



## CITY OF PATASKALA BOARD OF ZONING APPEALS

City Hall, Council Chambers  
621 West Broad Street  
Pataskala, Ohio 43062

### STAFF REPORT

January 12, 2021

#### Appeal Application AP-20-002

<b>Applicant:</b>	Leatrice Guttentag
<b>Owner:</b>	Intra-National Home Care, LLC
<b>Location:</b>	0 Mink Street (PID: 063-141666-00.000)
<b>Acreage:</b>	22.55-acres
<b>Zoning:</b>	GB – General Business
<b>Request:</b>	Requesting an appeal pursuant to Section 1211.03 of the Pataskala Code

#### Description of the Request:

The Applicant is appealing the Director of Planning's decision that pick-up volleyball games on the Intra-National Home Care, LLC property (vacant land) does not constitute a "use" under the Zoning Code; therefore, no zoning violations exist.

The Applicant is also appealing the Director of Planning's decision that Section 128705 (Noise) does not govern any sounds that come from an outdoor game of volleyball.

Finally, the Applicant is appealing the Director of Planning's decision that Section 1249.05(E)(Parking and Loading) – and by reference Chapter 1291 – does not apply to the individuals who show up and play volleyball on this vacant parcel.

#### Staff Summary:

This application was tabled on December 8, 2020 in order for the BZA to seek direction from legal counsel.

During the summer of 2020, the Planning and Zoning Department received complaints from Ms. Guttentag regarding noise emanating from the Intra-National Home Care, LLC property as a result of pick-up volleyball games. Staff investigated the complaint on July 20, 2020 and determined there was no violation of Section 1287.05 – Noise resulting from pick-up games of volleyball are not a zoning matter. Ms. Guttentag was informed of Staff's determination and recommended she contact the Pataskala Police Department regarding her concerns.

On September 18, 2020 the Planning and Zoning Department received a letter (attached) from Ms. Guttentag's attorney, James D. Perko, claiming the Intra-National Home Care, LLC property was in violation of Section 1287.05 – Noise and Chapter 1291 – Parking and Loading. The basis of the claim was that the volleyball games constitute a "use" pursuant to Section 1287.01 and Section 1291.01; therefore,



Section 1287.05 and Chapter 1291 are applicable to the property. He also requested the Zoning Inspector investigate these complaints and take appropriate action.

The Director of Planning responded via letter dated September 25, 2020 and again indicated the situation was not a zoning matter. See letter attached. In summation, the letter concluded that a pick-up game of volleyball on an unimproved property does not constitute a “use” under the Zoning Code because zoning permits are not issued for this activity and the Zoning Code does allow or prevent a volleyball game from taking place. Similarly, Sections 1287.05 and 1249.05 also are not applicable and do not govern this situation. Therefore, until a “use” under the Zoning Code is established, the requirements of the Zoning Code are not applicable. It was again recommended that Ms. Guttentag contact the Pataskala Police Department regarding her concerns.

Mr. Perko filed an appeal (attached) on Ms. Guttentag’s behalf on October 26, 2020.

**Resolution:**

For your convenience, the following resolution may be considered by the Board of Zoning Appeals when making a motion:

“I move to approve the applicant’s appeal pursuant to Section 1211.11 of the Pataskala Code because a pick-up game of volleyball on this vacant parcel constitutes a “use” under the Zoning Code and the Planning and Zoning Department should have investigated the complaints accordingly.”

Note: The BZA should consider each issue being appealed and make a decision on each issue individually. Pursuant to Section 1211.11, the BZA “shall either approve, approve with supplementary conditions or disapprove” each issue on appeal.









GUTTENTAG

INTRA-NATIONAL HOME CARE, LLC

CHARLES RD SW

MINZ ST SW

4





[www.hglawgroup.com](http://www.hglawgroup.com)

Donald B. Hallowes  
Chris E. Chapman  
James D. Perko, Jr.  
Wesley T. Fortune

1010 Jackson Hole Drive, Suite 200  
Blacklick, Ohio 43004  
Telephone (614) 759-4603  
Facsimile (614) 868-0029

September 18, 2020

***VIA U.S. MAIL AND ELECTRONIC MAIL***

**Steven Blake**  
City of Pataskala Zoning Inspector  
621 W. Broad Street  
Pataskala OH 43062  
[sblake@ci.pataskala.oh.us](mailto:sblake@ci.pataskala.oh.us)

***RE: Zoning Complaint***

Dear Mr. Blake:

I represent two residents of the City of Pataskala (the "City"): Leatrice Guttentag, 280 Charles Rd. SW and Dorothy Hicks, 262 Charles Rd. SW. Pursuant to Section 1209.14 of the Pataskala Zoning Code ("Zoning Code"), my Clients file this written complaint alleging a zoning violation against Intra-National Home Care LLC ("INHC"), a Michigan limited liability company.<sup>1</sup>

INHC, is the owner of certain real property located on Mink St., Pataskala, Oh 43062, Parcel ID 063-141666-00.000 (the "Property"). This parcel is zoned General Business according to the City's Zoning Map updated 5/20/2019. My Clients' homes are directly adjacent to the Property along the western property line. Nearly five days a week, including Sundays, INHC hosts volleyball games and matches near the west property line where 15-25 men frequently gather. During the volleyball games, loud music, whistles, car horns, screaming, revving car and motorcycle engines can be heard emanating from the Property. The noise is loud and obnoxious often exceeding 70 dBA as measured by a digital sound level meter. Further, 10-20 vehicles park on the Property. INHC's noise is also heard while my Clients and their families are gathered in their homes for dinner and family time from 6:30 pm to dark, approximately 8:30/9:00 pm. This activity has continued as early as May of 2020.

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<sup>1</sup> As a Michigan limited liability company, INHC has failed to register with the Ohio Secretary of State as a foreign company required under R.C. 1703.09 and failed to designate an agent as required by R.C. 1703.041.



Mr. Blake  
September 18, 2020  
Page 2 of 3

### **INHC Violates the Zoning Code's Noise Limit for General Business District**

Section 1287.05 of the Zoning Code provides that:

Continuous, frequent, or repetitive noise which exceeds 60 dBA (decibels) may not be produced. Noise from external speakers shall not be audible by an occupant of an adjacent property at the property line nearest the source of the speaker noise.

\* \* \*

Noise lasting less than 5 minutes per day is also exempt. Noise from primary on-site vehicles and equipment is not exempt.

During its volleyball games, INHC permits frequent and repetitive noise exceeding 60 dBA not only from external speakers, but also whistles, horns, vehicles, and screaming. Notably, the City's Zoning Code does not distinguish between noise emanating from persons and noise emanating from other sources. Therefore, the clear and unambiguous reading of Section 1287.05 would also apply to speech, including screaming, which exceeds 60 dBA at my Clients' adjacent property line.

As you are likely aware, the Ohio Supreme Court has held that zoning ordinances are presumed constitutional.<sup>2</sup> Further, noise intensity restrictions do not infringe upon INHC's constitutionally protected free speech rights. An ordinance's prohibition against loud noise is primarily an attempt to control conduct, rather than an attempt to control speech.<sup>3</sup> Therefore, the 60 dBA noise limitation is enforceable against speech, including screaming, emanating from the Property.

Additionally, under Section 1287.01, the Zoning Code also provides that the regulations are designed to protect uses in "all districts from certain objectionable off-site impacts. These impacts include noise, vibration, odors, and glare." Therefore, the regulations for General Business are not only designed to protect adjacent General Business zoned parcels, they are also designed to protect those in different adjacent districts, such as residential districts.

This noise frequently and repetitively emanating from the Property exceeds 60 dBA at the property line. This loud and obnoxious noise disrupts the character and livability of the surrounding neighborhoods, including those residents living on Charles Rd. Specifically, Ms. Hicks and Ms. Guttentag hear noise from the Property inside their homes with closed windows lasting 3 to 4 hours in the evening while they sit down with their families for dinner. The noise, especially the whistles, also disrupts area dogs causing them to bark and become agitated.

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<sup>2</sup> *Goldberg Cos., Inc. v. Richmond Hts. City Council*, 81 Ohio St.3d 207, 1998-Ohio-207, 690 N.E.2d 510 (1998) ("Zoning ordinances are presumed constitutional.").

<sup>3</sup> *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S.Ct. 2746, 2755, 105 L.Ed.2d 661 (1989).



Mr. Blake  
September 18, 2020  
Page 3 of 3

As the Zoning Code's regulations limit noise emanating from INHC's Property to 60 dBA at the property line, and because noise is frequently and repetitively heard exceeding this level, INHC is in violation of Section 1287.05 of the Zoning Code. As such, my Clients' request that the Pataskala Zoning Inspector record this complaint, immediately investigate, and take action as provided by the Zoning Code.

**INHC Violates the Zoning Code's Parking and Loading Ordinance for a General Business District**

Pursuant to Chapter 1249.05(E) of the Zoning Code, parking and loading requirements for the General Business district shall be regulated by Chapter 1291. Chapter 1291 requires that no "use"<sup>4</sup> shall be established unless there is permanently maintained off-street parking and provides in relevant part that all off-street parking shall be hard-surfaced with asphaltic cement, concrete, pavers to provide a durable and dust-free surface that meets the minimum requirements and specifications of the City Engineer. Pursuant to Section 1291.16, although volleyball is not identified, presumably INHC would require at least 3 parking spots for each volleyball court similar to tennis, handball, or squash courts. Further, whenever a parking area is located in or adjacent to a residential district, "it shall be effectively screened on all sides" which adjoins or faces residential property. *See* Section 1291.12.

INHC is making use of the Property by hosting frequent volleyball games and has failed to provide off-street parking having a hard-surface to mitigate dust, mud, and erosion. Further, it is clearly visible from Mink St. that vehicle traffic to the volleyball court located at the back of the lot has created a well-worn dirt driveway having eroded all vegetation. As such, INHC is again in violation of the Zoning Code.

In response to this complaint, we request that the Pataskala Zoning Inspector record this complaint, immediately investigate, and take action as provided by the Zoning Code to protect the residents who live adjacent to INHC from the aforementioned objectionable off-site impacts.

I look forward to your response and appreciate your attention to this matter.

Sincerely,



James D. Perko, Jr., Esq.

Cc: Clients

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<sup>4</sup> "Use" is defined as "[t]he specific purpose of which land or a building is designated, arranged, intended, or for which it is or may be occupied or maintained." *See* Section 1203.03 of the Zoning Code (emphasis added). Therefore, INHC's erection of a volleyball court and activity constitutes a "use" within the meaning of Section 1291.02 as they are occupying and maintaining the land as a recreational area and for recreational use.



September 25, 2020

James D. Perko, Jr.  
Hallowes Law Group, LLC  
1010 Jackson Hole Drive, Suite 200  
Blacklick, Ohio 43004



**Planning and Zoning  
Department**

Mr. Perko,

I write in response to your letter dated September 18, 2020. Please understand, I have spoken with Ms. Guttentag several times about this issue. As you requested, I (again) investigated this matter. And, I have come to the same conclusion – this is not a zoning matter.

Section 1287.01 states the “standards ensure that uses provide adequate control measures or locate in areas where the community is protected from health hazards and nuisances”. A pick-up game of volleyball does not constitute a “use” of the property under the Zoning Code. To put it another way, the Zoning Code does not allow or prevent a volleyball game from taking place on any parcel. The Planning and Zoning Department does not issue zoning permits for this activity. The intent of Chapter 1287 is to address off-site impacts emanating from a use on improved properties permitted within that zoning district. As you know, the property is currently vacant; therefore, no use has been established.

Furthermore, because the property is not yet developed, Section 1287.05 is not applicable. Section 1287.05 governs noise levels emanating from the improvements made to the property. For general noise issues, please contact the City of Pataskala Police Department to determine whether the issue can be addressable under Section 509.08 (Unreasonable Loud Noise).

Finally, the purpose of Chapter 1291 is to regulate parking to ensure the orderly development of land within the City. As stated above, the property currently is undeveloped, and no use has been established. Therefore, parking improvements are not required pursuant to Chapter 1291.

I hope this answers your questions and addresses your client’s concerns. Should you have any questions, please feel free to contact me by phone at 740-927-2168 or via email at [sfulton@ci.pataskala.oh.us](mailto:sfulton@ci.pataskala.oh.us).

Sincerely,

Scott Fulton  
Director of Planning  
City of Pataskala

Cc: File



CITY OF PATASKALA  
BOARD OF ZONING APPEALS  
OCT 26 PM 3:05

Leatrice Guttentag  
280 Charles Road SW  
Pataskala, Oh 43062

NOTICE OF APPEAL

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**NOTICE OF APPEAL**

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Pursuant to Chapter 1211 of the City of Pataskala Zoning Code ("Zoning Code"), Appellant Leatrice Guttentag ("Appellant") gives notice of appeal from the City of Pataskala Director of Planning, Scott Fulton's September 25, 2020 response (attached hereto as Exhibit A) to Appellant's September 18, 2020 Zoning Complaint (attached hereto as Exhibit B) finding that "[a] pick-up game of volleyball does not constitute a 'use' of the property under the Zoning Code."

The grounds for this appeal are that the Zoning Inspector's failure to find that frequent and continuous hosting of volleyball games and matches on a parcel zoned General Business adjacent to residential homes where 15-25 men frequently gather playing loud music, blowing whistles, car horns, screaming, revving car and motorcycle engines, constitutes a "use" under the Zoning Code, is not supported by substantial, reliable, or probative evidence and is not in accordance with the law or the Zoning Code for, but not limited to, the following reasons:

1. The Zoning Inspector failed to find that the Zoning Codes applies to outdoor recreational activity, including volleyball games conducted and hosted within the General Business district;
2. The Zoning Inspector failed to find that Section 1287.05 of the Zoning Code, concerning Continuous, frequent, or repetitive noise which exceeds 60 dBA (decibels), applies to volleyball games conducted and hosted within the General Business district; and



3. The Zoning Inspector failed to find that Section 1249.05 of the Zoning Code, concerning parking and loading requirements for the General Business district, applies to volleyball games conducted and hosted within the district.

Appellant requests that the Clerk transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appeal is taken and requests a hearing before the Board of Zoning Appeals.

Respectfully submitted,

**HALLOWES LAW GROUP LLC**



James D. Perko, Jr. (0093312)  
1010 Jackson Hole Drive, Suite 200  
Blacklick, Ohio 43004  
Telephone: (614) 759-4603  
Facsimile: (614) 868-0029  
Email: Jim@hlglawgroup.com

*Attorney for Appellant, Leatrice Guttentag*



September 25, 2020

James D. Perko, Jr.  
Hallowes Law Group, LLC  
1010 Jackson Hole Drive, Suite 200  
Blacklick, Ohio 43004



**Planning and Zoning  
Department**

Mr. Perko,

I write in response to your letter dated September 18, 2020. Please understand, I have spoken with Ms. Guttentag several times about this issue. As you requested, I (again) investigated this matter. And, I have come to the same conclusion -- this is not a zoning matter.

Section 1287.01 states the "standards ensure that uses provide adequate control measures or locate in areas where the community is protected from health hazards and nuisances". A pick-up game of volleyball does not constitute a "use" of the property under the Zoning Code. To put it another way, the Zoning Code does not allow or prevent a volleyball game from taking place on any parcel. The Planning and Zoning Department does not issue zoning permits for this activity. The intent of Chapter 1287 is to address off-site impacts emanating from a use on improved properties permitted within that zoning district. As you know, the property is currently vacant; therefore, no use has been established.

Furthermore, because the property is not yet developed, Section 1287.05 is not applicable. Section 1287.05 governs noise levels emanating from the improvements made to the property. For general noise issues, please contact the City of Pataskala Police Department to determine whether the issue can be addressable under Section 509.08 (Unreasonable Loud Noise).

Finally, the purpose of Chapter 1291 is to regulate parking to ensure the orderly development of land within the City. As stated above, the property currently is undeveloped, and no use has been established. Therefore, parking improvements are not required pursuant to Chapter 1291.

I hope this answers your questions and addresses your client's concerns. Should you have any questions, please feel free to contact me by phone at 740-927-2168 or via email at [sfulton@ci.pataskala.oh.us](mailto:sfulton@ci.pataskala.oh.us).

Sincerely,

Scott Fulton  
Director of Planning  
City of Pataskala

Cc: File





[www.hlglawgroup.com](http://www.hlglawgroup.com)

Donald B. Hallowes  
Chris E. Chapman  
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Wesley T. Fortune

1010 Jackson Hole Drive, Suite 200  
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Telephone (614) 759-4603  
Facsimile (614) 868-0029

September 18, 2020

**VIA U.S. MAIL AND ELECTRONIC MAIL**

**Steven Blake**  
City of Pataskala Zoning Inspector  
621 W. Broad Street  
Pataskala OH 43062  
[sblake@ci.pataskala.oh.us](mailto:sblake@ci.pataskala.oh.us)

**RE: Zoning Complaint**

Dear Mr. Blake:

I represent two residents of the City of Pataskala (the "City"): Leatrice Guttentag, 280 Charles Rd. SW and Dorothy Hicks, 262 Charles Rd. SW. Pursuant to Section 1209.14 of the Pataskala Zoning Code ("Zoning Code"), my Clients file this written complaint alleging a zoning violation against Intra-National Home Care LLC ("INHC"), a Michigan limited liability company.<sup>1</sup>

INHC, is the owner of certain real property located on Mink St., Pataskala, Oh 43062, Parcel ID 063-141666-00.000 (the "Property"). This parcel is zoned General Business according to the City's Zoning Map updated 5/20/2019. My Clients' homes are directly adjacent to the Property along the western property line. Nearly five days a week, including Sundays, INHC hosts volleyball games and matches near the west property line where 15-25 men frequently gather. During the volleyball games, loud music, whistles, car horns, screaming, revving car and motorcycle engines can be heard emanating from the Property. The noise is loud and obnoxious often exceeding 70 dBA as measured by a digital sound level meter. Further, 10-20 vehicles park on the Property. INHC's noise is also heard while my Clients and their families are gathered in their homes for dinner and family time from 6:30 pm to dark, approximately 8:30/9:00 pm. This activity has continued as early as May of 2020.

<sup>1</sup> As a Michigan limited liability company, INHC has failed to register with the Ohio Secretary of State as a foreign company required under R.C. 1703.09 and failed to designate an agent as required by R.C. 1703.041.



Mr. Blake  
September 18, 2020  
Page 2 of 3

**INHC Violates the Zoning Code's Noise Limit for General Business District**

Section 1287.05 of the Zoning Code provides that:

Continuous, frequent, or repetitive noise which exceeds 60 dBA (decibels) may not be produced. Noise from external speakers shall not be audible by an occupant of an adjacent property at the property line nearest the source of the speaker noise.

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Noise lasting less than 5 minutes per day is also exempt. Noise from primary on-site vehicles and equipment is not exempt.

During its volleyball games, INHC permits frequent and repetitive noise exceeding 60 dBA not only from external speakers, but also whistles, horns, vehicles, and screaming. Notably, the City's Zoning Code does not distinguish between noise emanating from persons and noise emanating from other sources. Therefore, the clear and unambiguous reading of Section 1287.05 would also apply to speech, including screaming, which exceeds 60 dBA at my Clients' adjacent property line.

As you are likely aware, the Ohio Supreme Court has held that zoning ordinances are presumed constitutional.<sup>2</sup> Further, noise intensity restrictions do not infringe upon INHC's constitutionally protected free speech rights. An ordinance's prohibition against loud noise is primarily an attempt to control conduct, rather than an attempt to control speech.<sup>3</sup> Therefore, the 60 dBA noise limitation is enforceable against speech, including screaming, emanating from the Property.

Additionally, under Section 1287.01, the Zoning Code also provides that the regulations are designed to protect uses in "all districts from certain objectionable off-site impacts. These impacts include noise, vibration, odors, and glare." Therefore, the regulations for General Business are not only designed to protect adjacent General Business zoned parcels, they are also designed to protect those in different adjacent districts, such as residential districts.

This noise frequently and repetitively emanating from the Property exceeds 60 dBA at the property line. This loud and obnoxious noise disrupts the character and livability of the surrounding neighborhoods, including those residents living on Charles Rd. Specifically, Ms. Hicks and Ms. Guttentag hear noise from the Property inside their homes with closed windows lasting 3 to 4 hours in the evening while they sit down with their families for dinner. The noise, especially the whistles, also disrupts area dogs causing them to bark and become agitated.

<sup>2</sup> *Goldberg Cos., Inc. v. Richmond Hts. City Council*, 81 Ohio St.3d 207, 1998-Ohio-207, 690 N.E.2d 510 (1998) ("Zoning ordinances are presumed constitutional.").

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Mr. Blake  
September 18, 2020  
Page 3 of 3

As the Zoning Code's regulations limit noise emanating from INHC's Property to 60 dBA at the property line, and because noise is frequently and repetitively heard exceeding this level, INHC is in violation of Section 1287.05 of the Zoning Code. As such, my Clients' request that the Pataskala Zoning Inspector record this complaint, immediately investigate, and take action as provided by the Zoning Code.

**INHC Violates the Zoning Code's Parking and Loading Ordinance for a General Business District**


Pursuant to Chapter 1249.05(E) of the Zoning Code, parking and loading requirements for the General Business district shall be regulated by Chapter 1291. Chapter 1291 requires that no "use"<sup>4</sup> shall be established unless there is permanently maintained off-street parking and provides in relevant part that all off-street parking shall be hard-surfaced with asphaltic cement, concrete, pavers to provide a durable and dust-free surface that meets the minimum requirements and specifications of the City Engineer. Pursuant to Section 1291.16, although volleyball is not identified, presumably INHC would require at least 3 parking spots for each volleyball court similar to tennis, handball, or squash courts. Further, whenever a parking area is located in or adjacent to a residential district, "it shall be effectively screened on all sides" which adjoins or faces residential property. See Section 1291.12.

INHC is making use of the Property by hosting frequent volleyball games and has failed to provide off-street parking having a hard-surface to mitigate dust, mud, and erosion. Further, it is clearly visible from Mink St. that vehicle traffic to the volleyball court located at the back of the lot has created a well-worn dirt driveway having eroded all vegetation. As such, INHC is again in violation of the Zoning Code.

In response to this complaint, we request that the Pataskala Zoning Inspector record this complaint, immediately investigate, and take action as provided by the Zoning Code to protect the residents who live adjacent to INHC from the aforementioned objectionable off-site impacts.

I look forward to your response and appreciate your attention to this matter.

Sincerely,



James D. Perko, Jr., Esq.

Cc: Clients

---

<sup>4</sup> "Use" is defined as "[t]he specific purpose of which land or a building is designated, arranged, intended, or for which it is or may be occupied or maintained." See Section 1203.03 of the Zoning Code (emphasis added). Therefore, INHC's erection of a volleyball court and activity constitutes a "use" within the meaning of Section 1291.02 as they are occupying and maintaining the land as a recreational area and for recreational use.



**CITY OF PATASKALA  
BOARD OF ZONING APPEALS**

Leatrice Guttentag	:	
280 Charles Road SW	:	CITY OF PATASKALA
Pataskala, Oh 43062	:	BOARD OF ZONING APPEALS

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**BRIEF OF LEATRICE GUTTENTAG**

**I. INTRODUCTION**

This appeal concerns a dispute with the City of Pataskala (“Pataskala”) Zoning Inspector’s failure to conduct an investigation of a zoning complaint filed on behalf of Leatrice Guttentag (“Guttentag”) concluding that ongoing recreational use of land for hosting large volleyball games is not a “use” subject to the city’s Zoning Code. As explained below, the complained of use is subject to the Zoning Code’s regulations and the Zoning Inspector is required to conduct an investigation and act accordingly.

**II. FACTS**

In 2007, Guttentag purchased approximately 5 acres of undeveloped land at the end of Charles Road SW in Pataskala. Charles Road is a quiet residential street. As a survivor of the terrorist attacks in New York on September 11, 2000, Guttentag chose this location to build a home because it was tranquil and quiet and because it was surrounded by woods and farm fields.

On or about May 10, 2019, Intra-National Home Care LLC (“INHC”), a Michigan limited liability company,<sup>1</sup> purchased approximately 22.5 acres of farmland off of Mink St. identified as Parcel No. 063-141666-00.000 (the “Property”). *See* OnTrac Property Map, attached as Exhibit 1. The Property is zoned General Business according to the City’s Zoning Map updated 5/20/2019.

The western boundary of INHC’s Property directly abuts Guttentag and others’ residential properties along Charles Road. Beginning no later than May of 2020, nearly five days a week, including Sundays, INHC hosted volleyball games and matches near the west property line where 15-25 men frequently gathered to play organized games of volleyball. INHC’s volleyball net is constructed using two 6x6 posts pounded into the ground. Recently, a second net has been installed. *See* pictures attached as Exhibit 2.

During the volleyball games, loud music, whistles, car horns, screaming, revving car and motorcycle engines could be heard emanating from the Property. The noise is loud and obnoxious often exceeding 70 dBA as measured by a digital sound level meter and is heard while Guttentag and the other neighbors are gathered in their homes for dinner and family time from 6:30 pm to dark, approximately 8:30/9 pm during the summer months. Further, 10-20 vehicles

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<sup>1</sup> As a Michigan limited liability company, INHC has failed to register with the Ohio Secretary of State as a foreign company required under R.C. 1703.09 and failed to designate an agent as required by R.C. 1703.041.



drive across the field and park on the Property during these games. A well-worn driveway from the street to the back of the Property is evident from recent Goggle Map satellite images (*see* Exhibit 3) and INHC has been viewed mowing and cultivating the Property. INHC's activity and use of the Property has resulted in large amounts of trash being thrown on the ground with water, beer, and liquor bottles also accumulating on Guttentag's property. *See* photos attached hereto as Exhibits 4 and 5.

Guttentag and other neighbors have contacted Pataskala and Pataskala police on multiple occasion complaining about the noise. After the noise and nuisance persisted, on September 18, 2020, Guttentag filed a zoning complaint ("Complaint") pursuant to Section 1209.14 of the Zoning Code outlining the nuisance and the sections of the zoning code that Guttentag believes were being violated. A true and accurate copy of the Complaint is attached hereto as Exhibit 6. In her Complaint, Guttentag argued that INHC's activity violated Section 1287.05 of the Zoning Code where INHC continuously, frequently, and repetitively produced noise which exceeded 60 dBA. The Complaint also asserted that INHC was in violation of Section 1249.05(E) of the Zoning Code regarding parking and loading requirements for the General Business district.

On September 25, 2020, Scott Fulton, on behalf of Pataskala, responded to Guttentag's Complaint. A true and accurate copy of Mr. Fulton's September 25, 2020 response is attached hereto as Exhibit 7. In his response, Mr. Fulton stated that he investigated the matter and concluded that "this is not a zoning matter." *See Id.*

In support of his conclusion, Mr. Fulton found that "[a] pick-up game of volleyball does not constitute a 'use' of the property under the Zoning Code." *See Id.* Mr. Fulton's analysis was based upon his finding that the Property is "vacant" and that no improvements have been made. He reasons that because "the property currently is undeveloped, . . . no use has been established." Guttentag appeals to this Board of Zoning Appeals and asks it reverse Mr. Fulton's decision.

### III. ARGUMENT

Guttentag appeals to this Board of Zoning Appeals to reverse Mr. Fulton's finding and conclusion that INHC's use of the Property did not constitute a "use" of the Property under the Zoning Code.

#### **a. The Zoning Code's Purpose is to Regulate and Limit the "Use of Land Areas" and is Not Limited to Buildings and Structures**

Enforcement of the Zoning Code is not limited to regulating buildings and structures. Under Section 1201.03, the purpose of the Zoning Code is to:

promote and protect the public health, safety, convenience, comfort, prosperity and general welfare by **regulating and limiting the use of land areas** and buildings and the erection, restoration and alteration of buildings and the use thereof for residential, business and industrial purposes; **to regulate the area and dimensions of land, yards and open spaces** so as to secure adequate light, air



and safety from fire and other dangers; to lessen or avoid congestion in the public streets; to regulate and restrict the bulk, height, design, percent of lot occupancy and the location of buildings; to protect the character of the existing agricultural, residential, business, industrial, and institutional areas and to assure their orderly and beneficial development; to provide for the orderly growth and development of lands, and for the purpose of dividing the City into various districts. (Emphasis added).

Indeed, the purpose of the Zoning Code is very broad and its intended to regulates others' use of "land areas." These regulations are not only applicable for land improved with buildings or structures. Under Section 1201.08, the code also provides that "[t]he regulations set forth in this Zoning Code shall be applicable to all buildings, structures, **uses and land** of any political subdivision, district, taxing unit or bond-issuing authority located within the corporate limits of the City, except that these regulations shall not be applicable to the City of Pataskala itself." The language of the code makes it clear that its purpose is to regulate "uses" and "land" of any district. This would include, INHC's land, regardless if there are improvements such as buildings and structures. As such, the Zoning Code applies to INHC using the Property to host frequent and reoccurring volleyball matches.

**b. INHC is Making "Use" of the Property as Contemplated by the Zoning Code and Ohio Law**

Mr. Fulton's primary argument for declining to investigate the Complaint is his belief that INHC is not making a "use" of the Property such that it can be regulated by the Zoning Code. This position is untenable because there are numerous examples in the Zoning Code where Pataskala controls an owner's activity concerning "undeveloped" land. Further, a city's zoning code regulates land use, not merely buildings or improvements.

"Use" is defined under the Zoning Code as "[t]he specific purpose of which land or a building is designated, arranged, intended, or for which it is or may be occupied or maintained." See § 1203.03 of the Zoning Code (emphasis added). The Zoning Code's own definition of "use" does not require a building, improvement, or vacancy to constitute a "use." Rather, the purpose for which "land" is "designated, arranged, intended, or for which it is or may be occupied or maintained" is sufficient. The Zoning Code itself states that its purpose is to "promote and protect the public health, safety, convenience, comfort, prosperity and general welfare by regulating and limiting the use of land areas and buildings . . . ." See § 1201.03. INHC's erection of a volleyball net, tilling a dirt base, mowing the property, and activity constitutes a "use" within the meaning of § 1291.02 as they are occupying and maintaining the land as a recreational area and for recreational use. Even Ohio courts have found that mud volleyball is a "recreation use."<sup>2</sup>

Mr. Fulton's definition of "use" is also inconsistent with other acknowledged "uses" of land. For example, under the Zoning Code, "Agriculture" is defined as the use of land for farming and the production of crops, for example, and is a "permitted use" in the Agricultural District (AG). See Zoning Code §§ 1203.03, 1225.03. This Board would agree that agriculture is

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<sup>2</sup> See *Pitcock v. W. Muskingum Athletic Booster Ass'n*, 5th Dist. Muskingum No. CT97-0046, 1998 WL 430540, \*3.



a “use” of land that does not require development or improvements but is nonetheless subject to the Zoning Code. However, under Mr. Fulton’s interpretation of the code, agriculture would not be a “use” of land under the Zoning Code if the land is neither developed nor improved.

Further, the Zoning Code also posits to regulate the parking of disabled vehicles. *See* Zoning Code § 1291.09. Again, under Mr. Fulton’s interpretation of the code, a land owner who uses his land to park disabled vehicles or equipment would not be subject to zoning regulations if the land was unimproved. Conceivable, this could mean that a land owner could use his land in any manner he like so long as he does not develop or improve it. The Board would likely agree that if an owner parks disabled vehicles on his unimproved land, that conduct or “use” would indeed be subject to the Zoning Code’s regulatory control. Reason being, the Zoning Codes regulates how an owner uses his land regardless if it is improved with buildings or structures.

Another example which courts have reviewed is trap and skeet shooting. The Supreme Court of Ohio in *Mentor Lagoons, Inc. v. Zoning Bd. of Appeals of Mentor Tp.* found that a township could regulate trap and skeet shooting under its approved zoning resolution.<sup>3</sup> The Court also found that a township zoning resolution may also require a zoning certificate for a change in the use of land even though such use will not require any buildings. *See Id.* at syllabus. Notably, the township in that case considered polo, trap and skeet shooting “uses” under its zoning resolution even though there were no buildings.

However here, based on the Mr. Fulton’s interpretation, the Zoning Code’s regulations would not reach trap or skeet shooting, commercial or private, on unimproved land. Indeed, based upon this interpretation, Pataskala could not regulate *any* activity or use of land under the Zoning Code that is not improved with structures or buildings. Conceivable, this could include recreational fields for soccer, football, or lacrosse, skeet/trap shooting, junk yards, and nurseries,<sup>4</sup> for example, so long as the owner did not improve the property with a building or structure. Because Mr. Fulton’s interpretation of what constitutes a “use” of property under the Zoning Code is incorrect, the Board should reverse his conclusion and compel the Zoning Inspector to investigate the alleged violations.

But even though a building or structure is not required to constitute a use of the property under the Zoning Code, INHC has indeed improved the land with a structure. Under the Zoning Code, “structure” is defined as “[a]nything constructed or erected, the use of which requires location on the ground, or attachment to something having a fixed location on the ground.” *See* Section 1203.03. INHC’s volleyball net constitutes a structure because it consists of two 6x6 posts erected from the ground requiring a location on the grounds and having a fixed location. *See* Ex. 2. Because the Property is improved with a “structure,” INHC’s use of the structure would therefore be subject to the Zoning Code even under Mr. Fulton’s interpretation. As such, the Zoning Inspector should immediately investigate the alleged violations and take appropriate action.

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<sup>3</sup> *See* 168 Ohio St. 113, 120, 151 N.E.2d 533, 539 (1958).

<sup>4</sup> *See Blue Heron Nurseries, L.L.C. v. Funk*, 9th Dist. No. 24745, 186 Ohio App.3d 769, 2010-Ohio-876, 930 N.E.2d 824 (finding that the township’s residential zoning restrictions prohibited a plant nursery’s operations of storing and selling plant stock that originated from other locations and was primarily stored in burlap sacks or containers).



**c. INHC Violates the Zoning Code's Noise Limit for General Business District**

Section 1287.05 of the Zoning Code provides that:

Continuous, frequent, or repetitive noise which exceeds 60 dBA (decibels) may not be produced. Noise from external speakers shall not be audible by an occupant of an adjacent property at the property line nearest the source of the speaker noise.

\* \* \*

Noise lasting less than 5 minutes per day is also exempt. Noise from primary on-site vehicles and equipment is not exempt.

During its volleyball games, INHC permits frequent and repetitive noise exceeding 60 dBA not only from external speakers, but also whistles, horns, vehicles, and screaming. Notably, the City's Zoning Code does not distinguish between noise emanating from persons and noise emanating from other sources. Therefore, the clear and unambiguous reading of Section 1287.05 would also apply to speech, including screaming, which exceeds 60 dBA at Guttentag's adjacent property line.

As you are likely aware, the Ohio Supreme Court has held that zoning ordinances are presumed constitutional.<sup>5</sup> Further, noise intensity restrictions do not infringe upon INHC's constitutionally protected free speech rights. An ordinance's prohibition against loud noise is primarily an attempt to control conduct, rather than an attempt to control speech.<sup>6</sup> Therefore, the 60 dBA noise limitation is enforceable against speech, including screaming, emanating from the Property.

Additionally, under Section 1287.01, the Zoning Code also provides that the regulations are designed to protect uses in "all districts from certain objectionable off-site impacts. These impacts include noise, vibration, odors, and glare." Therefore, the regulations for General Business are not only designed to protect adjacent General Business zoned parcels, they are also designed to protect those in different adjacent districts, such as residential districts.

This noise frequently and repetitively emanating from the Property exceeds 60 dBA at the property line. This loud and obnoxious noise disrupts the character and livability of the surrounding neighborhoods, including those residents living on Charles Rd. Specifically, Guttentag and other neighbors hear noise from the Property inside their homes with closed windows lasting 3 to 4 hours in the evening while they sit down with their families for dinner. The noise, especially the whistles, also disrupts area dogs causing them to bark and become agitated.

As the Zoning Code's regulations limit noise emanating from INHC's Property to 60 dBA at the property line, and because noise is frequently and repetitively heard exceeding this

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<sup>5</sup> *Goldberg Cos., Inc. v. Richmond Hts. City Council*, 81 Ohio St.3d 207, 1998-Ohio-207, 690 N.E.2d 510 (1998) ("Zoning ordinances are presumed constitutional.").

<sup>6</sup> *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S.Ct. 2746, 2755, 105 L.Ed.2d 661 (1989).



level, INHC is in violation of Section 1287.05 of the Zoning Code. As such, the Zoning Inspector should be required to respond to the Complaint and investigate the alleged conduct.

**d. INHC Violates the Zoning Code's Trash and Garbage Control Regulations**

Under Section 1249.05(G) of the Zoning Code, concerning the General Business District, “[a]ll trash and garbage shall be stored in container systems which are located and enclosed so as to effectively screen them from view. Screening of trash and garbage areas shall meet the requirements of Section 1283.06.”

While playing volleyball, INHC and its invitees have littered and thrown trash around the Property, including beer bottles, plastic water bottles, aluminum cans, and glass wine/liquor bottles. *See* Ex. 4. INHC has also littered, or permitted others to litter, on Guttentag’s property. *See* Ex. 5. INHC has not only failed to contain their trash or “screen all garbage areas” in violation of Section 1249.05(G), they are also in violation of Section 521.08 of the Pataskala General Offenses Code for littering on another’s private property. This littering is also a violation of 3767.32 of the Ohio Revised Code.

**e. INHC Violates the Zoning Code's Parking and Loading Ordinance for a General Business District**

Pursuant to Chapter 1249.05(E) of the Zoning Code, parking and loading requirements for the General Business district shall be regulated by Chapter 1291. Chapter 1291 requires that no “use” shall be established unless there is permanently maintained off-street parking and provides in relevant part that all off-street parking shall be hard-surfaced with asphaltic cement, concrete, pavers to provide a durable and dust-free surface that meets the minimum requirements and specifications of the City Engineer. Pursuant to Section 1291.16, although volleyball is not identified, presumably INHC would require at least 3 parking spots for each volleyball court similar to tennis, handball, or squash courts. Further, whenever a parking area is located in or adjacent to a residential district, “it shall be effectively screened on all sides” which adjoins or faces residential property. *See* Section 1291.12.

In his response to the Complaint, Mr. Fulton again asserted that “the property currently is undeveloped, and no use has been established. Therefore, parking improvements are not required pursuant to Chapter 1291.” *See* Ex. 6. This conclusion is flawed.

Pursuant to Section 1291.02 of the Zoning Code, “[n]o building, structure, or **use** shall be established, developed, erected or substantially altered, unless permanently maintained off-street parking and loading spaces have been provided in accordance with the provisions of this Code.” (Emphasis added). Because the drafters of the Zoning Code separately enumerated buildings, structures, and other “uses” such that “use” is intended to mean something other than buildings and structures.

INHC is making use of the Property by hosting frequent volleyball games and has failed to provide off-street parking having a hard-surface to mitigate dust, mud, and erosion as required in the General Business district. Further, it is clearly visible from Mink St. that INHC vehicle



traffic to the volleyball court located at the back of the lot has created a well-worn dirt driveway having eroded all vegetation. *See* Ex. 3. As such, INHC is again in violation of the Zoning Code.

Guttentag appeals to this Board asking it to find that INHC is making use of the Property that its use is subject to the Zoning Code's regulations. In so finding, Guttentag requests the Board to compel the Zoning Inspector to immediately investigate the alleged violations and take appropriate action as required under Section 1209.14 to protect the residents who live adjacent to INHC from the aforementioned objectionable off-site impacts.

Respectfully Submitted,

**HALLOWES LAW GROUP LLC**

/s/ James D. Perko, Jr.

James Perko, Jr. (0093312)  
1010 Jackson Hole Drive, Suite 200  
Blacklick, Ohio 43004  
Telephone: (614) 759-4603  
Facsimile: (614) 868-0029  
Email: jim@hlglawgroup.com

*Counsel for Leatrice Guttentag*



## **EXHIBIT 1**



# OnTrac Property Map

Exhibit 1



October 26, 2020

- Street Number Only  
● Sales - 2020  
 Owner Name & Acres
- Centerline Labels**  
  Interstate/US/State Route  
  County Road

- Township Road  
  Other Road Type  
  Driveway
- Municipal Corporations  
  Jurisdictional Townships

Licking County Auditor GIS

LICKING COUNTY TAX MAP



## **EXHIBIT 2**



















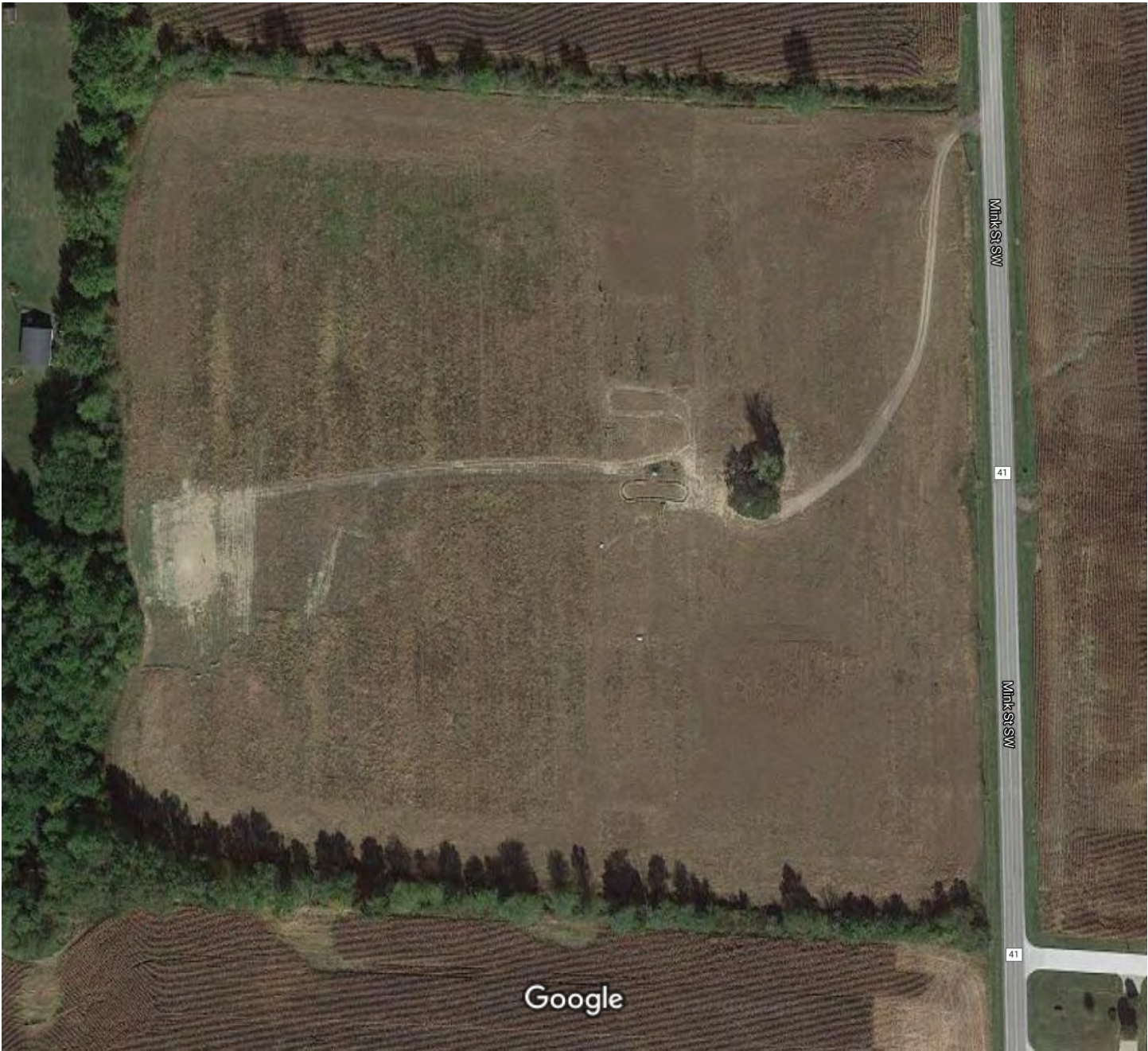




## **EXHIBIT 3**



Google Maps Pataskala



Imagery ©2020 Maxar Technologies, State of Ohio / OSIP, U.S. Geological Survey, USDA Farm Service Agency, Map data ©2020

100 ft



## **EXHIBIT 4**























## **EXHIBIT 5**



























## **EXHIBIT 6**



CITY OF PATASKALA  
2020 OCT 26 PM 3: 05

**CITY OF PATASKALA  
BOARD OF ZONING APPEALS**

Leatrice Guttentag  
280 Charles Road SW  
Pataskala, Oh 43062

:  
:  
:  
**NOTICE OF APPEAL**

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**NOTICE OF APPEAL**

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Pursuant to Chapter 1211 of the City of Pataskala Zoning Code ("Zoning Code"), Appellant Leatrice Guttentag ("Appellant") gives notice of appeal from the City of Pataskala Director of Planning, Scott Fulton's September 25, 2020 response (attached hereto as Exhibit A) to Appellant's September 18, 2020 Zoning Complaint (attached hereto as Exhibit B) finding that "[a] pick-up game of volleyball does not constitute a 'use' of the property under the Zoning Code."

The grounds for this appeal are that the Zoning Inspector's failure to find that frequent and continuous hosting of volleyball games and matches on a parcel zoned General Business adjacent to residential homes where 15-25 men frequently gather playing loud music, blowing whistles, car horns, screaming, revving car and motorcycle engines, constitutes a "use" under the Zoning Code, is not supported by substantial, reliable, or probative evidence and is not in accordance with the law or the Zoning Code for, but not limited to, the following reasons:

1. The Zoning Inspector failed to find that the Zoning Codes applies to outdoor recreational activity, including volleyball games conducted and hosted within the General Business district;
2. The Zoning Inspector failed to find that Section 1287.05 of the Zoning Code, concerning Continuous, frequent, or repetitive noise which exceeds 60 dBA (decibels), applies to volleyball games conducted and hosted within the General Business district; and



3. The Zoning Inspector failed to find that Section 1249.05 of the Zoning Code, concerning parking and loading requirements for the General Business district, applies to volleyball games conducted and hosted within the district.

Appellant requests that the Clerk transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appeal is taken and requests a hearing before the Board of Zoning Appeals.

Respectfully submitted,

**HALLOWES LAW GROUP LLC**



James D. Perko, Jr. (0093312)

1010 Jackson Hole Drive, Suite 200

Blacklick, Ohio 43004

Telephone: (614) 759-4603

Facsimile: (614) 868-0029

Email: Jim@hlglawgroup.com

*Attorney for Appellant, Leatrice Guttentag*



September 25, 2020

James D. Perko, Jr.  
Hallowes Law Group, LLC  
1010 Jackson Hole Drive, Suite 200  
Blacklick, Ohio 43004



**Planning and Zoning  
Department**

Mr. Perko,

I write in response to your letter dated September 18, 2020. Please understand, I have spoken with Ms. Guttentag several times about this issue. As you requested, I (again) investigated this matter. And, I have come to the same conclusion – this is not a zoning matter.

Section 1287.01 states the “standards ensure that uses provide adequate control measures or locate in areas where the community is protected from health hazards and nuisances”. A pick-up game of volleyball does not constitute a “use” of the property under the Zoning Code. To put it another way, the Zoning Code does not allow or prevent a volleyball game from taking place on any parcel. The Planning and Zoning Department does not issue zoning permits for this activity. The Intent of Chapter 1287 is to address off-site impacts emanating from a use on improved properties permitted within that zoning district. As you know, the property is currently vacant; therefore, no use has been established.

Furthermore, because the property is not yet developed, Section 1287.05 is not applicable. Section 1287.05 governs noise levels emanating from the improvements made to the property. For general noise issues, please contact the City of Pataskala Police Department to determine whether the issue can be addressable under Section 509.08 (Unreasonable Loud Noise).

Finally, the purpose of Chapter 1291 is to regulate parking to ensure the orderly development of land within the City. As stated above, the property currently is undeveloped, and no use has been established. Therefore, parking improvements are not required pursuant to Chapter 1291.

I hope this answers your questions and addresses your client’s concerns. Should you have any questions, please feel free to contact me by phone at 740-927-2168 or via email at [sfulton@ci.pataskala.oh.us](mailto:sfulton@ci.pataskala.oh.us).

Sincerely,

Scott Fulton  
Director of Planning  
City of Pataskala

Cc: File





[www.hglawgroup.com](http://www.hglawgroup.com)

Donald B. Hallowes  
Chris E. Chapman  
James D. Perko, Jr.  
Wesley T. Fortune

1010 Jackson Hole Drive, Suite 200  
Blacklick, Ohio 43004  
Telephone (614) 759-4603  
Facsimile (614) 868-0029

September 18, 2020

***VIA U.S. MAIL AND ELECTRONIC MAIL***

**Steven Blake**  
City of Pataskala Zoning Inspector  
621 W. Broad Street  
Pataskala OH 43062  
[sblake@ci.pataskala.oh.us](mailto:sblake@ci.pataskala.oh.us)

***RE: Zoning Complaint***

Dear Mr. Blake:

I represent two residents of the City of Pataskala (the "City"): Leatrice Guttentag, 280 Charles Rd. SW and Dorothy Hicks, 262 Charles Rd. SW. Pursuant to Section 1209.14 of the Pataskala Zoning Code ("Zoning Code"), my Clients file this written complaint alleging a zoning violation against Intra-National Home Care LLC ("INHC"), a Michigan limited liability company.<sup>1</sup>

INHC, is the owner of certain real property located on Mink St., Pataskala, Oh 43062, Parcel ID 063-141666-00.000 (the "Property"). This parcel is zoned General Business according to the City's Zoning Map updated 5/20/2019. My Clients' homes are directly adjacent to the Property along the western property line. Nearly five days a week, including Sundays, INHC hosts volleyball games and matches near the west property line where 15-25 men frequently gather. During the volleyball games, loud music, whistles, car horns, screaming, revving car and motorcycle engines can be heard emanating from the Property. The noise is loud and obnoxious often exceeding 70 dBA as measured by a digital sound level meter. Further, 10-20 vehicles park on the Property. INHC's noise is also heard while my Clients and their families are gathered in their homes for dinner and family time from 6:30 pm to dark, approximately 8:30/9:00 pm. This activity has continued as early as May of 2020.

<sup>1</sup> As a Michigan limited liability company, INHC has failed to register with the Ohio Secretary of State as a foreign company required under R.C. 1703.09 and failed to designate an agent as required by R.C. 1703.041.



Mr. Blake  
September 18, 2020  
Page 2 of 3

**INHC Violates the Zoning Code's Noise Limit for General Business District**

Section 1287.05 of the Zoning Code provides that:

Continuous, frequent, or repetitive noise which exceeds 60 dBA (decibels) may not be produced. Noise from external speakers shall not be audible by an occupant of an adjacent property at the property line nearest the source of the speaker noise.

\* \* \*

Noise lasting less than 5 minutes per day is also exempt. Noise from primary on-site vehicles and equipment is not exempt.

During its volleyball games, INHC permits frequent and repetitive noise exceeding 60 dBA not only from external speakers, but also whistles, horns, vehicles, and screaming. Notably, the City's Zoning Code does not distinguish between noise emanating from persons and noise emanating from other sources. Therefore, the clear and unambiguous reading of Section 1287.05 would also apply to speech, including screaming, which exceeds 60 dBA at my Clients' adjacent property line.

As you are likely aware, the Ohio Supreme Court has held that zoning ordinances are presumed constitutional.<sup>2</sup> Further, noise intensity restrictions do not infringe upon INHC's constitutionally protected free speech rights. An ordinance's prohibition against loud noise is primarily an attempt to control conduct, rather than an attempt to control speech.<sup>3</sup> Therefore, the 60 dBA noise limitation is enforceable against speech, including screaming, emanating from the Property.

Additionally, under Section 1287.01, the Zoning Code also provides that the regulations are designed to protect uses in "all districts from certain objectionable off-site impacts. These impacts include noise, vibration, odors, and glare." Therefore, the regulations for General Business are not only designed to protect adjacent General Business zoned parcels, they are also designed to protect those in different adjacent districts, such as residential districts.

This noise frequently and repetitively emanating from the Property exceeds 60 dBA at the property line. This loud and obnoxious noise disrupts the character and livability of the surrounding neighborhoods, including those residents living on Charles Rd. Specifically, Ms. Hicks and Ms. Guttentag hear noise from the Property inside their homes with closed windows lasting 3 to 4 hours in the evening while they sit down with their families for dinner. The noise, especially the whistles, also disrupts area dogs causing them to bark and become agitated.

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<sup>2</sup> *Goldberg Cos., Inc. v. Richmond Hts. City Council*, 81 Ohio St.3d 207, 1998-Ohio-207, 690 N.E.2d 510 (1998) ("Zoning ordinances are presumed constitutional.").

<sup>3</sup> *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S.Ct. 2746, 2755, 105 L.Ed.2d 661 (1989).



Mr. Blake  
September 18, 2020  
Page 3 of 3

As the Zoning Code's regulations limit noise emanating from INHC's Property to 60 dBA at the property line, and because noise is frequently and repetitively heard exceeding this level, INHC is in violation of Section 1287.05 of the Zoning Code. As such, my Clients' request that the Pataskala Zoning Inspector record this complaint, immediately investigate, and take action as provided by the Zoning Code.

**INHC Violates the Zoning Code's Parking and Loading Ordinance for a General Business District**


Pursuant to Chapter 1249.05(E) of the Zoning Code, parking and loading requirements for the General Business district shall be regulated by Chapter 1291. Chapter 1291 requires that no "use"<sup>4</sup> shall be established unless there is permanently maintained off-street parking and provides in relevant part that all off-street parking shall be hard-surfaced with asphaltic cement, concrete, pavers to provide a durable and dust-free surface that meets the minimum requirements and specifications of the City Engineer. Pursuant to Section 1291.16, although volleyball is not identified, presumably INHC would require at least 3 parking spots for each volleyball court similar to tennis, handball, or squash courts. Further, whenever a parking area is located in or adjacent to a residential district, "it shall be effectively screened on all sides" which adjoins or faces residential property. See Section 1291.12.

INHC is making use of the Property by hosting frequent volleyball games and has failed to provide off-street parking having a hard-surface to mitigate dust, mud, and erosion. Further, it is clearly visible from Mink St. that vehicle traffic to the volleyball court located at the back of the lot has created a well-worn dirt driveway having eroded all vegetation. As such, INHC is again in violation of the Zoning Code.

In response to this complaint, we request that the Pataskala Zoning Inspector record this complaint, immediately investigate, and take action as provided by the Zoning Code to protect the residents who live adjacent to INHC from the aforementioned objectionable off-site impacts.

I look forward to your response and appreciate your attention to this matter.

Sincerely,



James D. Perko, Jr., Esq.

Cc: Clients

---

<sup>4</sup> "Use" is defined as "[t]he specific purpose of which land or a building is designated, arranged, intended, or for which it is or may be occupied or maintained." See Section 1203.03 of the Zoning Code (emphasis added). Therefore, INHC's erection of a volleyball court and activity constitutes a "use" within the meaning of Section 1291.02 as they are occupying and maintaining the land as a recreational area and for recreational use.



## **EXHIBIT 6**



September 25, 2020

James D. Perko, Jr.  
Hallowes Law Group, LLC  
1010 Jackson Hole Drive, Suite 200  
Blacklick, Ohio 43004



**Planning and Zoning  
Department**

Mr. Perko,

I write in response to your letter dated September 18, 2020. Please understand, I have spoken with Ms. Guttentag several times about this issue. As you requested, I (again) investigated this matter. And, I have come to the same conclusion – this is not a zoning matter.

Section 1287.01 states the “standards ensure that uses provide adequate control measures or locate in areas where the community is protected from health hazards and nuisances”. A pick-up game of volleyball does not constitute a “use” of the property under the Zoning Code. To put it another way, the Zoning Code does not allow or prevent a volleyball game from taking place on any parcel. The Planning and Zoning Department does not issue zoning permits for this activity. The intent of Chapter 1287 is to address off-site impacts emanating from a use on improved properties permitted within that zoning district. As you know, the property is currently vacant; therefore, no use has been established.

Furthermore, because the property is not yet developed, Section 1287.05 is not applicable. Section 1287.05 governs noise levels emanating from the improvements made to the property. For general noise issues, please contact the City of Pataskala Police Department to determine whether the issue can be addressable under Section 509.08 (Unreasonable Loud Noise).

Finally, the purpose of Chapter 1291 is to regulate parking to ensure the orderly development of land within the City. As stated above, the property currently is undeveloped, and no use has been established. Therefore, parking improvements are not required pursuant to Chapter 1291.

I hope this answers your questions and addresses your client’s concerns. Should you have any questions, please feel free to contact me by phone at 740-927-2168 or via email at [sfulton@ci.pataskala.oh.us](mailto:sfulton@ci.pataskala.oh.us).

Sincerely,

Scott Fulton  
Director of Planning  
City of Pataskala

Cc: File