

**VILLAGE OF FONTANA ON GENEVA LAKE
WALWORTH COUNTY, WISCONSIN**

(Official Minutes)

SPECIAL MEETING of the VILLAGE BOARD OF TRUSTEES

Friday, May 17, 2019

Village President Pat Kenny called the special meeting of the Village Board to order at 9:00 am in the Village Hall, 175 Valley View Drive, Fontana, Wisconsin.

Trustees Present: Roll call vote: Trustee Petersen, President Kenny, Trustee McGreevy, Trustee O'Neill, Trustee Pappas

Trustee Absent: Trustee Prudden, Trustee Livingston

Also Present: Bryan Bruss, Maryanne Bruss, Jeff Cates, Theresa Loomer, Pete Novak, Wally Perkins, Chad Pollard

General Business

Conduct a public hearing pursuant to Wis. Stats. Section 125.12 and related sections and Chapter 6 of the Fontana Municipal Code regarding a complaint filed by Maryanne Bruss as to a liquor license held by Novak's of Fontana, LLC, with Mr. Novak as Agent on the license.

Attorney Thorpe presented a procedural outline of the revocation hearing and reminded the Board to remain fair and impartial until they hear all the facts. Mr. Peter Novak acknowledged receipt of the summons issued to him on May 10, 2019 commanding him to appear before the Board on May 17, 2019 at 9:00 am. Thorpe stated the complainant bears the burden of proof and it is the Board's duty to determine whether the complaint is true or untrue. Attorney Chad Pollard introduced himself and his client, Maryanne Bruss. He stated the complaint that was filed was nothing personal, but that his client has a business opportunity and would like to utilize the license. Pollard outlined his case against Novak and listed the following reasons: Failure to continue business, habitual law offender and because the renewal application is a sham. Pollard called Novak as his first witness. Pollard distributed a packet labeled Exhibit Complainant No. 1 which was placed on the record. Pollard asked Novak general questions about the Novak's of Fontana LLC business, business address, business hours, whether he owned the property at 158 Fontana Boulevard, questions regarding news articles published in the Lake Geneva Regional News about the change of plans from a restaurant to a boat sales show room for the 158 Fontana Boulevard building, Facebook posts from September 2 and September 20, 2018 indicating Novak's was closed, a Yelp review indicating Novak's is temporarily closed and is scheduled to reopen on April 1, 2020, asked Novak if he knew the Village has a 90-day operating provision for liquor license holders per Chapter 6 of the municipal code, and asked about an inactive website domain. Novak confirmed the published news articles and Facebook posts and stated the restaurant operated on weekends after September 2, 2018 up until September 30, 2018 and he has invoices to that effect. Novak stated he is not aware of the Village's ordinance requiring a liquor license holder to operate for 90 consecutive days. Pollard presented a calendar which showed a beginning date of July 1, 2019 and an ending date of September 19, 2018 and stated that is only 81 days. Pollard then referenced pages 29-55 of the Exhibit Complainant No. 1 regarding Novak's criminal history. Thorpe indicated Pollard was attempting to expand his testimony beyond the scope of the filed complaint by incorporating evidence from Novak's criminal history. Discussion followed regarding whether the reference to Wis. Stats. Chapter 125 in the initial complaint was too broad to include Novak's criminal history. Thorpe stated the case should be limited to the specific provisions laid out in the complaint and Pollard stated he objected for purposes of appeal. Pollard questioned Novak about the 2018 and 2019 submittal of the AT-115 and whether page No. 2 of the form was filled out completely as he provided a 'yes' answer to 6a but Pollard had no record of the second page being completed. Novak replied he did not recall whether he filled out the second page of the document and it appeared that only one side of the form had been copied. The Board took a three minute recess from 9:31 am to 9:34 am. After the recess, Pollard questioned Novak about the 2019-20 liquor license application that was filed for the premise at 138 Fontana Boulevard, whether the premise currently matched the diagram as submitted in the renewal application, if he owned the

premise, and whether the building meets state building code and also whether the 158 Fontana Boulevard building met state building code. Novak replied the premise on file does not currently match the diagram but will once the current tenant moves out. He has also signed a lease with Kathy and Wally Perkins for the premise at 138 Fontana Boulevard, and stated since the buildout is not complete, the premise does not currently meet the state building and sanitation code but the former 158 Fontana Boulevard Location did.

At 9:42 am Pollard called Maryanne Bruss as his second witness. Pollard asked Bruss her name, address, and history in the community. Bruss stated she has lived in the Village since 2000 and opened a local business in 2012 and is in the process of opening a second business location. Bruss also has a liquor license application on file with the Village. Pollard asked Bruss about the condition of 158 Fontana Boulevard and Bruss stated it is currently under construction. Pollard stated 138 Fontana Boulevard is still being used for the display and sales of boats. Pollard ended his questioning of Bruss at 9:47 am. The Board took a four minute recess from 9:47 am to 9:51 am. After the recess, Pollard called Chief Jeff Cates as his third witness. Pollard asked Cates about his role in the Village and whether he has inspected 138 Fontana Boulevard in relation to the liquor license filed by Novak. Cates stated he is the police chief for the Village and inspected the premise in question on May 10, 2019. He stated it is currently being operated as a boat sales location. Pollard concluded with his witnesses.

Novak distributed four documents that were entered into the record. The first document was labeled Exhibit Respondent No. 1 and Novak described the document as an architectural design services contract with Kehoe – Henry & Associates, Inc. for architectural and engineering services for the premise at 138 Fontana Boulevard. Exhibit Respondent No. 2 was entered into the record as a lease agreement between himself and Fontana Corner LLC (Kathy and Wally Perkins) for the property at 138 Fontana Boulevard commencing September 1, 2019. An e-payment document from the State of Wisconsin was distributed and entered into the record as Exhibit Respondent No. 3. Novak stated the document is proof that all payments associated with the liquor license are up to date. The last document distributed and entered into to the record was a handwritten receipt for a catering order dated September 30, 2019. Novak stated he has been in business in Fontana for 20 years and provided a history of the recent sale of his building at 158 Fontana Boulevard and setback encountered last fall because of the parking limitation for that location. He said a decision was made in 2018 to have Munson Marine move into the building at 158 Fontana Boulevard and relocate Novak's to 138 Fontana Boulevard. Novak stated he is waiting for the completion of 158 Fontana Boulevard so Munson Marine can move their operation down the road and he can move into the 138 Fontana Boulevard location. Novak called Wally Perkins as his first witness and asked what his thoughts are on the project regarding the complaint. Perkins addressed the development of the property at 158 Fontana Boulevard and stated it has been a fluid progression and some plans have changed throughout the process. He stated the lease agreement, marked as Exhibit Respondent No. 2, between his company and Novak, is scheduled to begin September 1, 2019. Perkins stated he is in the process of meeting with the construction company and working with Building and Zoning in order to move Munson into the new building at 158 Fontana Boulevard and then have Novak in business at the 138 Fontana Boulevard location as soon as possible. Perkins stated he supports the liquor license renewal application submitted by Pete Novak.

Pollard cross examined Perkins and asked if he owns 138 Fontana Boulevard and also if Novak has any membership or ownership interest in Perkins' company. Perkins replied that he does own 138 Fontana Boulevard and that Novak does not have any membership or ownership interest in his company.

Regarding Exhibit Response No. 1, Pollard asked Novak if he had an estimated time of completion of work and Novak responded no. Regarding Exhibit Response No. 4, Pollard discussed the invoice and asked if there was a reason no alcohol was listed. Novak stated the customer did not order alcohol. There were several questions pertaining to the dates of operation, if the business was open from July 1, 2019 to September 2, 2019 and then only open Friday – Sunday until September 30, 2019. Pollard asked Novak where he cooked meals for catering orders and Novak replied at "158 Fontana Boulevard".

Pollard made his closing statement and said that if Novak's was only open from July 1 to September 2, 2019 and then only open Friday through Sunday until September 30, 2019, he violated Chapter 6 of the Village ordinances. Pollard stated he failed to state prior convictions on the liquor license renewal after checking the 'yes' box on question 6a and does not remember if he filled out the convictions portion of the 2018 or 2019 form. Pollard stated a liquor license is a privilege and not a right and said if the lease for the building at 138 Fontana Boulevard does not begin until September 1, 2019 and still requires work to the building, there is no reason the liquor license should be held up, and Novak failed to take the necessary steps to retain the license.

Novak stated he had nothing to add except he hopes he can continue doing business.

Closed Session

Trustee Petersen/Trustee Pappas 2nd made a MOTION to go into Closed Session at 10:17 am pursuant to Wis. Stats. 19.85(1)(a) for the purpose of deliberating after a quasi-judicial hearing held by the Board pursuant to Wis. Stats. Section 125.12 and related sections and Chapter 6 of the Fontana Municipal Code regarding a complaint filed by Maryanne Bruss as to a liquor license held by Novaks of Fontana, LLC, with Mr. Novak as agent on the license.

The Roll Call vote was as follows:

Trustee Petersen – Aye

President Kenny – Aye

Trustee McGreevy – Aye

Trustee O'Neill - Aye

Trustee Pappas – Aye

The MOTION carried 5 – 0 vote with Trustees Prudden and Livingston absent.

Open Session Business

Deliberation after a quasi-judicial hearing held by the Board pursuant to Wis. Stats. Section 125.12 and related sections and Chapter 6 of the Fontana Municipal Code regarding a complaint filed by Maryanne Bruss as to a liquor license held by Novaks of Fontana, LLC, with Mr. Novak as agent on the license.

Trustee McGreevy/Trustee O'Neill 2nd made a MOTION to deny the revocation of the Novaks of Fontana, LLC, liquor license and find the complaint filed by Maryanne Bruss proven not to be true.

The Roll Call vote was as follows:

Trustee Petersen – No

President Kenny – Aye

Trustee McGreevy – Aye

Trustee O'Neill – Aye

Trustee Pappas – No

The MOTION carried on a 3-2 vote with Trustees Prudden and Livingston absent.

Adjournment

Trustee O'Neill/Trustee McGreevy 2nd made a MOTION at 10:37 am to adjourn the meeting, and the MOTION carried without negative vote.

Minutes prepared by: Theresa Loomer, Administrator/Clerk

Note: These minutes are subject to further editing. Once approved by the Village Board, the official minutes will be kept on file at the Village Hall.

APPROVED: 06-10-2019