MINUTES
REYNOLDSBURG BOARD OF ZONING
AND BUILDING APPEALS
JULY 18, 2013
6:30 P.M.

A. CALL TO ORDER

1. ROLL CALL

Members Present:	Mr. David Stoffel
	Mr. Anthony Rettke
	Ms. Bonnie Armintrout
Members Absent:	Mr. Patrick Feeney
	Mr. Anthony Feeney
Others Present:	Mr. Justin Robbins

2. APPROVAL OF MINUTES OF JUNE 20, 2013

Chairman Rettke: Are there any changes or additions to the minutes of April 18, 2013? (No response.) Hearing none, we'll approve those as submitted.

3. APPROVAL OF AGENDA

Mr. Rettke: Do we have any changes or corrections to the agenda as presented? (No response.) Okay, the agenda's approved.

4. SWEARING IN OF SPEAKERS

Mr. Rettke: If we can have anybody speaking before us tonight please stand and take the oath. (Mr. Rettke administers oath.) Just make sure you've signed in and before you speak give us your name and address.

5. PUBLIC COMMENT – None

A. UNFINISHED BUSINESS – None

B. NEW BUSINESS

Mr. Rettke: Can you please present Item B-1?

Mr. Robbins: This is a zoning certificate application for 6471 East Main, present zoning is CC and it is within our Community Commercial overlay district. I believe the Board is somewhat familiar with what is going on here and trying to make a determination on the type of use that is coming into this property. In particular, the definition of what is a business use or administrative and business office, as defined by our code, is “a for-profit business activity which may include one or more of the following uses, but to not carry on retail trade with the public and has no stock of goods maintained for sale to customers which is a bank, credit or other financial institution, broker or dealer in securities, investments, commodities or other associated services, insurance agent, broker or associated service, and real estate sales or associated services.” In addition, there’s a definition of pawn brokering and this is something that the Reynoldsburg code defers to the Ohio Revised Code and that definition is: “A pawn broker is a person engaged in the business of lending money on deposit or pledges of personal property other than securities, printed evidence of indebtedness, titles, deeds, or bills of sale at a total charge, rate or interest, or discount or other remuneration in excess of 8% per annum, and includes a person engaged in the business of purchasing personal property from another person with an agreement that the person property will be made available to that other person for repurchase within a due time period and for an amount greater than the price originally paid to that other person for the purchase of the personal property.” So I just wanted to get those definitions out of the way and make sure they’re on record.

The name of the business that’s proposed to go in, as you can see on the zoning certificate, is called Title Max and, from my understanding, I think this is something our applicants would like to probably address as well, is how the process works is that people come in and they basically get a loan and use the automobile as collateral, I believe. What staff is asking the Board to do is basically make a determination on the zoning certificate and if the business that they are proposing to put in the property is within the definition of one of the allowable uses such as administrative offices. Staff would like to mention that if it is not, if it’s considered pawn brokering, this particular property, the way that the code is written for pawn brokering is that it has to be within 1,000 foot distance away from schools, day cares and establishments serving alcohol. This particular property, within 1000 feet there are, I think, at least two day cares and at least one establishment serving alcohol. So the determination that the Board makes, if it is a Special Exception, it is pawn brokering, then it’s something that cannot go in there.

I would also like to mention Section 1193.03, Power and Duties of the Board. What we are trying to do is get involved in letter F which is “to grant or deny a zoning certificate when the question of issuance of such certificate is referred to by the zoning officer, or when the provisions of the zoning code indicate that the Board shall consider such questions.”

If there’s any pages you gentlemen would like to see, I can shut the lights down a little bit more so you can see them on the screen better.

Mr. Rettke: Okay, anybody wishing to speak, if you'd go ahead and sign in and then stand at the podium and state your name and address. We'll go ahead and start discussing this, I guess.

Mr. David Darby: My name is David Darby. I'm an attorney with Cooperman Gillespie. I respesent the property owner GBS Reynoldsburg, LLC and I have with me today a representative from the owner, Jason Gunsarek, as well as a consultant of the owner, Todd Dillon, who has been the main point of contact. We're prepared to briefly discuss the proposed use to go in there in relation to the definition of pawn brokering and just sort of go over the history and address any questions the Board has at this time. Todd, would you like to come up and I'll sort of elicit testimony from you?

Mr. Todd Dillon: My name's Todd Dillon and I'm the agent for the owner. It's actually GBS Main, LLC that owns the property that we're discussing.

Mr. Darby: Todd, the main issue here is the definition of pawn brokering. The definition of pawn brokering was per the Ohio Revised Code was read into the record. Title Max is not here this evening and I just want to address that for the Board as well. We've been here previously on sort of an informal – had sort of an informal conversation about this issue, I believe, in May. Todd, is it correct that since the meeting in May, Title Max did apply for a Certificate of Zoning Compliance. Is that correct?

Mr. Dillon: That's correct.

Mr. Darby: And have you corresponded with Aaron Domini at the zoning office regarding the progress and approval of the zoning compliance?

Mr. Dillon: I have.

Mr. Darby: Is this an accurate copy of an email you received on July 9th from Aaron?

Mr. Dillon: It is, yes.

Mr. Darby: And, just in substance, what is Aaron communicating to you in this email?

Mr. Dillon: I had reached out to Aaron just inquiring about the zoning certificate that Title Max had submitted and basically it's a response to my email with Aaron stating that he received the email and the zoning certificate application, he forwarded the application and, I guess, my email for final review to the City Attorney and then, you know, not barring any hurdles, he'll be able to approve the zoning certificate this week, that being the week of July 9th.

Mr. Darby: Okay. And then this subsequent email copy, this email that you received from Aaron, could you recite sort of the substance of that email and the date it was received?

Mr. Dillon: Yeah, on Friday, July 12th, a little bit after lunch, Aaron emailed me in regards to the review of the application of Title Max. Aaron states that staff does not have clarity on the application and then it goes on to talk about, "Per our attorney's recommendations at the last BZBA meeting, the zoning certificate submitted to review process," which we did, and "that staff is going to defer the application to the Board," and I think that's why we're here tonight. It goes on to explain the statute a little bit more in detail.

Mr. Darby: And during this time on Friday, July12th, had you been in communication with Title Max?

Mr. Dillon: Yes, we have.

Mr. Darby: And given the short notice, it's correct that they weren't able to free up a person to be up here for tonight's meeting since last Friday?

Mr. Dillon: That's correct.

Mr. Darby: Previous to tonight's meeting in your conversations with Title Max, have you spoken directly with them regarding the business that they intend to conduct at the subject premises?

Mr. Dillon: I have, yes.

Mr. Darby: On the telephone or via email?

Mr. Dillon: Both.

Mr. Darby: Based on your knowledge, is it correct that-- I think it's already been stated, but that the basic business model of Title Max is that they offer loans that are securitized by the debtor pledging a security interest on their auto title. Is that correct?

Mr. Dillon: That's correct.

Mr. Darby: Is that the only kind of loan that they issue?

Mr. Dillon: Yes.

Mr. Darby: Is that the only type of security that they accept before they issue a loan?

Mr. Dillon: Yes.

Mr. Darby: Does Title Max accept any personal property as security for a loan?

Mr. Dillon: No.

Mr. Darby: Do they sell any personal property, or has it been proposed to you that they would sell any personal property at the subject premises?

Mr. Dillon: No.

Mr. Darby: Would they sell motor vehicles that they – in the event they had to repossess a car, would those vehicles be located at the subject premises?

Mr. Dillon: No.

Mr. Darby: And they would not be sold from the subject premises, based on your conversation with them?

Mr. Dillon: Correct.

Mr. Darby: And we have a couple communications from Title Max. One has been presented to the Board. We'll present it again. It's just a letter dated May 16th. In addition, we have scanned copies of an Affidavit that was emailed to us this morning from the CEO of Title Max, attesting to the fact that they don't conduct pawn brokering, that they consider themselves a credit services organization.

Todd, based on the reading of the statute, is it your personal belief that Title Max, based on your conversation with them and the statute that's been read, is it your belief that they engage in what the statute considers pawn brokering?

Mr. Dillon: No, I do not believe so.

Mr. Darby: Is it correct that the Title Max has signed a lease for this premises?

Mr. Dillon: Yes, it is.

Mr. Darby: And is the lease conditioned upon compliance with all applicable laws, including zoning codes and ordinances?

Mr. Dillon: Yes, it is.

Mr. Darby: And does Title Max, in the lease, have the ability, if not the requirement, to vacate the premises in the event that their use is unlawful or should it become unlawful in the future?

Mr. Dillon: Yes, they do.

Mr. Darby: Based on Mr. Dillon's testimony on behalf of the property owner, it's our position that the proposed use does not fall under the definition of pawn brokering as security in the form of titles is excepted from the definition of a pawn broker, as was recited in the statute, and that Title Max does not engage in any other activities that would be included in the definition of a pawn broker. And, based on our interpretation, it falls within a conforming use and a certificate of zoning occupancy could be approved. I suppose, in furtherance of that, I've drafted, if the Board is able or willing to consider, proposed conditions for the issuance of a zoning certificate. The proposal would be, that I've written in here, that Title Max could be issued a certificate of occupancy on the condition that it comply with all applicable laws, does not engage in any activity falling under the definition of pawn broker as defined in 4727.01, that Title Max shall not store any repossessed vehicle at the premises, that Title Max shall not offer any motor vehicle for sale from the premises, and that Title Max should not accept any personal property other than titles to motor vehicles which are accepted as security for the loans made at the premises. These are just proposed that I've drafted. You know, we're open to suggestions or additional conditions if the Board is so willing.

Jason, do you have anything to add? (No response.) Okay, I'll hand my proposals. I think at this point we'd open it up for questions from the Board.

Mr. Rettke: Any discussion or questions?

Mr. Stoffel: What happens to the title if an individual defaults on their loan?

Mr. Dillon: There's a lien placed on the title and the client has the right to pay penalties and just like any other default of the loan. If they cannot come current on the loan that's due, then Title Max takes possession of that vehicle. Typically – not typically, but in all areas where they have these businesses, they also have an off-site kind of impound lot that they store vehicles at.

Ms. Armintrout: Did you say that they take possession of the car? Is that what you said?

Mr. Dillon: Just like any other – you know, if you have a loan on a car through Allied or another financing business, if you don't pay on your loan, they'll come and repossess your car. So it's not different that that, but, yes.

Ms. Armintrout: Where do they store them?

Mr. Dillon: They have basically an impound lot off-site somewhere, totally fenced, gated, secured; but it wouldn't be on our property.

Mr. Robbins: The proposed store in Reynoldsburg is the first for Title Max in Ohio. Is that correct?

Mr. Dillon: That's correct.

Mr. Robbins: Do you know if they've already established a kind of holding pen for cars?

Mr. Dillon: I don't. But I've explicitly discussed their operations of repossessing with one of their associates and nine times out of 10 repossession isn't done on property because people that aren't paying their loans typically aren't bringing their vehicles to the property to be repossessed. They're going out to their homes to repossess them. And then, secondly, there's no where to secure the vehicle on our property for them to stow it.

Mr. Darby: (Inaudible)

Mr. Dillon: Yeah. Another thing that the real estate representatives from Title Max had brought to our attention is their primary competition which is Loan Max, who is already established in the City of Reynoldsburg. We did some due diligence with the administrative staff and come to find out that a zoning certificate had been issued to Loan Max in 2012 for the same business – same type of business I should say. It's 1840 Brice Road, zoning certificate was issued in 2012.

Mr. Rettke: So are they going to do any check cashing or—

Mr. Dillon: No. No payday cashing, no check cashing.

Mr. Rettke: The only way they're going to get a dime is if they bring a title in?

Mr. Dillon: That's correct.

Mr. Rettke: I think that's where the error occurred on the other one, was it's more of a payday type place.

Mr. Dillon: Loan Max is 100% car title. The other one, which is Checksmart, they do payday lending as well as the title loans and they're right across the street from City Hall here. They also have a zoning certificate approved.

Mr. Stoffel: You wouldn't happen to know what proximity they are to any childcare facilities or any day care facilities, the ones that were issued? You wouldn't know that right off hand would you?

Mr. Dillon: I don't, sir.

Mr. Rettke: The ones across the street?

Mr. Robbins: They are not within the maximum distance. There's multiple childcare facilities and alcohol retailing establishments. One of the things that staff and the city has trouble with is to fully understand, I guess, the nature of the things coming into the city. It seems like the nature of these changes so often. I mean the State of Ohio passes a law and then you have these financial, or pawn brokering, or whatever the board determines, institutions that can rapidly change and then it's difficult for staff and the laws to catch up and fully address what's going in.

Mr. Dillon: The owner of the property, we have a vested interest. Our home office is at the back of this property and we're here every day all day. We're not here to, by any means, make enemies with the City – an even to the fact that we do all the within six (6) months of occupancy, basically whenever you guys want to call us back to the Board for kind of a review of the proposed conditions that Mr. Darby's put out there, I mean, we'd be willing to do.

Mr. Darby: And by that time, Title Max would have representatives in the State available to come and address concerns.

Mr. Stoffel: I believe, if I'm not mistaken, when you were here last month we asked Title Max to come back to this meeting. So they had – unless I'm forgetting something or I don't remember correctly – they had a month to prepare to come up to be here to answer these kind of questions.

Mr. Dillon: Yeah, I mean we were in front of you guys two months ago and basically the course of action was is we submitted – Title Max submitted a zoning certificate and, as we are working with staff, we felt that we were going to be administratively approved for that zoning certificate. So we basically alerted Title Max that this isn't going to happen. That was on Tuesday. On Friday we found out it was and the Dave spoke with the real estate director today. She was in the airport traveling somewhere. So I was just something that couldn't be managed. But ultimately the property owner is responsible for the zoning within the property and, you know, no matter what a tenant does, we've had it happen to us many a time where Tenants have broken zoning laws.

Mr. Stoffel: Cause I'd be real interested in hearing from the owner why they call themselves pawn brokers if they're not pawn brokers.

Mr. Dillon: They don't call themselves pawn brokers.

Mr. Stoffel: What do they call themselves in Georgia?

Mr. Dillon: It's car title pawn or something like that.

Mr. Darby: It might be called Auto Pawn in other states.

Mr. Stoffel: No, I understand what they're wanting to call it in Ohio. I was just curious how they refer to themselves in other areas, if we know that.

Mr. Darby: Based on your conversations with them, the reason they use the term pawn is because they operate in other states where the laws are, in fact, different and—

Mr. Dillon: That's correct. The laws in the other states require that that's how they refer to themselves

Mr. Darby: And the entity that's going to be operating Title Max of Ohio, Inc., is it correct that entity was created specifically to operate in Ohio?

Mr. Dillon: That is correct. An affidavit from the CEO of the organization, stating the store will operate as a credit service organization and not operate as a pawn broker. It's a sworn affidavit notarized in the State of Georgia.

Mr. Stoffel: What are you thinking, Tony?

Mr. Rettke: I'm not an expert on this.

Mr. Stoffel: Yeah, it's just really gray to me. I mean I wish it wasn't, but it—

Mr. Dillon: How's it not more black and white though? I mean to me I don't see how not any more black and white. I think you guys got put in a bad situation by staff. I mean no doubt about it, if you call it that, and I wouldn't be happy if I were you guys, but it's black and white. I mean not only do we have a sworn affidavit here; but as the property owner, we're willing to meet these conditions as Mr. Darby's laid out. We're not going to be backed into a corner over a Title Max and what they do. If they don't conform to what they tell us, then, you know, they have the right to leave the premises and we have the right to cancel their lease. Just remember, we're sitting here because we tried to do this above board. I mean Loan Max, whether they did it above board or not, I mean, you know, I can't answer that.

Mr. Rettke: I know they didn't come through us.

Mr. Dillon: But they probably didn't have to because of what they do. Just like we shouldn't have to be here because of what Title Max does. They are a credit service organization, as the code specifically allows within the zoning district, which this building lies in.

Mr. Rettke: Any other comments, questions?

Mr. Robbins: If the Board – if and when the Board is prepared to make a motion, I'd like to reiterate that it has to be in the affirmative. So you're basically going to make a motion, if and when the time comes, to accept the zoning certificate as submitted, and if you would like the additional conditions that were provided by the attorney today. If, in the event – we have three members right now and three are required to make a quorum. It means if we get a no vote, then the next step would be – and I believe you're aware of this – within the next 30 days to basically file a petition with Council and City Council will then take it up and you can proceed to appeal the decision by the Board through Council.

Mr. Rettke: It's not just necessarily a no vote, is it? It's an abstention too, correct?

Mr. Robbins: That's correct.

Mr. Rettke: Any other questions, concerns, comments?

Mr. Stoffel: No. I'll make a motion that we accept the zoning certificate number 161051.

Mr. Rettke: Second.

(Mr. Robbins called the roll. Mr. Stoffel voted "no." Mr. Rettke voted "yes." Ms. Armintrout voted "I'm going to abstain.")

Mr. Dillon: Are you allowed to explain why no?

Mr. Rettke: For the record he can, yeah.

Mr. Stoffel: For the record, it's just not that clear to me. I'm sorry that it's that clear to you, but it's not to me. It's just not that clear to me and the fact that you can go before City Council and they're able to make a determination, I'm comfortable with that.

Mr. Rettke: Okay, so you might want to follow-up with Aaron first thing tomorrow, get your application before the Council.

C. OTHER BUSINESS – None

D ADJOURNMENT

The meeting was adjourned at 7:07 p.m.

______________________________ ______________________________
Anthony Rettke, Chair Justin Robbins, Planning Administrator

This document was transcribed by:
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