

Planning Commission Minutes – September 6, 2023

PRESENT: Chairwoman Nancy Moore and Member(s): Diane Bernardo and David Volpe

ABSENT: Member(s) Ed Andrulonis and Joe Becker

STAFF: Code Enforcement/Zoning Officer, Zac Lawhead; Interim City Manager/City Engineer/Public Works Director, Chris Nasuti; City Solicitor, Toni Cherry; and City Secretary, Bobbie Shaffer

The meeting was called to order at 4:15 p.m. by Planning Commission Chairwoman, Nancy Moore.

Approval of Minutes – July 5, 2023

The motion was made by Volpe and seconded by Bernardo that the Planning Commission approve the minutes of the July 5, 2023, as presented.

VOTE

AYES: Commission Members: Bernardo, Volpe, and Chairwoman Moore

ABSTAIN: None

NAYS: None

MOTIONED PASSED: 3-0

Visitors Comments: None

Old Business: None

New Business:

Skill Games

Code Enforcement/Zoning Officer Lawhead stated he did a breakdown of the Skills machines; currently, and I just had a new one register last week, the old Firehouse Pizza on Long and Main. There are 55 individual Skill machines within the City; ten different locations; there are three locations that have not updated, one is a new one that just popped up I haven't gotten over there yet; two of them are outstanding, they have not renewed. So, that would be a total of 13, I don't know how many machines they all have.

Member Bernardo clarified that there are 55 individuals, does that mean that you go into a place and there may be two. Bernardo questioned locations, Lawhead confirmed there are ten locations in the City that have Skills machines. Lawhead said, so those 55 machines are spread out over ten locations.

Member Volpe asked how many machines you can have per location. Lawhead stated that we have no restrictions, the state has an unwritten rule if you have more than five they are going to come and figure out if you are doing something wrong. Volpe said he remembers Lawhead stating that previously.

Someone asked how many have more than five. Lawhead said two but one is lying to him because he doesn't know when they put them in. So, I haven't busted them yet but I'm going to get them. So, that would be three that I'm sure of.

Chairwoman Moore asked how many over five?

Lawhead stated three.

Member Bernardo stated to Lawhead, that last time we talked about the legislature; she hasn't been able to find any motion on the Skill machine controversy. Has anything come across your desk, or are they still debating? Lawhead stated they are still out there debating. I did a quick search yesterday and could not find anything new from the last time.

Bernardo stated that they seem to be perfectly OK with the Mom and Pop operations; but what I think they are missing the boat on, is you have five here in ten different locations and growing. Anything more Zac? The last time you mentioned to us about fees, is that on the Skills machines or the gambling machines? Lawhead confirmed Skills machines. Bernardo clarified that we are at \$100. Lawhead confirmed.

Bernardo said I believe you said the municipality you spoke with went as high as \$850. Lawhead confirmed. He went on to say that that was the information that Johnstown sent to him.

Chairwoman Moore asked what the fee was. Lawhead stated that Johnstown settled on \$350 per machine. Moore clarified \$350. Lawhead agreed. Moore asked Lawhead what he thinks about that. Lawhead said he is fine with it; it doesn't bother him one bit. Moore said what I meant was, do you think we can get it? Lawhead said he doesn't know if we can get it or not. I don't know how much money these places are making. I would think that they are making money. It may be something different for some of the Clubs in town. I don't know, I think they do pretty good. I think they follow the Small Games of Chance rules with the Skills machines in the Clubs, and they donate a lot of that back to the community. So, I don't want to punish the Clubs that are help out around here, it would be these individual businesses that are trying to get rich quick.

Solicitor Cherry asked if we should exempt non-profits.

Lawhead said you would lose a lot by doing that. But maybe a different tier schedule for a non-profit. I don't know if that is justifiable or not.

Bernardo asked if that was what Solicitor Cherry meant not exempt but different tiers.

Cherry said no her question was, do you want to exempt the non-profits because of the fact that they do other things with their money. But I don't think they use Games of Skill, I think they use the regular, don't they? When we were trying to find a way to make some money

for the Country Club, way back when, the mayor was telling them this is what we do at the Clubs and the determination was made that we don't have a clientele that would sit there all day and do that. At the hotel, we have two Games of Skill machines; I don't think they are used very much to be quite honest. These businesses, people are going there to gamble. Bernardo said, and they don't give back to the community. Cherry clarified they give nothing to the community.

Volpe asked if the Clubs included the Eagles; Lawhead said the Eagles aren't in the city, but we have the Pulaski, VFW, Legion.... Cherry said what about the Big O do they do it. Lawhead confirmed that they do. Lawhead went on the I.P.S. Club

Volpe asked if those are part of the 55; Lawhead confirmed.

Bernardo asked if he felt the fee would hurt the non-profits who do give their money away. That within this ordinance there could be devised a tier for profits and non-profits. A tier schedule, that would be perfectly legal wouldn't it be Toni?

Cherry said, what we would do to insure it is, is to say that this is what we are going to charge non-profits because they donate their profits to other community non-profits. Something like that. Do I think that these guys could sue and say that we differentiate between these two divisions; as long as you provide a reason in the ordinance as to why you differentiate, I think you are good.

Bernardo asked if Zac got the new Johnstown ordinance. Lawhead confirmed. Bernardo asked if they differentiate. Lawhead stated that they did not. Bernardo asked if it was a good ordinance. Lawhead stated it seemed to be, he didn't go over it with a fine-tooth comb. They did differentiate, what they differentiated was Games of Skill machines and Skill cranes, when you go to Hoss' there are those Skill cranes there, they are a different price. Like a video or old Pac Man game they have different prices for different types of games. It is a big difference in price but it's not a big list. Bernardo asked if this is Johnstown's ordinance. Lawhead confirmed. Bernardo said sounds like something adaptable or adoptable.

Cherry said there is obviously a lot of money in these businesses, and I think they need to be regulated because they are in these dumpy buildings and they should be fixing their buildings; but we can't make them fix their building. At least they keep the downtown from being empty.

Lawhead said he thinks that this is something that we work on; he asked if we sent out the Johnstown ordinance. Cherry said it was sent to her, she has it. Even having a fee schedule going forward, look over the fee schedule. Maybe we can adjust the fee schedule in the existing ordinance. I think our fees are in our ordinance. I don't think it was done by resolution.

Cherry said when she looked at this, we do all fees by resolution; I have to tell you honestly, I think that is a mistake. At least a base fee in the ordinance, that can be raised by Council by resolution. Because at least you have something in there and if in fact we don't get around to it... you know what I'm saying? I just think that you have it, they can look at it and they know it is legit. They have the jukebox fee annually is \$100, the Pool Table annual fee is \$75, Video Skill Mechanical Amusement device, non-paying would be \$100, I assume that is when you reach in a grab a teddy bear. Then Skill devices are established at \$350.

Moore asked if Lawhead felt the Ordinance from Johnstown was really good. Lawhead confirmed. He feels Planning should review it again just too... Bernardo asked Moore if she had a copy, she wanted to read over it.

Lawhead said he thinks it is something they just keep chewing on and keep moving forward. Maybe next month, talk about it a little bit more, I think the fees are good.

Cherry said it's \$350 a year, not \$350 a week; you are hardly cutting into their enormous profits. Lawhead said he has seen what has come out of some of those machines and it is pretty astronomical.

Cherry said maybe we don't need to differentiate, if we aren't going to do that then there is less chance that it could be challenged. They are doing it in Johnstown and it is no big deal.

Moore said I basically said we weren't going to vote on anything, we weren't going to decide anything, but can we decide that ordinance that it will suffice for us.

Cherry said you have the power, someone has the power to make a motion to recommend that the city adopt this ordinance. An ordinance that is.... Moore said I didn't think we were going to get one that was in that good of shape.

Cherry said congratulations to Johnstown.

The motion was made by Volpe and seconded by Bernardo that the Planning Commission recommend that Council adopt an ordinance similar to or identical to the Johnstown ordinance on Skill Games license fee. Bernardo had a question on the motion, she wanted to make sure when they are passing on this recommendation, going back to the fees; are we staying with the fees as recommended here in Johnstown? Moore stated she thinks we are and the discussion was whether to separate them and probably not because they could be challenged. Cherry said they can always come in and say we donate our fees; we donate them all, we don't have any money. Cherry said it is still an enterprise for them.

VOTE

AYES: Commission Members: Bernardo, Volpe, and Chairwoman Moore

ABSTAIN: None

NAYS: None

MOTIONED PASSED: 3-0

Rental Properties

Moore stated that we are nowhere near, we can't find the one we had before no one seems to have it. So, we don't have anything really going. Basically, we want something that will pass.

Lawhead asked what year, 2000 when you tried the first one. Bernardo said it was later than that because she was on the Council. Lawhead asked 2010? Bernardo said she was on Council, let her think. Lawhead felt 2010 and then 2017 we tried it again. Cherry said, she has tons of files, tons of things that she will start going through because I don't throw anything away. Bernardo thought Lawhead was correct with 2017, Volpe felt that sounded about right. Bernardo said she was definitely on Council at that point. Lawhead said there was an attempt before that too.

Cherry said she remembers the day they all came in. Council wouldn't back the ordinance.

Shaffer said that's all in the minutes. Cherry said you have it in the minutes; Shaffer confirmed. She felt it was 2015; Lawhead said it could have been.

Moore said we need to know how many people are in any dwelling. When you read the minutes from the last meeting we had, you made the remark that Brady Twp does it. That they do it apparently with their per capita tax. We lost that. Bernardo said yes you are right we used to have that number because of the per capita, now we have no way of knowing.

Cherry said Brady Township did not make the inquiry on the per capita. Joe and I own property out on Oklahoma Salem Road and also the camp. The tax collector wrote to me and said, can you tell me how many adults are in the rental property on Oklahoma Salem Rd. I said I'm sorry, I'm a lousy landlord I have no idea. I said it is a woman and her life partner and I think that is it.

The original Rental Ordinance from 2015 was found in the City Files.

It was presented for First Reading October 22, 2015; dismissed February 4, 2016. It is Council Bill No. 1908. Then we have another in 2000 and that was Council Bill No. 1710 providing for duty to register. Council Bill No. 1908, there it is. Gary Gilbert Mayor and President of City Council. Registration Statement, Local Agent for Registration Procedure, Fee, it's all here.

Bernardo asked if we can have copies of it for the next meeting. The secretary actually has the document on her computer; Bernardo would like a hard copy.

Cherry said there it is. There is nothing wrong with this ordinance, except we have people who didn'tBernardo said she would like to make a copy of it before we leave. Cherry likes hardcopies to, she likes to highlight and make her notes on the side. Moore can't read

on the computer. Lawhead requested that Shaffer email it to him. Volpe said Shaffer could email it to him and he would just print it off.

Bernardo asked to add a detail, she stated that most of you were at a Council Meeting where Jen Jackson, I think it was a Work Session don't quote me, she had brought up about my involvement with the radar and the rental property and that she would like to be a part of that. Then she emailed me and I emailed her back and we have had some dialog and continued dialog in person over the fact that what I wanted her to look at was the registration form and not just a registration form that sits in the codes office this registration form has to be a tool for the health and safety of people that EMS can use. I have the email here so I can just elude to some of the things we talked about. I referred to things like basement apartments where there is only one door and there are no windows. One apartment a friend lives on the second floor, there is a basement apartment with tiny little windows that no human being could squeeze through and they are painted shut. Mold and mildew build up. The tenant moved out and the landlord blamed it on the tenant. When you have a basement apartment that does not have any windows mold and mildew is hazardous. The landlord went in painted it, cleaned it, and rented it out because it is low income. I talked to Jen about that. I also talked about the fact that I had interviewed a couple of EMS workers back when we were doing this one. One of the problems is that they find that a person can go into a second-floor apartment, and they are whole human beings over the years infirmities set in and now they may be in a wheelchair. In today's day and age a person in a wheelchair can have Home Health Care, groceries delivered, have people help them and they never get out. I know that Dana Smith made this comment, he said and to add to this people who are usually go in thin because they are not doing anything get fatter too. They have had enough experiences with emergencies where they try to get a non-ambulatory person down from a second floor apartment. It is very very difficult. So, I said to Jen, if we can't do things, like how many people do you have per floor; at least can we get registered that there is someone there who has an infirmity. It may take more time to get them out of the apartment. I'm not saying that you would be preferential over someone on the third floor. It is not just awareness for the safety of the individual in the wheelchair or bed ridden but for the safety of the volunteers too. I asked her to take a good look as she is a property owner and does want to be involved and will be on the next Council. I asked her to take a good look at it because it is going to be a living document. It has to have a purpose other than to just register your apartment. I will continue a dialog with her on that.

Moore said I think we are all going to read this and find we have a viable ordinance here and enforcement of the codes, which that can come. That can come at some point in time. If we can get the basic ordinance and start looking at all these other things we will be in good shape.

Bernardo said she just brought that up because these are all things all of us have seen and we know about basement apartments. In talking with the firefighters and talking with the EMS that is where the real dialog is. What needs to be on these forms that will help them to help people get out of buildings alive.

Moore said the Rental Ordinance can be on the next Agenda and addressing Zac, didn't you tell me you might have an application for next month. Lawhead said he is waiting to see if he can get everything back from Hawaii. Moore asked what it is on, anything exciting? Lawhead said no just a small lot subdivision and lot addition. Cutting off a small piece of one lot and giving it to the neighbor.

Bernardo asked to go back, in the Ordinance that was devised in 2015 do we need anything in there about student housing?

Moore said the dialog we had at the last meeting on student housing was very eye opening.

Cherry stated that there is nothing here under the definition of student housing. We have housing throughout that is being rented to students. We also have the same housing on the same street being rented to sexual predators and Megan's Law people. I don't know if you want to add that someone from Megan's Law registry cannot be within a certain degree from a school. Bernardo asked if that was a state law? I don't know, our little friend Tim Britton seems to get away with it. Lawhead said you are not to have more than five at one registered address. Cherry asked if he has more. Lawhead said he does not, he blocks it at four. If there are no more than four registered.....Cherry said but you think he has more. Lawhead said he doesn't know if he does or not. Moore stated that we have no mechanism to find out. Lawhead said just the state search and if they don't register their address then. Cherry said if they don't register their address that's a crime they are going to jail. You should be able to pick it up on the website, I would think. Don't expect Tim Britton to volunteer to give you that information.

Moore asked who Kutsel is that has the Gluszek property. Lawhead said Chuck. Moore said on the corner of Long and Grant. Lawhead said yes it's Chuck Kutsel. Bernardo asked if he was related to the Kutsel with the junk, the cars out on McCracken Run.

Bernardo said, going back to the ordinance I know you need to peruse it. Should we include Megan's Law. Lawhead said I would touch it, just because then they can preempt it. Cherry said the same way we got stuck on that gun thing. If there is a real issue there, Sandy yelled and screamed about how we wouldn't allow hunting; we have nothing to say. State law preempts us. But the fact that we had it in the ordinance created such a difficulty. You can't enforce it anyway. So, if it is preempted by state law don't touch it. Bernardo asked if state law is different from Megan's Law? Bernardo went on, is Megan's Law federal. Cherry and Lawhead said state. Bernardo asked, Megan's Law is not federal? Moore said that's a good question. It happens, with regard to the state statue, because a lot of these people are sentenced in state court. So, it may very well be a federal one as well. Either way we are preempted. So, whoever is highest in the chain can control and it isn't us.

Cherry said I think when we talked about student housing, we don't have enough properties that are just designated as student housing in a student area. We tried to get Penn State

to..the foundation here in DuBois wanted to buy that property; Penn State wanted nothing to do with it. Penn State main campus said absolutely not.

Bernardo said, so throwing this back; we don't feel there is a need for anything like that in the ordinance.

Well, you know we have an old ordinance that talked about families and defining families in a single family unit. I think at this stage of the game if someone wants to question us, we would not survive that. You have so many single people living now in apartments, you also have two males, two females, polyamorous situations, you've really got the whole gamut I don't know if you define family anymore. We need to take a look at that. Not for this, because this ordinance didn't talk about anything about who lives where and who.... that just invites a lawsuit. We have enough problems.

Moore stated she agrees with that. The definition of family is defined in so many ways.

Cherry said we don't want to require if you're living with your boyfriend both names are on the lease. Bernardo said she doesn't feel it's any of our business. Cherry agreed.

Cherry asked if someone was going to make a motion that we also recommend to the Council that they pass the old Council Bill No. 1908.

The motion was made by Volpe and seconded by Bernardo that the Planning Commission recommend passing Council Bill No. 1908. Cherry said it will need to be renumbered at this stage in the game.

VOTE

AYES: Commission Members: Bernardo, Volpe, and Chairwoman Moore

ABSTAIN: None

NAYS: None

MOTIONED PASSED: 3-0

Moore stated she wasn't expecting to get that much done today.

Volpe had a question, is it possible that we brought up the junkyard on McCracken Run Road, because that is what it is, it is really getting pretty bad. Cherry stated she saw it, it is disgraceful. Volpe agreed. He asked if we can do something, look up board minutes or if we have an ordinance look at that to maybe renew that. Cherry asked if we have an ordinance that says your junkyard has to be enclosed? Bernardo confirmed we do. Cherry said do you remember when Mayor Gilbert was looking around and looked in someone's window and that was on the front page. When Council was checking on all of that. Do you remember that? Lawhead said no, that was before my time. Cherry asked Bernardo if she remembered that. She confirmed she did. They took a picture because Gary Gilbert, God Rest His Soul, was looking into someone's window, he was trying to find the owner. They wouldn't come out. It was on the front page of the paper. It was junk cars and junk stuff.

This is the one that was on DuBois. Bernardo said yes it was on DuBois and that is when we discovered all those oil barrels. It was close to or very close to the funeral home. Like down that alley. Bernardo said we went to a couple. Cherry said I know you did. Cherry said Zac that couldn't have been before your time. Lawhead said it was before me. I have had issues at that house down behind Nedza's. Honestly, it's been pretty good lately since I was in there with CYS and took the family out of there. Leo got scared that time. He's been doing a very good job keeping it cleaned up. Cherry asked if it was the family that did all of that. Lawhead said it must have been and that's a different family than the one that I dealt with. Cherry said, then it was before your time. I remember Council went ward by ward; Bernardo said yes, we did.

Bernardo addressed Lawhead and said it's been a while since I read the junkyard ordinance. Would that junkyard ordinance apply to situations like McCracken Run Road. It is not exactly a junkyard. It's... Lawhead said that is the question he has. Yes, we have a junkyard ordinance it's very vague, it has blanks left in it, it's kind of really open to interpretation. Cherry asked if it was under Vehicle Nuisances. Lawhead said we have that ordinance too. Bernardo felt this was more of a junkyard. Lawhead said we have a separate junkyard one, where it requires licensing and all of that. That Vehicle Nuisances goes into a lot of detail. Cherry confirmed it does. Lawhead said then he has the property maintenance code that is pretty light as no abandon vehicles allowed. It is a business that repairs vehicles, how do you enforce when it's a repair garage. The junkyard ordinance has a fencing and screening thing in it, but it also allows you to burn cars for scrap, tell me how updated that is. He thinks the ordinance is from the 30's and has probably never been touched. Which direction.....

Cherry said, well motored vehicles are defined as junk under the junkyard ordinance. I would think motored vehicles all types of automobiles, trucks and tractors, including self-propelled machinery of all kinds with the exception of farm machinery. Licenses required. Fencing and screening; every junk dealer license under this chapter shall enclose and maintain his junkyard as herein provided. There is a requirement for screening.

Bernardo asked if we could take that ordinance and expand it to automobiles; Zac I turn to you or anyone up here. We're saying cars that can't run and we said they are there to be repaired. But none the less they are setting there as junk cars and there is no screening around it. Could we use that junkyard ordinance and kind of expand it to any automotive facility with vehicles in need of repair.

Volpe said if he takes his vehicle to a place and it is broken, even if it was towed there it has current insurance, currently registration, I can put gas in it and once its fixed I can run that car. I guarantee you most of those cars that are sitting over there, because now they are in rows and you can't even see the cars that he has out against the embankment behind the building, because they have been sitting there for years. Cherry said it is not like when the guy next door to me pulls my car over to inspect it. Because that is a short-term thing. That yard looks beautiful. That is a wonderful business to be besides, the building is beautiful and

he has repaired it and he bought the one across the street and they work on the cars inside. This is junk, he is a junkyard, I'd fight that case in court.

Bernardo asked if Cherry felt that anything could be added to make that whole automotive repair area including repair shop a/k/a junkyard.

Cherry said no he meets the definition of a junkyard. Because he has any discarded or salvageable articles or material including but not limited to scrap metal, paper, rags, glass containers, scrap wood, automobiles, trailers, machinery and equipment. With the exception of farm machinery and mobile homes or house trailers which are occupied or are properly placed and plan for occupancy. He meets the definition.

Bernardo is there anything in there about burning anything?

Cherry said there is something about burning. Bernardo said that needs to be removed then. Cherry said it says that burning is restricted to not more than one motor vehicle or its equivalent may be burned at any one time. Gasoline, grease, oil, tires or similar material which could be dangerous or could produce a obnoxious smoke or odors should not be burned at any time. Any burning or melting on junkyard premises shall be properly attended and controlled at all times. Cherry said you want none of that. Lawhead said no. Cherry said we can amend that.

The motion was made by Volpe and seconded by Bernardo to have our current Junkyard Ordinance amended and then recommended to City Council for approval.

VOTE

AYES: Commission Members: Bernardo, Volpe, and Chairwoman Moore

ABSTAIN: None

NAYS: None

MOTIONED PASSED: 3-0

There being no further business to transact, the motion was made by Volpe and seconded by Bernado that Planning adjourn.

VOTE

AYES: Commission Members: Bernardo, Volpe, and Chairwoman Moore

ABSTAIN: None

NAYS: None

MOTIONED PASSED: 3-0