OLMSTED TOWNSHIP ZONING COMMISSION
RESOLUTION B-10

Recommending approval of a Development Plan for
The Gamers Club

WHEREAS, Section 520 of the Olmsted Township Zoning Resolution requires plan approval for any existing or previously approved development meeting the criteria which proposes to alter, reconstruct or otherwise modify a use or site including expanding the floor area of the permitted use or changing the use which requires an increase in the amount of parking or a change in the site's circulation; and

WHEREAS, The Board of Zoning Appeals shall review development plans for conditional uses when the conditional use involves new construction of building or structure or any change or alteration to a condition use that expands the floor area of the permitted use, increases the number of dwelling units in a multi-family development, or changes the use which requires an increase in the amount of parking or a change in the site's circulation; and,

WHEREAS, The Gamers Club has submitted to the Olmsted Township Board of Zoning Appeals for a conditional use; and

WHEREAS, The Olmsted Township Board of Zoning Appeals has approved the request for a conditional use provided the development plan is approved by the Olmsted Township Board of Trustees, and;

WHEREAS, The Gamers Club has submitted to the Olmsted Township Zoning Commission for its review and recommendations to the Olmsted Township Board of Trustees a development plan for property located at 7096 Columbia Rd.; and,

WHEREAS, The Olmsted Township Zoning Commission has held the required public hearing on September 29, 2010; and,
NOW, THEREFORE, BE IT RESOLVED that the Olmsted Township Zoning Commission recommends to the Olmsted Township Board of Trustees conditional approval of the plan for the Gamers Club dated August 9, 2010 provided the following conditions are met:

1. The development plan dated August 9, 2010, will provide for a maximum of 87 seating/play stations, a private office space, handicap accessible restrooms and a food service area.

2. The usual hours of operation are proposed for 11:00 am through 12:00 midnight, occasionally as late as 2:00 am, and will not adversely affect the surrounding residential areas.

3. The Gamers Club will secure the minimum forty parking spaces from the Town & County Plaza management and make available to the Gamers Club.

4. The Gamers Club will not permit any loud noise or glaring lights directed toward or infringe upon the residential properties surrounding the plaza.

5. The occupancy will not exceed the maximum occupancy as determined by the Olmsted Township safety forces; and,

On a motion of Mr. McMakin, seconded by Mr. Gebhard, the foregoing resolution was approved.

AYES: Campanalie, Gebhard, McMakin

[Signature]
Richard McMakin Vice-Chairman Zoning Commission

Date: 30 Sep 2010

Adopted this ___ day of ________________, 20__

Attest

Township Clerk

Township Trustees

Resolution B-10
Gamers Club Development Plan
APPLICATION FOR VARIANCE

Applicant's Name: CLEVE WEST TRL CL
Address: 579 THOMAS VILLAGE APART 09 Phone: 440-429-7447
Project Address: 7787 (Akron, OH) Sub Lot: 0 Permanent Parcel #: 079-14-00965

Property Owner's Name: CLEVE/ST. CLARE EAST TRL
Property Owner's Address: 245 ELY ST PLEASANT RIDGE, OH 44086 Phone: 440-238-2888

Evidence of practical difficulty (see Section 540.06 (b) 1-9)

Please provide seven (7) copies of the following when applying for this variance:
1. Completed application.
2. Site plan drawn to scale or clearly dimensioned indicating all buildings and lot dimensions.
3. Detail drawings such as: Elevations, Floor plans, and other drawings that convey need for variance.
4. Samples of anticipated construction, drawings, brochures, manifests, images, etc.
   * It is to the applicant's advantage to provide any information that shows evidence of practical difficulty.

Authorization/Property Access
The undersigned states that he/she is the owner of the property or authorized agent for the owner of the project:
address indicated in this application, and furthermore by signing below, I authorize members of Olmsted Township Building Department
and Board of Zoning Appeals to access the property for the limited purposes of photographing and/or viewing the area affected by the
variance requested in this application and verification of project dimensions.

Property Owner/Agent: William A. Sanderson
Date: 6-24-2010
Printed Name:

ADMINISTRATIVE ACTION
1st - BZA ACTION: COMMENTS/CONDITIONS:
CHAIR SIGNATURE: 7-12-10

2nd - BZA ACTION: COMMENTS/CONDITIONS:
CHAIR SIGNATURE: 

5th - BZA ACTION: COMMENTS/CONDITIONS:
CHAIR SIGNATURE: 

DEPARTMENT USE ONLY

Page 1 of 2
July 13, 2010

William Janowich
Cleve West Tel Co
508 Mariner Village
Huron, Ohio 44839

Dear Mr. Janowich:

At the July 12, 2010 meeting of the Olmsted Township Board of Appeals, the board approved your request for conditional use, application # 20100497. The granting of the conditional use will allow you to proceed with development plan approval according to Chapter 520 of the Olmsted Township Zoning Resolution.

Please contact this office if you have any further questions.

Sincerely,

Tammy Tabor
Secretary
COMMERCIAL BUILDING PERMIT APPLICATION

Olmsted Township Building Department
26908 Cook Road Olmsted Township, Ohio 44138

Date of submittal: 5-13-2010

Project Address: 7096 COLUMBIA RD
Parcel #

Property Owner's Name: TEAKLE - CLEVE WEST TEL CO

Property Owner's Address: 788 MARLBOROUGH VILLAGE, HURON OH 44839

Property Owner's Phone: (440) 428-7777 Fax: Same

Contractor Name: NOWAK
Contractor's Address: 788 MARLBOROUGH VILLAGE, HURON OH 44839

Contractor's Phone: (440) 428-7777 Fax: Same

Drawings Author: Contact
Address: Contact
Drawings Author Phone #: Fax #: Wireless Phone

GENERAL PROJECT INFORMATION

Estimated Cost: $3,000.00

Describe project: NEW CARPET + PAINT, CLEVE WEST TEL CO

Change of Occupancy? Yes No

If yes, what type of establishment was located at the above address previously? AUTO PARTS STORE

What was the name of the establishment? RETAIL SALES LIKE DISTILLER PHARMACY THERAPEUTICS

What is the proposed type of establishment? CLEVE WEST TEL CO

NOTE: A SEPARATE PERMIT IS REQUIRED FOR ANY NEW ELECTRICAL WORK PERFORMED IN CONJUNCTION WITH THIS PROJECT, ALONG WITH ANY NEW SIGNAGE BEING INSTALLED OR REPLACED.

Authorization

The undersigned stated that he/she is the owner of the property or authorized agent for the owner of the project address. This permit is subject to the observance of all resolutions of Olmsted Township and the laws of the State of Ohio, and is subject to revocation if any of these are not observed.

Signature of Property Owner (required) 5-13-2010
Signature of Contractor/Owner's Authorized Agent (if applicable) Date Printed Name

MAY 13 2010

DEPARTMENT USE ONLY

Permit fee (a) Permit Fee: $ ___
Permit fee (b) + State 3%: $ ___
Permit fee (c) Permit fee: $ ___
Permit fee (d) Total Permit fee: $ ___

Zoning Use: Zoning District

Review Approved by: Date:
Review Disapproved by: Date:

NOTES:

RECEIVED
In response to your application for plan approval (Olmsted Township Resolution), we have reviewed the plans to determine compliance with the Olmsted Township Resolution. The following items require clarification, plans to conform to all required codes per Olmsted Township even if not specifically addressed in the following:

1. Project without Plans has not been approved

**TITLE II DISTRIBUTION REGULATIONS**

**CHAPTER 250 Business, Commercial and Industrial District Regulations**

1. OTZR Section 250.03 Schedule of Permitted Uses
   a. 250.03 (d) (2) Assembly hall, meetings place, party center are conditional uses in a R-B District and need the approval of the Board of Zoning Appeals.

2. OTZR Section 250.12 Development Plan Review
   a. All uses in a nonresidential shall be permitted only after development plans have been reviewed and approved by the Zoning Commission according to the procedures set forth in chapter 520.

**CHAPTER 270 Conditional Use Regulations**

3. OTZR Section 270.02 General Criteria for all Conditional Uses
   a. 270.02 project to comply with items (a) to (e)

4. OTZR Section 270.05 Specific Standards for Conditional Uses in Business, Commercial and Industrial Districts
   a. 270.05 (c) Specific development conditions
      i. 270.05 (c) (1) Lighting
      ii. 270.05 (c) (2) Hours of operation

**TITLE III REGULATIONS APPLICABLE TO ALL DISTRICTS**

**CHAPTER 310 Off-Street Parking and Loading Regulations**

5. OTZR Section 310.02 Parking Facilities Required
   a. 310.02 (c) Change in use requiring new parking seeking 40-70 spaces

6. OTZR Section 310.05 Allowance for Shared Parking
   a. 310.06 (a) The Zoning commission may approve a lesser number of spaces it is shown the consistent with these regulations

7. OTZR Section 310.14 Development Plan Review
   a. 310.14 Development review per Chapter 520 required

**CHAPTER 320 Signs**

8. OTZR Section 320.01 Intent
   a. No signage proposed at this time

**TITLE V ADMINISTRATIVE PROCEDURES, ENFORCEMENT**

**CHAPTER 520 Development Plan Review**

9. OTZR Section 520.02 Development Plan Review Required
   a. 520.02 (a) the zoning commission shall review development plans
   b. 520.02 (b) the Board of Zoning appeals shall review development plans involving conditional uses

**CHAPTER 530 Conditional Use Permits and Similar Uses**

10. OTZR Section 530.02 Submission of application
    a. 530.02 Submittal of applications

**CHAPTER 540 Appeals and Variances**

11. OTZR Section 540.01 Appeals to the Board of Zoning Appeals
    a. 540.01 anyone adversely affected by any decision of the Board of Zoning Appeals or by any administrative officer deciding matters relating to this board, may appeal the decision
Please return letter with signature and statement of compliance for items indicated, or revise and return 2 sets of corrected plans to our office. It will help the plan reviewer and expedite the review your project (If you identify the changes you have made by circling them in red or otherwise indicating how you have resolved the items of non-compliance [correction letter]).
If you have any questions about any of the above items please contact the building department for further clarification. Items that cannot be resolved can be appealed.

Notice of appeal shall be filed with the officer from whom the appeal is taken and with the secretary of the Board of Zoning Appeals within 20 days after the date of any adverse order, requirement, decision, or determination. Such written notice of appeal shall specify therein the grounds and reasons for the appeal. The officer from whom the appeal is taken shall transmit to the secretary of the Board of Zoning Appeals all data pertaining to the subject matter upon which the action so appealed was taken.

Application to be filed at:
Olmsted Township Board of Zoning Appeals
26908 Cook Rd.
Olmsted Township, Ohio 44138
440-235-4225

Respectfully,

[Signature]

[Name]
Building Commissioner
'Internet sweepstakes cafes' popping up in Northeast Ohio

Published: Tuesday, July 06, 2010, 7:57 AM    Updated: Tuesday, July 06, 2010, 8:31 AM

Thomas Feran, The Plain Dealer

Angela Jones of Warrensville Heights studies her game at an Internet sweepstakes cafe in Garfield Heights. The cafes are the latest attempt by some business people to run gaming operations that are not considered gambling. A judge has said the ventures are legal.

BROOK PARK, Ohio -- While plans to build casinos and install slot machines at horse-racing tracks are still in the starting gate, another type of gaming is already growing in Northeast Ohio.

Brook Park last month became the latest local community to approve rules for "Internet sweepstakes cafes," which operators say don't cross the thin legal line from gaming into state-regulated gambling. A judge in Toledo has agreed.

Usually open in former shops and restaurants, the businesses offer a variety of computer-based services that include faxing and copying. But they mainly operate by selling prepaid phone cards.

Customers use the cards to play online computer games that look like video slots. They play to win more Internet time and points that have no cash value but give them chances in sweepstakes where they can win money. Because the sweepstakes have a pre-determined outcome, similar to scratch-off lottery games, they...

July 21, 2010

William Janowich
Cleve West Tel Co
508 Mariner Village
Huron, Ohio 44839

Mr. Janowich,

The Olmsted Township Zoning Resolution Chapter 520 states that development plan approval is required for all business or commercial uses in the Township.

I have attached a copy of that section of the Zoning Resolution and the application that will need to be filled out. The fee for the public hearings for the Olmsted Township Zoning Commission and the Board of Trustees is $250.00. The deadline for submittal will be August 31, 2010 for the September 22, 2010 meeting. After the Zoning Commissions recommendation the Board of Trustees will hold a hearing to render their determination on the application.

Please clarify any of the items in section 520.04 that are pertinent to your application. Please feel free to contact our office if you have any further questions.

Sincerely,

Tammy Tabor

[Signature]
IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

City of Toledo, State of Ohio
Appellant

v.

Robert Dabish
Appellee

Court of Appeals No. L-09-1318
Trial Court No. CRB-08-25138

DECISION AND JUDGMENT
Decided: JAN 22, 2010

This matter is before the court upon the motion of appellant, city of Toledo, requesting leave to appeal the trial court's judgment pursuant to R.C. 2945.67(A) for failure to apply the specific law to the facts of the case. Appellee, Robert Dabish, opposes the motion.

An appellate court has discretionary authority to review evidentiary rulings and substantive law rulings in cases resulting in a judgment of acquittal so long as the verdict itself is not challenged. R.C. 2945.67(A) and State v. Bistricky (1990), 51 Ohio St.3d 157, syllabus. In this case, appellee was charged with gambling and operating a...
The trial court made the following factual findings, which it determined were not in dispute. Appellee operated a business known as the Players Club Café in Toledo, Ohio. Next door, appellee operates a grocery store business. A Toledo police detective testified that he investigated allegations that appellee was running a gambling operation. The detective entered the Players Club Café and purchased a $50 card. His picture was taken and attached to a card along with other information. The detective testified that he used this card to play computer-generated games and win $54, which he received at the window where he purchased the "game" card. Based upon this information, the detective filed criminal charges against appellee and the computer server was seized.

However, after a view of the premises and a demonstration of the business, the trial court concluded that it is clear from posted signs that a customer actually purchases a $5-$50 phone card. The detective admitted upon cross-examination that the back of his card indicated that it was a phone card that can be used for an unlimited amount of time, except that it expires three months after its first use. Furthermore, the posted sign indicates that the computer-generated games are part of a sweepstakes and that a customer can play the games for free every 24 hours. However, if the customer did not wish to play the games, the attendant could "swipe" the card at that point to see if the customer had won any prizes. The same rules were also displayed on the computer screen. Thus, the customer received a phone card for the amount purchased with an
opportunity to win a sweepstakes prize. Appellee testified that the purpose of the operation was to entice customers to play a game of chance and that the sale of the phone card was of little value. Appellee argues that although there is a reward for entering the sweepstakes, a customer need not play the games to enter the sweepstakes and the customer never loses the value of the phone card purchased. Thus, it is clear that the predominate purpose of the operation is to increase the sale of phone cards.

The court rejected the state's contention that there is no "predominate purpose" element to the crime. But, even if there was, the court concluded that the predominate purpose was to sell phone cards and was not to engage in gambling as there was no risk to the customer.

On appeal, appellee argues that the trial court erred when it considered the common law elements of gambling (consideration, risk, reward) from FCC v. Am. Broadcasting Co. (1954), 347 U.S. 284 rather than the applicable statutes. Appellee argues that the trial court accurately set forth the law in this case. Therefore, appellee argues, appellant seeks to challenge the application of the law to the facts of this case and
that this case is distinguishable from State v. Bouman, 8th Dist. No. 88021, 2007-Ohio-224 relied upon by appellant.

We agree with appellee. In State v. Bouman, supra at ¶ 8, the issue was whether a person could be charged with the offense of "expired plates" under R.C. 4503.21. The case concerned the interpretation of several statutes to determine whether a certain act was mandated or not and did not involve application of the law to a specific set of facts. Rather, the issue centered on the pronouncement of what the law requires. Supra at ¶ 12.

In the case before us, the trial court set forth the applicable statutory law. Appellant's attempt to argue that the court confused common law concepts with the statutory elements is unfounded. What appellant seeks to have us review is whether the facts of this case constitute the crimes alleged. We find that this purpose is wholly outside the purposes of R.C. 2945.67(A) and would result in an advisory opinion.

Therefore, appellant's motion is denied. Costs to appellant.

Peter M. Hardwick, J.

Arlene Singer, J.

Thomas A. Otterbein, J.

CONCUR.
IN THE TOLEDO MUNICIPAL COURT, LUCAS COUNTY, OHIO

State of Ohio,

Plaintiff,

vs.

Robert Dabish,

Defendant.

Case No. CRB-08-25138

Judge Francis X. Gorman

Defendant is charged with two violations of Ohio law, Operating a
Gambling House, a violation of Section 2915.03(A)(1) of the Ohio Revised Code,
and Gambling, a violation of Section 2915.02(A)(2) of the Ohio Revised Code.

The Defendant, a resident of Warren, Michigan, operates a business
known as the Players Club Café at 218 Main Street in Toledo, Ohio. It is this
business that is the subject of these criminal charges; however, and it is relevant
to this case, the Defendant also maintains a grocery store next to the Players
Club Café. On December 8, 2008, Detective Kenneth DeWitt of the Toledo Police
Department’s Vice and Narcotics Unit was dispatched to the Defendant’s Players
Club Café to investigate allegations that it was a gambling operation. He entered
the premises and purchased a $50.00 card. His picture was taken and other
information, along with the picture, was affixed to the card. During the trial, the
Defendant referred to this card as a “game card.” Detective DeWitt than took
the card to one of the seventy or so computers on which, after swiping his card,
he was able to play any number of computer-generated games. Although
Detective DeWitt testified that he won $4.00 as a result, in actuality he won
$54.00 for which he was paid at the window where he purchased the card,
following his exhaustion of game entries. Based on this activity, the Detective
then filed the instant criminal charges.

The server which serviced all of the computers was seized by the Toledo
Police Department and has been held up to the date of the trial. It is important
to note that since the day of the filing of the charges, the premises remained
intact.

During the course of the trial to the Court, the Court, the Prosecutor, the
Detective, the Defendant, the Defense Lawyer, and court staff, including the
Court Reporter, toured the Players Club Café and had the opportunity to observe
the premises, as well as a demonstration by the Defendant of the operation of
the Players Club Café. The Defendant operated a computer-generated game for
the benefit of the Court.

Defendant's premises consists of one large room with seventy or so
computers, along with certain soft drink facilities. Upon entering the premises, a
customer proceeds to a back window at which a large sign is present. As the
Detective indicated, upon purchase of a "card" the customer can then, should he
wish, proceed to a computer and play the computer-generated games.

However, to conclude that this is all that occurs at the Players Club Café is both
simplistic and misleading.

The evidence indicated, both visually and with the testimony of the
Defendant, that what really occurs upon entering the premises is that a customer
proceeds to the back window to purchase a card. This large sign, a photograph of which was admitted into evidence, indicates that the person is purchasing a $5.00, $10.00, $15.00, $20.00 or $30.00 telephone card. Upon cross-examination, the police officer, when examining his "game card," became aware that on the back of the card it was indicated that it was a phone card which allowed him to use it for an unlimited period of time, but that once he began its use the card would expire within three months. Moreover, this sign in the Defendant's premises indicated to the customer that the games were a sweepstakes and that customers could, every twenty-four hours, play the sweepstakes games for free without purchase. The sign also indicated that if a customer did not wish to play the computer-generated games, he could ask the attendant to "swipe" his card at that point and that the swiping of the card would indicate whether or not the customer had won any prize in the sweepstakes.

The Defendant testified, and his sign clearly indicated, that the outcome of the sweepstakes winners was predetermined by the operation of the computer. Detective DeWitt could have asked the operator to swipe his card and, at that point, Detective DeWitt would have learned that he had won the $54.00.

This is not to say that Detective DeWitt was being untruthful in his testimony. In fact, the evidence in this case is not in dispute. Detective DeWitt, to his credit, testified that when he entered the premises he was looking for a gambling operation and perhaps did not spend the time reading this rather involved sign. Detective DeWitt also indicated that when he played the games
he did not realize or recognize that the same rules were printed on the computer screen.

And, while perhaps not crucial to the outcome of this trial, the Defendant testified that in the course of the business he purchased the phone card time in bulk from a Canadian corporation. He also testified that, not surprisingly, many of his customers did not use all of the time on the phone card after exiting the premises so that the Defendant then could, at a later time, resell that unused time which, of course, increased his profitability in the sale of the phone cards. The defense pointed out, correctly, that while the purchase of a phone card permitted the customer to either have his card swiped, play the games, or exit without doing either, in any event, the customer retained the phone card minutes purchased. Regardless of the outcome of playing the games, swiping of the card, or neither, the customer got what he paid for – the phone card.

The Defendant testified during the course of the trial that his entire operation was a marketing tool intended to draw customers into the establishment to purchase a phone card to play games. He testified, and there is no dispute to his testimony, that his entire profit came from the sale of the phone cards.

It is also instructive to note that at the Defendant's grocery store next door, of which the entire inventory of the grocery store was supplied by Spartan Stores of Michigan, Defendant had a kiosk of phone cards for sale. The Defendant testified, and it is hardly surprising, that while these phone cards were worth the approximate same value as the ones sold in the Players Club Café, the
sales at the Players Club Café far outweighed the sales of phone cards in his grocery store.

In summary, the evidence in this case is not in dispute. The Court is not called upon to resolve issues of fact. Rather, both the prosecution and the defense lay out arguments as to how these facts should be interpreted in light of the existing Ohio law.

THE LAW

RC 2915.02(A)(2): Gambling.
No person shall do any of the following: Establish, promote, or operate or knowingly engage in conduct that facilitates any game of chance conducted for profit or any scheme of chance.

RC 2915.03(A)(1): Operating a gambling house.
No person, being the owner or lessee, or having custody, control, or supervision of premises, shall: Use or occupy such premises for gambling. In violation of Section 2915.02 of the Revised Code,

RC 2915.01(E): Game of chance conducted for profit.
Means any game of chance designed to produce income for the person who conducts or operates the game of chance, but does not include bingo.

RC 2915.01(D): Game of chance.
Means poker, craps, roulette, or other game in which a player gives anything of value in hope of gain, the outcome of which is determined largely by chance, but does not include bingo.
RC 2915.01 (C): Scheme of chance.
Means a slot machine, lottery, numbers game, pool conducted for profit, or other scheme in which a participant gives a valuable consideration for a chance to win a prize, but does not include bingo, a skill-based amusement machine, or a pool not conducted for profit.

RC 2915.02(VV): Slot machine.
(1) Means either of the following: (a) Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player who gives the thing of value in the hope of gain; (b) Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player to conduct or dispense bingo or a scheme or game of chance.

The State argues that the conclusion to be drawn from the evidence is that the Defendant is promoting a scheme of chance and its argument is well summed up in the State's post-hearing brief:

"A phone card sweepstakes such as the Defendant's is really nothing more than 'scheme of chance' as defined in Revised Code 2915.01(C). Ohio courts have consistently looked to the predominate purpose of the game, rather than its face, in determining whether the game is a true sweepstakes or scheme of chance. When presented with the argument that consumers are giving consideration for only the phone card--courts have held that it is obvious the consumers are interested in potential monetary prizes and not the phone card. The phone card, in essence, is just a sham to entice customers into the establishment."
To bolster its argument, the State relies on a series of cases that all originate with an initial decision in *Katmandu, Inc. v. Liquor Control Commission* (2002) Franklin App. No. 01CVF10-10134, unreported, and affirmed by the Tenth District Court of Appeals. *Katmandu, Inc. v. Liquor Control Commission* (2002), 2002-Ohio-6743. As the prosecution notes, the Court of Appeals found “We can find no error in the common pleas court’s determination that the phone card portion of the ticket was of little value and that the predominating purpose of operating the machine was to play a scheme or game of chance.

In *Katmandu*, supra, the alleged gambling device was a “Lucky Shamrock Emergency Phone Card Dispenser” which would accept money and dispense a two-minute long-distance phone card with attached sweepstake game pieces. Winning tickets were predetermined and the machine would recognize the winning ticket and would light up and present an award if the customer was deemed to be a winner. While obviously this case and the subsequent cases relying on *Katmandu* are clearly relevant to this Court, unfortunately *Katmandu* does not address the issue to be decided by this Court, for in *Katmandu* the defendant stipulated to the admissibility of the Liquor Control Commission’s investigating officer’s report. That report indicated that the machine was a gambling device that allowed persons to play “schemes of chance on a video screen.” Inasmuch as the defendant stipulated that the machine was a game of chance, the trial court was not called upon to determine whether or not the machine was a game of chance. The Court of Appeals correctly noted that it is not the role of an appellate court to examine the evidence. In this case, the
Defendant vehemently denies that his operation involves a scheme or game of chance. His operation is, of course, different than Katmandu. The fact that it is different than Katmandu does not necessarily lead the Court to conclude that it is not a game of chance. However, his denial does require the Court to make that determination.

At this point, it should also be noted that Katmandu, as well as the cases relying on it, was civil in nature as opposed to the instant case. Obviously, the standard of proof is far different in the two scenarios.

These courts, moreover, have concluded that the proper test to be utilized, the "predominate purpose of the machines," is the legal test that this Court should utilize. Indeed in Flare Game Technology, Inc. and Mid-Ohio Vending v. the Ohio Department of Public Safety (2003), 10th App. Dist. No. 02AP-748, the commission argued that the fact that a machine has an innocent use in dispensing phone cards does not prevent a trial court from concluding that the appellant's intention is to operate an illegal gambling device. This rather startling assertion may have some use in a civil case; however, this Court is addressing an alleged violation of Ohio criminal law.

In conclusion, the State argues that the Defendant's operation at the Players Club Café is a ruse; that the sales of the phone cards, as the Liquor Commission noted in Katmandu, were of little value; that the real and overall purpose of the operation was to entice people in to play games of chance and that, therefore, the Defendant has violated the Ohio gambling laws.
However, in order to have this Court conclude beyond a reasonable doubt that the Defendant violated the Ohio gambling laws, the State must overcome serious obstacles to their own argument. First of all, while the *Katmandu* decision says that the phone cards purchased in those cases were of little value, the evidence in this case would indicate otherwise. The Defendant sells these phone cards in the Players Club Café, but it is equally true that he sells the same value cards in his grocery store adjacent to the Players Club Café. No evidence was presented to suggest that the phone cards sold in Defendant’s grocery store were of no value. Inasmuch as the cards were essentially identical, the Court can conclude that the phone cards sold at the Players Club Café by the Defendant were of equal value. And, while no evidence in this case, the Court notes that it recently was at an Ohio turnpike plaza where all of the goods and services available there are licensed by the Ohio Turnpike Commission, and the Court notes that in the foyer was a telephone card machine which dispensed cards similar in nature to the cards involved here. One would hope that the Ohio Turnpike Commission would not license products to be sold of little or no value.

In short, the Court finds that the cards sold by the Defendant gave to the purchaser telephone cards that were available to the public by other retail sellers and are of the same or similar value.

The Defendant argues that there are three elements to a charge involving gambling, "Consideration – Risk – Reward." As The Supreme Court noted in *Federal Communications Commission v. American Broadcasting Co.*, 347 U.S. 284 (1954), "A prohibited lottery, or gambling, is the union of chance, prize and
consideration. Remove any of these elements and there is no gamble." This is
the threshold test.

Consideration. While clearly the customer, upon entering the Players Club
Café, purchases a phone card for a predetermined amount of money, $5.00,
$10.00, $20.00, etc., it should be noted, however, and is clearly indicated on
Defendant's premises, that one can enter the sweepstakes without the purchase
of a phone card. The evidence clearly establishes that once the individual
purchases such a card he retains what he purchased whether or not he chooses
to enter the computer-generated games. Simply put, the value of the card is
never at risk.

Risk. As evidenced in the above paragraph, there is no risk to the
purchaser of the phone card in losing the value of his purchase. He can play the
computer-generated games, have the card swiped to determine whether or not
he won a prize, that prize having already been predetermined by computer, or
he could simply leave the premises with the phone card.

Reward. Defendant concedes in his post-hearing brief that there is a
reward and the evidence would clearly indicate that there is a possibility of a
reward as evidenced by Detective Delwitt's winning of $54.00 upon playing the
computer-generated game.

The Defendant testified at the trial that his entire profit from the operation
of the Players Club Café came from the sale of the aforementioned phone cards.
The State did not challenge that assertion; instead it argues that the Court
should look at the predominante purpose of the operation and the State argues
that the sale of the phone card was nothing more than a ruse to entice the
purchaser of a card to play the machine. Defendant counters that the computer-
generated game is a marketing tool intended to increase the sale of phone cards.
He testified that the sale of the phone cards at the Players Club Café drastically
exceeded the sale of the phone cards from the kiosk in his grocery store.

The Court is somewhat mystified at the "predominate purpose of the
machines" argument inasmuch as the State asserts that it is an essential element
of the crime. Even if it was, which it is not, the Defendant's argument is rather
persuasive that the predominate purpose of the machines is to encourage the
purchase of the phone cards, a clever and apparently profitable marketing tool.

And while not controlling in this state, the Massachusetts Supreme Court in Mobil
Oil Corporation v. Attorney General, 361 Mass. 401 at 407 (1972), observed "The
incidental increase in business attendant upon the use of promotional games...is
not the type of consideration necessary to make [such] games lotteries." In
other words, the fact that this Defendant has developed a clever promotional
device to increase the sale of phone cards is not evidence of a gambling
operation. Again, gambling is the union of chance, prize and consideration.
Remove any of these elements and there is no gamble. Federal Communications
Commission v. American Broadcasting, supra. Clearly in this case, the element
of risk is not present. The element of consideration is present, but it is not
coupled with risk. In other words, once the card is purchased the customer
owns the phone card, as does the customer of a phone card purchased at the
grocery kiosk or at the turnpike plaza. And, as the Defendant stipulated, the
element of reward is, of course, present. As the Defendant asserts, he has to offer a reward in order to influence the customer to purchase a phone card and, while not determinative here, it should be kept in mind that a person entering the Players Club Café can play the computer-generated promotional sweepstakes games without the purchase of a phone card.

Nevertheless, the State argues that we must look at the grand scheme, because all of the elements of gambling are simply not present. This Court is reminded of a decision in A.P. Herbert's wonderful book *Uncommon Law*, Methuen & Co. Ltd. London 1933. This classic collection is of fictional English decisions which, at times, have great relevance to current court matters. Mr. Herbert's case is *Rex v. Haddock* (subtitled "Is it a Free Country?") in which the defendant, on a dare, jumped into the Thames river from a bridge in London. The police, unsure of his conduct, charged him with (a) Causing an obstruction, (b) Being drunk and disorderly, (c) Attempting to commit suicide, (d) Conducting the business of a street bookmaker, (e) (Under the Navigation Acts) endangering the lives of mariners; (f) (Under the Port of London Authority By-laws) interfering with an authorized regatta. This decision is relevant here only to the extent of the next paragraph in the decision.

"It may be said at once that in any case no blame attaches to any person for the framing of these charges, who were placed in a most difficult position by the appellant's unfortunate act. It is a principle of English law that a person who appears in a police court has done something undesirable, and citizens who take it upon themselves to do unusual actions which attract the attention of the police should be careful to bring these actions into one of the recognized categories of crimes and offences, for 'it is intolerable that the police should be put to the pains of inventing reasons for finding them undesirable.'
It is that paragraph which this Court finds similar sympathies with the argument of the State. The Defendant's conduct in the instant case simply does not fall within the guidelines of the violations of the Ohio gambling laws and the State, here, like the prosecution in Haddock, is suggesting that the Court look beyond those elements. This the Court cannot do. The Defendant's operation simply does not violate the Ohio gambling laws.

Findings of Fact

1. The Defendant owns and operates the Players Club Café, in which participants purchase phone cards and as a result of those purchases can play computer-generated games at which there is a possibility that they could win a predetermined prize.

2. If the purchaser does not wish to play a game, he can have the card swiped at the purchase counter to determine whether or not he has won a predetermined prize.

3. Or, the purchaser can merely leave with the phone card.

4. The phone card retains its value whether the purchaser plays a game or does not play a game.
5. Persons entering the Defendant's premises can play the computer-generated games once every twenty-four hours without the purchase of anything.

6. Defendant operates a grocery store next to the Players Club Café in which phone cards, which have approximately the same value as the cards sold in the café, are sold at a kiosk.

7. The games that are played on the computer are games in which the winner of any such game has been predetermined by a computer-generated system so that a purchaser could determine whether or not he was a winner instantly.

8. The Defendant claims that his business is a sweepstakes operation and, while the Court agrees that it has all the appearances of such a sweepstakes, the Court is not required to make that determination and the Court declines to do so.

Conclusions of Law

In order to find the Defendant guilty of a violation of Ohio gambling laws, the Court must find that there is chance, prize and consideration.

1. The Court finds that the consideration is for the purchase of the phone card only and that that consideration is never in jeopardy.

2. That the element of risk is absent from this case inasmuch 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 his phone card. There is the chance of a prize or a reward in the playing of the game.

3. The element of risk is missing. The element of consideration is, at best, compromised.

4. The claim of the State: that the Court must look at the "predominant purpose of the machines" is not a criminal element and need not be addressed by this Court.

The Court finds the Defendant not guilty of gambling, a violation of Section 2915.02(A)(2), and, by necessity, not guilty of operating a gambling house, a violation of Section 2915.03(A)(1).

17 December 09
Judge Francis X. Cooran
2915.04 Public gaming.

(A) No person, while at a hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort shall make a bet or play any game of chance or scheme of chance.

(B) No person, being the owner or lessee, or having custody, control, or supervision, of a hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort shall recklessly permit those premises to be used or occupied in violation of division (A) of this section.

(C) Divisions (A) and (B) of this section do not prohibit conduct in connection with gambling expressly permitted by law.

(D) Whoever violates this section is guilty of public gaming. Except as otherwise provided in this division, public gaming is a minor misdemeanor. If the offender previously has been convicted of any gambling offense, public gaming is a misdemeanor of the fourth degree.

(E) Premises used or occupied in violation of division (B) of this section constitute a nuisance subject to abatement under Chapter 3767. of the Revised Code.

Effective Date: 04-03-2003
SIGN PERMIT APPLICATION

Project Address: 4613 WICKER RD - YOUNG COUNTRY CLUB SUBURBS CENTER
Property Owner's Name: TERRY CLEVER
Property Owner's Address: 4613 WICKER RD - YOUNG COUNTRY CLUB SUBURBS CENTER
Property Owner's Phone: 419-466-1102

Contractor's Name: [Blank]
Contractor's Address: [Blank]
Contractor's Phone: [Blank]

GENERAL PROJECT INFORMATION

Lot Frontage: 84' 6" Building Frontage: 46' 5"
Estimated Cost: $22,000

Sign Type: ( ) monument ( ) wall ( ) awning ( ) canopy ( ) window ( ) projecting ( ) directional ( ) temporary

Permit is for a sign re-facing only: ( ) yes ( ) no

*SCALD DRAWINGS REQUIRED*

LOCATION OF SIGN

Length: 36" Width: 60"
Area: 2160 sq ft
Thickness: 1/8"
Weight: 300 lb

Is sign illuminated? ( ) yes ( ) no

List Other Signs on Property

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Authorization

The undersigned state that he/she is the owner of the property or authorized agent for the owner of the project address. This permit is subject to the observance of all resolutions of Olmsted Township and the laws of the State of Ohio, and is
subject to revocation if these are not observed.

[Signature]
[Date] [Printed Name]

DEPARTMENT-USE ONLY

BUILDING / ZONING REVIEW

Permit Fee: $ + State 3%; $ = Total Permit fee: $
Zoning Use:

Review Approved by: [Blank]
Review Disapproved by: [Blank]

NOTES: [Blank]
ELECTRICAL PERMIT APPLICATION

Date of Submittal: 9/1/2010

Project Address: 7096 Carmel Bo-Township, Lot #7 Permanent Parcel # 123-74-74

Property Owner's Name: TAYLOR, PAUL WEST TWP

Address: 7096 CARMELO VILLAGE HUNION CORD 44087

property Owner's Phone: 440-235-4235 Fax: 440-235-8625 E-Mail: TAYLOR.PAUL@GIA.COM

Homeowner acting as contractor - Affidavit required [check one] D1/8/96

Contractor Name: 2010 VERNOLO ENV MANAGEMENT Contact Person: GLAVER EQUUS


Contractor's Phone #: 440-97-113-7 Fax: E-Mail: State: Zip: 44087

GENERAL PROJECT INFORMATION

Estimated Cost $5,000

Describer Project: 150AMP LITNED GFI 66 EXTERIOR OF BUILDING, ADD ELECTRICAL CIRCUITS AND RECEPTS, NEW WATR FICTURES IN BATHROOM

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Authorization

The undersigned states that he/she is the owner of the property or authorized agent for the owner of the project address. This permit is subject to the observance of all regulations of Olmsted Township and the laws of the State of Ohio, and is subject to revocation if these are not observed.

Signature of Property Owner

Date: 9/1/10

Printed Name: JACQUES

Signature of Contractor (if applicable)

Date: 9/1/10

Printed Name: JACQUES

It is the responsibility of the owner and/or contractor to notify the Building Department for all required inspections.

DEPARTMENT USE ONLY

BUILDING ZONING REVIEW

Permit Base Fee: $ Zoning Use

Total # of openings (above): 6 x 6 = 36 Zoning District

STATE 1% Fee: $ Total Permit Fee: $

Review Approved by: Date: Review Disapproved by: Date:

NOTES:
SIGNAGE
The building containing 7098 is positioned 304 ft set back from the principal
street Columbia Rd and also is directly facing a side street, Parkway Dr. The
Zoning Resolution of Olmsted Township Section 320. (c) (3) grants an
additional one half square foot for each foot of building frontage if the building is
set back over 200 feet from the principal street. The building frontage on
Columbia Rd is 40 ft. Section 320.04 (a) (1) provides one and one-half square
foot for every linear foot of building frontage for identification Signs attached to
Buildings in a Business or Commercial District. Therefore, the Maximum Sign
Area of the Identification Sign on the front of the 7098 Building should be
calculated at 2 square feet times 40 feet yielding 80 square feet. The proposed
sign is 36 inches tall by 260 inches wide which equals 65 square feet. The
referenced sections are shown below.

SECTION 320.04 MAXIMUM SIGN AREA PERMITTED.
Signs as permitted in the respective zoning districts shall conform to the
maximum area limitations set forth in Schedule 320.04(e), except as specified in
subsection (a) through (d).
(a) Identification Signs in Business, Commercial and Industrial Districts. The
maximum permitted area for identification signs in business, commercial
and industrial districts, for both permitted and conditional uses shall
comply with the following:
(1) Signs Attached to Buildings in a Business or Commercial District.
The maximum permitted area for signs attached to a building shall
be one and one-half square feet for every linear foot of building
frontage. This maximum area shall be the sum of the areas of all
identification signs attached to the building, including awning and
canopy signs, and shall include the area of instructional signs
unless the Zoning Commission determines such instructional signs
are exempt pursuant to subsection (b) below. Notwithstanding the
above standard, each building shall be permitted a minimum of 40
square feet of identification signs attached to the building.

SECTION 320.07 SUPPLEMENTAL REGULATIONS.
The following regulations are in addition to the maximum sign area and height
regulations set forth in Sections 320.04 through 320.06.
(c) Additional Area for Business Identification Wall Signs in Business,
Commercial and Industrial Districts.
(2) Large Building Setbacks. The maximum allowable area for
identification wall signs may be increased by one-half square foot
of sign area for each foot of building frontage when the principal
building is set back more than 200 feet from the principal street on
which the building is located. The sign area may also be increased
by one-half square foot of sign area for each linear foot of that
portion of the building which is more than 200 feet from the street
and facing such street when the additional sign area is included in
a sign placed on that portion of the building.
PARKING
There is more parking available in the complex than will be required. There are 82 parking spaces between the building and Columbia Rd and an additional 22 behind the building. In addition, there are 90 more spaces in front of the building in the North end of the complex. Cleve West Tel Co anticipates the need for approximately 40 spaces. The building owner has allocated 80 spaces for our use. The pictures presented in this plan were prepared using Bing Maps which are made from satellite photos.
SIGNAGE
The building containing 7096 is positioned 304 ft set back from the principal street Columbia Rd and also is directly facing a side street, Parkway Dr. The Zoning Resolution of Olmsted Township Section 320. (c) (3) grants an additional one half square foot for each foot of building frontage if the building is set back over 200 feet from the principal street. The building frontage on Columbia Rd is 40 ft. Section 320.04 (a) (1) provides one and one-half square feet for every linear foot of building frontage for Identification Signs attached to Buildings in a Business or Commercial District. Therefore, the Maximum Sign Area of the Identification Sign on the front of the 7096 Building should be calculated at 2 square feet times 40 feet yielding 80 square feet. The proposed sign is 36 inches tall by 260 inches wide which equals 65 square feet. The referenced sections are shown below.

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Signs as permitted in the respective zoning districts shall conform to the maximum area limitations set forth in Schedule 320.04(e), except as specified in subsection (a) through (d).
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(1) Signs Attached to Buildings in a Business or Commercial District. The maximum permitted area for signs attached to a building shall be one and one-half square feet for every linear foot of building frontage. This maximum area shall be the sum of the areas of all identification signs attached to the building, including awning and canopy signs, and shall include the area of instructional signs unless the Zoning Commission determines such instructional signs are exempt pursuant to subsection (b) below. Notwithstanding the above standard, each building shall be permitted a minimum of 40 square feet of identification signs attached to the building.

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(c) Additional Area for Business Identification Wall Signs in Business, Commercial and Industrial Districts.
(2) Large Building Setbacks. The maximum allowable area for identification wall signs may be increased by one-half square foot of sign area for each foot of building frontage when the principal building is set back more than 200 feet from the principal street on which the building is located. The sign area may also be increased by one-half square foot of sign area for each linear foot for that portion of the building which is more than 200 feet from the street and facing such street when the additional sign area is included in a sign placed on that portion of the building.
PARKING
There is more parking available in the complex than will be required. There are 82 parking spaces between the building and Columbia Rd and an additional 22 behind the building. In addition, there are 90 more spaces in front of the building in the North end of the complex. Cleve West Tel Co anticipates the need for approximately 40 spaces. The building owner has allocated 90 spaces for our use. The pictures presented in this plan were prepared using Bing Maps which are made from satellite photos.
Section 320.10, Criteria for the design and construction of signs further defines sign requirements for lettering, shape, size, style and harmony with other buildings in the area. Section (k) of that section additionally defines illuminated signs. Section (l) defines construction standards.

The sign proposed by Cleve West Tel Co for the 7096 Columbia Rd property was manufactured by a professional sign company, McQueen Sign Company in Vermilion, Ohio. It is a "Cloud" sign illuminated with fluorescent lighting. The sign appears as individual letters but is in fact all one electric sign. It is identical in construction and look with other illuminated signs in the shopping center complex.

Below is a picture of the sign:

Below is a picture of the sign as it will appear above the main entrance.
Cleve West Tel Co – Town & Country Plaza Shopping Center – 7096 Columbia Rd

Side Street adjacent building leading to development

Some parking immediately in front of building – 82 total spaces available for this building
Position of New Sign to be Erected - center of 40 foot horizontal area

Left edge of building

Some parking immediately in front of building - 82 total spaces available for this building.
Future Sign to be Erected above entry on roof

GAMERS CLUB

Sign is 36 in hi by 260 in wide — “Cloud” style illuminated with fluorescent. Color Gold/Yellow on Black
Pictures of other Business Signs in the same complex