

**XENIA TOWNSHIP BOARD OF ZONING APPEALS**  
**PUBLIC HEARING**

September 17, 2013

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

Board of Zoning Appeals members present: Ed Jacobson, Charles Bingamon, Don Harner, Ken Penewit and Joe Mullikin. Also present was Stephanie Hayden, Greene County Assistant Prosecutor and Alan Stock, Xenia Township Zoning Inspector/Clerk.

Ed Jacobson, Chairman, called the meeting to order at 7:00 p.m. He presided at the Hearing and welcomed the people in attendance. He went over the rules of the meeting. All cell phones must be turned off. Everyone must sign in. The application will be read by the Stephanie Hayden, Greene County Assistant Prosecutor. Because BZA decisions are quasi-judicial, all testimony has to be sworn. Everyone must come to the podium, state your name and address and that you are under oath. Only facts are to be given, not opinions or emotions. Minutes are being taken manually and electronically. Direct questions to the Board only. We will follow Roberts Rules of Order for procedure. Chair reserves the right to limit public input. The BZA may deliberate in private, and announce decision at a later date. BZA may approve in whole or in part, reject in whole or in part, or reschedule to another date. Applicant may also withdraw. The decision will become effective five days after date of decision. A decision by this Board is a final order. Under ORC 2506.04, aggrieved individuals may appeal the decision to Common Pleas Court. The audience joined the Board in the Pledge of Allegiance. Mr. Jacobson swore in the audience. He asked that everyone in the audience who wished to participate, to raise their hand and swear to tell the whole truth and nothing but the truth so help you God. Members of the Board of Zoning Appeals introduced themselves.

Jacobson asked the Board members if they had read and considered the application and if they intended to participate in the hearing. The Board members indicated they intended to participate.

**Gayle and Paul Sampson, 736 Jacoby Rd., Xenia, Ohio 45385 – Request for Conditional Use for Bed and Breakfast**

Alan Stock read the application from Gayle and Paul Sampson, owner of 736 Jacoby Rd., Xenia, OH 45385, Parcel ID #M36000100120002900, requesting a Conditional Use in the Agricultural District to operate a bed and breakfast on their property. Notification went to all property owners within 500', notice was published in the Xenia Gazette and on the Township website, and a sign was placed on the property.

Paul Sampson handed out packets and spoke about their plans. He provided signatures in support of the bed and breakfast from all neighbors (except for one who was not at home the times they tried). The original plan was to have room for aging parents to move in; however none of the parents are ready to move in with them. They then started thinking of creating something useful. There is separate parking for two cars and is 700' off of Jacoby Rd. It is practically surrounded by Glen Helen Reserve. It has a private entrance and 2<sup>nd</sup> egress with the walk-out deck. He listed the many features in Exhibit #1. They will have Fire Department

inspection when finished. Mr. Jacobson asked if this was only structure on property. Mr. Sampson answered no. Their home is on the other side with 3 car garage and breezeway to their house. The bed and breakfast is above the garage. The B & B meets current code as it is right now. Gayle Sampson covered the rental plans. This is also in Exhibit #1. They will have online booking and charge around \$120.00 per night in season. Mr. Jacobson asked about signage. Mr. Sampson answered probably a small sign by the mailbox. Mr. Jacobson said the Township does have regulations on signs and to check those when time comes. He also reminded them of liability insurance. They will be doing LLC and getting insurance.

Brian Housh, Community Relations Representative with Yellow Springs Chamber of Commerce, spoke on behalf of the B&B and is very supportive. He said many visitors come into the Chamber looking for a place to stay. Glen Helen Nature Reserve is also very excited about the prospect because of it being located next to Birch House and it would give people a place to stay for weddings and other events. He also said the Sampsons are very upstanding citizens in the communities of Xenia and Yellow Springs.

Mr. Mullikin made a motion to approve the Conditional Use as requested to operate a Bed and Breakfast for Paul and Gayle Sampson. Mr. Penewit seconded. Roll call vote: Mr. Bingamon – Aye, Mr. Harner – Aye, Mr. Jacobson – Aye, Mr. Mullikin – Aye, Mr. Penewit – Aye. Motion passed.

**Kil-kare, 1166 Dayton-Xenia Rd., Xenia, Ohio 45385 – Request for Extension of Previously Granted Conditional Use to Other Parcels and for Extension of Previously Granted Conditional Use Minus Truck and Tractor Pulls and Music Festivals to Their Property South of the Bike Path**

Alan Stock read the application received by the Xenia Township Board of Zoning Appeals. The Applicant requests two things: 1) To extend their previously granted BZA approval adopted June 26, 2012, with specific activity denial and approval with conditions for parcel M36000100160000200 to the three (3) parcels (M36000100160000100 and portions of B0300020049002700 and B0300200492002400) previously named Auto Salvage Service parcels; and 2) To amend their previously granted BZA approval dated June 26, 2012, with specific activity denial and approval with conditions for parcel M3600010060000200 to Kil-Kare parcel M36000100160004500 with only the activities approved and asked for in the attached document. Specifically, the approved activities REMOVED for this parcel in this request are: music festivals, and truck and tractor pulls. Since portions (approximately 115' x 57') of two Beaver Creek Township parcels are located in Xenia Township Mr. Stock spoke in person and sent a letter to Ed Amrhein, Beaver Creek Township Zoning Inspector, regarding the request. Notices were mailed to the surrounding property owners within five hundred (500) feet of subject property, notice was published in the Xenia Daily Gazette, notice was on the Xenia Township website, and a sign was placed on the property. Everything was done in order for the application to lawfully be heard by the Board of Zoning Appeals. Jacobson asked the Board members if they had read and considered the application and if they intended to participate in the hearing. All Board members indicated they intended to participate.

Marshall Foiles showed the map to clarify the portions with Beaver Creek Township parcel numbers. He gave a history of Kil-Kare and an overview of all safety precautions taken since the new ownership. Kil-Kare would like to be able to use the parcels south of the bike path for a haunted trail or a Christmas event. Mr. Mullikin asked if any motor sports were planned for this area. Mr. Foiles answered no. Mr. Stock added there was an extra page given by Kil-Kare

listing uses for this area, i.e. carnival with amusements rides, merchandise and food vendors; haunted trail; lighted Christmas walk with horse drawn carriage rides; motorsport swap meet with merchandise and food vendors. Mr. Mullikin asked if there were any plans for camping. Mr. Foiles answered no as they were not ever approved for camping.

The following Exhibits were presented and marked:

- (1) Features of B&B at 736 Jacoby Rd.
- (2) Letter from Mary Nutter
- (3) Letter from Robert Nutter
- (4)
- (5)
- (6) Information from David Reed
- (7)

Comments from the Audience:

Mary Nutter, 925 Hilltop Rd., Xenia, OH – spoke about Kil-Kare no longer being a desirable neighbor because of the noise and loose operating schedule (sometimes beginning 8:00 a.m. and ending well past midnight Wednesdays through Sundays). She gave a written statement—marked Exhibit 2.

Robert Nutter, 925 Hilltop Rd., Xenia, OH – spoke about moving to Hilltop Road in 1991 and the noise from Kil-Kare increasing in the last 3 years. Events are scheduled 6 days a week. They are unable to use their patio very often. The noise can still be heard even inside with the windows closed. It can take up to an hour after closing for the patrons to quiet down. The loud speakers continue after midnight. Kil-Kare clear cut a tree buffer which made it even noisier. Mr. Nutter asked for the following: Noise monitoring around the Kil-Kare property and the establishment of a noise limit measured at their property line; reduction in the hours of operation; mufflers on their cars; hard shut-down at 6 p.m. on Sunday, 9 p.m. on Monday through Thursday, 10 p.m. on Friday and Saturday, with a start time of 1:00 p.m. on Sunday; have at least 2 weekends a month with no noise; have a fixed schedule; have Xenia Township be responsible for noise monitoring. He gave a written statement—marked Exhibit 3.

Dr. Angelo Campanella, 3201 Ridgewood Dr., Hilliard, OH 43026 – works in field of community noise. Mr. Nutter called him to evaluate and make recommendations. He monitored the noise and reported. Noise comes from the high RPMs of the engines and can easily travel 2500' from the track to the Nutter residence. Recommendation of mitigation measures should be required such as mufflers (which could cost under \$100). A muffler could get 20 decibels off the sound. To obtain a decrease of 20 decibels from a wall, the wall would have to be 30 feet tall. He agreed with hours of operation ending earlier. Loud speakers should be aimed straight out. Health effects can result from sleep deprivation from all the noise.

David Reed, Attorney with the law office of Taft Stettinius & Hollister, Dayton Office, 400 N. Main St., Suite 1700, Dayton, Ohio 45423 – here with associate Kim Burke from the Cincinnati office to represent the Nutters. He has worked with zoning matters for over 20 years. He handed out a Brief Opposition to Kil-Kare's Application Submitted August 9, 2013—it was marked Exhibit #6. The Zoning Code disfavors any expansions of a non-conforming use. A non-conforming use is only to be allowed under very narrow circumstances. If they are trying to do a conditional use, this request does not fit under the conditional uses delineated in the Xenia

Township Zoning Code. The history has been an awkward, contentious relationship between Kil-Kare and the neighbors, which is typical where there is a non-conforming use and a regular effort to grow and expand that use. One of the problems is variance requirements have not been satisfied. There seems to be an effort to separate out elements of the application that are not part of a non-conforming use and add them as conditional uses. Kil-Kare has always been recognized as a non-conforming use and separating it out to meet standards of a variance would have to be the result of a hardship, peculiar circumstances, or violation of property rights. The request also conflicts with Xenia Township's comprehensive plan. Section 400.4.3 of the Zoning Resolution prohibits the BZA from allowing the use of loud speakers, amplifiers, or public address systems except inside a building. The corner piece of land by the river is in a flood plain. He says the Trustees could establish what type of noise is permissible in each district which could reduce the ongoing piece meal battles. The BZA should place conditions on the conditional use that would address the noise issue.

Kyle Willetts, 1166 Dayton-Xenia Rd. – has worked at the Kil-Kare facility since 2000. He said we are not here to discuss racing today. Curfews have not been violated. The Green County Sheriff's deputies are at every event. On Fridays and Saturdays events end no later than midnight. On Sundays through Thursdays events end no later than 10:00 p.m. This includes the loud speakers. On Sunday mornings they do not allow firing of engines or loud speakers before 10:00 a.m. They also are sometimes bothered by noise with the gun range to the north and the airplanes landing at Louis Jackson Airport. Kil-Kare provides community events for the whole family to enjoy. It is something the Township should be very proud of. He stated that Dr. Campanella was an expert witness for 35 Raceway Park in favor of the race track and he is here today employed by Mr. Nutter against the race track.

William Tharpe, 1166 Dayton-Xenia Rd. – Competition Director for Kil-Kare Dragstrip who enforces the curfews. He even called a race recently because it was five minutes until curfew. Kil-Kare is noted as one of the premier raceways throughout the whole country. They generate revenue for the community. The racing season was shorter because of the improvements being made to the track. Penewit asked how many are employed by Kil-Kare. Mr. Tharpe answered there are over 100 people on staff.

Whitney Baker, 786 Dayton-Xenia Rd. – newer residents to the neighborhood who have noticed a great increase in noise level since they moved there in 2008. They would appreciate some kind of sound barrier constructed.

Mr. Foiles said his goal is for events to end by 10:00 pm. They are trying to be good neighbors.

William Tharpe spoke again about it being important to keep personal feelings out of the issue. Kil-Kare is trying to better many communities.

Alan Stock said last year 3 people complained during the racing season and this year none have complained.

Jim Reed, 1080 Stone Rd. – Xenia Township Trustee asked if the Greene County Sheriff enforces the curfew. Stephanie Hayden answered they do not. No concerns have been raised to her. If curfews are violated it would be a zoning violation (violation of a conditional use).

A resident spoke about the issue of complaints. He has called the Sheriff several times to complain. Apparently the Sheriff did not make a report. Alan Stock will give the resident his card with a phone number.

Richard Carlisle – grew up around the drag strip. He said if you live around an airport, you can't expect to shut down the airport. They are not doing anything that hasn't been going on for the last 50+ years. They are trying to have more community involvement. They would like to have something that could be used year round. They are just trying to better their business.

Thomas Sears, 1550 Stone Rd. – suggested sitting down and working on a solution together. Kil-Kare is a big part of this community. However, we do have a lot of residents who are very unhappy. In his travels, many raceways are using mufflers. He suggested forming a taskforce to work out some issues.

Tony Ponder, 718 Hawkins Rd. – had questioned if there are more events than Christmas and Halloween. Alan Stock read the list. Mr. Ponder asked how many events. Mr. Foiles answered they are not sure, but they are much quieter events and do not include racing. Kil-Kare can already do these events but are just asking to expand the area where they can do it.

Mary Nutter – asked Kil-Kare representative what they are doing to monitor the noise. She would like a system of good sound monitoring.

William Tharpe – Kil-Kare does not use the ¼ mile track in attempt to be a good neighbor and more community friendly. Kil-Kare is trying and will continue to be a good neighbor.

Alan Stock was asked to clarify that no music festivals or truck and tractor pulls were to be included in the expanded use area.

Mr. Angelo Campanella stated that this may be the perfect opportunity to address noise issues and limitations.

A resident questioned if there were existing regulations regarding the hours of operation for Kil-Kare. The answer was yes and the Board Members stated that these regulations would be made available to anyone who would like them.

A motion was made to go into executive session. After the committee returned, Mr. Jacobson asked that a motion be made to continue this issue so that it could be further studied. A motion was made to schedule work sessions on September 25<sup>th</sup> at 6:30 p.m. and September 30<sup>th</sup> at 6:30 p.m. A public meeting was scheduled for October 16, 2013, at 6:30 p.m. with the hope of finalizing the issue.

Stephanie Hayden of the Prosecutors Office asked that anyone with questions or concerns contact Alan Stock, Xenia Township Administrator.

Charles Bingamon made a motion to adjourn the Public Hearing. Ken Penewit seconded. Meeting adjourned at 8:00 p.m.

ATTTEST:

