

STATE OF INDIANA)
) SS: IN THE BROWN CIRCUIT COURT
COUNTY OF BROWN) CAUSE NUMBER 07C01-1909-PL _____

07C01-1910-PL-000445

BROWN COUNTY AREA PLAN COMMISSION,)
and BROWN COUNTY, INDIANA,)
) Brown Circuit Court
) Plaintiffs,
)
) -VS-
)
JERRY W. COWAN, JR., dba J.C. LAWN CARE)
AND SNOW REMOVAL,)
)
) Defendant.

VERIFIED COMPLAINT FOR PERMANENT INJUNCTION
AND FOR CIVIL PENALTIES ON ORDINANCE VIOLATIONS

Come now the Plaintiffs Brown County Area Plan Commission and Brown County, Indiana, and for their Verified Complaint for Permanent Injunction and for Civil Penalties on Ordinance Violations ("Complaint") against the Defendant Jerry W. Cowan, Jr., dba J.C. Lawncare and Snow Removal ("Cowan"), allege as follows:

1. The Plaintiff Brown County Area Plan Commission ("Commission") is a duly authorized area plan commission acting pursuant to the authority vested in it by the laws of the State of Indiana and the Zoning Ordinance of Brown County, Indiana ("Zoning Ordinance").
2. The Plaintiff Brown County, Indiana ("County") is a political subdivision of the State of Indiana.
3. Pursuant to I.C. 36-7-4-1014 and Sections 7.3 and 7.4 of the Zoning Ordinance, the Commission, acting through the Brown County Area Planning Coordinator ("Planning

Coordinator"), has the authority to initiate any legal proceedings necessary to enforce the Zoning Ordinance or to restrain individuals or entities from violating the Zoning Ordinance.

4. The Defendant Cowan is the record owner of certain real property ("the Cowan Property") located in Section 10, Township 10 North, Range 3 East, Brown County, Indiana. The Cowan Property is commonly referred to as 8458 Ridge Acres Drive, Nashville, Indiana, and is more specifically described in the deed copy attached hereto as "Exhibit A."

5. The Cowan Property is located within the jurisdiction of the Commission, the County, and the Zoning Ordinance.

6. The Cowan Property is located within an area zoned Secondary Residential ("R2") by the Zoning Ordinance.

7. Cowan's residence is located on the Cowan Property.

8. Additionally, Cowan has established and operates a lawn care and snow removal business ("the Business") on the Cowan Property.

8. The Business involves activities such as outdoor equipment storage and maintenance, and employee parking.

9. Generally, the Zoning Ordinance does not allow R2 zoned property to be used for lawn care and snow removal business purposes.

10. Chapter 5, Section 2, Part C1 of the Zoning Ordinance authorizes the use of certain residential dwellings or accessory structures for certain home occupation uses, subject to certain conditions and limitations. A copy of Chapter 5, Section 2 of the Zoning Ordinance is attached hereto, and incorporated herein, as "Exhibit B."

11. The Business does not meet the definition and limitations applicable to home occupation uses and has not been authorized, by permit or special exception approval, to operate as a home occupation.

12. By virtue of the foregoing, Cowan, and those acting in concert with or at his sufferance, are using and occupying the Cowan Property in a way that violates the Zoning Ordinance; namely; as an unauthorized commercial business in an R2 zoning district.

13. By letter, the Commission notified Cowan that the use and occupancy of the Cowan Property for the Business violated the Zoning Ordinance. A photocopy of the letter is attached hereto as "Exhibit C."

14. In response to the Commission's letter, Cowan failed or refused to bring the use of the Cowan Property into compliance with the Zoning Ordinance by ceasing the operation of the Business on the Cowan Property.

15. The above-noted violations of the Zoning Ordinance inflict harm upon the Commission, the County and the public-at-large, which is certain and irreparable and which will continue if not enjoined.

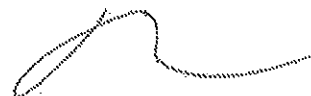
16. There is no other adequate remedy at law or equity other than to enjoin Cowan and those acting in concert with or at his sufferance, from their continued use of the Cowan Property for the operation of the Business.

17. Each and every day that Cowan uses or allows the use of the Cowan for purposes of operating the Business constitutes a separate and continuing violation of Chapter 5, Section 2 of the Zoning Ordinance and a fine of up to ten thousand dollars (\$10,000.00) per violation should be levied against Cowan, as authorized by Section 7.4 of the Zoning Ordinance.

WHEREFORE, the Commission respectfully prays that the Court:

- a. Schedule a trial on the Commission's Complaint at the Court's earliest convenience.
- b. Enter a Judgment which declares the respective rights and legal obligations of the County, the Commission, and Cowan, to the effect that each day of use of the Cowan Property for the operation of the Business constitutes a violation of the Zoning Ordinance.
- c. Issue a permanent injunction which enjoins Cowan, and any other persons, from using the Cowan Property for the operation of the Business.
- d. Order Cowan to pay a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each day that they, or other persons, have used the Cowan Property for the operation of the Business in violation of the Zoning Ordinance.
- e. Order Cowan to pay the costs of this action and all other relief deemed appropriate in the premises.

Respectfully submitted,



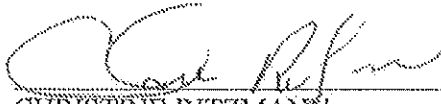
David B. Schilling, #2255-12
Attorney for the Plaintiffs
Post Office Box 5995
Bloomington, IN 47407-5995
Tele: (812) 325-4685

VERIFICATION

I, Christine Ritzmann, affirm under the penalties of perjury that:

1. I am the Brown County Area Planning Coordinator and, as such, I am charged with the duty of enforcing the Brown County Zoning Ordinance, which is a duly enacted and adopted ordinance regulating and governing land use in the unincorporated areas of Brown County, Indiana.

2. That as Brown County Area Planning Coordinator, I have read the allegations of the foregoing Verified Complaint for Preliminary and Permanent Injunctions and for Civil Penalty on Ordinance Violations, and the matters alleged therein are true and accurate to the best of my knowledge and belief.



CHRISTINE RITZMANN

Brown County Area Planning Coordinator

STATE OF INDIANA)

) SS:

COUNTY OF BROWN)

Before me, a Notary Public, personally appeared Christine Ritzmann, who being first duly sworn upon her oath, acknowledged execution of the foregoing Verification, this 24 day of September, 2019. My Commission Expires on the 07 day of June, 2025.



9/24/19



KAYLA ROBERTSON

Notary Public

County of Residence: Brown

2018002821 WD \$25.00
10/16/2018 01:45:13F 3 PGS
Judy Swift-Powdrill
Brown County Recorder IN
Recorded as Presented



07C01-1910-PL-000445

Brown Circuit Court

When Recorded Return To:
Quality Title Insurance
Recording Department
750 East Southport Rd.
Indianapolis, IN 46227
recording@qualitytitle.com

WARRANTY DEED

THIS INDENTURE WITNESSETH, this 26th day of September, 2018 that ANGELA G HASH, GRANTOR, OF BROWN COUNTY, STATE OF INDIANA, *CONVEYS and WARRANTS* to JERRY W. COWAN, JR., GRANTEE, OF HENDRICKS COUNTY, STATE OF INDIANA, for and in consideration of the sum of TEN and No/100 DOLLARS, (\$10.00) and other valuable consideration, the receipt whereof is hereby acknowledged, the following described Real Estate, situate, lying and being in BROWN COUNTY, STATE OF INDIANA, to-wit:


SEE ATTACHED EXHIBIT "A" LEGAL DESCRIPTION

MORE COMMONLY KNOWN AS: 8458 RIDGE ACRES DR, TRAFALGAR, IN 46181

SUBJECT TO ALL RESTRICTIONS, RESERVATIONS AND LIMITATION OF RECORD, IF ANY, AND TAXES ASSESSED NOVEMBER, 2017 DUE AND PAYABLE IN NOVEMBER, 2018 AND ALL SUBSEQUENT INSTALLMENTS AND YEARS THEREAFTER.

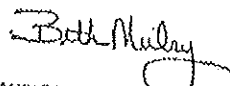
PARCEL # 07-02-10-200-120.000-006

IN WITNESS WHEREOF, GRANTOR HEREUNTO SETS GRANTOR'S OR HAND AND SEAL THE DAY AND YEAR FIRST ABOVE WRITTEN.


ANGELA G HASH

DULY ENTERED
FOR TAXATION

OCT 16 2018


AUDITOR OF BROWN COUNTY

FILED

OCT 16 2018

ASSESSOR
BROWN CO.

EXHIBIT A

STATE OF INDIANA

) SS:

COUNTY OF MARION

Before me, a Notary Public in and for the State of Indiana and a resident of MARION County, Indiana, personally appeared ANGELA G HASH, who acknowledged execution of the foregoing instrument.

Witness my hand and Notarial Seal this 26th day of September, 2018.

Randy Arnold

NOTARY PUBLIC

Notary Printed Name: RENDY ARNOLD
My Commission Expires: 08/08/26
My County of Residence: MARION



SEND TAX STATEMENTS TO GRANTEE'S STREET OR RURAL ROUTE ADDRESS:

8458 Ridge Acres Dr, Tratalgar, In 46181

This Form Prepared by: JOSEPH G. STRIEWE, ATTORNEY-AT-LAW
18-1567F

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Sharon Hamilton

Exhibit "A"

Legal Description

ALL THAT CERTAIN PARCEL OF LAND SITUATED IN THE COUNTY OF BROWN, IN THE STATE OF INDIANA, DESCRIBED AS FOLLOWS:

THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 10 NORTH, RANGE 3 EAST, DESCRIBED AS FOLLOWS:
BEGINNING AT AN IRON PIN AT THE NORTHWEST CORNER OF SAID TRACT AND RUNNING
THENCE SOUTH 89 DEGREES 56 MINUTES EAST, 691.6 FEET TO AN IRON PIN; THENCE SOUTH 00 DEGREES 05 MINUTES EAST, 684.0 FEET TO AN IRON PIN; THENCE NORTH 89 DEGREES 58 MINUTES WEST, 692.2 FEET TO AN IRON PIN; THENCE NORTH 00 DEGREES 03 MINUTES WEST, 685.4 FEET TO THE PLACE OF BEGINNING.

CONTAINING 10.87 ACRES, MORE OR LESS.

EXCEPTING THEREFROM A PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 10 NORTH, RANGE 3 EAST, HAMBLEN TOWNSHIP, BROWN COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

BEGINNING AT A REBAR FOUND MARKING THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 10;
THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST (BEARING FROM WILLIAM R. FISCHER R. L.S. #12432) ON AND ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, 430.45 FEET TO A CAPPED REBAR SET 250.00 FEET SOUTH OF THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER; THENCE SOUTH 79 DEGREES 48 MINUTES 51 SECONDS EAST, 349.04 FEET TO A CAPPED REBAR SET; THENCE SOUTH 88 DEGREES 03 MINUTES 23 SECONDS EAST, 344.38 FEET TO A CAPPED REBAR SET IN THE EAST LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER 300.00 FEET SOUTH OF THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, ALSO BEING THE WEST LINE OF A TRACT DEEDED TO FLOYD AND JUDITH HAMILTON AND RECORDED IN DEED RECORD NUMBER 139, PAGE 301, IN THE OFFICE OF THE RECORDER OF BROWN COUNTY, INDIANA; THENCE SOUTH 00 DEGREES 25 MINUTES 32 SECONDS WEST, ON AND ALONG SAID EAST LINE 381.53 FEET TO A CAPPED REBAR SET MARKING THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, ALSO BEING THE SOUTHWEST CORNER OF SAID HAMILTON TRACT; THENCE NORTH 87 DEGREES 57 MINUTES 12 SECONDS WEST, AND AND ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER 685.33 FEET TO THE BEGINNING.

CONTAINING 6.32 ACRES, MORE OR LESS.

CONTAINING AFTER SAID EXCEPTION, 4.55 ACRES, MORE OR LESS.

accused violator shall be notified of the date, time, and place of said meeting by certified or registered mail.

- (3) At the hearing before the (Commission/Board), the accused violator shall be given an opportunity to present his position and to question those who are alleging the violation. A decision shall then be made upon vote of those members present, and a vote of a majority of the Commission/Board membership shall be necessary before a permit may be revoked.
- (4) Any adverse decision may be appealed by writ of Certiorari to the Brown Circuit Court for review.
- b. Permit which has been revoked may not be reissued for a period of two (2) years thereafter.
- c. In the event of a revocation of a Permit, the fee previously paid therefore shall be deemed to be forfeited.

2. Penalty

Any person failing to comply with any of the requirements set forth in paragraphs B through and including F above shall be subject to a fine of ten thousand dollars (\$10,000) per day.

- a. Separate violations - Each day a violation occurs shall be deemed a separate violation.
- b. Enforcing officer -The Area Planning Director, her deputy, or duly appointed agent are hereby authorized to enforce the provisions of this ordinance.

3. Legal Action

Action on the violation of any of the aforementioned requirements of this section and the right of injunction shall be as provided in Section 141 et sequ of Public Law 178, Acts of 1979 of the Indiana General Assembly.

5.2 HOME OCCUPATIONS

A. Definition

Except as otherwise specifically provided, a home occupation is an accessory use of a dwelling unit, for monetary or equivalent gain, conducted entirely within said dwelling unit, carried on by one or more persons, all of who reside within the dwelling unit, and, unless specifically authorized herein, where no persons are employed other than resident and domestic help. The use is clearly incidental and secondary to the use of the dwelling for residence purposes and does not change the character thereof or adversely affect the uses permitted in the residential district of which it is a part. There shall be no outside storage of any kind and any indoor storage, construction, alterations, or electrical or mechanical equipment used shall not change the fire rating of the structure of the fire district in which the structure is located.

B. Examples of Uses that Frequently Qualify as Home Occupations

The following are typical examples of uses, which often can be conducted within the limits of the restrictions established in this chapter and thereby qualify as home occupations. Uses, which qualify as "home occupations" are not limited to those named in this paragraph (nor does the listing of a use in this paragraph automatically qualify it as a home occupation): accountant, architect, artist, author, beauty parlor, consultant, dressmaking, individual stringed instrument instruction, individual tutoring, insurance, millinery, preserving and home cooking, realtor.

C. Use Limitation

In addition to the use limitations applicable in the zoning district in which located, all home occupations shall be subject to the following use limitations:

1. A home occupation must be conducted within a dwelling which is the bona fide residence of the principal practitioner or in an accessory building thereto which is normally associated with a residential use.
2. Except for articles produced on the premises, no stock in trade shall be displayed or sold on the premises.
3. No alteration to the exterior of the principal residential building shall be made which changes the character thereof as a dwelling, either by the use of colors materials, construction, lighting, signs, or the emission of sounds, noises, vibrations.
4. No outdoor display of goods or outside storage of equipment or materials used in the home occupation shall be permitted.
5. Except as otherwise provided, such occupation shall be conducted solely by resident occupants in their dwelling unit.
6. No use shall require internal or external alterations or involve construction features or the use of electrical or mechanical equipment that would change the fire rating of the structure of the fire district in which the structure is located.
7. No use shall create noise, dust, vibration, smell, and smoke glare, electrical interference, fire hazard, or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the district in question under normal circumstances wherein no home occupation exists.
8. Only one nameplate shall be allowed. It may display the name of the occupation (e.g. John Jones, Realtor). It shall not exceed two (2) square feet in area, shall be non-illuminated. The limitation to one nameplate is intended to apply to all lots, including corner lots.
9. It shall not involve the use of commercial vehicles for delivery of materials to or from the premises.

D. Zoning Districts Where Allowed

A Use that qualifies as a home occupation may be conducted in any zoning district except Lake Residential.

E. No Permit Required

The following uses are permitted and may be carried on without the practitioner having first obtained a permit, provided that the activity being carried on is in compliance with the other provisions of this section, and provided further that no retail sales are conducted at the home occupation site:

1. Artists and artisans
2. Authors and composers
3. Dressmakers, seamstresses, and tailors
4. Home crafts such as model making, rug weaving, lapidary work and cabinet making.
5. Office facility of minister, rabbi, or priest.
6. Office facility of a salesperson, sales representative, or manufacturer's representative.
7. The letting for hire of not more than two (2) rooms for rooming or boarding use for not more than two (2) persons, neither of whom is a transient. (Includes Home Stay facilities).
8. Individual musical instrument instruction.
9. Individual tutoring.
10. Any other activities not specifically limited by other parts of this ordinance, which is consistent with or similar to the types of activities set forth above, and which requires no increase in parking areas, traffic, and noise levels beyond those normally contemplated in a single-family dwelling structure.

F. Permit Required

The following uses are permitted and may be carried on only after the practitioner has applied for and received a permit from the Area Planning Director:

1. Architect, accountant, real estate broker or salesperson, insurance agent, land surveyor, upholstery.
2. Any of those uses or occupations listed in subsection E, "No Permit Required", which intend to conduct Retail sales from the home.
3. Any other activity not specifically limited by other parts of this ordinance, which is consistent with or similar to the types of activities listed above, and for which, although

some increase in parking areas, traffic, and noise level may be foreseen, said increase would be minimal and not offensive to surrounding residents.

G. Uses Permitted Only With Special Exception

The following uses are permitted and may be carried on as home occupations only after the practitioner has applied for and been granted a Special Exception as provided for in Chapter 3, Section 3.3 of the Brown County Zoning Ordinance, and applied for and received a permit from the Area Planning Director:

1. Beauty shop or beauty parlor, owner-operated.
2. Auto repair, minor or major, or the painting of vehicles, trailers, or boats, provided that no more than four (4) licensed vehicles other than the owner's own vehicles and no unlicensed vehicles are stored on the property.
3. Instruction to two (2) or more students at a time.
4. Photo developing or studios.
5. Antique shops.
6. Private schools with organized classes.
7. Any home occupation to be conducted in a two-family or multi-family dwelling.
8. Any other use authorized by Subsections E or F above, in which there are to be employees other than family members residing in the dwelling unit, PROVIDED, however, that in no event shall there be allowed more than two (2) such employees.
9. Any other activity not specifically limited by other parts of this ordinance, which is consistent with or similar to the types of activities listed above but which would in all likelihood involve increased parking areas, traffic, noise or vibration levels, or outdoor activities and which requires scrutiny, limitation, and an opportunity for surrounding residents to be heard in opposition thereto due to the propensity of such activities, once started to rapidly increase beyond the limits permitted for home occupation.

No special exception shall be granted under this subsection unless the Board of Zoning Appeals finds that, in addition to the requisite findings set forth in Chapter 3, Section 3.3, the proposed use is in full compliance with the terms of this section that the proposed use will not alter the nature of the neighborhood in which it is to be located, and that the proposed use will not expand or enlarge to the point where it will exceed the limits permitted for home occupations.

H. Procedures

1. Powers and Duties of Plan Director

- a. It shall be the duty of the Area Planning Director (hereinafter referred to as "Director") to investigate complaints that a home occupation is being carried on

within the area of jurisdiction (i.e. Brown County, Indiana) in violation of the terms of this ordinance.

- b. In the event it should come to the attention of the Director that such a violation is occurring, or that a use has expanded beyond its original classification, or that a use is being carried on which exceeds conditions set forth either by the Director in issuing a permit, or the Board of Zoning Appeals in granting a special exception, the Director is hereby empowered and authorized to make a determination whether a violation does indeed exist, and, if so, to notify the offending party or parties that remedial action (either application for a permit or a special exception, or cessation of the violation) must be initiated within thirty (30) days. Said notice shall be by certified or registered mail, return receipt requested.
- c. In cases where the Director has made the determination that a violation exists, the alleged violator may opt to appeal that decision to the Board of Zoning appeals in the manner set forth below. Such an appeal must be initiated within ten (10) days of the aggrieved party's receipt of notice of the violation.
- d. Should the alleged violator fail to take appropriate remedial action within thirty (30) days as set forth above, or successfully appeal the Director's decision, the Director is hereby authorized and empowered to revoke any previously granted permit, and to file suit in the name of the brown County Area Plan Commission, seeking injunctive relief to enforce the Ordinance.

2. Time Limitations

- a. Any permit issued shall be valid for one (1) year only from the date of issuance.
- b. The holder of the permit may seek renewal of same annually, by making written request therefore, and certifying in that request that the use has not expanded beyond that for which the permit was initially granted. Said request shall be made no later than thirty (30) days prior to expiration, and shall be accompanied by a renewal fee of \$10.00. (See Chapter 8:3 for revised filing fees)
- c. The request for renewal shall be reviewed and an inspection of the property made by the Director and/or authorized personnel to verify continued compliance with the necessary criteria and conditions established with the initial approval. If, in the judgment of the Director, the applicant has not complied with said criteria and conditions, the applicant shall be so informed and the Director shall take appropriate corrective measures, all as set forth in Subsection H.1. above.
- d. Should the use for which a permit was issued cease for a period of six (6) continuous months, said period shall become automatically null and void.

3. Permits

The fee for all Home Occupation Permits shall be Ten Dollars (\$10.00). (See Chapter 8:3 for revised filing fees).

4. Appeals

- a. In the event an applicant for a Home Occupation permit whose application is denied by the Director desires to appeal the Director's decision, said appeal may be initiated by filing a Notice of Appeal with the Area Planning Office, on a form to be provided by that office, no later than ten (10) days from the date that the applicant is informed of the Director's decision.
- b. Upon receipt by the Director of a Notice of Appeal, the matter complained of shall be placed on the agenda of the Board of Zoning Appeals as soon as time allows.
- c. Notice of appeal shall be published in a newspaper of general circulation published in the county no later than ten (10) days prior to the date of the meeting at which the appeal is to be considered.