked if the ninety-six municipalities that have been sued over this piece of ordinance were sued for a specific item such as the fee, or has it been just the overall ordinance in general. Mr. Dowling said it did not have to do with an ordinance, it has to do with the interpretation of the local regulations. So it is not the ordinance, it is the enforcement of it.

The Commission thanked Mr. Dowling for his information.

B.) Pending Applications:

Mr. Conklin wondered if there were any applications pending. Mr. Pritchard said that a site plan review for the second phase of the Norton Commons project was pending.

C.) Pride One Development:

Mr. Conklin asked about the Pride One Development. Mr. Pritchard said that they are exploring the possibilities through Council to negotiate connection fees. Brief discussion followed.

D.) Wastewater Treatment Facility Feasibility Study:

Mr. Spisak asked if the Wastewater Treatment Facility Feasibility Study was proceeding. Mr. Pritchard said that he was meeting with URS, Engineering Firm, Thursday, April 12, 2007, due to questions regarding finite points and then they should be starting fairly soon.

E.) Comprehensive Plan:

Mr. Pritchard mentioned that if the Commission members saw some issues that they would like to address within the Comprehensive Plan, they could discuss it at one of their meetings.

V. CONSIDERATION OF MINUTES:

A.) Planning Commission Minutes of the Tuesday, January 30, 2007 and the Tuesday, February 13, 2007, meetings:

1.) **Tuesday, January 30, 2007:**

The Commission reviewed the minutes from their Tuesday, January 30, 2007, meeting. It was noted that the second sentence on page two (2), paragraph two (2), should state, 'Mr. Pritchard said yes' instead of 'no'. With no further corrections, **Chairperson Spisak moved to approve the minutes of Tuesday, January 30, 2007, as corrected; seconded by Mrs. Jacobs. ROLL CALL: Mr. Spisak-Yea, Mrs. Jacobs-Yea, Mrs. Abbott-Abstain, Mr. Conklin-Yea, Mr. Houser-Abstain. The motion passed 3-0-2, approving the minutes with one (1) revision. They were signed and processed accordingly.**

2.) **Tuesday, February 13, 2007:**

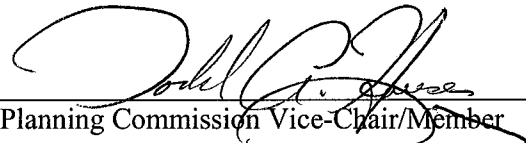
The Commission reviewed the minutes from their Tuesday, February 13, 2007, meeting. Chairperson Spisak called for a motion. **Mrs. Abbott moved to approve the minutes of Tuesday, February 13, 2007, as submitted; seconded by Mr. Houser. ROLL CALL: Mrs. Abbott-Yea, Mr. Houser-Yea, Mrs. Jacobs Abstain, Mr. Conklin-Yea, Mr. Spisak-Yea. The motion passed 4-0-1, approving the minutes as submitted. They were signed and processed accordingly.**

VI. ADJOURNMENT:

Chairperson Spisak announced that their next meeting was scheduled for Tuesday, April 24, 2007, at 6:00 p.m. With no further business coming before the Board, Chairperson Spisak adjourned the meeting at 7:19 p.m.



Planning Commission Chair/Vice-Chair



Planning Commission Vice-Chair/Member

4/24/07
Date

