



BOARD OF ADJUSTMENT MINUTES

MARCH 26, 2015, 6:30PM, SFD TOWN HALL

1. The meeting was called to order at 6:30 p.m. by Chairman James Brady, with the following present:

Board Members:

James Brady
Lewis Nash
William North
Michael Stewart
Ron Willis
Don Wendelken (alternate)

Staff:

William Hill, Town Attorney
Julie Reid, Town Planner
Kevin May, Code Enforcement (consultant)

2. Chairman Brady asked that all Board members and staff members introduce themselves.
3. Mr. Brady asked if there were any deletions or additions to the agenda. Mr. North made a motion to approve the agenda as presented. It was seconded by Mr. Stewart. Approval was unanimous.
4. Chairman Brady asked if there was any old business, hearing none, he moved to the case listed on the agenda, 01-15 Appeal.
5. He asked if Mr. Hire was present. Ms. Reid said no. Mr. Brady asked if there was a representative for Mr. Hire present. Ms. Reid said not that she was aware of. He then asked if Ms. Reid would present the Town's position. Mr. Hill interjected that in light of Mr. Hire's absence, that there was no evidence to consider to the contrary and the Board could affirm the Zoning Administrator's interpretation.
6. A motion was made to affirm the Zoning Administrator's decision and was seconded. During the discussion, concern was expressed that the Board wanted a full review of the issue and discussion prior to a vote. The motion and second were withdrawn.
7. Chairman Brady asked Ms. Reid to review the evidence and the determination for the Board.
8. Ms. Reid indicated that each Board member had been supplied with copies of all materials pertaining to the case. Each document was indexed with a number. Ms. Reid said that on November 7, 2014, she observed an employee of Steve Hire posting a sign in the right-of-way for Us Highway 220 North in front of the Summerfield Square Shopping Center. No permit had been issued for a sign at this location and further signs are not permitted within the road right-of-way. She stopped, informed the gentleman that no permit had been issued for a sign at that location. The man told her they had just opened a business and did not know they needed a permit for the sign. He indicated the location of the business and told her it was a sweepstakes business. She stated she informed the general manager and other

Council: Mayor Mark Brown, Dena Barnes, Alicia Flowers, Dianne Laughlin, Elizabeth McClellan, John Wray, Jr.

Board of Adjustment: Jim Brady (Chair), Lewis Nash, Bill North, Michael Stewart, Ron Willis, and alternates Rob Lovell and Don Wendelken

staff that no permit had been issued for a business at this location and no permit for the sign above the door. She said she also explained they were in violation of the Summerfield Ordinance. She also advised them that she did not believe that Sweepstakes were listed as a permitted use. She told them they would need to come to the Town Hall on Monday to obtain permits.

9. Ms. Reid notified the code enforcement officer of the violations on November 10, 2014. A period of time was allowed to permit the business to prepare and submit an application to the Town. There was no contact from any representative of this business entity. An inspection was done on December 3, 2014. (*Exhibit 1*), the use had not been discontinued. Later the same day, a notice of violation was posted on the property and issued to the owner of the property and the tenant. (*Exhibit 2*)
10. Ms. Reid told of a meeting was held on December 10, 2014 to review the situation with respect to this business and violations and to give the business owner an opportunity to discuss the proposed use of the property. . Mr. Hire introduced himself as the owner of the business. A Mr. Apperson also attended the meeting who was introduced as the owner of Lucky Linda Ventures and as the person responsible for computer software used in the “sweepstakes” business. Also in attendance was Scott Whitaker, Town Manager, and Ms. Reid. The men representing the business were given the opportunity to explain the characteristics of the business they wished to run. They described the “sweepstakes” portion of the business at length. They described the purchase of internet time. In response to questions relating to whether the general public would have access to the internet, their response was affirmative. When asked whether children could access the internet after school at this location, the men said absolutely not – no person under the age of 18 years old would be permitted on the premises.
11. Ms. Reid gave Mr. Hire a blank permit application, and was asked to apply for a permit and to delineate what his proposed use would include.
12. A permit application was received on December 17, 2014. The permit has listed three uses; 1. website development, 2. photo copies and 3. internet time for use on site and an accessory use, promotional sweepstakes computers to promote internet time sales..(*Exhibit 3*)
13. Mr. Hire had not previously indicated that Mr. Apperson or other programmer would be working from this location. Ms. Reid stated computer programming services are a permitted use as a business, professional and personal services. Photocopying and duplication services are a permitted use as a business, professional and personal services.
14. A determination was made that the sale of internet time is not a permitted use in our current ordinance. The use of promotional sweepstakes computers to promote the sale of internet time would also not be permitted in the Town of Summerfield current ordinance.
 - A. This determination was made first by examining the Table of Permitted Uses in the Unified Development Ordinance. (*Exhibit 4.*) “Land, buildings, and structures shall only be used and buildings and structures shall only be erected which are intended or



designed to be used for uses listed in the Permitted Use Schedule, Table 4-3-1." There was no listing for the sale of internet time or for sweepstakes.

B. The ordinance provides a method for determining whether a proposed use may have the same characteristics or classification as a listed permitted use and therefore be allowed.

"B. Formulation of Permitted Use Schedule

The Standard Industrial Classification Manual – 1987 was utilized in the preparation of this table and shall be referred to as a guide for purposes of interpretation by the Summerfield Zoning Board. SIC codes are used to refer to SIC Classifications.

*The SIC Manual shall serve as a guide in classifying any unlisted use. **If the Enforcement Officer should determine that a use is not listed and is not similar to a use in the Permitted Use Schedule, then said use is prohibited.**"*

15. A review of the various SIC codes did not indicate a similar classification for either the internet sales or the "sweepstakes" use. Ms. Reid made reference to the handouts with a copy of the SIC codes that most closely resemble these two uses with a brief description of what type of activities are included in each. **(Exhibit 5)**
16. Ms. Reid's review and assessment of the characteristics of these classifications and the proposed uses was considerably more extensive. Other classifications were considered such as sale of utilities and communication provisions. A determination was made that the uses were not listed in the permitted use table and the uses proposed were not similar in to a use in the Permitted Use Schedule and therefore said uses are prohibited.
17. It was also determined that if there is some aspect of the use restricted to adult use, it would not be permitted under this zoning classification.
18. She presented a copy of the letter prepared and mailed to deny the permit application, to explain why it was denied and to suggest changes that would result in an approved application. The letter also noted that "any use of the current location would continue to be a violation until a revised permit is received and approved." **(Exhibit 6)**
19. A second application was received. **(Exhibit 7)**. No mention of the sweepstakes issue was included, but computer services was listed. This category contains many different types of uses. Additional information was requested by letter and by email. **(Exhibit 8)**
20. The use was continued and no additional information to complete the application had been received. An amended notice of Violation was issued on January 28, 2015. **(Exhibit 9)**
21. The appeal was received on February 13, 2015. **(Exhibit 10)**
22. On February 27, 2015, a letter was sent determining that the second application was incomplete and no additional information had been received. The application was returned to the applicant. **(Exhibit 11)**



23. On March 18, 2015, a letter was sent to the applicant, the property management company and the owner of Summerfield Square Shopping Center indicating the time and a date of the Board of Adjustment hearing. (*Exhibit 12*).
24. Mr. Hill asked three questions of Ms. Reid

Question 1: Are the documents that have been submitted to the Board of Adjustment as Exhibits 1-12 represent records of the occurrences relating to this matter in your capacity as Town Planner?

Answer 1- Yes

Question 2: Did these documents help form the basis of your decision with regard to this application? **Answer 2 - Yes**

Question 3: Did these documents help illustrate to the Board the basis for your testimony and decision? **Answer 3 - Yes**

25. Chairman Brady then stated that given there is no evidence being offered in support of the appeal, was there any discussion.
26. Mr. Stewart stated that after reading the appeal, he felt there were no facts presented to support a different interpretation.
27. Mr. North stated that in reviewing Exhibit 5 (land use table) and the various SIC classifications, he did not see any uses that were even close to what the appellate requested. Further, if there are no uses that match or are not similar to a permitted use than Ms. Reid has every right to declare it a prohibited use. He added that Mr. Hire did not attend the meeting and did not present any evidence that supported a different interpretation.
28. Mr. North made a motion finding that the proposed uses were not listed in the permitted use table, that there was not a comparable use within the SIC codes that came close to the same characteristics, the Board has listened to the evidence and based on the evidence concluded that Ms. Reid's determination was correct and that the Board affirm the interpretation. The motion was seconded by Mr. Stewart. Approval was unanimous.
29. A motion was made to adjourn.