

XENIA TOWNSHIP ZONING COMMISSION
PUBLIC HEARING
KIL KARE REZONE OF PARCEL M36000100160004500
FROM AGRICULTURAL TO B-3 BUSINESS HIGHWAY

June 29, 2017

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

The Xenia Township Zoning Commission held a continued public hearing on June 29, 2017 at 7:00 p.m. at the Xenia Township Trustees Office, 8 Brush Row Road, Xenia, OH 45385.

Chairman Jeffrey Zweber called the Public Hearing to order at 7:00 p.m.

All participated in the Pledge of Allegiance.

Roll Call: Jeffrey Zweber, Chair, Alan King, Kent Harbison, Virgil Ferguson, Donna Randall and Alan Stock. There were a number of guests in attendance and the applicant.

Mr. Zweber explained the rules and procedures for the Public Hearing and asked Alan Stock to go over the Ohio Revised Code (ORC) requirements for this hearing and whether these have been met.

Alan Stock went over the Exhibits for this hearing and discussed each of them, and after checking all exhibits he stated that he agrees that all of the ORC procedures have been met and have been verified and placed so that the Commission can hear this application in its entirety this evening.

Mr. Zweber asked if the commissioners want to hear from the petitioner or review the Regional Planning report. It was agreed to hear the petitioner first. Mr. Zweber asked the petitioner to step to the podium and make his presentation.

Marshal Foiles, 3003 E. Hoop Road, representing Kil Kare, Inc. Mr. Foiles wanted to thank the Commission for taking the time to be here tonight. He stated that Kil Kare, Inc. is asking for B-3 zoning to allow the company to build a Store & Lock facility. He stated that the parcel is 22 acres and there are no CAUV taxes associated with the parcel. He explained the parcel is currently zoned Agricultural but the company does not get any Agricultural exemptions. He stated that he does not believe this is spot zoning, because this rezone would match other businesses in the area. He advised that currently the land is mowed by an individual who uses the material for hay, and Kil Kare donates this and there is no monetary gain from this parcel of land. Mr. Foiles stated that the requirements for B-3 would require utilities, which Greene County Regional Planning discusses in its report. He believes that the only utilities that would be needed for the Store & Lock would be minimal electricity for lighting. Mr. Foiles stated that this facility would not require water or sewer because Kil Kare has offices with these facilities. He stated that the proposed buildings themselves would be 150'x40' and the Kil Kare would start with one building and could build up to eight depending on demand. Mr. Foiles explained the buildings would be built one at a time, when one building filled up, then another would be built. Mr. Foiles shared the picture of the parcel in question. He stated that this falls within the Kil Kare district along Dayton-Xenia Road. Mr. Foiles stated that Greene County Building Regulations will keep Kil Kare from building any of the other of the permitted uses on this

property. He explained that even if this parcel gets water and sewer he did not believe this would be a place for any of the other permitted uses. Mr. Foiles stated that it is commercial all around it and Kil Kare is not looking to build anything but a Store & Lock. Mr. Foiles asked for questions regarding his presentation.

Mr. King asked about the entrance to the Store & Lock and where it would be located. Mr. Foiles stated that the entrance to the Store & Lock would be located on the east side of the old entrance to the race track. He explained there would be no new entrance or exit from Dayton-Xenia Road but only from the existing exit for Kil Kare. Mr. Foiles stated that this would give Kil Kare more control over the Store & Lock when it comes to security.

Mr. King asked if this parcel was part of a flood plain and Mr. Foiles stated that it was not. He explained that there is a flood plain but it is on the opposite side of the property.

Mr. Zweber stated that this application was seemingly identical to the application filed one year ago and asked Mr. Foiles if he had considered any changes and why he resubmitted this second application. Mr. Foiles stated that Kil Kare feels that this is a viable use for the property and that maybe this year Kil Kare was able to explain what it was wanting to do better than last year. Mr. Foiles explained that this parcel is in the middle of other parcels that are used for commercial purposes.

Mr. King asked about whether the land had been farmed or if it could be used as farmland. Mr. Foiles stated that it is hard to find a farmer willing to come in to farm only 20 acres since it is not near any other farm land.

Mr. Ferguson asked about the fencing that would be used for security. Mr. Foiles stated that it would be fenced for security, similar to the Store & Lock on US 68 North. He advised that there would be a minimum of security lighting on the outside and minimal lighting on the inside, for example one light bulb in each unit.

Mr. King asked if tenants would be allowed to work on vehicles inside the Store & Lock. Mr. Foiles stated that this would not be a garage, the units will be too small to keep a car and be able to work on it. He stated that Kil Kare has no intention of allowing that, a tenant may be allowed to store a car in the units but not be allowed to use it as a mechanics garage.

Mr. Zweber asked if there were any other questions for the applicant, there were none and Mr. Zweber thanked the applicant for his presentation. Mr. Zweber asked if there were any Xenia Township residents that would like to speak in favor of this rezoning application. There were none. He then asked if there was anyone else in the audience that would like to speak in favor. There were none. Mr. Zweber asked if there were any Xenia Township residents that wanted to speak in opposition of this rezoning. There were none. He then asked for the presentation against the petitioner and welcomed Mr. Nutter's representative to the podium.

David Reed, Attorney for Mr. Nutter, 40 N. Main Street, Suite 1700, Dayton Ohio 45402, he was here to on behalf of Bob and Mary Nutter, to speak in opposition to the proposed rezoning. He stated that he has 26 years of zoning and land use experience. Mr. Reed stated that he believes the proposed rezoning is contrary to principles of rezoning and Xenia Township's Zoning Resolution. Mr. Reed stated that zoning changes need to be handled with care and precision

otherwise there can be unintended consequences which could cost the Township a lot of time, resources and money. It can also hurt the aesthetics of the Township. He stated that rezoning a property is a significant decision because it has a lasting impact on the property and creates vested rights. He stated that this is why the Ohio Revised Code and Xenia Township Zoning Resolution establishes such high standards for rezoning property. Mr. Reed stated that the applicant did not apply to be approved for a Store & Lock which is not a permitted use in this zoning district. Mr. Reed stated that the applicant was attempting to rezone the property. In his opinion, the applicant is asking the Commission to go against established principles for rezoning, the recommendation of Regional Planning, Perspective 2020, the Xenia Township Zoning Resolution, and to permanently allow 28 new potential business uses for the themselves and all future landowners. Mr. Reed stated that each of these items were a reason to turn down the rezoning. Mr. Reed stated that nobody has a right to have their land rezoned and rezoning is a discretionary act of a government entity and is established by Ohio case law. Mr. Reed stated that in his opinion, there has been no evidence presented that this application serves some sort of common good for Xenia Township. He stated that rezoning should never be to simply benefit a single parcel or a single property owner. He stated that a rezoning is only justified when it is done to serve the best interests of the community as a whole, not for the benefit of an individual or group. Mr. Reed stated that where the application asked for a reason for the rezoning the answer was to build Store & Lock. He stated that it does not state how this would benefit the Township, plus an application is usually accompanied by a site plan and studies that would demonstrate that altering the use rights would be good for the community as a whole. Mr. Reed stated he does not think the applicant makes a good case or to show any standards have been met for a rezoning change. Mr. Reed stated that this rezoning would go against the recommendation of the Greene County Regional Planning Coordination Committee (RPCC). Mr. Reed explained the role of RPCC and their purpose. He stated that RPCC does not recommend the rezoning to B-Highway Business at this time. Mr. Reed explained the RPCC report and its recommendation for this application. Mr. Reed stated that the rezoning goes against Perspectives 2020 which was to provide sound principles to guide future development in the county. Mr. Reed stated that there is no basis for permanently allowing 28 new uses for this property. He stated that this application has asked for the Commission to approve a rezoning for all 28 uses and this would cause a loss of control to an entrance corridor to Xenia Township. He stated that he did not understand why the applicant is not asking for zoning approval for a Store & Lock by asking for a Planned Unit Development (PUD). He stated that this would ensure that the facility was well designed and address multiple issues and protect against undesired permitted uses in Highway Districts. A PUD is allowed within the Zoning Resolution and he does not understand why this is not the approach of the applicant. Mr. Reed stated that this application goes against the Xenia Township Zoning Resolution. He stated that Highway Business districts are designed to serve the market of the Urban Area and the area was to have public utilities, central water supply, offsite wastewater disposal and major transportation readily available. Mr. Reed discussed other applications submitted by the applicant and the results of those applications. Mr. Reed stated that for these reasons the application should be denied.

Mr. King asked Mr. Reed that he made the argument of why the applicant did not ask for a conditional use, instead of the way he had applied, so he wanted to know if the opposition was absolutely opposed to this particular use for the land or just the procedures that the applicant had used. Mr. Reed stated that when a governmental body decides to rezone it should be seen for what it permits because there is nothing to stop the land from being flipped or if the Store & Lock does not go well. He stated that this rezoning mandates utilities and a lot of other items. He

stated that once there is a vested use then a person does not necessarily have to show that all the ideal utilities are present. Mr. Reed stated that with a PUD, which he recommends when someone wants a specific use for property because a person can come and say this is what they want to build, then gives the Commission the ability to look at it and say whether it is set in the most ideal location, and make recommendations to make it fit. Mr. Reed stated that he did not believe that they took an opposition against a Store & Lock, but want to be sure that it is a responsibly laid out design, but the property does not meet the standards for a rezone according to the code. Mr. King stated that he would be more comfortable if the applicant applied for a PUD. Mr. Reed stated that this would limit the property to that particular use and would not be able to be used for any other use.

Bob Nutter, 925 Hilltop Road, he stated that his primary concern was what other uses could happen at this property if it is rezoned. Some of this would be noise and light pollution, and lack of any plan. He stated that there was no traffic study and no plans. Mr. Nutter stated that last year Kil Kare stated that the Store & Lock would be a 24-hour facility, but would not have restrooms so would the track be kept open so people could use the restroom. He stated that since there was no traffic study and that it has been said that there were not any traffic issues on Dayton-Xenia Road since the stacking has been put in. Mr. Nutter stated that this was not true because he had waited more than once while approaching the Kil Kare traffic pattern. He stated that he does not understand why Kil Kare had not been forced to have a turn lane. Mr. Nutter stated that light pollution robs every one of the dark sky, which is something people who live in the country enjoy. He stated a PUD would keep the light pollution from emanating onto neighboring properties. Mr. Nutter stated that a good zoning plan increases the value of the region, the local neighborhood and the property. He stated that to pass a zoning request with no knowledge of what is going to be constructed is a gamble. Mr. Nutter stated that Mr. Stock told him that Xenia Township had never used PUD zoning and stated that this could be a case to use it.

Les Pitstick, 1387 Champions Way, he stated that he owns a commercial building at 1410 Dayton-Xenia Road, which is west of Kil Kare just before Trebein Road. He stated that he has an interest in what goes on around this area. Mr. Pitstick stated that he does not understand why the application is not just to put in a Store & Lock, if that is what Kil Kare is wants to do. Mr. Pitstick stated that his grandfather was a farmer in the area his whole life, and he had once told him that if someone makes a proposal to you make sure it satisfies the smell test. He stated that he had never forgotten that and this rezone does not satisfy his smell test. Mr. Pitstick stated that the Commission had denied this rezoning last year for good reasons and he hopes that the Commission will do it again.

Mr. Zweber stated that next on the agenda was for anyone wanting another chance to speak and make any additional comments.

Mr. Ferguson asked the applicant why this would be good for Xenia Township. Mr. Foiles stated that it would fill a need for Store & Locks that are created by the urban sprawl next door. He stated that these people need a place to store because of the many restriction. He believes this would be a convenient place to store things. Mr. King asked if he had done any studies to see where potential tenants would come from. Mr. Foiles stated that they had not done any studies. Mr. King asked if Mr. Foiles felt that the tenants may come from neighborhoods or somewhere else. Mr. Foiles stated that he thinks many will come from the housing along Trebein Road. He stated that many of these people are already storing at another facility and that facility is running

out of space, so Kil Kare is trying to fill that void. Mr. King asked about the traffic issues and what Mr. Foiles could say about this. Mr. Foiles stated that he did not believe this would cause any traffic issues because people come and go from Store & Locks randomly. He stated that he had never seen a Store & Lock back up traffic. Mr. King asked why the Commission should trust Kil Kare to not use the other 28 permitted uses if the rezone occurs. Mr. Foiles explained that trust is an interesting word, but he thinks that checks and balances were put in place by the County for the allowed uses. He stated that the property does not have the necessary stuff that was required for most of the other uses. Mr. Foiles stated that he believes there are checks and balances between Xenia Township Zoning and Greene County Building Regulations that would prevent most of the other uses. Mr. Foiles stated that Perspectives 2020 was mentioned many times but Xenia Township never adopted that and never went for it. Mr. King asked what Mr. Foiles thought the impact would be on the residential area near Kil Kare. Mr. Foiles stated that he did not see any impact because there would be a limited amount of traffic which would not cause any issues along the road.

Mr. Reed stated that once there is a vested use it is very hard to stop that use, as long as setback and height requirements are met. He does not understand what the checks and balances and his main point is that it is not meaningful to have vested use rights in the property.

Mr. Zweber stated that he had a few questions that he wanted to address and answer. He stated that most if not all of what was presented applies generally to how zoning is accomplished in Xenia Township, however not specifically in this case. Mr. Zweber advised that a lot of what he heard were objections to the way Xenia Township Zones and a lecture that Xenia Township should zone like Beaver Creek Township. He stated that Beaver Creek Township has extensive uses of PUD's and Xenia Township has none. He stated that by working with this Commission, the Trustees and for him personally, he believes the heavy hand of zoning that the opposition was advocating for and the Beaver Creek Township seems to like is not the much lighter hand of government of Xenia Township. Mr. Zweber stated that the first point of the brief was made that the applicant has no right to rezone it and that rezoning is a grace handed out by the Zoning Commission and the three Trustees also are obviously much more empowered to manage land use than the rights of the property owners. Mr. Zweber stated that he did agree with the opposition that this is what Ohio law allows, and Ohio law certainly allows if the Township would want a very heavy hand in zoning; that this gives a Township a choice of whether to come down with heavy handed zoning and PUD's everywhere. Mr. Zweber advised that Xenia Township had not and in his opinion Xenia Township should not because that is not the character of the way he feels zoning should be done in the Township. He stated that from listening to the other commissioners and the Trustees that this was not the way Zoning here in Xenia Township gets handled. He stated that this is the way zoning gets done in Beaver Creek Township. He advised that he understands that some of this land crosses between the two townships and this does showcase the issue of two significantly different zoning philosophies in the same area. Mr. Zweber explained why heavy handed zoning does not sit right with him. He stated that this application is not about a Store & Lock but about the 28 permitted uses that may or may not be appropriate; as for conditions change, for the perpetuity of time until the Township decides to change. Mr. Zweber stated that he had spent more time looking into Perspectives 2020 due to the excellent work done by the opposition. Mr. Zweber advised that he looked at Perspectives 2020, which RPCC mentions is 16 to 17 years old, so conditions change. The Xenia and Xenia Township's specific sections of that plan were only a couple pages. He advised that implying any specificity to the very unique piece of the county and extrapolating on what Perspectives 2020

meant about this particular property 17 years ago, he would not put a lot of credibility into Perspectives 2020 on this particular place. Mr. Zweber stated that Perspectives 2020 has a bias towards shopping centers in being commercial and that it does not talk about mixed use developments, so how controlling or how much credibility that he puts into Perspectives 2020 and that its use as guidance is limited for him. Mr. Zweber advised that Perspectives 2020 mentions County and City services; services provided by the City of Xenia require annexation into the City. He stated to follow the strict interruption of B-3, across the Township, that wherever there was a business district it would be difficult if not impossible because of the interest of the City of Xenia. Mr. Zweber explained where the city water and sewer are and the cost for the City of Xenia to extend these services to these properties. He stated that with the current situation between the County and the City when it comes to water, in a way it leads to a shrinking Xenia Township that remains agricultural. He stated that any development of any industrial would require services either from the County and he did not think it would be too likely that the City and the County would cooperate when it comes to sewer and water. He advised that in the case of B-3, that there may be a fundamental flaw in the current zoning resolution in terms of a consequence that the text incentivizing annexation to the City of Xenia. Mr. Zweber stated that he looked at the map for this property; there is one parcel between the parcel in question and the City of Xenia, which is the mine across the street. He stated that a rigorous standard of utilities has to be in place before the rezoning. He believed this drove the Township towards annexation before development of any of the 28 uses that Regional Planning, the Health Department, County Building and everybody else might dispute. Mr. Zweber advised to the principles of rezoning and as far as he knows there is currently no approved Xenia Township Land Use Plan but there was a proposed plan and a citizen's counter proposal that have not been approved. He looked at the Kil Kare area in these two plans, he stated they are identical and read what this special planning area and its use in the plans.

Mr. King stated that he would like to read the conclusion from the Regional Planning report for the record, which is attached as an exhibit. He read the conclusion of the RPCC report:

“Based on the above findings and discussion, rezoning the property to B-3 Highway Business is not recommended at this time. No conditions have changed since the last request. Completion of the Xenia Township Land Use Plan update, Xenia Township coordination with Greene County, Beavercreek Township and the City of Xenia on a mutually-acceptable land use concept in this area and the provision of utility services should be accomplished before a change to B-3 would be appropriate. While the stated use of a store and lock facility would have lesser impact than other uses permitted in the B-3 district, the other more intense uses with greater impacts on public services would be allowed on any part of the site.

It is further recommended that Xenia Township consider a text amendment to allow store and lock facilities as a conditional use in the A Agricultural zone. The conditional use text should be identical to that used in Section 408.4 (2) with the addition of limiting such uses to property along roadways classified as “arterial” in the Greene County Thoroughfare Plan.”

Mr. King stated that the Interesting Observation from the Staff Report for Kil Kare Rezone from Agricultural to B-3, Highway Business District should be read into the record as well. Mr. Zweber read:

Xenia Township has no central entryway into the Township. It has a minimum of five State Routes from both direction, and three major arteries from one direction in to the Township, and at least four other larger roadways into and out of the Township.

The service road to the Petitioner's property in Xenia Township is over two time the width of the road that serves it. When major congestion on Dayton-Xenia occurred, the property owner in conjunction with the Greene County Sheriff's Office worked together to eliminate the congestion.

The uses in a B-3 district would much more closely align with the property's use today than the Agricultural zoning it currently has.

Mr. Zweber asked the other commissioners if they had any other questions or comments before he reopened the public comments. There were none, Mr. Zweber asked those in attendance if they had any more comments.

Mr. Reed stated that he understands that it is up to the commissioners whether they choose to follow RPCC's recommendation, whether they choose to listen to Perspective 2020, or whether they give any concern to the general principles of zoning, those were all persuasive ideas that he thought would be useful to discuss. He advised that where he did not reconcile it was that the Xenia Township Zoning Resolution is black letter and it states that there are supposed to be utilities in a B-3 zone district, so to go against the black letter zoning code would be a bold act by this commission that would be held by what the Resolution says. Mr. Reed stated that this may be inappropriate for the Zoning Code, but then the process should be to amend the zoning code. He explained why a change in the zoning code would be the appropriate path.

Mr. Nutter stated that he understands the territorial line between Xenia and Beavercreek Townships. He stated that he did not see it that way, instead he sees this as an opportunity for Xenia Township to improve their land with items used on it versus using a PUD. He does not believe having the desire to have a good-looking facility as being heavy handed. Mr. Nutter advised that asking for plans so that one could know the effects on the neighboring properties as heavy handed. He stated that he looks at things that would affect the neighbor and stated what he believed to be good zoning.

Mr. Zweber asked if there was anything else anyone needed to help them come to a decision. There were none. Mr. Zweber closed the public comments section of the public hearing.

Mrs. Randall stated that she was not concerned with the process of rezoning, however she is concerned with this specific application. First, since it was identical from last year, she explained that she would have liked to see comments like, business has increased so there is a bigger need for it. She stated that she did not see anything that would try to convince the Commission to rethink this application. Second, she stated that she did not understand why the applicant did not

try to for a conditional use, because this makes her think that the applicant is not only thinking of a Store & Lock, but thinking of other things that can be done with the property after the rezone. Third, she was worried that changing it to B-3 would mean it would go to anyone who may purchase the land in the future. Mr. King asked Mrs. Randal for clarification about the conditional use. Mrs. Randall showed Mr. Zweber what she was referring to from her notes. Mr. Zweber stated that he would try to explain. Mr. Zweber stated that in the Regional Planning report, it suggested considering making Store & Locks a conditional use in Agricultural districts. He stated that this is currently not a conditional use in Agriculture so they cannot apply for a conditional use without rezoning it. He advised that the applicant could wait and see if the Commission would amend the zoning text to make Store & Locks a conditional use in Agriculture. Mr. Zweber stated that if the commission wanted to take the applicant at his word that they want the Store & Lock, without changing the current text then there were two processes to accomplish this. One would be the two-step process that they say they are going through, step one rezone to B-3, step two file a conditional use permit; the other process also requires rezoning without a text amendment to Agriculture so, a rezoning is required to get the Store & Lock. Mr. Zweber continued that the alternate rezoning would be what Mr. Nutter is advocating for which is to request to rezone to a PUD, and explained this process. Mr. Zweber explained the three different ways the applicant could apply to be able to build the Store & Locks. There was discussion that there was also the option to say no to all these processes.

Mr. Ferguson stated that a Store & Lock could be good for that end of the Township but the 28 other uses bother him. He stated that they could use the PUD or a conditional use, and this was his biggest concern.

Mr. Harbison stated that he was concerned about the activities that could occur at the Store & Lock which is detailed in the conditional use for the BZA. He would like to know why this does not go through that process. Mr. Zweber stated that those would be the conditions put on the conditional use through the BZA.

Mr. Stock advised that the commission could look through the PUD use or a conditional use. He explained that a conditional use gives greater opportunity for the BZA to consider not only the text but also what is happening in the Township at the time and specifically that area. Those would be the minimums, because the BZA also looks at ingress and egress for fire police, lighting, height and building materials that require a very specific site plan.

Mr. King asked if the BZA would have the ability to ask for screening or non-polluting lighting. Mr. Stock stated this was correct and that those would be non-negotiable. Mr. Stock advised that when the BZA puts on conditions that are not negotiable then this was the minimum that could be asked.

Mrs. Randall stated that she thinks the best route would be to change the wording in the resolution to include Store & Locks as a conditional use in Agricultural districts.

Mr. Zweber stated that there was some discussion about lighting and screening and any other number of concerns. He stated that there are general provisions in the text that are about lighting on areas and parking and what not. He advised that the concerns of the effects on the neighbors were not a free for all in the current zoning resolution and any of those concerns that should be in an application for PUD rezoning, and Xenia Township handles this in a general sense of zoning

requirements in section 500. He stated that whether it was done well or poorly those things are covered in a general sense, which he wanted to point that out for the fellow commissioners. Mr. Zweber advised that amending the text in the Agricultural zone for Store & Locks to be a conditional use could be done at this meeting, but he was not sure. Mr. Stock advised that the ORC would not have been followed to make a recommendation to change the text. Mr. Zweber agreed and stated that if the Commission wanted to go down that path there would have to be a public hearing for that purpose and that purpose is fundamentally different than the purpose of this current meeting.

Mr. King asked if the property owner would like to come back if it is not approved tonight, since he is not able to come back for the same rezoning for one year. Mr. Stock reminded the commission that they are a recommending board, so this will all go to the Trustees and the process starts again and the recommendation is sent to the Trustees which they then have thirty days to hold a public hearing. He advised that what the Trustees say is not final, but then the applicant could file a referendum. Mr. King asked if this is turned down by the Trustees then this property could not come before the commission again for one year for anything, like a PUD. Mr. Stock stated that the applicant would not be able to ask for the same rezoning, so they could come back and apply for a different rezoning.

Mr. King stated that he has some pros and cons he would like to share. Mr. King started with his cons list; in contrary to the approval would be traffic issues, which he did not see to be too much of a problem. He advised that protecting of the neighborhood properties from additional noise, traffic, unsightly properties, and lighting was important.. He stated that the issue of spot zoning which he thought that all of the current B-3 zones are small 20 to 40-acre spots around the Township now. He stated that the fact that not having all the utilities would be contrary to the approval process which he thinks in this case were not needed so this is also minimized. He stated that he is in favor of the approval and that he usually likes to be in favor of the rights of the land owner. He advised that the land owner should be able to determine the best use of the land. Mr. King stated that each year this land is not being used except to be mowed and not for soybeans or corn, which he considers farm produce coming from the property. He advised that the fact that they have not asked for their taxes to be reduced for CAUV indicates to him that it has always been considered commercial property, whether it has been used for commercial use or not. Mr. King stated that the overall take from RPCC was that they do not think Store & Locks would be a bad thing to do there, they just do not think the zoning right now is the best way to do it.

Mr. Zweber stated that with the non-binary choice presented, since he had described four options. Mr. Zweber stated that whatever motion the Commission makes is the next topic for this meeting. Mr. King advised that whatever happens here, this application for a change to B-3 will go to the Trustees next, unless the applicant were to withdraw. Mr. Stock stated that unless the application was withdrawn, then a letter of conveyance will be sent from Mr. Zweber. He explained that the Trustees would receive a letter of conveyance, a resolution and all the exhibits from this meeting. Mr. Zweber described a similar meeting from the past where the Commission recommended approval to a different zone and what went to the Trustees was the application and the recommendation. Mr. Zweber advised that this Commission was not limited to a yes or no on the application, and that the Commission is allowed to recommend what this Commission recommends. Mr. Zweber stated that what needs to be addressed for this parcel and what has been provided by the applicant. He stated that one option is to recommend approval of the

application as submitted. He stated that an alternative to that was to recommend denial on the basis of no Store & Locks or any other business uses on this property. Mr. Zweber stated the other two alternatives, so if this Commission wanted to recommend approval to Store & Locks but no on the other 28 uses, but approval on the conditional use. He stated that the other option would be to put this issue on hold by setting a continuance to go look at amending the Agricultural zone, or to take the recommendation of the opposition which is to recommend a PD-B or PD-M, which is uncharted territory, which he admits certainly that if they were to start down the road to use the PUD then this could be used with more conditions or less conditions. Mr. Zweber stated that this would just make this Commission a BZA, as he would call it a functionally conditional use. Mr. Zweber stated that of those four alternatives, he was curious how each Commissioner was leaning. Mrs. Randall stated that she did not want the B-3. Mr. Zweber discussed the other options: changing the Agricultural text to include Store & Locks as a conditional use, to go with a PUD where the conditions would be set by this Commission. Mrs. Randall stated that she would be for approving a PUD. Mr. Zweber asked if the other Commissioners had any comments or preferences about the alternative options. Mr. King stated that as far as the PUD goes, it looks like a lot more paperwork and public voting. Mrs. Randall asked if the Commission were to go with the PUD, would that be part of the resolution tonight? Mr. King stated that this is where the messy part could come in. Mr. Zweber stated that this could involve continuing the meeting; however, they could change it by going with a PUD or continuing the meeting for the messy stuff. Mr. King advised that this Commission is more in favor of allowing the property owner to decide and trust that was what the property owner will do. He advised that this may even open the slight risk that someday, like 50 years from now, it could be sold and the new owner want to do something else with the land. Mr. King stated that he would be more in favor of proceeding with an approval of what is being asked for now. Mr. King stated that if the rest of the Commission decides to not go this way, then he thinks it might behoove the applicant to withdraw his application before it went to the Trustees and then resubmit with the proper paperwork for a PUD. Mr. Harbison stated that he feels no matter which way this goes the applicant would end up in front of the BZA. Mr. Zweber explained that if they decide to go with a PUD then the applicant would not have to go to the BZA. Mr. Harbison stated that he is still thinking about which method he prefers. Mr. Ferguson stated that he is leaning towards changing the text in Agriculture, with a PUD being the second option. He stated that the PUD would still need to be classified as a PUD-B. There was discussion about the description of a PUD-B. Mr. King stated that a Store & Lock was not a permissible use under a PUD-B. Mr. Zweber stated that with a PUD-B the allowable uses are further restricted by the development plans. Mr. Zweber stated that a PUD would make the Commission function as the BZA does, so there were restrictions generally in the zone but for this PUD the height restrictions were X and the building styles were Y, etcetera. Mr. Zweber stated that with the tool of a PUD the Commission can decide how heavy of a hand they want to use. Mr. King read part of the text about PUD-B that stated that the height restriction for a PUD-B are the same as that in a B-3. Mr. Zweber advised that the way interprets this is that if a person comes in for a PUD-B that the person cannot put a mine in there. Mr. King advised that then the person would have to go to the BZA for the conditional use. Mr. Zweber stated that there would be no BZA. Mr. King asked if something was a conditional use in B-3, then would it also be a conditional use in a PUD-B. Mr. Zweber stated that this was a good question. Mr. Zweber stated that he does not think that Store & Locks are a permitted use in any of the zones. Mr. King agreed. Mr. Zweber stated that it may be that the PUD text in the resolution is ambiguous as to a PUD for Store & Locks. Mr. Stock stated that idea behind a PUD is to take a look at smaller tracts of land and to be able to have multiple uses within creating smaller uses of land to their advantage. He did not

see in reading any of this that the Commission include conditional uses, they would just use principle uses for multiple areas to allow greater efficiency in smaller tracts of land. Mr. King asked whether Store & Locks would be approved. Mr. Stock stated that within a PUD the Commission would be allowed to do any conditional uses. He stated that it is about rearranging the puzzle pieces of principle uses. Mr. King stated that he thinks could be a flaw in the text. Mr. King asked about the amount of time to make a text amendment to include a conditional use. Mr. Zweber stated that he believes that they could do it in this meeting start the public hearing process for a text change. He stated that they could talk about how they want to text to be tonight since it was brought up by RPCC. Then they would need to set another public hearing for that change, so he thought it would take 45 days at most. There was discussion about the public hearing and text change option.

Mr. Stock wanted to ask the Commission a few questions. The reason for a continuance is not so an alternative end for a specific application; a continuance would be used to gather more information and more knowledge. He stated that the Commission only has thirty days from the public hearing to render a decision. He would not advise the Commission to try to come up with some alternative solution to benefit one person or one home owner over another. One by continuing, because the ORC states they can have a continuance but not so they can favor or disfavor people but to gather information to form an opinion, not to alter text that is already there. Mr. Stock stated that these are two completely separate matters and he would not advise the Commission to go along this route, because there is no reason to continue unless they were going to ask for more information from opposition or the applicant. Mr. Stock stated that a continuance is used if they need more information.

Mr. Ferguson stated that he agrees with Mr. Stock. He stated that they either pass or not pass it and if they do not pass it then they can talk about changing the text at the next meeting.

Mr. Stock advised that they should look at why they would only look at Store & Locks as a conditional use in one district. He stated that he would argue that they would be favoring one applicant over another. Mr. King agreed with Mr. Stock and stated that he believes that the Commission had been trying to condense the text and not list each type of business in the text but try to generalize to a point and what could be a use in each district. Mr. Stock stated that this meeting had set some urgency for the Commission, so since they set their agenda it would be up to them to set aside the Land Use Plan and work on the text and decide what changes they want to discuss.

Mr. Zweber asked the applicant if he had anything to add to the discussion. Mr. Foiles stated that he did not have anything else to add. Mr. Zweber asked those in opposition if they had anything to add. Mr. Reed stated that with a PUD or a conditional use, whichever way the commission goes, he stated that all these things should happen anyway. He advised that they should do all the things that they are responsible for developing. Mr. Reed stated that with a PUD it gives the Commission all the regulations upfront.

Mr. Nutter stated that this had been wonderful discussion tonight and talking about making a narrower focus that a PUD handles. He advised that with a PUD the Commission would not have to change all of the districts, they could just go with the PUD. Then the Commission can be as narrowly or widely focused as they choose. Mr. Nutter stated PUD's in his experience are used for large and small tracts; his first was 432 acres and he has revised it twice.

Mr. Zweber stated that the questions that was asked was about whether the applicant just wanted to do what he says he wanted to do then would the folks in opposition be opposed, he believes the answer to this is probably not. He stated that he did not get the sense that there was no way Store & Locks were going to work on that property. He asked the opposition if their position was that it was too hard for Store & Locks to work on that property. Mr. Reed stated that they are not opposed to the use of a Store & Lock, but they are concerned that someone could come along and build a five-story building without any screening, but if it is responsibly built and good construction standards, and it was aesthetic, then he does not believe his client would be opposed to it. Mr. Nutter agreed with Mr. Reed. Mr. Zweber stated that this answer does not help him because it brings up the third choice.

Mr. Zweber stated that if they look at the application as presented, then Mrs., Randall is opposed to it and two concerns from two other commissioners. He stated that they were all here a year ago, with these same five people and the approval only got two votes. Mr. Zweber asked the three commissioners that voted no last time how they could get good looking Store & Locks on this property. Mr. Zweber advised that they are only recommending and this is more flushed out for the township Trustees than perhaps it was last time. So, no matter how the vote comes out tonight it still goes to the Trustees. He advised there have been multiple application on this property and there has still not been any progress.

Mr. King asked if it would be wise to ask the applicant if he was willing to withdraw his application and reapply as PUD. Mr. Foiles stated that he was not willing to do that at this time. He stated that he would rather have a vote. Mr. Harbison asked whether the PUD would also go with the land or just the current owner. Mr. Zweber stated that however they change it, the change stays with the land.

Mrs. Randall stated that she still thinks this should be added to the conditional uses. Mr. Zweber stated that is something that more or less they will get to separate from this meeting. Mrs. Randall advised that they could continue this meeting until the text was changed for Agricultural conditional uses. Mr. Zweber stated that would get them to a resolution. Mr. Stock asked if there could be a five-minute recess and Mr. Zweber stated that they would take five minutes.

Mr. Zweber stated that they were back from the recess. Mr. Zweber asked Mr. Ferguson if he had any insights of a way out of this mess or a solution to getting good looking Store & Locks on this property. Mr. Ferguson stated that he was not sure how they could get there. He advised that if it is passed tonight and it is sent to the Trustees and they turn it down can Kil Kare go to the BZA. Mr. Zweber stated that no Kil Kare could not do that.

Mr. Zweber stated that he was looking at his two swing votes to see which way they were leaning. Mr. Ferguson stated that they should pass it onto the Trustees and let them worry about it. Mr. Ferguson added that they can add Store & Locks as a conditional use not only to Agricultural but also to B-2. Mr. Zweber agreed. Mr. Zweber stated that he agrees with Mr. Stock that amending the text in any districts does not get them out of this particular issue in a timely manner.

Mrs. Randall asked if the Kil Kare area was a planning area in the Land Use Plan. Mr. Zweber stated that yes, it is and he had mentioned that and showed her a map from the Land Use Plan.

Mr. Zweber stated that he does not see where more time is going to be any help. He stated that based on the applicant saying that he does not want to apply for a PUD at this time, then he thinks they are going for a yes or no on the application. Mr. Zweber advised that he thinks everyone seems to be ready and all agreed.

Mr. Zweber stated that he will make his motion and expects everyone to explain why they voted the way they did.

Mr. Zweber moved to approve the rezoning application of 1166 Dayton-Xenia Road, Kil Kare, Inc., Parcel # M360001001600004500 from the Agricultural zone to the B-3 Highway Business District. Virgil Ferguson seconded the motion. Mr. Zweber advised that he was voting for the motion and that he feels that most of the uses in B-3 are appropriate uses for this with the other regulatory features that are in the code in terms of lighting and parking, in the Building Department, Health Department and soil and Water, so whatever comes in there are sufficient protections to address all of the other uses. He was also taking the applicant at his word that he would build Store & Locks, and he will have to apply for a conditional use and through that process the specific issues would be handled by the BZA. Mr. King stated that he listed his pros and cons earlier and the only thing he sees on the list as an issue would be a bar but he does not feel that would be appropriate for that area. This has not been farm land for a long time so he intends to vote in favor. Mrs. Randall stated that she is against the motion for all the reasons she stated earlier. Mr. Ferguson stated that without sewer and water they could not build any of other uses on this parcel so he is planning to vote in favor. Mr. Harbison stated that he is planning to vote yes. ROLL CALL: Mrs. Randall – nay, Mr. Ferguson – aye, Mr. Harbison – aye, Mr. King – aye, Mr. Zweber - aye. Motion passed by roll call 4-1.

Mr. Zweber confirmed the vote was 4-1 to recommend approval of the application to the Trustees. Mr. Zweber asked if there was any other business for this meeting seeing none he moved adjourn the meeting.

Mr. Zweber made a motion to adjourn, seconded by Mr. Ferguson. ROLL CALL: Mrs. Randall – aye, Mr. Ferguson – aye, Mr. Harbison - aye, Mr. King – aye, Mr. Zweber - aye. Motion passed by roll call 5-0. Meeting adjourned at 9:50 p.m.

ATTEST:

Alan D. Stock, Zoning Clerk