

XENIA TOWNSHIP BOARD OF TRUSTEES
PUBLIC HEARING FOR KIL-KARE REZONE FROM
AGRICULTURE TO B-3 HIGHWAY DISTRICT

August 3, 2017

THESE MINUTES ARE A SUMMARY OF THE EVENTS OF THE HEARING AND ARE NOT A WORD FOR WORD ACCOUNT OF THE DISCUSSIONS WHICH TOOK PLACE.

The Xenia Township Board of Trustees held a public hearing on August 3, 2017 at 6:00 p.m. at the Xenia Township Trustees Office, 8 Brush Row Road, Xenia, OH, 45385 with the following members present:

Attendees: Steve Combs, Trustee, Chair; Susan Spradlin, Trustee; and Sheila Seiter, Fiscal Officer; Scott Miller, Trustee; Alan Stock Zoning Inspector.

Also, present: Court Reporter, hired by Mr. Reed and the Nutter's (per Mrs. Seiter)

Mr. Combs called the hearing to order at 6:01 p.m. and asked everyone to stand and participate in the Pledge of Allegiance.

Mr. Combs started with reading the following statement. The Trustees understand that the stated final goal of the petitioner is a Lock and Store. This goal is actually a two-step process, one that would take action by the Trustees and another step that would take action by the Board of Zoning Appeals for a conditional use for a Lock and Store in a B-3 district. The issue for the Trustees this evening is a request for the rezoning of the property from Agricultural district to B-3 Highway Business district. The trustees recognize that the Zoning Commission through their process recommended to the Trustees, by a 4 to 1 vote, to approve the rezoning request. This evening the Xenia Township Zoning Resolution is not in question, the primary principle uses, conditional use, and accessory uses will be taken into consideration and applied without prejudice to those in favor or those opposed to this rezoning request.

All presentations and comments are to be made to the chair and ask each speaker to state their name and address for the record, comments made should reflect the purpose of the public hearing not the character of any individuals or institutions. Decisions will be based on the merits of the zoning discussion not whether individuals like other individuals or institutions. Mr. Combs asked Mr. Stock for verification the Ohio Revised Code (R.C.) had been met for this public hearing.

Mr. Stock listed the exhibits: 1) Zoning Application, 2) Notices for Zoning Commission Public Hearing, 3) RPCC report, 4) Xenia Township Staff Report, 5_Greene Soil and Water Conservation District letter, 6) Checklist, 7) Brief in Opposition, 8) PowerPoint presentation from Opposition, 9) Proposed floor plan of Store and Lock, 10) Zoning Commission sign in sheet, 11) notices for Trustee Public Hearing, 12) checklist, 13) Minutes for Zoning Commission Public Hearing on April 26, 2016, 14) Zoning Resolution, 15) conveyance letter, 16) PowerPoint presentation dated August 3, 2017, 17) picture of Store and Locks, 18) Transcription from Beavercreek Township Commission Hearing dated September 28, 2016, 19) CD containing recording of Beavercreek Township Zoning Commission meeting, and stated that based on the requirements of the R.C. and the Zoning Resolution all requirements had been met.

Mr. Combs stated that the zoning map change to be considered is as follows; 1166 Dayton-Xenia Road, Kil Kare, Inc, Parcel# M360000100160004500 Ag-Agricultural to B-3 Highway Business District. Mr. Combs advised to the steps for this evenings meeting.

Mr. Marshall Foiles, petitioner, 3003 Hoop Road, started by showing a historical picture of Kil Kare with motorcycles in front of the park. He described the picture in detail. He stated that the picture is more than 100 years old and Kil Kare has been in this area long before even our parents were here. He wanted to share a little history of how long Kil Kare had been in its current location. Mr. Foiles stated that racing did not start until 1959 on the drag strip. He advised that what they are trying to do with their petition was to get some type of year around revenue for the track since it was a seasonal track. He stated that he felt the largest need in the area was for a Store and Lock. He advised that the urban sprawl in the area has created the need for a Lock and Store. Mr. Foiles explained the restrictions in these new neighborhoods, and feels this would be a

good location for these residents. Mr. Foiles stated that Kil Kare is trying to follow the rules within Xenia Township to accomplish their goal. He stated that the request for a rezone to B-3 as a path to a Store and Lock. He advised that he is following this path to get before the Board of Zoning Appeals to get to a Store and Lock. Mr. Foiles stated that it makes no sense to spend thousands of dollars on plans and drawings for a PUD, a person has to follow the same exact process and then be turned down. This would be a waste of money. He advised that the other businesses listed under the B-3 district, as mentioned in a newspaper article to extend racing, which would extend it across the bike path is not financially feasible. He stated that Kil Kare would have to build extra facilities. He stated that the bike path acts as a shelter and a disconnect to the road. He advised that they have resubmitted this because he felt last year there was a misunderstanding and concerns about adult entertainment and a bar being built there. Mr. Foiles advised that this would not be a good way to go and explained why. Mr. Foiles stated that there are other Store and Locks within Xenia Township that do not have sewer and water either. He advised that he did not know what process those facilities had to go through. He stated that to get sewer and water on this parcel would be cost prohibited and most of the other businesses allowed in B-3 require sewer and water. Mr. Foiles stated that he understands the concerns about loud noises, but a Store and Lock would not create much traffic and it would have eco-friendly lighting that would not create much light pollution. Mr. Foiles state that the opposition will say this is an interest to Xenia Township, but this is also an interest to Beavercreek Township and explained why.

Mr. Combs asked Mr. Foiles if his sole interest and only use was for a Store and Lock. Mr. Foiles agreed and stated that there is no ambition to do anything else at Kil Kare. He explained what the parcel is being used for presently. Mr. Foiles shared pictures of the possible finished product of the Store and Lock.

Mr. Miller asked Mr. Foiles how many buildings he thought there may be for the Store and Lock. Mr. Foiles advised that there would be a possibility of eight buildings and explained where the entrance would be located.

Mrs. Spradlin asked what types of things may be stored in these buildings. Mr. Foiles advised that it would be personal effects, whatever people need to store, businesses sometimes rent space to store extra inventory, and sometimes people store things while in the process of moving.

Mr. Combs asked about boats, RVs and campers. Mr. Foiles advised that people need to store these but do not have room at their homes, so this would be a way to serve the community. Mr. Combs asked if this would be indoor or outdoor storage and Mr. Foiles stated both.

Mr. Miller asked if these units could be used for shops. Mr. Foiles stated that he did not believe that the Board of Zoning Appeals would allow this and Kil Kare has no intention of being used for a flea market or shopping mall. Mr. Miller asked about space being used for a personal wood shop or something similar. Mr. Foiles stated that this would be difficult because the plans do not include outlets in the unit just a light bulb. He advised that the plan is to have reduced electricity use for this facility, just security lighting and one light bulb in each unit. Mr. Miller asked if the units would be large enough to store a vehicle. Mr. Foiles advised that there would be some units large enough to store a car.

Mrs. Spradlin stated that last year she had recommended to Kil Kare to try for a PUD and explained why. She asked what had changed since then. Mr. Foiles advised that she had given that suggestion and the cost of a PUD and not knowing if it would be approved would not be fiscally wise. He advised that besides her suggestion that the largest sticking point was the other uses. Mrs. Spradlin advised that last year Mr. Foiles stated that Kil Kare was also trying to get a parcel in Beavercreek Township rezoned. Mr. Foiles stated that Kil Kare did go in front of their Zoning Board and was approved through their Zoning Board as well, but received a no vote from the Trustees. He stated that after leaving he heard that they had called for a special meeting to vote on it. He stated that since there was a no vote, that meant that the zoning board's actions would carry and then there was a special meeting the next day and lost the vote to the Trustees. Mrs. Spradlin asked if Beavercreek Township advised Kil Kare to try a PUD. Mr. Foiles stated that they did and now that seems to be the sticking point. Mr. Foiles stated that if this was a larger parcel then he may consider a PUD but did not feel it would be necessary for 22 acres. Mrs. Spradlin explained why she would prefer a PUD over the B-3. She stated that a PUD would protect Xenia Township if there were ever another/different owner. Mr. Foiles asked which businesses would be objectionable besides a bar and restaurant. Mrs. Spradlin advised that she

would have to look back over the list and understands that other permits would have to be obtained but if the B-3 were approved, she believes that Mr. Foiles would just put a Store and Lock there but things change and the zoning goes with the property not the owner. She stated that she remembers the previous owner did not want to sell but things happen, so she feels more comfortable having a little more control of what could happen on this parcel.

Mr. Combs advised that a few of the uses were troubling some of them were not possible to do on this parcel or not practical to do.

Mr. Miller asked whether the Store and Lock would have an office on this parcel. Mr. Foiles stated no they would use the current office for Kil Kare. Mr. Miller asked about the coming and going from the Store and Lock. Mr. Foiles advised that a person would turn off of Dayton-Xenia Road by the big Kil Kare sign and then turn into the Store and Lock. He showed this on a map. Mr. Miller asked if there would not be an office at the Store and Lock how would they control access into the buildings. Mr. Foiles advised renters would have access with a keyed number and a key pad, each renter would have a unique code to open the gate.

Mr. Combs asked if anyone would like to speak in favor of the Zoning Change, seeing none he closed that section and asked for those wanting to speak in opposition of the request.

David Reed, representing Nutter Enterprises, stated that he wanted to address the chair about his comments made to the Beaver Creek Township Zoning Commission on September 20, 2016. He stated that it was related to the Kil Kare application to Beaver Creek Township to rezone 11 acres. Mr. Reed advised the Chair had spoken in favor of the application and this has been presented as an adjacent project. Mr. Reed asked if it was Mr. Combs intention to recuse himself at the time of voting. Mr. Combs advise that he had no intention of recusing himself, he was there as a private citizen. Mr. Reed stated that he understood but would like to present exhibit one, the statements made by Chairman Combs at that meeting and exhibit two a CD with the recording of that meeting. Mr. Stock advised they would be marked as Exhibits 18 and 19 respectively. Mr. Reed read the statement made by Mr. Combs at the Beaver Creek Township meeting. He stated that it is not appropriate to advocate for a related project in an adjacent jurisdiction and thinks it was extraordinary to do so and asked Mr. Combs to keep an open mind to what he was about to say and Mr. Combs agreed to do so.

Mr. Reed advised to his background in zoning and that these things need to be handled with care and precision. Mr. Reed advised that the petitioner had not come tonight for a Store and Lock but for a rezone to a B-3 district which a Store and Lock is not a recognized use. He advised that the petitioner was asking the Trustees to go against the recommendation of Regional Planning and the Xenia Township Zoning Resolution. Mr. Reed stated that to go against the Zoning Resolution in order to help one property owner sets a very questionable precedent for other zoning applications and is contrary to zoning law. Mr. Reed advised he has been involved with Kil Kare trying to expand for four years and explained the past requests made by Kil Kare. Mr. Reed advised to the other uses in a B-3 zone that are troubling to him, the biggest one being open air commercial amusement. He stated that this is the biggest concern because it is not defined in the Zoning Resolution or the ORC but could use an interpretation of the words. He stated that an open air commercial amusement could mean any outdoor entertainment that relates to commerce and he gave examples. He stated that they have many concerns about noise and hours of operation because they had been told that Kil Kare would follow but it has not been full filled. He stated that there were many other approaches that could be followed and explained what those were and advised to what was in the Xenia Township Zoning Resolution in regard to a B-3 district. He advised that approving this would be against the Xenia Township Zoning Resolution and that Greene County Regional Planning does not recommend this change. Mr. Reed explained why having sewer and water were so important for the B-3 zone. Mr. Reed stated that no one has the right to rezone their property and this is well established in Ohio law. Mr. Reed read through the recommendation of Greene County Regional Planning. Mr. Reed explained why a request for a PUD would be the best route for everyone involved. Mr. Reed advised that from his prospective to approve a B-3 district would violate the Xenia Township Zoning Resolution.

Mr. Combs asked if Mr. Reed's biggest concern was the other potential uses. Mr. Reed advised that it was and that a well thought out and well-done Store and Lock plan would not be objectionable. Mr. Reed stated that they are opposed to the B-3 district and a fear of the expansion of Kil Kare for uses on that strip. He stated that a PUD would be the best route and the Store and Lock could have already been built if this had been done to begin with.

Mr. Miller asked about the Urban Service Boundaries and who established those. Mr. Reed stated that Greene County had done that at this point as part of Regional Planning. Mr. Reed advised that there should be concerns now of how many people are using the septic at the facility. Mr. Miller asked whether the areas that have water and sewer now, had those services ever been withheld for any particular reason. Mr. Reed stated that he did not have the answer to that questions. Mr. Miller advised that there was a water treatment plant very close to the facility and is operated by the City of Xenia, so this facility would probably care for Kil Kare if sewer was extended to it. He stated that services would be withheld unless the property was within the City limits. So, even though we may have Urban Service Boundaries within the Township, to have businesses grow, thrive and utilize those services does not happen because of the constraints to use those services. Mr. Reed explained why a PUD would be better and why B-3 would not be because this would need to have sewer and water for those uses to be done in a safe way.

Mr. Combs asked for any comments to be made against the request.

Keith Hawkins, 945 Hawkins Road, stated that Kil Kare has always been there while he has lived there and that previously there were requests to do other things at the race track. He understood that with the Agriculture zoning that they were grandfathered in so long as they did not make improvements and change things they could continue to operate with what was there. He stated that if Kil Kare were to make improvement then they would have to go somewhere else. He was trying to figure out why Kil Kare wanted to put a Store and Lock at this location. He stated that if they could put up the Store and Lock under Agricultural then why not do that. He stated that he heard that Kil Kare wanted to extend their drag strip, so he sees this as a way to extend the runway. He has lived with Kil Kare his whole life and has learned to deal with it but he does not want to see it expand.

Barbara Hawkins, 945 Hawkins Road, stated that their son lives at the other end of Hawkins Road and had lived with Kil Kare their whole life. She stated that when the two families started farming, Kil Kare was not there. She stated that when it started that it was just supposed to be a park then it became a raceway, thanks to the Marshall brothers in Beavercreek. She stated that they learned to live with the fair and the traffic and they did improve that when they let most of the traffic out onto Dayton-Xenia. They used to exit onto Hawkins Road and that was a nightmare. She stated that a Lock and Store would be fine but to open this up to a B-3 would be a nightmare for their community, for the area and for agriculture. Her family has been farming there all their lives and they deal with what is there but if it is opened up to something that is not controlled then she sees it as a disaster for them. A Lock and Store is fine, but she does not see them building one that big.

Les Pitstick, 1387 Champions Way, stated that his interest in the rezone was that he owns a commercial building on Dayton-Xenia Road west of Kil Kare before Trebein Road. He does not understand why it was so complicated. Kil Kare says they want to build a Store and Lock. He stated that no one seems to be against a Store and Lock so assuming this is what Kil Kare wants why not ask for a variance or conditional use in the agricultural that it is already zoned. He stated that there were many good reasons given for denying a B-3.

Mr. Combs asked for last call of public comments either for or against.

Mr. Foiles stated that trying to expand the racetrack would not work on this parcel because it would actually shorten the track, so they are not looking to expanding the race track or expanding their racing operations. He explained why they were planning to build the Store and Lock the way that they are. He stated that they have tried to implement a good neighbor policy since he bought Kil Kare six years ago and the zoning inspector can attest that they close down on time. Mr. Foiles stated that he was notified when they open and when they close and technically Kil Kare does not have a curfew but he has set one for midnight on weekends and ten at night on weekdays. He has imposed that trying to be a good neighbor. He stated that traffic control is much better since they had addressed it with the new entrance. He stated that he has tried to implement a good neighbor policy in the area. He stated that they do not want to be any more disruptive than what racing already was.

Joshua Laughlin, 1341 Shaw Lane, stated that he has no problems with Kil Kare personally and just recently moved to the area. He stated that he moved there because it was pretty desolate besides the race track. He stated that Kil Kare does not bother him at all He does have a problem

with the B-3 zoning. He is looking at making this his lifelong home and stated that his concern was if the property gets sold, what could happen then.

Janis James, 691 N. Bickett road, stated that it was simple for her; the Trustees took an oath to uphold zoning laws, and a B-3 district has to have sewer and water. She stated that they should uphold their oath.

Sheila Seiter, Fiscal Officer, Kinsey Road, asked how the rest of the track was zoned. Mr. Reed stated that it is zoned Agricultural with a conditional use. Mr. Miller stated for clarification that the request for a zoning change applies only to the one portion between the road and the bike path.

Mr. Combs asked for last call of any public comments, hearing none he closed the public comments portion of the meeting at 7:25 p.m.

Mr. Miller asked about Mr. Hawkins reference that had happened well before his time at the Township and he would like to see if that document existed or if it could be found, so it could be referenced.

Mrs. James asked for clarification of what document Mr. Miller was asking for from Mr. Hawkins. Mr. Hawkins stated that this was something that the Trustees at the time agreed to with the owner at that time. Mr. Combs asked if this item was something that was rumored or was it acknowledged.

Stephanie Hayden, Greene County Prosecutor's Office, stated that what Mr. Hawkins was referring to was that Kil Kare started in 1959 and Kil Kare predated Xenia Township Zoning. Mrs. Hayden stated that Kil Kare was established before Xenia Township Zoning, therefore Kil Kare was in legal non-conforming use and that was what they have been talking about, and stated that there was no document that states this.

Mr. Reed stated that when there is a new zoning code and there was an existing use, it becomes a non-conforming use in most jurisdictions that cannot be expanded. Mrs. Hayden stated that when you hear people use the phrase "Grandfathered," it was done when zoning was passed.

Barbara Hawkins stated that anything Kil Kare had done had been legal and okayed by the Trustees at some point or another. She stated that no matter what they say Kil Kare has always been ok. She stated it was frustrating because it has been okayed but it is not ok.

Mr. Combs stated that as far as he was concerned what the residents of Xenia Township have said carries a lot more weight with him compared to what Mr. Reed had said, with no offense to Mr. Reed. Mr. Combs stated that some very good points had been made tonight and Mr. Reed had a very good presentation but the concerns of the Xenia Township residents carries more weight for him. Mr. Reed stated that he understood. Mr. Combs stated that he did take exception that Mr. Reed tried to take his vote, by suggesting that he recuse himself. Mr. Combs stated that this issue has taken on a David and Goliath scenario and finds a little irony because back in 1976 he drove Trebein Road twice a day by the prettiest farm in Greene County while attending Wright State. It is no longer a farm and he finds irony there and this may not apply to this case but it is fact. He stated that he plans to make his decision on the merits of the case and that what Mr. & Mrs. Hawkins had said tonight has weighed on him greatly.

Bob Nutter, 925 Hilltop Road, stated that since Mr. Combs referred to his farm that he wanted to note that one third of the land would remain open green space. He stated that it is PUD and it is restricted and there were many good things with it. The area will develop and it was up to them how it would develop. He stated that he grew up with the animosity between Beavercreek and Xenia and stated that frankly they were all part of the same county. He advised that he would love if Kil Kare would not intrude on Beavercreek but they do, so no matter what he says they will always intrude on Beavercreek as long as they are racing.

Mr. Miller moved to continue this hearing to a future date and time. Mr. Combs seconded the motion. ROLL CALL: Mr. Miller – aye; Mr. Combs – aye; Mrs. Spradlin – nay. Motion PASSED by roll call 2-1.

RESOLUTION NO. 2017-149

XENIA TOWNSHIP BOARD OF TRUSTEES PUBLIC HEARING
AUGUST 3, 2017

Mr. Stock stated that the next date and time would need to be decided tonight and the next date must be within thirty days. There was discussion about dates and times. There was discussion for August 17th and have the Trustee meeting at 5:00 p.m. and the public hearing at 6:00 p.m. There was discussion between the trustees if this were agreeable all agreed.

XENIA TOWNSHIP BOARD OF TRUSTEES

Resolution #

Steve Combs, Chair

Date Approved

Scott Miller

ATTEST:

Sheila Seiter, Fiscal Officer

Susan Spradlin

MEH