

Johnson County Board of Zoning Appeals

March 28, 2023 Meeting Minutes

The Johnson County Board of Zoning Appeals met on Tuesday, March 28, 2023 in the Johnson County Courthouse Annex Auditorium. The meeting was called to order at 7:02 PM by Chairman Chris Campbell.

I. ROLL CALL:

Present: Chad Bowman, Chris Campbell, Charlie Canary, James Kaylor, Steve Powell, Attorney Jacob Bowman (Legal Counsel - not voting), Michele Hansard (Director - not voting), Rachael Schaefer (Planner – not voting) and Angela Olson (Recording Secretary – not voting).

Absent: Paul Clodfelter (Alternate)

II. APPROVAL OF MEETING MINUTES:

Chairman Chris Campbell called for a motion to approve the February 28, 2023 Board of Zoning Appeals meeting minutes.

Motion: Approval of February 28, 2023 Board of Zoning Appeals meeting minutes. **Moved** by James Kaylor. **Seconded** by Charlie Canary. **Yes:** Bowman, Campbell, Canary, Kaylor and Powell. **No:** None. **Motion approved 5-0.**

III. PUBLIC HEARINGS:

V-3-23; Dustin Caplinger – Variance of Development Standards Request. 6234 W. Horseshoe Rd.

Staff presented findings and facts to the board and recommended approval of this request.

Petitioner Dustin Caplinger (6234 W. Horseshoe Rd., Morgantown 46160) was present to speak and address questions and/or concerns.

Board members asked questions and expressed concerns which were addressed by the Petitioner and staff as follows:

- Q. Board member Chad Bowman inquired as to how staff was made aware of this structure being built?
A. Petitioners applied for building permit.
- Q. Board member Charlie Canary asked for confirmation that the construction had already started?
A. Yes.

- Q. Board member James Kaylor asked the Petitioner if he had contacted his neighbors?

A. Yes.

- Q. Board member James Kaylor asked the Petitioner how long he had owned the property and if at the time Petitioner purchased the property did a survey have to be completed?

A. Petitioner has owned the property since 2009 and he did not have to have a survey completed.

Motion: To approve V-3-23 to allow for an accessory structure that is two (2) feet from the side setback, five (5) feet from the rear setback and Petitioner's Findings of Fact. **Moved** by Chad Bowman. **Seconded** by James Kaylor. **Yes:** Bowman, Campbell, Canary, Kaylor and Powell. **No:** None. **Motion approved 5-0.**

UB-1-23; Michael Kloess – Unsafe Building/Demolition Order Request. 5729 N. 75 W.

Staff presented findings and facts to the board and recommended that the board affirm the Order as delivered via Unsafe Building Ordinance Violation case UB-01-20, which requires that the subject single family dwelling and detached garage be sealed or removed.

Staff presented to the board an **Exhibit** packet for this matter.

Austin King (59 Meadow Ln., Whiteland 46184) was present to speak in favor of this matter and to express his concerns regarding the property abandonment, safety and property values.

Sally Peacock (820 Lawson Ct., Greenwood 46142) was present to speak in favor of this matter and to express her concerns regarding the property abandonment, safety, question of whether or not the county had spoken to the caseworker for the property owner and question of whether or not a local entity could do the cleanup and sealing voluntarily.

Board members asked questions and expressed concerns which were addressed by staff as follows:

- Q. Board member James Kaylor inquired as to whether or not the property owner had paid the property taxes?

A. Yes.

- Q. Board member Attorney Jacob Bowman asked for confirmation that the Health Department had taken no further action?

A. Yes, the Health Department has taken no further action.

- Q. Board member Chad Bowman referred to the Health Department condemnation in 2018 and inquired as to why it has taken until 2023 for Planning and Zoning to take further action?

A. Staff explained the circumstances regarding the property owner.

- Q. Board member Attorney Jacob Bowman inquired as to whether or not staff had spoken to Robert Reynolds on Rustic Lane?

A. No, staff has mailed correspondence but yet to hear from Mr. Reynolds.

- Board members had various concerns and questions about their options in this matter.
- Attorney Jacob Bowman provided legal explanation and advised the board members on their options in regards to this matter.

- Q. Board member James Kaylor asked Mr. King if he had seen the property owner on the property?

A. No.

- Q. Board member Chad Bowman asked Mr. King if he could see the property in question from his residence?

A. No.

Motion: To affirm the order for UB-1-23 that the subject single family dwelling and detached garage shall be sealed. **Moved** by Chad Bowman. **Seconded** by Steve Powell. **Yes:** Bowman, Campbell, Canary, Kaylor and Powell. **No:** None. **Motion approved 5-0.**

IV. NEW BUSINESS:

Adoption of Findings for V-1-23 Variance of Development Standards 1 and 2.

Motion: To approve adoption of Findings of Fact for V-1-23 Variance of Development Standards 1 and 2. **Moved** by Charlie Canary. **Seconded** by Steve Powell. **Yes:** Bowman, Campbell, Canary, Kaylor and Powell. **No:** None. **Motion approved 5-0.**

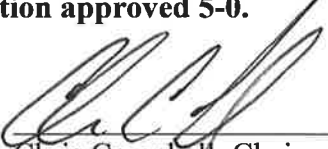
V. ADJOURNMENT:

Chairman Chris Campbell called for a motion to adjourn the meeting at 7:57 PM.

Motion: Adjourn the meeting. **Moved** by Charlie Canary. **Seconded** by James Kaylor. **Yes:** Bowman, Campbell, Canary, Kaylor and Powell. **No:** None. **Motion approved 5-0.**

Approved on: April 25, 2023

By:


Chris Campbell, Chairman

Attested By:


Charlie Canary, Secretary

BEFORE THE JOHNSON COUNTY BOARD OF ZONING APPEALS

IN THE MATTER OF:

5729 N 75 W, Whiteland IN 46184

Owned by Michael A. Kloess

ORDER AND
FINDINGS

This matter comes before the Johnson County Board of Zoning Appeals (“BZA”), acting as Hearing Authority for the Johnson County Unsafe Building Law, on a Notice of Order to remove or fully seal all unsafe structures on the property (collectively, the “Order”) issued by Johnson County Planning and Zoning Department (“Department”), as Enforcement Authority, pursuant to Ind. Code § 36-7-9. The Order was issued for the property located at 5729 N 75 W, Whiteland, IN 46184 (the “Property”). The Order is presented as Exhibit 1.

The Department, as well as the Johnson County Health Department, has received several complaints on the property over the course of five years or more. ^{The} ~~in~~ Health Department issued a Notice of Condemnation on 8/20/2018, Exhibit 2. The property has been abandoned for an unknown amount of time. The yard and structures of the property have not been maintained in several years. It is evident in the pictures supplied in Exhibit 3. An official site inspection was conducted on 12/12/2022 by the Building Official of the Department. Photos taken during this inspection are supplied as Exhibit 3. His Findings are as such

- (a) “The property is found abandoned. It contains two structures, a single-family home and a detached garage. The property is littered with trash, debris, and cut-up timber. All openings of the building are broken and open to the outside elements. It is observed from the outside of the house that the interior of the house is also littered with trash and abandoned items of the property owner. There has also been damage to the interior walls. The detached garage has one broken garage door that is not closed. The interior contains several items and rubbish. No structural damage is observed from the outside. Since the property is littered with trash that is covered in overgrown vegetation, the inspection was limited to the front of the property.”

PARTIES AND
NOTICE

1. Deed # 2002-015119 shows a Micheal A. Kloess ("Mr. Kloess") as the Grantee of the property since April 26th, 2002, copy of deed as Exhibit 4. The last known address for Mr. Kloess filed with the County Auditor's office is the property's address.
2. On February 27, 2023, the Director of Planning and Zoning issued a Notice of Order by certified mail to Mr. Kloess's last known address. Certified mailing tracking provided as Exhibit 5
3. On February 27, 2023, copies of the notice were mailed via first-class mailed to the following addresses:

Michael A. Kloess
5729 N 75 W
Whiteland, IN 46184

Robert C Reynolds
Trustee of The Kloess Trust
804 W. Rustic Lane
Whiteland, IN 46184

Adult and Child Service
Care of Michael A. Kloess
222 E. Ohio St
7th floor
Indianapolis Indiana 46204

Proof of mailing is provided with Exhibit 6 USPS Form 3877 Certificate of Mailing

4. Robert C. Reynolds was the Trustee of the Kloess Trust that owned the property from 9-29-2000 to 4-26-2002.
5. Email to Postmaster of the Whiteland Postal Office asking for a past forwarding address and response from Postmaster Jessica Morgan can be found in Exhibit 7.
6. An Notice of Unsafe Structure with details of the actions required and hearing date were posted on the property on March 17, 2023 in two locations. Exhibit 8.

Per IC 36-7-9-4.5 the Property is deemed unsafe because

Sec 4.5 (a) a vacant structure that could attract children, become a harborage for vermin, serve as temporary abodes for vagrants and criminals, and is likely to continue to be damaged by vandals or set ablaze by arsonists.

(d) Unkept grounds surrounding vacant structures invite dumping of garbage, trash, and other debris.

(e) Many vacant structures are situated on narrow city lots and in close proximity to neighboring structures, thereby increasing the risk of conflagration and spread of insect and rodent infestation,

(f) Vacant, deteriorated structures contribute to blight, cause a decrease in property values, and discourage neighbors from making improvements to properties.

Per IC 36-7-9-5, The Order given required either of the two following actions:

a) Fully seal the dwelling and detached structure, and repair any openings in the roof and exterior no later than April 28th, 2023, in accordance with required permits issued by the Johnson County Department of Planning and Zoning, OR

b) Remove all structures no later than April 28th 2023, in accordance with a demolition permit issued by the Johnson County Department of Planning and Zoning.

Per IC 36-7-9-7 Hearing Authority Findings and action:the hearing authority may make findings and take action to:

(1) affirm the order;

(2) rescind the order; or

(3) modify the order, but unless the person to whom the order was issued, or counsel for that person, is present at the hearing, the hearing authority may modify the order in only a manner that makes its terms less stringent.



JOHNSON COUNTY

Department of Planning and Zoning
86 West Court Street
Courthouse Annex
Franklin, Indiana 46131

Phone (317) 346-4350
Website: www.co.johnson.in.us

February 27, 2023

Case Number: UB-01-23

Delivered via First-Class Mail and Certified Mail Number: 9214 8901 0661 5400 0183 6940 92

MICHAEL A KLOESS
5729 N 75 W
Whiteland, IN 46184

Michael Kloess and/or interested parties of 5729 N 75 W, Whiteland, IN 46184

An inspection of the property you own at 5729 N 75 W, Whiteland, Indiana 46184, revealed the presence of an Unsafe Structure, as defined in Indiana Code 36-7-9-4 and in the Johnson County Unsafe Building Ordinance. With this Notice of Order you are ordered to take the action described below to make the property safe and bring the site into compliance with state and local code.

On this property a single-family dwelling and a detached garage stands vacant, dilapidating, apparently abandoned, and with openings in the roof and windows, exposing the interior to the elements. The structure represents an attractive nuisance to children, a haven for vermin, a general hazard to the surrounding area, and a substantial eyesore and blighting influence.

Required Actions:

- a) Fully seal the dwelling and detached structure, and repair any openings in the roof and exterior no later than April 28th, 2023, in accordance with required permits issued by the Johnson County Department of Planning and Zoning, OR
- b) Remove all structures no later than April 28th 2023, in accordance with a demolition permit issued by the Johnson County Department of Planning and Zoning.

Property Details

Address: 5729 N. 75 W., Whiteland Indiana 46184
Parcel ID#: 41-05-20-024-015.000-033
Brief Legal: NW S20 T13 R4

Exhibit 1

Because this Order requires that the dwelling be sealed and repaired, or demolished, the matter must be brought to the Johnson County Board of Zoning Appeals (BZA) at a public hearing. That hearing is set for **March 28th 2023, at 7:00 PM**, in the public auditorium of the West Courthouse Annex Building, 86 West Court Street, Franklin, Indiana.

At that hearing, the BZA may affirm the Order, affirm the Order and impose a civil penalty not to exceed \$5,000, rescind the Order, or modify the Order. Additionally, if applicable, the BZA may determine the property to be abandoned as provided in Indiana Code 36-7-37. As the property owner and responsible party, you are entitled to appear at the hearing with or without legal counsel, present evidence, cross-examine opposing witnesses, and present arguments. You are strongly encouraged to attend the hearing. Adjoining property owners will be notified in writing of the hearing, and will be invited to attend.

If, by April 28th, 2023 you do not take the actions ordered above, or succeed in having the Order rescinded or modified at the March 28th, 2023 BZA hearing, Johnson County may take action to bring the property into compliance with the Unsafe Building Ordinance and other ordinances. You and any other party holding a substantial interest in the property will be held liable for the cost of the work, as well as ancillary costs.

Per IC 36-7-9-27, a person who has been issued and has received notice of an order relative to unsafe premises and has not complied with that order must supply full information regarding the order to any person who takes or agrees to take a substantial property interest in the unsafe premises before transferring or agreeing to transfer the interest.

If you have any questions, please contact me at (317) 346-4350 or mhansard@co.johnson.in.us. If you require a short time extension to be able to satisfy this Order, we would be happy to discuss that, as well.

Sincerely,

Michele Hansard, Director
Johnson County Department of Planning and Zoning



JOHNSON COUNTY HEALTH DEPARTMENT

460 N. Morton Street Suite A
Franklin, Indiana 46131

(317) 346-4365
Fax (317) 736-5264

August 20, 2018

Michael Kloess
5729 N 75 W
Whiteland, IN 46184

Dear Mr. Kloess:

Re: NOTICE OF COMDEMNATION – 5729 N 75 W Whiteland, IN 46184

This is to inform you that after inspection of the above-referenced property by representatives of the Johnson County Health Department on August 15, 2018, the exterior and interior of the dwelling is hereby declared unfit for human use as per Indiana State Code IC 16-41-20. The exterior and interior of the dwelling have been deemed dangerous and detrimental to life and health because of filth, no utilities, no means of sewage disposal and evidence of mosquito activity. Therefore, it is ordered that the property is repaired by August 27, 2018.

The following defects were noted at the time of inspection:

- There are no utilities at the property.
- There is a mosquito infestation on the exterior of the property due to an accumulation of human waste, trash, large rubbish and junk and high weeds/grass.
- There is no means of sewage disposal in the home.
- All of the windows of the home are broken out.

In order to assure that the home meets required standards, we recommend the reconnection of all utilities, removal of all items of trash and waste, proper draining of any stagnant water, and installation of new windows. If repairs are not made to the dwelling then the Johnson County Health Department will vacate the premises.

This condemnation order may be rescinded by this department after a formal inspection whereby it is determined that all repairs have been made and that the dwelling is no longer deemed a danger or health hazard.

If you have any questions or believe this notice is in error then please feel free to contact me.

Regards,

Betsy Swearingen
Director
Johnson County Health Department

Exhibit 2

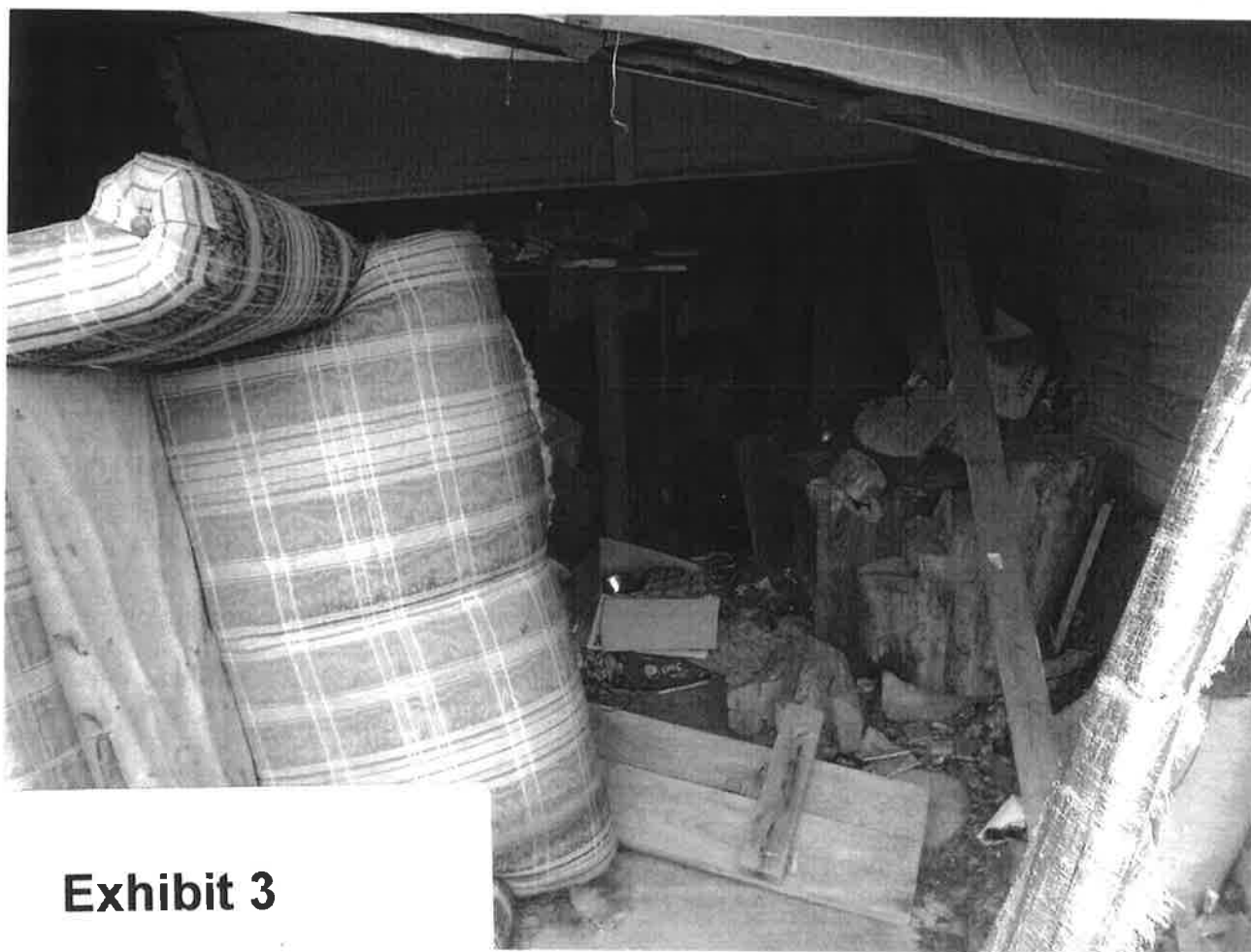


Exhibit 3



14-0

QUITCLAIM DEED

THIS INDENTURE WITNESSETH that Robert C. Reynolds, as Trustee of The Kloess Trust, QUITCLAIMS to Michael A. Kloess, for the sum of One Dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, the following described real estate in Johnson County, Indiana:

Eight (8) acres by parallel lines off of the entire south side of the following described tract of land, to-wit:

Part of the northwest quarter of section twenty (20), township thirteen (13) north, range four (4) east of the second principal meridian, described as follows:

Beginning on the east line of said quarter section at a point, one hundred and eight-tenths (100.8) rods south of the northeast corner thereof; thence west, parallel with the north line of said section, seventy-one and five tenths (71.5) rods to the middle line of a county road; thence northward with said middle line, to a point, thirty-five and two-tenths (35.2) rods south of the north line of said section; thence east, parallel with the north line of said section, sixty-one and five-tenths (61.5) rods to a point of the east line of said quarter section, thirty-five and two tenths (35.2) rods south of the northeast corner of the said quarter section, thence south on the east line of said quarter section, sixty-five and six-tenths (65.6) rods to the place of beginning.

More commonly known as 5729 North 75 West, Whiteland, IN 46184.

Subject to the real estate taxes due and payable in May, 2002, and thereafter.
Subject to all conditions, restrictions and easements appearing of record.

IN WITNESS WHEREOF, the Grantor has executed this deed this 26th day of April, 2002.


Robert C. Reynolds, Trustee of The Kloess Trust

STATE OF INDIANA)
COUNTY OF MARION) SS:

Before me a Notary Public in and for said County and State, personally appeared Robert C. Reynolds, Trustee of The Kloess Trust, who acknowledged the execution of the foregoing Quitclaim Deed, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 26th day of April, 2002.

Signature: 
Franklin N. DeWester, Notary Public

My Commission Expires:
October 23, 2007
County of Residence:
Morgan

This instrument was prepared by Franklin N. DeWester, Attorney at Law.
Send deed and tax statements to: Robert C. Reynolds, 804 W. Rustic Lane, Whiteland, IN 46184.

DULY ENTERED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

MAY - 2 2002


AUDITOR OF JOHNSON COUNTY

Exhibit 4

Tracking Number:

Remove X

92148901066154000183694092

Copy

Add to Informed Delivery (<https://informedelivery.usps.com/>)

Latest Update

Your item has been delivered to the original sender at 9:06 am on March 7, 2023 in FRANKLIN, IN 46131.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivered

Delivered, To Original Sender

FRANKLIN, IN 46131

March 7, 2023, 9:06 am

Departed USPS Regional Facility

INDIANAPOLIS IN DISTRIBUTION CENTER

March 6, 2023, 7:56 pm

Forward Expired

WHITELAND, IN 46184

March 2, 2023, 8:34 am

Arrived at USPS Regional Facility

INDIANAPOLIS IN DISTRIBUTION CENTER

March 1, 2023, 12:55 am

Accepted at USPS Origin Facility

FRANKLIN, IN 46131

February 28, 2023, 11:40 pm

Pre-Shipment Info Sent to USPS, USPS Awaiting Item

February 28, 2023

Feedback

Exhibit 5



Name and Address of Sender

JOHNSON COUNTY DEPARTMENT
PLANNING & ZONING
86 W. COURT STREET
COURTHOUSE ANNEX
FRANKLIN, IN 46131

Check type of mail or service

- | | |
|---|---|
| <input type="checkbox"/> Adult Signature Required | <input type="checkbox"/> Priority Mail Express |
| <input checked="" type="checkbox"/> Adult Signature Restricted Delivery | <input type="checkbox"/> Registered Mail |
| <input type="checkbox"/> Certified Mail | <input type="checkbox"/> Return Receipt for Merchandise |
| <input type="checkbox"/> Certified Mail Restricted Delivery | <input type="checkbox"/> Signature Confirmation |
| <input type="checkbox"/> Collect on Delivery (COD) | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail | |
| <input type="checkbox"/> Priority Mail | |

Affix \$
(for add
Postage)



0000

U.S. POSTAGE PAID

FRANKLIN, IN

46131

MAR 01 2017

AMOUNT

\$1.62

R2305E123891-07

e Mail

USPS Tracking/Article Number	Addressee (Name, Street, City, State, & ZIP Code™)	Postage	(Extra Service) Fee	Handling Charge	Actual Value if Registered	Insured Value	Due Sender if COD	ASR Fee	ASR Fee	RD Fee	RR Fee	SC Fee	SCRD Fee	SH Fee
1.	Robert C Reynolds Trustee of The Kloess Trust 804 W. Rustic Lane													
2.	Michael A. Kloess 5729 N 75 W Whiteland, IN 46184													
3.	Adult and Child Service C/O Michael A. Kloess 222 E. Ohio St 7th floor Indianapolis Indiana 46204													
4.														
5.														
6.														
7.														
8.														
Total Number of Pieces Listed by Sender 3	Total Number of Pieces Received at Post Office 3	Postmaster, Per (Name of receiving employee) Lynn Smith Complete in Ink												

Exhibit 6

Hansard Michele - Planning & Zoning

From: Morgan, Jessica D - Whiteland, IN <Jessica.D.Morgan@usps.gov>
Sent: Friday, March 3, 2023 4:01 PM
To: Hansard Michele - Planning & Zoning
Subject: RE: [EXTERNAL] question on forwarding address

I do not see a forward order on file for this name or address.

Jessica

From: Hansard Michele - Planning & Zoning <mhansard@co.johnson.in.us>
Sent: Friday, March 3, 2023 3:54 PM
To: Morgan, Jessica D - Whiteland, IN <Jessica.D.Morgan@usps.gov>
Subject: [EXTERNAL] question on forwarding address

CAUTION: This email originated from outside USPS. **STOP and CONSIDER** before responding, clicking on links, or opening attachments.

Do you have access to an old forwarding order? And are you able to share with others? The address is MICHAEL A. KLOESS, 5729 N 75 W, Whiteland, IN 46184-9509. I know the property is vacant so I knew the letter would be returned. Just curious on what the forwarding address may have been.

"Your item was returned to the sender at 8:34 am on March 2, 2023 in WHITELAND, IN 46184 because the forwarding order for this address is no longer valid."

Michele Hansard, AICP

Director

Johnson County Department of Planning and Zoning

86 West Court St. ~ Franklin, IN 46131

p. (317) 346-4350

Exhibit 7



Exhibit 8

