

PLANNING AND ZONING COMMISSION

June 2, 2009
7:30 p.m.
Council Chambers

STUDY SESSION

7:00 p.m.
Planning and Development Conference Room

For its agenda, the Study Session will provide an overview of all matters to be taken up in today's 7:30 p.m. meeting of the Planning and Zoning Commission.

SPECIAL ANNOUNCEMENTS

PUBLIC COMMENTS

CONSENT

1. **Roll Call.**

Commissioners Present: Best, Boyce, Butler, Hartley, Loyd, Westcott, Woolery,
Vice-Chairperson Romine and Chairperson Harris.
Commissioners Absent: Davis.
Staff Present: Jim Lawson Director of Planning and Development
Timothy Davis City Attorney
Tara Norback City Forester
Sonja Paden Office Assistant II

2. **Approve Agenda.**

Recommended Action: Approval of the agenda for the June 2, 2009 Planning and Zoning Commission meeting.

MOTION:

Motion by Vice-Chairperson Romine and seconded by Commissioner Boyce, and unanimously carried to approve the format of the June 2, 2009 agenda.

3. **Approve Minutes.**

A. May 5, 2009.

Recommended Action: Approve the minutes of the May 5, 2009 Planning and Zoning Commission meeting.

MOTION:

Motion by Commissioner Hartley and seconded by Commissioner Loyd, and unanimously carried to approve the minutes of the May 5, 2009 meeting.

OLD BUSINESS

None.

PUBLIC HEARINGS

- 4. Request For Recommendation Of Approval Of A Special Use Permit For Branson Bingo For Properties Located At 3310 W Highway 76 Branson, Missouri. Project No. 09-1.7 (09-00100007).**

Applicant: Branson Bingo, LLC.

Tara Norback, City Forester, presented the staff report as filed with the Planning Division. She pointed out the subject property on the vicinity map displayed on the overhead screen, adding that the subject properties would be hatched in black in the future to help better identify them. Jim Lawson, Director of Planning and Development, said this had been his idea for people who might be color blind. An aerial map displayed on the overhead screen indicated the location of the subject property with a red circle around it. Ms. Norback showed a video of the subject property and the surrounding area.

Mr. Lawson stated the applicant had requested this item be tabled tonight and discussed at a later date. Because bingo was a new issue for the city, he asked that they hear from the applicant to discuss it. Chairperson Harris said it would help them be better prepared should it come back before the commission. He invited the applicant or applicant's representative to come forward to speak.

Don Ingram stepped to the podium and stated he represented the applicant. He said prior to this venture, what he knew about bingo was that it needed to be conducted by a non-profit organization or a 501(c)(3) qualified entity. His client had businesses in other tourist areas and had previously talked with Mr. Lawson about wanting to open a bingo hall. He said the bingo commission was operated under the Missouri Gaming Commission, which also regulated the boats and the gambling casinos. Mr. Ingram said he talked about this with a friend from Jefferson City and at one time the bingo games were overseen by the Office of Economic Development. His friend had commented that some of them had been "mafia run," so they had been moved to the gaming commission, which had a totally different attitude about the statute and the conduct of it. After talking with a woman at the gaming commission who had provided him with some information, he called his client about his options. He told his client a for-profit business could be a bingo hall provider, but could not operate the game, so it might be somewhat hard to do. Another limitation was they could operate only one (1) day per week. He told his client they would have to get a series of non-profits that would be willing to rent the hall, conduct these games, and make arrangements for compensation. Furthermore, there were limitations in the state statute concerning compensation arrangements. Mr. Ingram

had said it sounded like it would be difficult economically to make it work, but his client would like to pursue it. He said the lady at the gaming commission had sent him a printout of all the licensed bingo operators in the state of Missouri and most of them were single-facility operators, such as the Lions Club or the Knights of Columbus. One that caught his attention was a bingo hall provider called the Compass Club Home Association, Inc. in Springfield and they had a list of multiple not-for-profits. Apparently there were situations when a hall provider made arrangements with various not-for-profits to operate these events. One of the things that would be difficult for this client was to find enough not-for-profits to operate in this facility at least five or six (5 or 6) days a week to make it economically viable. With the vicinity map on the overhead screen, he pointed out other locations owned by his client and because his client owned several properties in the immediate area, it was possible he wanted to open his bingo parlor at one of those locations instead, which was another reason he had requested a postponement. Mr. Ingrum did not think this request was out of character for or detrimental to the community. If his client was able to comply with state law in terms of operating this bingo game then he did not think it would necessarily be fair for this board not to approve it because it was gambling. There were not-for-profits all over the state that ran these games. Just because a for-profit entity provided the facility for them run the events and even if it was not a good deal for the not-for-profits, he saw no reason why this board should tell them not to do it.

Chairperson Harris asked Mr. Ingrum if he knew when his client might be thinking about switching properties. Mr. Ingrum said that decision should be made within the next week. He said if his client had not made a decision by the June 5th deadline for the July P&Z meeting, he would submit a separate application for the location across the road then would withdraw one prior to the July 7th meeting.

Chairperson Harris recognized Commissioner Loyd.

Commissioner Loyd asked Mr. Ingrum how the state gaming commission made sure the hall providers were legitimate and not actually running the games themselves and paying the entity a little sliver off it. Mr. Ingrum said he did not know. He said he looked at the statutes and one of the limitations was a hall could not be rented out for a percentage of the gross. It had to be done so there was not too much risk for the not-for-profit. The not-for-profit had to benefit or else it would not work. In terms of monitoring the hall providers, he said he did not think they would find any people running the not-for-profits, nor his client, interested in violating the state gaming laws because they carry with them felony convictions. Chairperson Harris said it seemed logical with the use of gambling boats and the like that the commission would have to step up its game in order to monitor these types of activities because it was not just bingo anymore in the state of Missouri.

Chairperson Harris recognized Commissioner Wescott.

Commissioner Wescott said for Mr. Ingrum's client to operate profitably he would have to network with not-for-profits and fill his time slots with them. Mr. Ingrum said that was right. His client would have to get separate not-for-profits for each day of the week. He said maybe

he could have fifteen (15) not-for-profits as long as he could fill twenty-five or thirty (25 or 30) days out of the month. Referring to the Compass Club example, he read off several not-for-profits and the respective day of the week each was booked at the bingo hall. Although he could not tell from this list if a game was run every one of those days, each not-for-profit had an assigned day. For the not-for-profit to advertise the event as a community effort to fundraise, Commissioner Wescott asked whether it had to use a hall such as this one or if it could be held at its own building. Mr. Ingrum said it could be held at its own building, but one of the drawbacks was there was a limited number of approved equipment providers in Missouri. All the bingo cards, bingo balls, bingo ball cage, et cetera, had to be acquired through an approved supplier. He did not know how much these items cost, so it could be cost-prohibitive to purchase the necessary equipment from an approved provider. Commissioner Hartley asked whether the hall provider or the not-for-profit would pay for it. Mr. Ingrum said, as he understood it, if the hall provider supplied the equipment, that was okay, but the cost would obviously be built into the rent to make it economically feasible for them to do it. At the same time, it would also have to be economically feasible for the not-for-profit to operate the game.

Chairperson Harris recognized Commissioner Boyce.

Commissioner Boyce said as an example, when they did the roadwork for their golf tournament, they did it as a not-for-profit and donated it to charities. He asked if the same principle applied here, such as if the Rotary Club wanted to rent the hall for a bingo night and donate the proceeds to whatever charities they selected. First of all, Mr. Ingrum said the Rotary Club would have to be approved by the gaming commission to operate a bingo game, whether it was for one time during the year or once a week, before his client could allow them to operate in his establishment. Continuing with the Rotary Club as the example, Commissioner Butler said once it had been approved, it did not matter whether it gave its proceeds to charity or kept them in-house because they were one of those qualifying organizations. Mr. Ingrum said that was correct, as long as it was within the purview of what they were supposed to do as a 501(c)(3) exempt organization.

Chairperson Harris recognized Mr. Lawson.

Mr. Lawson said it would be a good time to discuss the processing of an application such as this, since it was something new. In this case, a special use was requested, but it could also have been an amendment to a PD (Planned Development). He said there was a lot of latitude in terms of what they could require and how they could do it. He asked at what point the commission would want the application brought forward to them. He asked whether or not the board would want staff to have a gaming license as a provider in place before they brought the application to them. He said it seemed like it would be good to know that if it had or had not been approved by the state during the commission's decision-making process. He said if a request is approved, they would want it to operate several nights a week to be a good business. Chairperson Harris said in other words what kind of documentation should the applicant have on hand when he came back to the commission asking for either a special use permit or an amendment to the PD. He told Mr. Ingrum they had done that before with special use permit

requests where people had to bring in licenses or a location had to have been inspected or the FAA had to supply a letter prior to them getting their approval. He said it might be something Mr. Ingrum would want to talk about with the city council representative. Mr. Ingrum said he would be glad to talk about it, but since Chairperson Harris had brought up the FAA issue and his client had been the one who had also purchased that property, part of the reason he purchased it was contingent upon the fellow to whom he had leased it having FAA approval. He said it had been approved by the commission in advance because the FAA approval came after the board had approved the helicopter ride itself. He said they would like the same consideration in this case. If they came back to the commission, they would appreciate having the approval granted on this request with one of the conditions being they were licensed by the Missouri Gaming Commission. Chairperson Harris said they had done that before, too. Mr. Ingrum said the only thing doing it the other way would do would be slow down the process because, assuming they get approval from the gaming commission, it would be anywhere from thirty to sixty (30-60) days before the facility could be opened. Chairperson Harris said it could take quite a while. Mr. Lawson said as the local community they should have the last say, so he would like to be able to know the applicants had their ducks in a row from the State of Missouri, but that it would not obligate the city to approve the request. He said he thought local jurisdiction ought to have the last call and not the next-to-the-last call. He said the city should feel comfortable approving it and said he had some reservations about that.

Chairperson Harris recognized Commissioner Butler.

Commissioner Butler asked Mr. Davis if he had anything to add at this point. Mr. Davis said state law expressly permitted bingo under some conditions, assuming the conditions were met. He said the City of Branson would not have the power to prohibit bingo altogether in the city, although the city would have the power to regulate bingo, such as the location, the times of day and maybe the advertising of it. The city would not be able to issue a carte blanche prohibition of bingo in the city. Commissioner Butler said, if they decided to review these items before the gaming commission saw them, it would not matter if the commission put the provision in subject to the Missouri Gaming Commission approval or not because it was there. The board could not usurp the higher authority. He said he was impressed with Mr. Lawson and how he was causing them to think of different factors because he would have assumed they would just go ahead and do it and let them know it, but that did not mean it was right. His concern was mainly whether or not it was a good fit for the location. As a special use permit, this was something they were reminded of constantly, but even as a PD amendment, it would need to fit with the context. The Lions Club operated a bingo game one (1) night a week out on East Highway 76; that was a different location from the southwest corner of West Highway 76 and Highway 165. He said they would need to concentrate on that when the time came. He said it had been discussed when it 'came back' to us, but Mr. Lawson had talked about others coming, so what would they need to do the first time. He asked if it needed to be a 2-step process. Chairperson Harris said they wanted to do it right the first time and there were lots of things to look at on both sides. Since this was a PD, it might be an amendment to the PD they use as opposed to a special use permit. He confirmed with Mr. Ingrum that he would still prefer a postponement on the item so the commission could get do some further research

and get some ideas. He told Mr. Ingrum the board appreciated everything he had told them about the project. Chairperson Harris said he had gone on to the website for the gaming commission and looked at some of the laws that were there. It referred to the requirements of the people who worked there and he cited a few of them. There were many regulations that seemed to go with it, so it looked like this was new territory for everyone and it would be a good idea for them to do everything correctly the first time.

Chairperson Harris recognized Commissioner Wescott.

Commissioner Wescott said if they approved a special permit first then the requirements were met, would the applicant have to show staff proof that the requirements were met prior to any licenses being issued. He asked if they had to have that proof before they were allowed to open their doors for business. Mr. Lawson said yes. He said he would like to know that the client did have three or five or six (3 or 5 or 6) non-profits lined up. He did not want to approve something and then it just hang out there because the applicant was trying to get a license and they did not know for sure whether it would happen or not. Before they approved or denied a request, they needed to feel comfortable knowing exactly what it was and exactly how it would operate because that gave them a better decision-making tool with which to make their decision. Mr. Lawson said he would like to be able to bring the commission the applicant's license with all the names of the clubs lined up. Since it was a form of gambling, he felt they needed to have all the questions answered with nothing hanging out there.

Chairperson Harris recognized Commissioner Loyd.

Commissioner Loyd asked what expense was involved to apply for a license through the state gaming commission. He thought it might not be very expensive, but process might be a long one. Mr. Ingrum said the application process itself would probably take thirty to forty-five (30-45) days. To address Mr. Lawson's issue of having all the non-profits lined up, Mr. Ingrum said he had talked to the lady at the gaming commission about this and asked her how she would suggest they did this because there was a list of 501(c)(3)s that would be utilizing the facility. She told him, if they did not have any, they would just put 'to be determined' in there then make application for one, which he thought was a hundred and fifty bucks (\$150). You could say you wanted the authority to operate one (1) day a week or you could have one 501(c)(3), which would be a hundred and fifty (\$150). She said it was no problem to go back later if you added more and pay the extra money for them. He told Commissioner Loyd he thought the cap was seven hundred and fifty dollars (\$750) a hall provider would have to pay in any calendar year. He did not inquire what it would cost the 501(c)(3) to be approved, but his guess was the cost would be very minimal. He thought policy would be if a 501(c)(3) wanted to operate a bingo game then they would want to try and facilitate its being able to do so. Even the state did not require them to have any people or entity lined up to be able to operate. Whether or not this worked economically was a risk for his client to take. Whether he had a bingo game in one of his units out there or another pizza company, it was a business decision for his client to make. If there was something inherently bad about bingo being run by not-for-profits then he guessed the commission could disapprove it, but he did not think that was the case. He did not think they should have to come to the commission for two or

three or five (2 or 3 or 5) or anything else. It might be they have only two or three (2 or 3) not-for-profits interested in it within the first six (6) months. If it worked out well for those not-for-profits then they would probably get more that would want to utilize one of the days of the week. He felt it was unreasonable for the city to ask the applicant to be full up before it would grant a special use permit.

Chairperson Harris asked if the commissioners had any other questions or comments of staff at this time; there was no response. He asked if anyone else there wished to speak in regard to this particular item. He said they were planning on postponing it at the request of the applicant, but they had started the discussion and would be open to hearing anyone's comments.

Dave Good stepped to the podium and introduced himself saying his corporation owned the Uptown Café. Referring to the map on the overhead screen, he said he joined this property on the south. He said he would be interested in knowing what else might be going on in there, such as whether or not they would seek a liquor license or be looking to operate a restaurant. He would be interested in how many seats they would set and where they would be parked because there was not a lot of parking at that facility. He said he had a lot of parking at his facility, but he obviously did not want to have to police it. Those were the kind of questions he would have about it. Chairperson Harris said they were very legitimate questions and said the commission dealt with those issues a lot when other businesses were going in somewhere. He said there were rules and regulations that related to parking.

Chairperson Harris asked if there was anyone else there who wished to make a comment; there was no response. He said he would entertain a motion for postponement at the request of the applicant and of staff.

MOTION:

Motion by Commissioner Butler and seconded by Commissioner Best to postpone Resolution 09-1.7.

Chairperson Harris asked if there was any discussion on the postponement item; there was no response.

AYES: Commissioners Best, Boyce, Butler, Hartley, Loyd, Westcott, Woolery, Vice-Chairperson Romine and Chairperson Harris.

NOES: None.

ABSTAIN: None.

ABSENT: Commissioner Davis.

Motion to postpone Resolution 09-1.7 to a later date carried with a 9-0 vote.

Chairperson Harris said the item was postponed to a further date.

OTHER BUSINESS

Chairperson Harris asked Mr. Lawson if there was anything else he had for the commission. Mr. Lawson said yes. He introduced Garrett Anderson, the new Economic Development Director, who was in attendance at tonight's meeting. He said they were glad to have him on board. Chairperson Harris welcomed Mr. Anderson and asked him to please let the commission know if there was anything they could do to help him.

ADVISORY RECOMMENDATIONS

None.

ADJOURNMENT

Motion by Chairperson Harris and unanimously carried to adjourn the meeting at 8:08 p.m.



Clark Harris, Chairperson

7-7-09

Date



Sonja Paden, Office Assistant II

7.07.09

Date