IN RE: PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION	*	BEFORE THE
(901A and 915 Middle River Road)	*	OFFICE OF
15th Election District		
6th Council District	*	ADMINISTRATIVE HEARINGS
Bradley S. Glaser, Authorized Representative of VEI Middle River, LLC, *Legal Owner*	*	FOR BALTIMORE COUNTY
Jumping Jamboree, LLC, *Lessee* Petitioners	*	**Case No. 2014-0035-SPHX**

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ORDER ON MOTIONS FOR RECONSIDERATION

Now pending are cross Motions for Reconsideration filed by both the Petitioner and Protestants. Both Motions will be denied, as explained below.

The Protestants filed the first Motion, requesting additional restrictions be imposed on the special exception relief. As far as the square footage issue, I do not believe it is my role to decide upon the layout of Petitioner's business, the needs of which could change over time. The Order contained a restriction on the number of arcade machines, and that limit cannot be exceeded regardless of their placement within the building. In addition, Baltimore County Zoning Regulations (B.C.Z.R.) § 423 requires that the arcade use be subsidiary to the recreation (i.e., moon bounce) use, so the law itself dictates that the square footage devoted to the arcade use must be subordinate to the area devoted to the recreation use. I believe the combination of these factors is sufficient to safeguard the health and welfare of the community.

The Protestants also request that additional restrictions be imposed on the arcade machines, such that only machines rated "green" be allowed. The Protestants at the hearing expressed concern with violent games being available at the facility, and I believe the current restriction (permitting machines with green and yellow, but not red, ratings) will address this concern, and I will not impose any additional restrictions.

After looking into the matter in greater detail, it appears many courts hold that video games (even ones appealing to a minor's "morbid interest in violence") are protected free speech. Entertainment Software Ass'n. v. Foti, 451 F.Supp. 2d 823, 829 (M.D. La. 2006) (citing cases). In light of this authority, I do not believe that any further restrictions concerning the content of the games would survive judicial/constitutional scrutiny.

The Petitioner has also filed a Motion for Reconsideration, seeking to have Condition No. 6 stricken from the final Order. This condition – – essentially stating that the relief is personal and shall not "run with the land" – – was imposed at the behest of the community, and I too felt that Ms. Sabernia was a vital component of the business operation, given her long-standing presence in the community as an educator and child advocate. While I understand the argument advanced by Petitioner, the Order does not require – – and it was certainly not my intent – – to mandate that Ms. Sabernia be present at the facility every day from opening to close. The restriction was that the relief would terminate upon her sale of the business.

It is not entirely clear that such restrictions are permissible, although I was unable to locate any Maryland law directly addressing the issue. Cases from other states are divided on the point. Compare Shoosmith Bros. v. County of Chesterfield, 601 S.E. 2d 641, 643 (Va. 2004) (conditional use permit does not run with land), with Fromer v. Two Hundred Post Assoc., 631 A.2d 347, 349 (Conn. 1993) (environmental permit "to conduct a regulated activity runs with the land"). Given the lack of controlling case law on the issue, I believe the condition is a reasonable one given the facts and circumstances in this case. As such, the Petitioner's Motion will be denied.

WHEREFORE, IT IS ORDERED this **13th** day of November, 2013, that the Motion for Reconsideration filed by Protestants, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Motion for Reconsideration filed by Petitioner, be and the same is hereby DENIED.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

_____Signed_____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw