

# Holzhauser Ford sheriff sale rescheduled

## LAWSUITS AGAINST DEFUNCT DEALERSHIP, SHAREHOLDERS MARCH ON

BY TOM CULLEN

A sheriff sale of the building that used to house the defunct Holzhauser Ford in Cherokee was rescheduled to June.

A notice Sheriff Derek Scott posted on Monday shows the sheriff sale of the former Ford dealership on North Second Street is scheduled for 10 a.m. June 12. The sale was previously scheduled for Wednesday.

Cherokee County District Court Judge Charles Borth ordered the defunct Cherokee Ford dealership and its Storm Lake partner dealership to the sale block after their real estate holding company defaulted on a loan that secured their purchase nearly four years ago. The bank alleged the dealerships owed nearly \$3 million on the loan. The real estate company never responded to the lawsuits filed by Citizens First National Bank of Storm Lake.

Buena Vista County Sheriff Kory Elston said a sale date for the Storm Lake dealership hasn't been scheduled yet.

The lawsuits against the Ford dealerships' real estate company are two of nine against the Holzhauser brand, its shareholders and associated entities, alleging default on nearly \$15 million in loans that have been issued in recent years.

Recently they've focused on Dan Winchell, the majority shareholder of the Holzhauser brand.

This month, lawyers for Winchell's former shareholders obtained login credentials to his company email and Judge Andy Smith assessed \$423,000 to Winchell for not responding to a lawsuit Cherokee State Bank filed in connection with a loan default earlier this year.

Last month, Bryan Lam, his former partner in the Holzhauser franchise, sued him for stonewalling the sale of the former Harley Davidson building. The building is the subject of a loan foreclosure by Farmers State Bank of Marcus, which alleged Winchell and Lam defaulted on a series of loans against the building on North Second Street.

Winchell hasn't filed responses in any of the lawsuits against himself, Holzhauser or any of the dealership's associated corporate entities for months. He didn't respond to a request for comment on the most recent filings in Cherokee County District Court.

### EXTRACTED EMAILS

Lawyers for Winchell's fellow shareholders have yet to access his emails.

Brian Rickert and Megan Ball, Des Moines attorneys representing Robin and Tony

Jenness of Marcus, asked Judge Michael Schilling for permission to use Winchell and other former employees' login credentials provided by a former employee of the defunct dealership.

Emails between the Des Moines attorneys show the former employee provided "login/emails and passwords," PIN numbers and access to Holzhauser's former payroll software provider. The former employee also mentioned a laptop in another shareholder's possession, as well as electronic reviews by the defunct dealership's accountant. Rickert and Ball reckoned that immediately accessing the information could violate the Electronic Communications Act and the California Invasion of Privacy Act.

The information was delivered from a subpoena that was issued in connection with a lawsuit by Citizens First National Bank of Storm Lake, alleging the dealership defaulted on a \$6.5 million loan last spring.

The Jennesses claim the information in Winchell's emails could be critical in their defense against the bank.

"The Jennesses now seek the court's direction on how best to proceed with the collection, review and circulation of the information contained within (the former employee's subpoena response," reads a filing Rickert and Ball submitted to Judge Schilling earlier this month.

Rickert and Ball claim the Jennesses should have access to the emails from Winchell's accounts.

They claimed Winchell's email was a work email that belongs to the dealership and its board of directors. The Jennesses were on the board. Winchell and Kevin Driscoll, an attorney for the defunct dealership, have claimed some of his email contain material protected by attorney-client privilege. Winchell signed an affidavit — his first filing in months in any of the lawsuits involving Holzhauser — attesting that the employee had no authority to share company logins and passwords anyway.

"The information in these emails is not fully discoverable," reads a filing Driscoll submitted to Judge Schilling. "(The former employee) has no authority to even begin to access any documents at this time, or at such time of employment with Holzhauser Motors."

Judge Schilling has yet to rule on the Jennesses' request. The Storm Lake bank is seeking individual judgments against each of the shareholders who promised to repay the bank what it owed — Winchell and the Jennesses signed guarantees in 2019 that promised payment in full. The shareholders — except for Bryan Lam and his wife Vanessa Xau, who settled with the bank — have denied the bank's claims and have countersued for breaching their duty to lend in good faith.

A jury trial is scheduled for November.



Juan Gonzalez hefts a roll of barrier sheeting.



Roofers at work Saturday.

## HISTORICAL SOCIETY: Water damage hinders organization efforts

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bility of the building. The museum's old newspapers, photos and records are safe because they are in north part of the building, which is under a different roof. The office area was also unaffected.

Servicemaster has been hired to completely dry out the building, extracting water from soaked carpet and running dehumidifiers. The work will cost \$7-8,000, said Jackson.

### Roofers race the clock

Juan Gonzalez and a crew of 10 from J & D Construction worked quickly to cover the top of the building with barrier sheeting Saturday before rain that was predicted to fall Sunday.

"He came to us. We didn't have to call," said Fitzsenry of Gonzalez, who has been hired for past jobs at the museum. "They're such hard workers." J & D will top the roof with asphalt shingles, said Gonzalez. "Lucille used to be my neighbor. We knew there's no insurance."

The price tag for the roof is estimated at around \$20,000, said Jackson, money the historical society doesn't have. "We're just a non-profit."

Jackson said the board de-

cidated about two years ago not to insure the building. "They told us it was going up \$10,000. We said, 'If it burns down there's no way we can replace what's in it.'" The museum does have liability insurance.

### Financial help, volunteers welcome

With damages expected to cost around \$30,000, the museum staff appreciates any and all financial donations. "We're going to have to fundraise," said Fitzsenry. She said there was never a thought of discontinuing the museum. "We care so deeply about it."

Regular museum volunteers cleared out items from the display cases and books from the recent book sale (which netted \$2,100) on the main floor Sunday. They cleaned up the yard and picked up sections of the roof that blew into the next block to the east.

More work lies ahead upstairs. More volunteers will be needed to remove carpet and wipe down items like dishes, some of which have standing water in them. Old cookbooks are cemented together with rainwater. Old assessor's books from the 1800s are also wet.

Museum staff were in the process of categorizing and cleaning items upstairs for the last several months. The water damage sets them back in this challenge.

Some furniture pieces and vintage board games can't be



Servicemaster employee Drake Hollingsworth vacuums wet carpets in the Buena Vista County Historical Museum, which lost its entire roof. TIMES PILOT photos by DOLORES CULLEN



Water stands on the tables in the genealogy room. Connie Stille is part of the cleanup crew.



Assessors books from the 1800s are wet.

recovered. Among the various items up there are an entire hot air balloon and a disassembled sail boat.

Diligent volunteer Chris-

tine Watts was happy when she heard Sunday's rain leaked through the roof in four places. "Only four! That's better than 40."

# Iowa Legal Aid event in Storm Lake April 29

The City of Storm Lake has invited Iowa Legal Aid for a presentation to the community on Tuesday, April 29, at 5:30 p.m. at King's Pointe Resort.

The statewide nonprofit organization provides free civil legal assistance to eligible Iowans. Iowa Legal Aid can assist severe weather survivors in connecting with the legal questions and issues they may face. Other matters Iowa Legal Aid can assist with include helping tenants avoid unlawful evictions and possible homelessness; helping consumers avoid unlawful garnishments so they can pay their house, rental, car and utility bills; helping survivors of domestic violence and their families obtain safety, stability and self-sufficiency; and helping individuals receive their entitled benefits so they can meet their basic needs now and in the future.

Everyone is welcome for this informative presentation. There is no charge.

## TRIAL: Lawyer argues Josie Smith no longer a violent predator

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nile detention at Midwest Christian Services in Peterson and two stints in the Newton Correctional Facility.

She completed sex-offender treatment in September 2023.

She claims she no longer has deviant sexual urges and has less than a one-percent chance of reoffending if released. She also noted she hasn't committed any sex crimes against children since she started identifying as female around December 2017.

Jill Eimermann, a Des Moines public defender appointed to represent Smith, told the jury in opening arguments that her client doesn't fit the elements of a sexually violent predator under the 1998 Sexually Violent Predators Act. Eimermann said her client "chose to stop living a lie" and identified as transgender when she was 27. She started hormone replacement therapy seven years ago. Smith —

wearing bangs and a ponytail — donned a black women's blazer and pink blouse.

"It does matter, Josie Smith being transgender," Eimermann told the jury on Tuesday morning. She attempted to explain the effects of her client's hormone treatment on her testosterone levels, but was cut off by Assistant Attorneys General Thomas Bakke and Josh Duden. "Josie made a choice about that when she was 27 years old. She decided she was going to stop living a lie," Eimermann added.

Smith's gender identity became the subject of a nationwide uproar and an attorney general campaign in 2024, when candidate Brenna Bird excoriated Tom Miller, then the longest-serving AG in the country. Miller attempted to commit Smith to the Cherokee civil commitment unit in 2019 for a raft of sex crimes in Buena Vista and Pottawattamie counties as a juvenile, as well as sex-related offenses at the Newton prison. The AG's office claimed Smith suffered from pedophilic disorder and was more likely than not to re-offend.

But Smith started identifying as female. Then Miller's of-

fice dismissed the civil commitment proceeding. A spokesman for Miller acknowledged that Smith's testosterone levels influenced the dismissal. Miller later said during the campaign that his office couldn't find an expert to agree with the state's argument that Smith was more likely than not to reoffend, a required element of civil commitment.

Bird said Miller "allowed a dangerous sexual predator to go free" and promised to commit Smith to CCUSO.

Hence the trial in Buena Vista County this week.

Bakke and Duden told the jury they were confident in the state's case. The two lawyers summoned Smith's former parole officer, Tyler Griffin of Sioux City, to testify on Smith's violations after she was released from prison in 2020. Griffin told the jury he found clandestine mobile devices that yielded illicit communications with fellow parolees and one that contained The Onion Router, a browser that can access the dark web.

"Josie Smith is more likely than not to commit sexually violent offenses if not in treatment," Bakke said at the end of the state's opening argument.

The state's expert, Dr. William Schmitt of Verona, Wis., is expected to take the stand on Thursday. Schmitt is expected to agree with the state's position that Smith is more likely to reoffend despite her lower testosterone levels. A sealed report of an evaluation Schmitt conducted on Smith has been filed with Judge Shayne Mayer.

Smith's lawyers have already attacked Schmitt's report. Eimermann and her co-

counsel, Trevor Andersen of the state public defender special defense unit, described Schmitt's report as misleading and lacking "any additional probative value."

"Dr. Schmitt's report is replete with inadmissible hearsay for which no exception applies," reads a filing Smith's attorneys submitted last week. The public defenders later alleges Schmitt "routinely quoted hearsay from others in a manner that leads the listener to believe that it is a fact."

Judge Mayer has yet to rule on the public defenders' request.

### JURY SELECTION

Jury selection consumed nearly all Monday.

Lawyers for Smith and the state explained at length the nature of the proceeding. And one after the other, they winnowed a group of 19 down to eight. Duden told the jury that it wasn't meeting out punishment. It was gauging as a matter of fact whether Smith was a sexually violent predator.

One juror, Christopher Barackman, had trouble reckoning with the process. He said those against sex crimes against children deserve stiff penalties, possibly the death penalty. Duden asked Barackman whether he could recognize that his role wasn't to punish Smith. He responded that he couldn't reconcile what the proceeding was.

Barackman was excused. The jury that was seated at tested that they recognized it was determining whether Smith needed treatment, not whether she was being punished.

## MAY DAY

**WE THE MANY CARRY THE LIGHT**  
CANDLELIGHT PROTEST

**MAY 1ST 8:30PM**  
RADIO PARK (SOUTH OF TYSON)  
FLINDT DR., STORM LAKE

PEACEFULLY STAND UP FOR DEMOCRACY AND AGAINST THE VIOLATIONS OF DUE PROCESS TARGETING OF IMMIGRANTS, MASS FIRING OF FEDERAL WORKERS (MANY OF WHOM ARE VETERANS) AND ALL OTHER ATTACKS BY THIS ADMINISTRATION

WE'VE GOT THE CANDLES, YOU BRING THE SIGNS. PARKING AVAILABLE ON SURROUNDING RESIDENTIAL STREETS AND ALONG THE LAKE

### OFFICIAL PUBLICATION

PUBLIC NOTICE

Notice is hereby given that the Board of Adjustment of the City of Alta will meet in special session on April 30, 2025 in the Council Chambers beginning at 6:00 pm. The Board will hear arguments for or against the granting of a variance to allow the construction of:

1. A new house with an attached garage at 305 Cyclone Dr., Alta, IA/04-00 Alta Corp. Eighth Addition City of Alta
2. A new house with an attached garage at 101 Cyclone Dr, Alta IA/13-00 Alta Corp. Eighth Addition City of Alta.

The property owner, Grieme Properties LLC, has requested a Variance to the Residential Zoning Ordinance by the Board of Adjustment granting Special Exception Uses Permit to exceed the setback in front of the property. Presently the setback is 25 feet from the property line. The owner is asking for a 5-foot variance.

Board of Adjustment &  
City Code Office  
City of Alta

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