

**Perquimans County Planning Board**

12-11-12 (cloned 3-26-13)

**A G E N D A**

Regular Monthly Meeting  
**Tuesday, April 9, 2013 at 7:30 PM**  
Courthouse Annex Building

➤ **Call to Order**

➤ **Prayer**

**I. Agenda**

**A) Additions, deletions or corrections to the Agenda**

**B) Consent Agenda** (*Consent items as follows may be adopted with a single motion, second and vote, unless a request for removal of an item or items is made from a Planning Board Member or Members.*)

➤ **Approval of Minutes** (*March 21, 2013 Rescheduled Regular Meetings*)

**II. Business Items**

**A) Consideration of Conditional Use Permit No. CUP-13-01 by Virginia Electric & power Company, d/b/a Dominion North Carolina Power, in review of expansion plans for that portion of the Electric Substation Facility located at 150 Two Mile Desert Road and zoned RA, Rural Agriculture within the Planning & Zoning Jurisdiction of Perquimans County** (remainder of site located within and regulated by the Town of Winfall, NC). Subject property known as Tax Parcel No. 5-0032-0075-W

**B) Consideration of Recombination Application No. NZV-13-02 requested by Suzanne Gray to recombine Tax Parcels 2-D082-k039 and-K040-HI into one lot** which will not meet minimum lot requirements (subject properties located at 146 East Inlet Circle (SR 1431) and zoned RA-25, Residential & Agricultural District)

**C) Consideration of Administrative Text Amendment No. TXT-13-01 to establish standards, conditions, procedures and definitions for Video Sweepstakes Operations/Electronic Gaming Operations/Internet Sweepstakes Cafés in the unincorporated County**, with potential changes to Articles VIII, IX, XIX & XXIV of Zoning Ordinance

**III. Other Items**

**A) FY 2012-2013 Work Program & Timeline** (with task added on 2-12-13)

**B) Status Report on Previous Planning Board Recommendations**

**C) Chair's signature on approved minutes, subdivisions, etc.**

**Adjournment**

**Perquimans County Planning & Zoning Staff Report**  
**April 9, 2013: Agenda Item II-A**

**Consideration of Conditional Use Permit No. CUP-13-01 by Virginia Electric & Power Company, d/b/a Dominion North Carolina Power, in review of expansion plans for that portion of the Electric Substation Facility located at 150 Two Mile Desert Road and zoned RA, Rural Agriculture within the Planning & Zoning Jurisdiction of Perquimans County** (remainder of site located within and regulated by the Town of Winfall, NC). Subject property known as Tax Parcel No. 5-0032-0075-W.

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**PROCEDURAL ISSUES**

**Potential Schedule for Public Hearing(s):** The Application package for the Winfall Substation expansion plans was received by the County’s Planning & Zoning Office on February 8, 2013, and found to be complete on February 25, 2013. The request was positioned for the County Planning Board’s March review and then postponed for one month at the request of Jonathon Schultis, Applicant for Dominion Power, based upon his decision to first complete the Town of Winfall’s zoning process. At the time of this writing, Mayor Fred Yates confirmed that the request is eligible for Winfall’s zoning approval and will not require a Conditional Use Permit from the Town. (For the record, a Conditional Use Permit would only be required by the Town of Winfall if the existing substation improvements were being expanded beyond the original property lines or if the project was brand new and there were no pre-existing substation improvements.)

Public notices have been sent to adjacent property owners and published in the Perquimans Weekly in accordance with Section 2302 of the County’s Zoning Ordinance. Pursuant to Section 902, Procedures, *“All requests for Conditional Use Permits shall be considered by the Planning Board and the Board of County Commissioners within ninety (90) days from submission (completion) to the Planning Department. However, this requirement is not intended to prevent the Board of County Commissioners from delaying action after review.”* Should the Planning Board require additional information or time, they may postpone action on the case until May 14<sup>th</sup>. Otherwise, the Planning Board’s action on April 9<sup>th</sup> would allow the case to be scheduled before the Board of County Commissioners on May 6<sup>th</sup>.

**Consideration of Cup Criteria and Proposed Conditions:** Section 903 provides for the Planning Board to consider the proposed CUP at a public meeting and to make a recommendation to the BCC. In considering the proposed Application, the Planning Board and BCC shall use as a guide Sections 903(a) thru (d) as summarized in the Table on page 4.

**Quasi-Judicial Procedures for Conditional Use Permit:** Reference is made to the attached “Quasi-Judicial Procedures” (on page 36) which apply to the Board of County Commissioners’ Public Hearings for the purpose of receiving information from the Applicant and other interested individuals for the proposed Conditional Use Permit. State law does not require these procedures to be followed during the Planning Board’s meeting, although it may choose to do so.

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## PROJECT REVIEW

**Existing Conditions:** The existing substation occupies a 4-acre tract of land at 150 Two Mile Desert Road, the bulk of which is located within the Town of Winfall. As shown on the attached County GIS Map, most of the northern boundary and the northeast corner of the site are within the County's Planning & Zoning Jurisdiction and is zoned RA, Rural Agriculture Zoning District, thus requiring a Conditional Use Permit for "Public Utility Substations, Transformer Stations, and Other Facilities."

The 1998 CAMA Land Use Plan Update shows properties along this segment of Two Mile Desert Road as "Developed" (see attached Land Classification Map on page 19). As defined by the Land Classification System:

*"The areas designated as Developed are the towns of Winfall and Hertford and the planned unit development of Albemarle Plantation. All three are served by a centralized sewage system." "The purpose of the Developed class is to provide for continued intensive development and redevelopment of existing cities, towns and their urban environs. The entire Town of Winfall falls into this category. Areas meeting the intent of the Developed classification are currently urban in character (and) have in place, or are scheduled for the timely provision of, the usual municipal or public services ..."*

**Proposed Conditions:** In his Statement of Justification (on pages 12 – 15), Shaun Tweed, Applicant for Dominion Power, explains that the proposed expansion is needed to "increase electric reliability in northeast North Carolina and support growth in Dominion's as well as local electric cooperative's service territories. The expanded Substation will house the larger 230 kV equipment needed to complete the Line #64 conversion." The Applicant's Site Plan depicts existing facilities along with the proposed equipment needed to convert or double the Substation's existing capacity from 115 to 230 "kV" kilovolts.

**Technical Review Committee (TRC) Comments:** The Technical Review Committee (TRC) met on February 25<sup>th</sup> at which time Mr. Schultis made his request to postpone the County's Conditional Use Permit process until April 9<sup>th</sup> to first obtain a Zoning Permit from Winfall. During the meeting, it was also noted that the adjacent property owner, Jarvis Winslow, has no objections to the request.

The TRC discussed the existing fire-fighting capabilities of the general area. County staff later confirmed that a 6-inch water main is located on Two Mile Desert Road; a 2-inch flushing device is located directly in front of the substation; and regular fire hydrants are located about 2,000 feet south of the site (in front of the Post Office on Main Street) and roughly 1.2 miles north of the Substation (in the 300-block of Two Mile Desert Road). The TRC made no special recommendation or requests for the project.

**Conditional Use Permit (CUP):** The specific requirements and considerations contained in Article IX of the Zoning Ordinance, especially Section 907.25, are included in the Draft Conditional Use Permit prepared for consideration by the Applicant and the Planning Board.

The Planning Board may wish to consider approval of the Applicant's request as conceptual or conditional, subject to compliance with an approved drainage plan and the other conditions stated in the draft CUP. In particular, Conditions 1 and 10 (on pages 5 and 7) may support this approach along with the other zoning criteria which includes measurable objectives to be confirmed by Soil and Water Conservation, Planning & Zoning, and Building Inspections staff prior to and during construction, as well as professional certifications provided by Dominion Power to the County upon completion of the improvements.

The Applicants' Site Plan and Statement of Justification are considered formal parts of the CUP. If approved, the Draft CUP will be executed by the Owners and the BCC Chair and recorded by the Applicants or Owners in the Register of Deeds along with said Site Plan and Justification Letter. Later, the recorded CUP would be attached to the Applicant's Zoning Permit and then used by Planning staff to determine zoning compliance and to issue a Certificate of Zoning Compliance.

In the event the Conditional Use Permit is granted by the Board of County Commissioners, all site engineering and building improvements will be reviewed to ensure the development has met all Federal, State and local regulations and permitting requirements, as well as any conditions determined by the Boards in the course of approving the Conditional Use Permit. No permits authorizing development shall be issued prior to compliance with all applicable regulations and conditions.

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## RECOMMENDATIONS AND SUGGESTED MOTIONS AND ACTIONS

The Planning staff believes that the Substation as proposed may be developed in compliance with Section 907.25 and other applicable design standards. The Draft Conditional Use Permit as recommended by the Planning Board must contain conditions included by the Planning Board's motion, if so moved. A preliminary listing of potential conditions, derived from the Zoning Ordinance and the Applicant's Statement of Justification, is included in the attached Draft CUP.

The Planning Board is requested to consider using one of the following scripts to form the desired motion for approval or denial of each proposed application, as follows:

- 1) **ACTION TO RECOMMEND APPROVAL:** Motion to recommend to the Board of County Commissioners approval of Conditional Use Permit No. CUP-13-01 to expand that portion of the Winfall Substation located at 150 Two Mile Desert Road (Tax Parcel No. 5-0032-0075-W) and zoned RA, Rural Agriculture within the Planning & Zoning Jurisdiction of Perquimans County, known as, conditioned upon *(revise, add or delete from list of conditions contained in the DRAFT Conditional Use Permit)*, adopting Findings to support the motion (see next Table on next page).
- 2) **SUGGESTED ACTION TO RECOMMEND DENIAL:** Motion to recommend denial to the Board of County Commissioners for Application No. CUP-13-01, adopting Findings to support the motion (see Table on next page).

**SECTION 903 TABLE OF FINDINGS**  
**Proposed Conditional Use Permit No. CUP-13-01**  
**Request to expand Winfall Substation**  
**by Dominion North Carolina Power**

<b>Motion to recommend approval finds:</b>	<b>Motion to recommend denial finds:</b>
1) That the CUP will not materially endanger the public health or safety, if located according to the plan submitted and approved.	1) That the CUP will materially endanger the public health or safety, if located according to the plan submitted and approved.
2) That the use meets the required conditions and specifications.	2) That the use does not meet the required conditions and specifications.
3) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity.	3) That the use will substantially injure the value of adjoining or abutting property, or that the use is a public necessity.
4) That the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the Perquimans County Land Use Plan.	4) That the location and character of the use, if developed according to the plan as submitted and approved, will not be in harmony with the area in which it is to be located and in general conformity with the Perquimans County Land Use Plan.

**Attachments:**

- 1) Draft Conditional Use Permit No. CUP-13-01, with Applicant's Statement of Justification and Site Layout and Elevation drawings;
- 2) 1998 CAMA Land Classification Map;
- 3) Remaining Application Package items (including Adjacent Property Owners, Owner's Authorization, Legal Description/Deed, Checklist, Cover Letters);
- 4) Excerpt of Zoning Ordinance, Article IX;
- 5) Quasi-Judicial Procedures;
- 6) Notice of Request with County GIS Map;
- 7) County GIS Aerial (March 2008); and
- 8) Photographs (April 2013).

**Perquimans County Planning & Zoning Staff Report**  
**April 9, 20132: Agenda Item II-B**

**Consideration of Recombination Application No. NZV-13-02 requested by Suzanne Gray to recombine Tax Parcels 2-D082-k039 and-K040-HI into one lot** which will not meet minimum lot requirements (subject properties located at 146 East Inlet Circle (SR 1431) and zoned RA-25, Residential & Agricultural District)

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This is a request by Suzanne Gray to recombine two lots known as Tax Parcel Nos. 2-D082-K039 and K040-HI into one lot. Mr. and Mrs. Gray currently reside at 138 East Inlet Trail and wish to locate a residence in the middle of these two lots, necessitating the recombination of said lots in order to meet minimum building setbacks.

Information relevant to the review of the request is as follows:

- 1) This review technically qualifies as a Variance from Section 701(a) of the Subdivision Regulations and the Applicants have paid their \$100 review fee to cover the cost of advertising the BCC's Public Hearing. If the requested recombination resulted in a 43,000 square foot lot [or 25,000 square feet with public wastewater treatment and water systems], this proposed Recombination would be exempt and the Planning staff would have already signed off on it).
- 2) The two existing lots are considered "legal, non-conforming lots of record" (reference Section "K" of Holiday Island, recorded January 27, 1972, prior to County regulations).
- 3) Approval of the request would reduce the extent of the non-conforming lot sizes.
- 4) Reference Section E, Easements, of the Restrictive Covenants for Holiday Island (recorded at Deed Book 137, Page 872 in the Office of the Register of Deeds), which states in part that: "*Easements are granted to the Association along and within 5 feet of all back lot lines and all side lot lines, and within 10 feet of all front lot lines for the following purposes:*" (see attached on page 9).
- 5) The Planning staff's only concern is the status of the easements established along the original lot line as stated in the Restrictive Covenants. East Inlet Circle is paved and maintained by the NCDOT. Should there be any existing drainage or utility lines or similar improvements, the existing easements would need to be retained. Therefore, the Planning staff has no objection to the request provided that steps are taken to address this question, perhaps in a statement from the Holiday Island Property Owners Association, to certify that there are no such improvements within the easements and that the easements will not be needed in the future, and by a certification or note on the face of the proposed Survey Plat which provides that "*To the best of my knowledge and belief, there are no existing drainage, utility or similar improvements located within the easements previously established for the subject properties by the Revised Restrictive Covenants at Deed Book 137, Page 872 in the Perquimans County Register of Deeds Office. Said easements are hereby vacated along with the vacated lot lines.*"

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**RECOMMENDATIONS AND SUGGESTED MOTIONS AND ACTIONS**

Pursuant to Section 206 of the Subdivision Regulations: "The County Board of Commissioners may, on recommendation from the Planning Board, authorize a variance from these regulations

when, in its opinion, undue hardship may result from strict compliance. In granting any variance, the Planning Board shall make the findings required below, taking into account the nature of the proposed subdivision, the existing use of land in the vicinity, the number of persons to reside or work in the proposed subdivision and the probable effect of the proposed subdivision upon traffic conditions in the vicinity. No variance shall be granted unless the County Board of Commissioners finds (see following Table of Findings):

<b>SECTION 206 TABLE OF FINDINGS</b> <b>Case No. NZV-13-02: Recombination of Existing Lots</b>	
<b>Motion to recommend approval finds:</b>	<b>Motion to recommend denial finds:</b>
1) That there are special circumstances or conditions affecting said property such that the strict application of the provisions of this ordinance would deprive the applicant of the reasonable use of his land.	1) That there are no special circumstances or conditions affecting said property such that the strict application of the provisions of this ordinance would deprive the applicant of the reasonable use of his land.
2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner.	2) That the variance is not necessary for the preservation and enjoyment of a substantial property right of the petitioner.
3) That the circumstances giving rise to the need for the variance are peculiar to the parcel and are not generally characteristic of other parcels in the jurisdiction of this ordinance.	3) That the circumstances giving rise to the need for the variance are not peculiar to the parcel and are not generally characteristic of other parcels in the jurisdiction of this ordinance.
4) That the granting of the variance will not be detrimental to the public health, safety, and welfare or injurious to other property in the territory in which said property is situated.	4) That the granting of the variance will be detrimental to the public health, safety, and welfare or injurious to other property in the territory in which said property is situated.

**SUGGESTED MOTIONS-RECOMMENDATIONS-ACTIONS:** The Planning Board is requested to consider using one of the following scripts to form the desired motion for approval or denial of the proposed Subdivision Variance, as follows:

- **SUGGESTED ACTION TO RECOMMEND APPROVAL:** Considering Section 206 Findings contained in the table above and the Section 701(a) exemption criteria, a motion is hereby made to recommend approval of Case No. NZV-13-02, to recombine Tax Parcel Nos. 2-D082-K039; and K040-HI into one lot, located at 146 East Inlet Circle (SR 1376), **conditioned upon approval by the Holiday Island Property Owners’ Association and the ability to vacate the existing easements previously established by deed restrictions.**
- **SUGGESTED ACTION TO RECOMMEND DENIAL:** Motion to recommend denial of Case No. NZV-12-03, based upon findings contained in the table above.

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**Attachments:**

- 1) Application for Recombination (including reduced copy of Applicant’s proposed Plat and current Deed Book 407, Page 214);
- 2) HIPOA Restricted Covenants, Section E, Easements; and
- 3) County GIS Map.

**Perquimans County Planning & Zoning Staff Report**  
**April 9, 2013: Agenda Item II-C**

**Continuation of Administrative Text Amendment No. TXT-12-03 to establish standards, conditions and procedures for Video Sweepstakes Operations/Electronic Gaming Operations/Internet Sweepstakes Cafés throughout the County, with potential changes to Articles VIII, IX, XIX and XXIV of the Zoning Ordinance**

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On December 11, 2012, the Planning Board recommended to the Board of County Commissioners approval of the attached Draft Ordinance regulating video sweepstakes operations. Several days later, in response to an appeal, the NC State Supreme Court issued a ruling in support of the State's prohibition of such establishments. This caused the County to delay sending the item forward, in order to allow more time to determine the appropriateness of the very concept of regulating a use which is prohibited by the State. At the Planning Board's last meeting on March 21, 2013, concerns about the status of the VSO Ordinance was expressed and the County staff was directed to pick up where we left off in the review process. To that end, the item was re-advertised for the Planning Board's review on April 9<sup>th</sup>.

To reacquaint and to catch up on the latest happenings surrounding this issue, reference is made to the following attachments:

- 1) Draft Ordinance approved by the Planning Board on December 11, 2012 pages 4 – 15);
  - 2) Planning Board December 11<sup>th</sup> Minuets (pages 16 – 18);
  - 3) Two Coates' Canons Law Blog articles posted by the School of Government on December 19, 2012 and March 14, 2013 (pages 19 – 24).
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**TEXT AMENDMENT CRITERIA**

**Reference is made to the Zoning Ordinance, Section 1302, Action by the Planning Board, as follows:**

*“Every proposed amendment, supplement, change, modification, or repeal of this Ordinance shall be referred to the Planning Board for its recommendation and report. The Planning Board shall hold a public meeting, at which the Board of County Commissioners may sit concurrently with the Planning Board if the Board of Commissioners so desires. (The) Board of County Commissioners shall receive written notice of the meeting and its subject matter from the Planning Board.*

*B. In evaluating any proposed ordinance text amendment, the Planning Board and the County Commissioners shall consider the following:*

- (1) The extent to which the proposed text amendment is consistent with the remainder of the Ordinance, including, specifically, any purpose and intent statements;*
- (2) The extent to which the proposed text amendment represents a new idea not considered in the existing Ordinance, or represents a revision necessitated by changing circumstances over time;*



*(3) Whether or not the proposed text amendment corrects an error in the Ordinance; and*

*(4) Whether or not the proposed text amendment revises the Ordinance to comply with state or federal statutes or case law.*

*In deciding whether to adopt a proposed Ordinance text amendment, the central issue before the Board of County Commissioners is whether the proposed amendment advances the public health, safety or welfare and is consistent with any adopted County Land Use Plan documents, the CAMA Land Use Plan, and the specific intent of this Ordinance.”*

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## SUGGESTED MOTIONS – ACTIONS – RECOMMENDATIONS

**Planning Board Action on Proposed Text Amendments to Zoning Ordinance:** The Planning Board may wish to consider using one of the following scripts to form the desired motion for approval or denial of the proposed Text Amendments to the Zoning Ordinance:

- **SUGGESTED ACTION TO RECOMMEND APPROVAL:** Based upon guidelines as contained in Sections 1302B(1) through (4), motion to recommend approval of Administrative Amendment No. TXT-12-03 **to establish standards, conditions and procedures for Video Sweepstakes Operations/Electronic Gaming Operations/Internet Sweepstakes Cafés throughout the County**, with changes to Articles VIII, IX, XIX and XXIV of the Zoning Ordinance;
  - **SUGGESTED ACTION TO RECOMMEND DENIAL:** Based upon guidelines as contained in Sections 1302B (1) through (4), motion to recommend denial of Administrative Amendment No. TXT-12-03.
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For the record, comments from the former Staff Reports on this item are provided as follows:

**Staff Report for December 11, 2012, Agenda Item II:** As you may know from my last two email messages (November 21<sup>st</sup> and December 4<sup>th</sup>), the Planning Board, at its meeting on November 13<sup>th</sup>, continued its review of the Draft Ordinance in order to look more closely at the proposed Site Considerations and Operational Considerations, and to obtain feedback from Wallace and Brenda. As stated in my November 21<sup>st</sup> email, reference is made to the Draft Ordinance, especially pages 9, 10, 11, 14 and 15) with proposed Sections 907.30B(1)(a) through (e) and 907.30B(3)(a) through (i), and the concerns discussed at the meeting, as follows:

- Generally, no problem with the use to be limited to the Commercial Highway (CH) Zone, subject to a Conditional Use Permit.
- Are some of the linear footage distances from VSO excessive? See Subsections 907.30B(1)(a) existing sensitive use = 1,320 feet; (b) another VSO = 1,000 feet; (c) existing restaurant = 500 feet; and (d) property zoned for residential = 250 feet.
- Will these distances allow existing buildings to be used for VSO's?
- Do we need parameters to address changing tenants in strip malls and other nonresidential buildings?
- Is this gambling?

- The County will not make a lot of revenue as there is no sales tax revenue from VSO's.
- Who is going to regulate the conditions?
- What will the enforcement process involve?
- Firearms can't be regulated.
- What is the State's required distance from ABC stores? (50 feet from a church or public school or church school and zoning laws as per <http://abc.gov/faq/category.aspx>).

Since no comments have been received to date, the same Draft Ordinance from last month's agenda is attached hereto unchanged, along with a "Circle Map" or "Buffer Map" which shows the potential locations within the CH, Highway Commercial Zone, along US Highway 17 North and South for new Video Sweepstakes Operations/Electronic Gaming Operations/Internet Sweepstakes Cafés (VSO) based on a 1,320-foot separation from existing residences (green circles), a 1,320-foot separation from existing churches (blue circles), and a 500-foot separation from existing commercial uses (red circles). This map may not provide 100% accuracy of the actual measurements we would see in the field, however, it does give us a good idea of the limitations that would result from the current Draft Ordinance, since the address points are generally centered on existing buildings or in the middle of the lot. For comparison, Rhonda Money, GIS Mapper, is working on another map to be available Tuesday night which will show 500-foot circles around the address points of these same existing residences, churches and commercial uses. If the 500-foot separation shows a large number of gaps, Rhonda may prepare additional maps showing 750- and 1,000-foot separations.

For background purposes, this item was added to the Planning Board's Work Program after the last Joint Work Session on August 14<sup>th</sup> to head off problems that are occurring in neighboring communities (towns, cities and counties alike). Reference is made to materials provided in the October 9<sup>th</sup> agenda package (including regulations from other local governments and Rich Ducker's "Notes on Zoning and Video Sweepstakes Operations." New attachments include information from the City of Elizabeth City, Currituck County, and experts at the School of Government (SOG). In discussing the situation this week with Chris McLaughlin of the SOG, it was his opinion that it is best to proceed and not allow the current court cases to delay the County's review or adoption of the proposed regulations (see attached "Coates' Canons: NC Local Government Law Blog regarding Internet Sweepstakes Judicial Update and the Webinar scheduled for January 16<sup>th</sup>), since it is doubtful that the lower court's ruling will be upheld.

The remainder of this staff report is the same as November 13<sup>th</sup>.

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**Staff Report for November 13, 2012, Agenda Item II-A:** At the request of the Planning staff, this item was added to the Planning Board's Work Program after the last Joint Work Session on August 14<sup>th</sup> to head off problems that are occurring in neighboring communities (towns, cities and counties alike). Reference is made to materials provided in the October 9<sup>th</sup> agenda package (including regulations from other local governments and Rich Ducker's "Notes on Zoning and Video Sweepstakes Operations."

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**Attachments in the December 11, 2012 agenda only (not in April 9, 2013 agenda):**

- 1) Draft Ordinance ("strikethrough and underline" copy).
- 2) GIS Buffer Map showing 1,320' separation from existing residences and churches & 500' separation from existing commercial uses.
- 3) City of Elizabeth City Conditional Use Permit Criteria for Internet sweepstakes café.
- 4) Currituck County Memo with four potential text amendments for Electronic Gaming Operations (Internet Sweepstakes).
- 5) Coates' Canons: NC Local Government Law Blog posted 11-29-12 Privilege License Taxes and Internet Sweepstakes Judicial Update and the Webinar scheduled for January 16<sup>th</sup>

