

STARKE COUNTY BOARD OF ZONING APPEALS

53 EAST MOUND STREET

KNOX, IN 46534

PHONE: 574-772-9176

MINUTES

December 12, 2022

Chairperson Troike opened the meeting at 6:30 p.m.

I Pledge of Allegiance- led by Chairperson Troike.

II Roll Call- Bob Troike (Chairperson), Mark Allen (Vice-Chairperson) absent, Denise Cultice (Executive Secretary), Gwen Rentz (Member), Jason Downs (Member), Justin Schramm (Attorney), Wallace Williams (Boz) (Building Commissioner), Mary Beever, Planning Commission Administrator, Tina Holley, BZA Secretary

III Review of the meeting minutes for – November 14, 2022. After review, Denise Cultice motioned to approve the minutes as presented; seconded by Jason Downs. Voting unanimous 3-0

IV Chairman Troike opened the meeting by reading the first Public Hearing notice.

Public Hearing to consider an appeal of business permits requested by **LOMAX Property Owners Association c/o Viola Woods** to possibly revoke business licenses that were granted without going through proper process, on property owned by Alliance Trust c/o Gerald Cannon and described as follows: S Pt Common Area 33-33-4; 1.41 acres, Parcel number parcel #75-04-33-400-002.401-011, located at 3153 S 900 W, San Pierre, IN 46374.

Mr. Troike asked if all certified notifications were returned. Tina, Recording Secretary stated only 1 of 3 were returned; of which not returned were Thomas Morin, and Alliance Trust c/o Gerald Cannon. It was decided by Viola Woods to continue with the hearing.

Gwen Rentz asked if there is a time restraint on the licenses in question as some go back 10-12 years. Is there any stipulation as to when an appeal can be filed; one goes back 12 years. Justin Schramm, Counsel, responded that that refers to any Board action which there has not been.

Tina, Recording Secretary stated the reason we are here is that the Board granted LOMAX a hearing upon the information given to them at the October meeting. They are here this evening to consider revoking the licenses that were granted without due process. Denise Cultice motioned to open the meeting to the public; Jason Downs seconded the motion. Voting 3-0.

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Viola Woods then presented her case for the public and Board present. Viola questioned just what the Board members received as she had brought copies of many documents to hand out. Tina assured her that the Board had received all the proper documents that were emailed to her as well. Viola was then asked to proceed.

Viola introduced herself as Viola Woods, who initially filed to be heard at the Board Meeting in October as the attorney for LOMAX Property Owners Association. Due to some technicality, it was rescheduled to tonight. In the meantime, LOMAX Property Owners Association has reached an agreement with Alliance Trust; which is the holder of the 8 licenses that are being referred to in tonight's hearing. This has further now been processed through the court system. Approximately one week ago it was closed which Viola considers to be a major accomplishment in that several difficult issues were solved (the 8 licenses were only a small item). In the settlement, it was decided that Viola Woods would not ask for the 8 licenses to be voided. She is here, now, as Viola Woods, a member of the LOMAX POA – not the attorney. Paul McGinn, Treasurer, will be speaking on behalf of the LOMAX POA later tonight. Viola continued that all the 8 licenses were registered to Alliance Trust c/o Gerald Cannon which has been notified of the settlement agreement. All of the 8 licenses were auto resale businesses located in an agriculture zoned area with a platted subdivision of 6 residences. The licenses were issued from 2013 to 2020 with no notice given to any member of the LOMAX Station subdivision. Their understanding of the agriculture-zoned code is that it includes buildings on a tract of land containing 10 acres or more/temporary housing for seasonal workers/buildings and pens for livestock and poultry and that they have to be more than 150 feet from the nearest residential developed area. Pig styes, sheds, manure disposing facilities are stated but no were is it stated of an auto wholesale business permissible. All of the licenses were approved by the Planning Commissioner and not the Board as stated as a requirement in the code enforcement; no notice, no hearing, no due process. It was told to Viola that Terry Stephenson, the prior Planning Commissioner took the stipulation of a boat or marine storage facility as applicable to a wholesale auto business. Therefore, he took the authority to approve the 8 businesses. Viola continued to explain her role as the member of the LOMAX POA and their reason for asking for the public hearing to revoke the licenses of the 8 businesses in question. Viola stated that none of these businesses have complied with the Secretary of State to keep their licenses current. Ms Woods stated it has taken years to get a settlement with LOMAX POA and Alliance Trust c/o Gerald Cannon but it has been done and she simply wants the Board to be aware of her hard work to accomplish this. Alliant Trust c/o Gerald Cannon is no longer connected with LOMAX POA and is a separate entity. Mr Cannon has agreed to follow the rules of the Starke County Board of Commissions and no one will attempt to obtain business licenses without following due process.

Paul McGinn, Treasurer of LOMAX POA took to the floor and presented his information. He pointed to the map and explained where this piece of property was. It has now obtained a quiet title. He is requesting from the Board that if any of these 8 licenses

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decide to come before the Board and obtain their business permit properly that we deny that due to their past behavior.

Boz Williams, County Inspector, took the floor and stated that this area called LOMAX is not a subdivision, never has been and never will be; it has always been a campground and all the lots listed were meant to have campers placed on them. There will never be a building permit issued for a home in that LOMAX POA area. The current six homes were already placed there without being monitored; overloading the current septic system. It's already a business - a Campground/Wellness Center, whatever you want to call it. Viola Woods wanted to insist it is classified as a PUD and that the name Campground is in the titled plat. Boz Williams stated it is not why we are here tonight.

Justin Schramm, Counsel stated that he was confused and – asked Viola if she was withdrawing her request to revoke these licenses? Mr. McGinn stated that yes that is still on the floor. There ensued discussion between Viola and Justin as to the business licenses and what the settlement covered. Viola stated that the settlement did not state that these licenses would be revoked but that no new licenses would be granted within the 4 corners of Starke County zoning code. Justin stated that then by seeking revocation here with the Starke County Board of Zoning Appeals you are not violating your settlement. Viola stated that is correct.

Bob Troike asked if there was anyone in audience in favor of LOMAX POA requesting revocation of the business licenses in question; and no further business licenses being granted until they go through the proper Starke County zoning code enforcement. He then asked if anyone in audience is opposed.

Bob Troike then put questions from the Board on the floor for discussion. Bob asked if this is a gated community, then why is this even being brought to the Board? He asked that if this is a gated community and governed themselves then why was this not brought to the POA Board. Viola stated that no one knew about it in 2013. She stated that the property in white that is being visualized on the TV on the wall. Gerald Cannon was the president of the LOMAX for years. He was also Vice-President. He paid dues, came to the meetings. The POA did not know he had applied for the business licenses.

Mary Beever explained to the Board to help clarify the situation. Mr. Cannon owned a large building located within the property in question. Terry Stephenson, then current Building Inspector, signed off of these businesses although technically Mr. Cannon should have come before the BZA for approval. These are “shell” corporations and the people are never there which he got approved through Terry. These business licenses were for an office space and address only. Mr. McGinn stated that currently Mr. Cannon is actually trying to sell the building. Mary stated that no one was notified of these licenses at the time of approval as they did not appear at any BZA meeting. Mr. McGinn

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then agreed and stated that since rules were not followed then the licenses are not valid and need to be voided.

Denise Cultice asked if a Campground can have things for sale – can they have a yard sale? Boz stated that all of that would have to go through the BZA. He restated that Viola Woods appears to be here about the licenses; and that it's already listed as a business, they used to have a restaurant. Mary again restated that if any homeowner came to her office to get a business license that they would have to go through the BZA for that. If approved, then a business license would be granted. Much discussion ensued between the Board members as to what has actually been located there and what this hearing is about. A lot of talking continued amongst everyone. All they are asking for is that the Board does not approve any further business license. Justin stated that all the LOMAX POA needs to do require any business license must go through the BZA and if indeed Mr. Cannon does that he would be in non-compliance with the settlement – is that correct? Further discussion ensued between Justin and Viola as to just what the settlement states and what state given rights Mr. Cannon has. The Board expressed discouragement that Mr. Cannon is not here to answer for himself as he is the topic of this variance. Viola again gave a lengthy response.

Bob Troike asked for a motion to close the public comment. Denise Cultice made the motion and Jason Downs seconded. Voting was 3-0.

Discussion now ensued between Justin Schramm and the Board members as to the revocation of licenses. Jason Downs attempted to re-affirm what Justin was stating – that if they revoke the licenses that were granted though incorrectly, then they could appeal the decision. He stated that perhaps it is better to deny any licenses at that location going forward and to make the current ones non-transferrable upon Mr. Cannon's selling or closing of the property in discussion. Any current license that expires with the State of Indiana also expires with Starke County and will not be renewed is the understanding.

Jason Downs made a motion that any business license that has expired through the State of Indiana is also expired with Starke County. The business licenses currently still active with the State of Indiana will remain active and upon their dissolution will be expired from Starke County as well. There will also be no transferring of licenses. Denise Cultice seconded the motion Voting 3-0. Viola Woods questioned if the statement included the terminology “administratively dissolved” in its wording. Justin Schramm responded yes.

Bob Troike read the next public hearing to be presented. Public hearing to consider a USE variance request by Adrian Botis, Owner, to set up a Used Car Business at property owned by Adrian and Olga Botis and described as follows: Pt SW NW S22 T33 R1 5 ac.,

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Parcel number 75-07-22-100-017.100-012, located at 0286 So. S.R. 23, Knox, IN 46534.

Bob asked if all notifications are in order; Tina responded yes, all were returned. Mr. Botis is here to present to the Board his request to set up a Used Car Business at this property with approximately 4-5 used vehicles.

Mr. Botis took the floor and introduced himself. He is requesting to open a used car business at his residence. He stated that everything will stay the same and that he needs this variance in order to get a auto dealer license which he can do once he secures a location. He does not plan to build any additional structures –He has a dealer membership but has no intention of buying a car dealer or increasing traffic. He has been doing business via on-line but can purchase better vehicles if he has a car dealer license. He currently conducts business on-line and ships cars over-seas to purchasers. He currently resides in Chicago and does plan to move to this permanent location in the future.

Bob Troike opened the hearing to the audience and asked if there was anyone in favor of or in opposition to this variance to stand, state their name and address for the record. Kevin Richardson, 225 So S.R. 23, Knox. Kelly Klingerman, 0320 so. S.R. 23, Knox. Tina read a letter of opposition from Linda Dust, 8788 E. 50 S., Knox, IN. During the reading there was much conversation amongst the Board members. Mr. Botis responded to the letter – he stated he just needs a piece of property to get a dealer license through the State of Indiana. If this property is not applicable then he is prepared to search for another. He needs a physical address which he cannot obtain in Illinois as he lives in an apartment. Gwen Rentz asked Mr. Botis where did he plan to park the cars as she was looking at the pictures that were included. She was concerned as to a display area for the cars; where were people to park, etc. Mr. Botis stated that he is a truck driver and uses the area in front of the white fence as an area to pull off when he is in the area. That area is not related to this variance request. Jason Downs re-iterated the question was where was Mr. Botis going to park the cars. He answered that there should be minimal cars as he does everything online. It is much easier to buy and sell cars online and ship to Europe as the legal/title requirements are less and the value of the dollar are higher. That is what he is wanting to do. Much discussion ensued between the Board and Mr. Botis along with much discussion amongst Board members. The main concern of the neighbors is multiple cars, random people, disposing of fluids, increased traffic, dilapidated cars. Mr. Botis responded that all he needed to get his license is a piece of property that can hold 2 cars for the State of Indiana – he stated that he will be not selling cars physically, everything will be online. Mr. Botis cannot apply with State of Indiana until this variance is granted.

Motion was made by Denice Cultice and seconded by Gwen Rentz to close public comments. Voting 3-0. Public Response was then closed and discussion ensued amongst the Board and Justin Schramm. Jason Downs reiterated that Mr. Botis appears to be requesting a variance in order to get a car dealer license from the State of Indiana but doesn't sound like he plans to actually physically sell cars to the public. He needs a space and an address.

Motion was made by Denice Cultice that the Use Variance be GRANTED with stipulations:

1. Limit of 2 plated/licensed/insured vehicles for sale at property at any time.

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2. All State of Indiana requirements to be met prior to obtaining business license in Planning Commission.
3. Variance is NOT transferrable upon sale of property.

Seconded by Gwen Rentz. Additional clarification ensued with the Board and the audience to clarify the stipulations. Most importantly, they wanted to be sure they were notified if Mr. Botis returned for another variance to increase number of vehicles or change this current USE Variance. It was explained that he can get a building permit (Pole Barn, etc.) without notification of the neighbors if he chooses to do so in the future. The audience was agreeable to that. Voting was then done; 3-0. Mary Beever, Planning Commission Administrator explained to Mr. Botis that he has 6 months from tonight to return for his permit; following acceptance through the State of Indiana.

Bob Troike, President continued with the meeting upon reading the next Public Hearing to consider an AREA variance request by Joseph Magiera, to reside in an undersized home at property owned by Anthony Joseph Magiera and described as follows: Pt E Side W ½ SW Se 22-34-1 1.58 acres, **Parcel number 75-03-22-400-039.000-009**, located at 9780 E. 500 N., Grovertown, IN 46531.

Tina Holley, Recording Secretary stated that 3 notifications were sent with 2 being returned. Notification not returned is Steven and Heather Fisher, 9720 E 500 N, Grovertown, IN 46531. Bob Troike explained that if Fisher's appeal the decision made by the Board tonight there would possibly be a re-hearing. Mr. Magiera chose to continue.

Tina Holley, Recording Secretary read the reason for Mr. Magiera's appearance tonight for an AREA Variance to reside in an undersized non-permanent structure. The Board's findings are as follows: No county approved well or septic system is on the property. No permit has been sought for the accessory building that Mr. Magiera currently resides in, along with two sheds. In addition, there can be no permit for this accessory building if there is no dwelling on the property. There are currently 10 dogs on the property which requires a kennel license.

Mr. Joseph Magiera stood up and presented his case for the Area Variance. He stated that one of the sheds is sitting over the inch and a quarter driven well so he needed to put something over it and use that for the water; then he can tap into the existing septic system.

He was not aware that he could not utilize it. He resides in the Shed in a loft area and would like to remain in this shed while he builds a home. Gwen Rentz asked about a time frame and Mr. Magiera responded he doesn't have one at this time. He has multiple trees to drop to clear the property and would like to use some of that lumber to construct it. Mr. Anthony Magiera – Joseph's father and owner of the property then stood up to speak. He explained that he, his wife and Joe have all been in the hospital along with the Covid issue which has slowed everything. He also stated that when he purchased the property that he was told it had a well and septic on it. He did not get this in writing so was unaware they were not

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approved systems. It was during Covid so there was no direct contact with the realtor – everything done at a distance. They figured they would start the home on the existing foundation when things calmed down. He stated that his son came to the Planning Commission office about the 10 dogs that he uses for his business and was not told anything about a kennel permit. Much continued explanation was given by Mr. Magiera. Tina Holley responded that we need to address the fact that the septic is not approved and therefore, no human habitation should be at this property until that is rectified. She has spoken to Mike in the Starke County Health Department who states there needs to be a PERC test. Once that has been approved and paid for then Mr. Magiera can proceed with a plan through the Planning Commission. Boz Williams did explain that Mike stated if Mr. Magiera obtained a licensed contractor who approved the current septic system that perhaps that is an option. Boz stated he thought Mr. Magiera had been told to do that prior to tonight's meeting but apparently Mr. Magiera did not understand that request. A lot of multiple discussions ensued between Board Members. Gwen Rentz asked what is Mr. Magiera using if the septic is not in working order and he stated that he had a port-a-john located behind one of the sheds. Denice Cultice spoke with Mr. Magiera about not living in the sheds he has put on the property without proper permits. He also has solar panels that have not been permitted as well. He was also served papers via our zoning enforcement officer as to the proper permits that needed to be obtained.

Board members discussed no shed if less than 10 acres if no home is on the property. They discussed septic/well/ multiple permits that have not even been attempted. Mr. Magiera appeared to be confused about all of the discussions. Jason Downs tried to convey to the father, Anthony Magiera, that the Board is really trying to help them but they need to help themselves as well. Mr. Magiera attempted to assign blame to his father not coming in to get the proper permits and to say our office is not giving out proper information.

Mary Beever, Planning Commissioner Administrator, attempted to explain all of the information that has been discussed. Mr. Magiera was again told he cannot reside in the shed as it is an unsafe, unhealthy environment. Boz asked her to explain what permits he needed. She stated at the very least he needs to get a house permit (800 sq ft), 2 shed permits, and a kennel permit. If he plans on keeping the solar panels, he will need to get permits on that as well. Gwen re-iterated that Mr. Magiera cannot do any of this until he speaks with Mike in the Health Department and gets a soil test/boring/PERC test which mean he must start there first. Discussion ensued further on the explanation that is to be done. He was told he needed to get moving on things if he plans to live there in the near future.

The audience was then opened up for comments. Seth and Trisha Huitt, 9790 E 500 N, Grovetown, IN took the floor. His main concern is to if a sewer or septic system was actually hooked up and working. Also, there needs to be proper permitting to be living on the property which they are pretty sure has not been done.

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Denice Cultice motioned public comment be closed; seconded by Jason Downs. 3-0 voting.

Discussion ensued between Justin Schramm, Counsel and the Board as to what stipulations, if any, can be placed on this variance in order to assist Mr. Magiera. Jason mentioned the variance needs to be denied and give Mr. Magiera a time frame to get everything completed.

Jason Downs motioned to deny the AREA Variance Request for occupancy in an undersized home with the stipulations listed below:

1. Obtain Survey of Property.
2. Obtain Soil Test (List of Soil Scientist Consultants and Septic Contractor List attached), proceed to Starke County Health Dept to obtain Septic Permit.
3. Obtain Building Permit for a home as per required by the Starke County district restrictions in Chart 1 for R-2 districts. (Chart 1 attached)
4. Obtain Shed Permit x2.
5. Obtain Solar Permit
6. Obtain Kennel License Permit.

The motion was seconded by Denise Cultice. Tina Holley, Recording Secretary repeated the motion. Voting was 3-0. Motion carried.

Bob Troike asked if there was any further business; there being none, Denise Cultice motioned we adjourn. Gwen Rentz seconded the motion. Carried 3-0.

Meeting was adjourned at 9:00 p.m.
Respectfully submitted,

Tina Holley
BZA Secretary

This meeting was recorded and will be on file in the zoning office. The next meeting of the Starke County Board of Zoning Appeals is scheduled for January 9, 2023 at 6:30 pm in the Starke County Government Building, located in Knox, IN.