

The Banks County Board of Commissioners held a hearing on June 3, 2021 at 4:00 p.m. in the Board Room of the Banks County Courthouse Annex. The hearing was for an alleged county code violation for Zachary Lurie/Maximum Powersport of Georgia, LLC.

Members Present

Chairman Charles Turk
Vice Chairman Danny Maxwell
Commissioner Bo Garrison
Commissioner Sammy Reece

Members Absent

Commissioner Keith Gardiner

Staff Present

Assistant County Clerk Erin Decker
Attorney Randall Frost

Media Present

None

1. Call to Order

Ch. Turk called the hearing to order.

2. Zachary Lurie/Maximum Powersport of Georgia, LLC. Hearing

Ch. Turk opened the hearing stating Mr. Lurie had a conditional use for a motor shop. He stated Mr. Lurie agreed to the meeting today and Ch. Turk read the Letter of Intent that Mr. Lurie submitted when applying for the conditional use application.

The letter read as follows:

I am under contract with interest of buying 33.8 acres on Columbus Drive in Homer, GA. I have interest in moving my family to this beautiful lay of land and raise our children here. I would like the permission to do so all while running my business on the property out of a 3,200 square foot (80ft. x 40ft.) barn structure. This structure will be built on the front pasture to house for my equipment and to work out of. Along the backside of the property, I have interest in building my family home.

My business, Maximum Powersports will be a private business ran inside our barn structure. Customers will have access to drive onto my property to drop off and or to pick up machines by appointment only. These appointments will be made between the hours of 10:00 a.m. and 6:00 p.m. Monday – Friday. We will NOT have a road frontage building and or storefront. The buffer of trees between the road and the property will remain the same. We will provide a gravel drive entrance with a gate that will only be open during hours of 10:00 a.m. and 6:00 p.m. and or when we are going in and out of our property.

Our land and building will be maintained to perfection. No machines and or junk will be left outside on our property at any time.

With your approval we hope to make this a beautiful piece of family land for us to reside and create many memories on together.

Thank you,
Zach Lurie

Ch. Turk stated all Mr. Lurie asked for in the conditional use was an 80 ft. x 40 ft. structure.

Ch. Turk quoted sections of the Criteria to Consider for Conditional Uses along with Mr. Lurie's response on the application:

"Criteria to Consider for Conditional Uses"

C. Whether the proposed use will have compatibility with existing uses of adjacent land and the surrounding area and will not cause or create or be likely to cause or create adverse effects upon the existing or future development of either the area or the rest of the county.

Mr. Lurie had answered yes on the application.

F. Whether hours and manner of operation of the proposed use are inconsistent with adjacent and nearby uses.

Mr. Lurie had answered normal business hours, 8-5 on the application.

H. Whether the proposed use will have a significant adverse effect on the level of property values or the general character of land uses in the surrounding area or the county.

Mr. Lurie had answered no on the application.

J. The existing uses and zoning of nearby property and whether the proposed use will adversely affect the existing use or usability of nearby property.

Mr. Lurie had answered it will not affect nearby uses, surrounding property zoned ARR, use allowed as a conditional use approved by Commissioners on the application.

L. The extent to which the destruction of property values of the applicant promotes the health, safety, morals or general welfare of the public.

Mr. Lurie had answered none on the application.

R. Whether the proposed use has nuisance characteristics.

Mr. Lurie had answered noise? on the application.

Ch. Turk further said the minutes of the Planning Commission meeting from May 15, 2018 stated the Planning Commission Chairman Jack Stewart asked Mr. Lurie if he would be testing the dirt bikes at the shop and Mr. Lurie stated he would have a sound proof room located in the shop where the bikes and atvs would be tested and occasionally be ridden around his property. Ch. Turk said that at the Commissioners' meeting on July 10, 2018 Mr. Lurie stated the hours of operation were by appointment and he stated the noise level could be compared to a lawnmower or a weed eater.

Ch. Turk also read *Section 22-93 Sub-Section 5: Grounds for Revocation of Registration -The business constitutes a nuisance. For the purposes hereof, a nuisance is defined as anything that would hurt, inconvenience, or cause damage to another. The fact that the act done may otherwise be lawful shall not keep it from being a nuisance. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person.*

Ch. Turk stated that several months ago Code Enforcement Officer Paul Ruark and himself went to the property and there were campers. Ch. Turk stated campgrounds were a conditional use for ARR property. Campgrounds for not more than 10 spaces for vehicles, recreational vehicles or campers had to get a Conditional Use in ARR.

Ch. Turk stated this was a nuisance violation and knew some were wanting to split hairs whether this was a training facility or racetrack. Ch. Turk pulled up a YouTube video that showed dirt bike racing. Ch. Turk stated that within the video at about 21 minutes you had four youth lined up and a guy standing beside them that waved his hand down for them to start racing.

Comm. Garrison stated that he watched the video over and over three different times and everything he read from the zoning and planning, this doesn't meet the criteria like Mr. Lurie said it did. He further stated he wasn't on the Board of Commissioners when it was voted on and was just more or less looking at it as an outsider since he wasn't here. He further stated after reading all the formal paperwork, he thought Mr. Lurie was in violation of what he had agreed upon. Ch. Turk stated that all Mr. Lurie stated was a building and no training facility or track. Comm. Reece stated he had had complaints about the noise since a year and a half ago. Vice Ch. Maxwell stated the Conditional Use was for working on the vehicles and it was stated that noise would be no louder than a weed eater or lawnmower and when vehicles would be tested, they would be in a confined noise-controlled room and from what he could see that was not happening. Ch. Turk stated there were a couple people at the hearing that lived nearby that could hear the noise of the facility.

Ms. Jody Parks – 2151 Hwy. 63 - Stated when this racetrack was first put in, they were out in the garden and it felt like the motorcycles were right at her face because it was so loud. She stated she wondered what the heck was going on and she went over there and she was in tears. She stated she was an outdoor person but when they are over there racing, she just goes back inside and can still hear the noise in her house. She said she didn't even feel like going outside and that was how it had affected her. At first, she thought they were permitted to do this but then found out they were not. She stated she had talked to other neighbors about the noise and further stated that one day she had a farrier at her house and they were literally having to scream at each other and the farrier told her that he didn't know how she could handle that noise. She stated she went down to the very end of E. Coker Road, which was about a mile away and talked to two residences that said they could hear the noise. She also stated she was told by the people that were behind the track that there was an erosion problem that happened and it went into their lake and they had to drain the lake. She stated that was a federal violation. She stated the track didn't belong in an ARR/Agricultural setting. She stated she had signatures from 12 different people and they also wanted this noise to stop. Ms. Parks stated that if you went to their website, it said that the track was created by the country's number one builder, Dream Tracks, so this was a race track and it did not fit into the community.

David McDonald, an attorney with Weinstein & Black stated he was here today representing Mr. Lurie and Maximum Powersports. He stated he wanted to be clear that nothing that followed would be

meant to discredit some of the claims that were being made about his client or the claims of things that were happening at the facility. He stated the fundamental issue here today was there was a lack of appropriate notice that existed in this issue where his client hadn't had any opportunity to see what code sections he had violated. He stated they received a citation that would draw him into Magistrate Court to deal with a code violation but he had no idea which codes were actually violated. He stated, in fact, on the citation and the letter that noticed him about the hearing, the only thing that he was reminded of twice was that the Commission had the authority to suspend or revoke his license.

Attorney McDonald stated, ironically in that code section that was mentioned it stated how the procedure of notice and hearing should be carried out. Attorney McDonald stated he was failing to understand how his client was suppose to mount any defense or engage in a meaningful conversation about what was going on here when he had not been apprised of a single part of the County code that he was actually in violation. Attorney McDonald stated this was a very serious violation that they were dealing with here today. He stated the simple fact that he was hearing of a YouTube video, that by the way they didn't get a chance to see, they had no way to see who took that video or when it was taken.

Ch. Turk stated it was on Maximum Powersports website and Attorney McDonald stated that was not the point. The point was to move forward with a decision to suspend or revoke someone's business license without giving them the opportunity to meaningfully defend themselves based on evidence that was presented to support the accusation that they were in violation of particular parts of the code section was inappropriate. Attorney McDonald further stated he didn't think anybody intended to do that with malice but this was not an appropriate way to go about something that was this serious.

He also stated the letter mentions Code Section 22-93 so before they came in here today and heard Ch. Turk mention Sub-Section 5 of Section 22-93, they had to guess which of the 5 could possibly pertain to the situation. Attorney McDonald stated none of this should have been guess work, they should have been notified and his client had a right to know the accusations that were against him and see the evidence that was presented to support those accusations. He stated they were not here today to dispute the fundamental underlying issues or ask that this issue be completely disposed of or dealt with but deal with it in a more appropriate way at a later date when they have had an opportunity to review particular code sections that are in play and how they can mount a meaningful defense to the accusations. He stated this gentleman was threatened with losing a way to keep a roof over his head and food on his table. Ideally this hearing should not be the first place they hear audio recordings or see video and there was no evidence that a sound study had been conducted if in fact we had to guess that part of the problem could be that there could be a noise ordinance violation. He stated he didn't know where you expected them to start to have a meaningful and constructive conversation of how to rectify the issue or how to defend himself when they don't know what exactly he was being charged with and this was not the appropriate environment where he had been summoned to defend himself to find out for the first time what it is that he was supposed to be defending himself against. Attorney McDonald stated that he understood there had been a petition and an effort to gather up support in opposition to the business that his client was engaged in but they have not seen any evidence supporting that. He stated as the Board could see, his client had brought an entire side of the room in support of the business. Attorney McDonald said all they were here for today was to ask for time to mount a meaningful defense to these accusations, and work with the County at some point to figure out if there was a way to rectify the situation. Attorney McDonald stated they had only been involved in this case a few days and had already found significant concerns in the citation and how that was drafted and the code sections that were listed on the letter. Attorney McDonald stated it was to the county's benefit and his client's benefit to be working toward the best solutions for everyone. Attorney McDonald stated

they had some level of concern about moving forward when there was a Commission member absent and not available which could have an impact on the final decision. He then asked that this matter be tabled and moved to a later date when they are able to see and be notified what the code section violations were, see the evidence, mount a meaningful defense and present their side of the case in front of a full body of the Commission. Attorney McDonald stated that it was his understanding that this hearing's primary purpose was to find out how to move forward on the issue. If any of the members of the Commission had any questions in that regard then he would be glad to answer those but they were not here today to talk about any of the underlying issues. They are just simply asking that this matter be moved so it can be addressed appropriately.

Ch. Turk asked Attorney McDonald if Mr. Lurie had told him that Officer Ruark and himself had visited the site when they were training and there were probably five or six kids out there. He further stated they specifically told him that his conditional use was for the building and not a training facility or racetrack and he needed to cease and Mr. Lurie continued to operate. Ch. Turk further stated he received calls on 4/11, 4/14, 5/20 and 6/1 stating that they were operating, so Mr. Lurie knew what the violations were. Attorney McDonald told Ch. Turk that if it wasn't on the citation or on the letter or in the record then this was not the appropriate place to have this discussion at this time and the appropriate time would be at a later date when they had an opportunity to see the evidence.

Vice Ch. Maxwell asked Officer Ruark if he put different codes that were being broken on the citation. Officer Ruark stated he issued a blanket summons in which he talked to Mr. Lurie about the violations that were still continuing to happen and he would be back out in the next day or two with a letter from the Commissioners to have these problems addressed. Attorney McDonald presented a true and accurate citation for the Commissioners to inspect. Officer Ruark stated the codes that were cited were Section 22 Sub-Section 92 thru 100. Attorney McDonald stated that the letter was dated May 26, 2021 and that was not sufficient amount of time to mount a defense.

Comm. Garrison stated that Attorney McDonald was throwing code numbers out but we were here because Mr. Lurie violated his conditional use, and asked was that not correct? Attorney McDonald stated that his client hired him to speak. Attorney McDonald then asked which code he violated. Comm. Garrison asked if Attorney McDonald had set down and read the agreement that he agreed on his conditional use. Attorney McDonald stated yes. Comm. Garrison said respectfully had he not violated his agreement with this board over his conditional use leaving all zoning issues out and only what he agreed to through the conditional use. Attorney McDonald stated he was not going to play this game where he left out the meat of the issue to satisfy the Commissioners agenda. Comm. Garrison stated the meat of the issue was the violation of the conditional use agreement. Attorney McDonald restated that his client was not notified properly what the violations were. Attorney McDonald stated the violations were allegations and not facts and further stated they were only here today to ask for an extension of time. Comm. Garrison stated that if we happen to agree on the extension for another hearing, can it be agreed upon that Mr. Lurie can run the shop but not run the track until the date of another hearing. Attorney McDonald stated his client was open to working with the County to figure out a way that everybody could be happy.

Ch. Turk restated Comm. Garrison's question and Attorney McDonald asked if he could have a few minutes to consult with his client. The Board agreed.

Attorney McDonald returned and asked what would the time length be and Ch. Turk asked how much time do you need? Ch. Turk stated the next Commission meeting was June 22, 2021 but Attorney

McDonald stated he would be out of town. Attorney McDonald stated they would not need any more than 15 days and he stated he could do June 15, 2021 at 4:00 p.m.

Ch. Turk stated what they were agreeing to was the track would cease to operate until the time of the hearing. Attorney McDonald clarified by stating there would be no activity at the track.

Motion to adjourn the meeting: Bo Garrison

Second: Danny Maxwell

Vote: 5:0

All aye votes and the hearing was adjourned at 4:51 p.m.