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SYCAMORE TWP.

Mr. Skylor Miller
Planning & Zoning Administrator
Sycamore Township Administration
8540 Kenwood Road
Sycamore Township, OH 45236

RE: Zoning Certificate No.: SYZ-22-010- The Action Factory

Dear Mr. Skylor Miller,

I am writing to you on behalf of The Action Factory Social Club, Inc. ("Action Factory"). It is our goal to work an amicable solution related to your letter dated March 10, 2022, titled Intent to Revoke Zoning Certificate #SYZ-22-010 ("Revocation Letter"). While it is unclear pursuant to the Sycamore Township Zoning Code, what is expected of your proposed "informal hearing", the Action Factory, in an effort to both protect our administrative appeal and due process rights and to work through the challenges you have with the activity of the Action Factory, would like to have this "informal hearing" prior to Action Factory's opening on March 25, 2022. It is our position that Zoning Certificate No.: SYZ-22-010, issued on February 10, 2022 is valid.

As a precursor, to our "informal hearing", we have several concerns with your Revocation Letter and would like to briefly address them prior to our meeting.

Legality of Planning of Zoning to Interpret Gaming Laws

Your Revocation Letter states that that Sycamore Township intends to revoke Action Factory's zoning certificate on the grounds that its intended method of operation violates criminal gambling statutes. Your interpretation of the criminal code is erroneous, but it is superfluous to engage with the Sycamore Planning & Zoning Department ("Department") with the proper interpretation of a criminal gambling statute. By threatening revoking Action Factory's zoning certificate on these grounds, you and the Sycamore Township have exceeded the powers delegated to Sycamore Township by Ohio statute and thereby Sycamore Township, if

further action is taken will violate of Ohio law and the Fourteenth Amendment of the U.S. Constitution.

Ohio townships have only the zoning power delegated to them by statute. *Ketchel v. Bainbridge Twp.*, 557 N.E.2d 779, 781 (OH 1990). A township in regard to zoning matters can only promulgate zoning regulations that regulate “the location, height, bulk, number of stories, and size of buildings and other structures . . . the density of population, the uses of buildings . . . and the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of the township.” ORC §519.02.). In issuing a zoning certificate, the only relevant consideration authorized by statute is whether “the plans for the proposed building or structure fully comply with the zoning regulations then in effect.” O.R.C. §519.17; *See Barrett Paving Materials, Inc. v. Bd. of Zoning Appeals*, 1991 Ohio App. LEXIS 2961 at 5-6 (Ct. App. June 24, 1991); *Gibson v. Oberlin*, 167 N.E.2d 651, 654 (OH 1960).

It is well established that this authority to regulate land use for trade or industry is limited to the general consideration of the types of trades or industry allowed within zoning areas. This ability to regulate land use does not grant zoning authorities the power to regulate how businesses operate within its trade or industry. Such regulation is obviously left to arms of the government better equipped to make and enforce such determinations.

Hence, it is unsurprising that the zoning regulations of Sycamore Township does not grant you or anyone within the Zoning & Planning Department with the authority to consider criminal gambling statutes in approving, denying, or revoking a zoning certificate. Without a provision within the zoning regulations authorizing this consideration, you have caused Sycamore Township to be in violation of Ohio law and the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.

Action Factory is a Private Club and will operate within the laws of Ohio

There are social clubs operating in Ohio for over ten (10) years, including Shark Tank in Columbus and Ruggles in West Chester, operating exactly in the same way Action Factory plans to operate. Under Ohio’s gambling laws, a “Game of chance conducted for profit” means any game of chance designed to produce income for the person who conducts or operates the game of chance. The Action Factory is NOT taking any profits from the poker table and will operate as a private membership club.

Pursuant to the Action Factory’s Operating Manual, dated March 1, 2022:

6.II Definitions of Membership Fees: Anyone who wishes to enter the premises to participate in poker must become an official member of The Action Factory Social Club by signing a Membership Agreement. Failure to sign the Membership Agreement will result in the individual being asked to leave the premises.

Membership Fees are paid in two different forms and are due upon entering the facility. Refusal to pay Membership Fees will result in the individual being asked to leave the premises.

First, all members will be asked to pay a Daily Fee to access the club. As of January 1, 2022, the fee is \$10.00, but is subject to change at any time. The Daily Fee will cover a member for entire time the club is open for business on that particular day, with zero re-entry fees. The Daily Fee may only be waived by ownership.

Second, all members, while participating actively in a poker game, will be subject to paying Hourly Fees. These fees represent money to be paid to The Action Factory for use of the poker equipment, furniture and facility. Hourly Fees will be charged every thirty-minutes (at half the value of one hour's services) and can be purchased in thirty-minute increments, sixty-minute increments, multiple-hour increments, or an all-day pass.

Action Factory receives absolutely ZERO revenue from the poker game and therefore never is profiting from the "Game of Chance".

It is our goal that we can resolve this dispute in a peaceful manner and we are reiterating our request for an "informal hearing" or meeting to discuss this matter. As time is of the essence, we would request the meeting on Monday or Tuesday and will make ourselves available. I can be reached on my cell phone at 859-242-0255 and look forward to hearing from you.

Respectfully Submitted,

GATLIN VOELKER PLLC

/s/ Jack S. Gatlin

Jack S. Gatlin