

**XENIA TOWNSHIP BOARD OF TRUSTEES**  
**PUBLIC HEARING**

June 2, 2016

**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 Board of Trustees held a meeting on June 2, 2016 at 6:00 p.m. at the Xenia Township Trustees Office, 8 Brush Row Road, Xenia, OH, 45385 with the following members present:

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

Mr. Miller called the meeting to order at 6:00 p.m. He shared that the hearing was to discuss the rezone of Kil – Kare from AG to B-3.

Mr. Miller asked for all attendees and guests to stand for the Pledge of Allegiance. All participated in the Pledge of Allegiance.

Mr. Miller said that this public hearing was being held for a zoning map change for a particular parcel of land owned by Kil – Kare. He said the request was to go from AG to B – 3. Mr. Miller explained that it is the front portion of the parcel. He said that the parcel would be discussed further in a moment. Mr. Miller asked that all comments are directed specifically at the request and not at a particular group or person. He shared that decisions will be made based on what is presented to the Trustees. He said that the Trustees will listen to the request, and then hear comments made both in favor and against. Mr. Miller said that once the public comments have all been heard, then either during this meeting or in a continuation, the Trustees will have a chance to deliberate and ask for additional information if needed. Mr. Miller gave the requestor the floor.

Marshall Foiles, representative of Kil – Kare Incorporated, said that what they are asking for is for the parcel of land in front of Kil – Kare to be rezoned to B – 3. He said that their plan is to go to the Board of Zoning Appeals to have store – in – locks put up. What they are looking for is monthly revenue, month after month and not just a seasonal income. Marshall Foiles informed that this was the first step in the process. He said if there were any questions to feel free and ask.

Mr. Combs said that he noticed that the exit for Kil – Kare splits the parcel in question, and asked if there was any interest in moving that.

Marshall Foiles, representative of Kil – Kare Incorporated, said probably not. They want to get rid of the trailer in the front and utilize that particular area.

Mr. Combs asked if they were going to have units on both sides.

Marshall Foiles, representative of Kil – Kare Incorporated, said that they were not sure. He said that he really wish that he could answer that question, and that they are in the process of getting parts rezoned in the Beavercreek Township, and they may just do it all over on one side if there

is enough room. He said they definitely want to keep the entrance there because it solved the traffic problems on Dayton – Xenia Road.

Mr. Miller said to describe the boundaries of what is being discussed in general terms, he asked if it was going to run from the bike path down to the road.

Marshall Foiles, representative of Kil – Kare Incorporated, answered and said yeah, and that the parcel is broken out by the bike trail.

Mr. Miller said that the request was for B – 3, which is more encompassing than just the request. Mr. Miller asked what the thought process was.

Marshall Foiles, representative of Kil – Kare Incorporated, said that you have to be zone B – 3 to build store – in – locks, which is a conditional use of B – 3. Marshall Foiles stated that this is the first step in making that happen, so that is where the thought process was. He stated that they could put other things on the parcel if it was to be rezoned to B – 3, but they have no interest in doing so and are not even sure when the store – in – locks would get placed, they are just following the necessary processes.

Mr. Miller asked for any questions.

Mr. Combs stated that the only problem with B – 3 zoning is that it would allow Kil – Kare to do any number of things.

Marshall Foiles, representative of Kil – Kare Incorporated, said that that is not their intent, and that a question that may come up is whether or not anything in B – 3 zoning is conducive to the area the parcel is in.

Mr. Miller asked for any further comments. There were no further comments. Mr. Miller asked for any public comments in support of the project. There were none. Mr. Miller asked for any comments against the project.

Nick Pieczonka, Counsel for Mary and Bob Nutter, stated that it is their position that the Board of Trustees follows the recommendations of both the Planning Commission and Zoning Commission to deny the application. He said the Board's duty is to serve the best interest of the community as a whole and not just the applicant. He said Kil – Kare's rezone runs counter to that duty. He said that the application serves only the interest of Kil – Kare. Nick Pieczonka stated that there is no justification under Ohio law to rezone a parcel for the sole purpose of an applicant. He quoted Baldwin's Ohio Handbook Series on Ohio Zoning and Planning. He read that the rezoning of any single parcel is only justified when it is done in furtherance of a general plan adopted and designed to serve the best interests of the community. Nick Pieczonka read section 400.1 of the Zoning Resolution. He said that there is even further reason to deny the rezone because Kil – Kare has not presented any plans or details regarding the intended use. He said that applying for the rezone was not the first step of the process, but rather drawing up plans so that the Board can see exactly what you plan to do. He said that with B – 3, who knows what they could do. Nick Pieczonka said that Kil – Kare said that they eventually intend to build store – in – locks, but their plans could change and they could put something else there that follows the B – 3 zoning regulations. He said that the community's best interest lied in conserving the

land. Nick Pieczonka said that the land in question is also not suitable for the B – 3 rezone right now. He read that under section 408.1 of the Zoning Resolution, B – 3 zones should be put in places with public utilities readily available. He stated that water and utility services are not in place at this time, and there are no plans to have them installed in the future.

Mrs. Spradlin asked Nick Pieczonka if he was the one who dropped of the packets given to the Board of Trustees. He confirmed that someone from his office dropped them by.

Mrs. Spradlin said that she had not yet had a chance to look at it.

Nick Pieczonka, Counsel for Mary and Bob Nutter, said that the packet contained a lot of what he had gone over. He said that he did not think that the Board of Trustees would all have a chance to read it because it had just been brought by that day.

Mr. Miller asked if anyone else would like to speak.

Les Pitstick, 1387 Champious Way, shared that he had sent a letter and is interested in the area, but that he was more interested in the fact that he has an office located at 1400 Dayton – Xenia Road west of Kil – Kare that is currently being rented. He believes the area between Trebien and Hawkins Road has a lot of great potential, and he is greatly interested in what is going to happen. He said that he thinks that it would be smart in the long term sense of the Board of Trustees to maintain control over what goes in in that area.

Mr. Stock said that the Trustees each had a copy of the letter in their packets. He said this letter was exhibit A.

Mr. Miller said that there have been a few letters submitted, including Les Pitstick's. He informed that Les Pitstick's letter was received May 23, 2016. He said that the Trustees have another letter from Thomas Betterman which was received here on May 25, 2016. Mr. Stock said that that letter was exhibit B. Mr. Miller said there was another letter from Glenn Vull received on May 27, 2016. Mr. Stock said that this letter was exhibit C. Mr. Miller said that the packet from Nick Pieczonka was received June 2, 2016. Mr. Stock said that this was exhibit D. Mr. Miller said that in addition; Greene County Regional Planning submitted a recommendation. Mr. Stock said that this was exhibit E. Mr. Miller apologized for not reading those out ahead of time and said that anyone else that would like to speak in opposition of the request could.

Bob Nutter, of 925 Hilltop Road, said that he recognizes the need to stay on point, and the point here is whether or not Kil – Kare is going to do what they said they intend to do or not. Bob Nutter said that he has had a lot of experience with Kil – Kare from afar and said that they have never done anything they said they were going to do. He said that Kil – Kare said they were going to shut down at a specific hour, but they do not. Bob Nutter said that everyone was aware of the sound issues. Bob Nutter said that what it amounts to is that if you give the B – 3 rezone, you are giving people who have already proven they are unreliable another opening. He said that what is being talked about here is basically the gateway to Xenia. Bob Nutter said that if you wanted a good example of what they feel is okay, you could drive by Kil – Kare and see. Bob Nutter said the last 5 or 6 years you could find the dilapidated trailer out front. He said that he does not see them as people that will follow through with what they say without proper guidance. Bob Nutter said that when he wants to start forth on a project, there are many hoops he has to

jump through, the first requiring a PUD to be given to the Board of Trustees so that they have the ability to grant the request. He said that a proper site plan is needed, and before the site plan can even be drawn up, utilities need to be in place. He believes now is a good time to start requiring site plans first before a request to be made in the Xenia Township, and he said that he is speaking in terms of what has been allowed through in the past. He said that he was told by Kil – Kare that he should not live in the region because he built his home after Kil – Kare had already been placed, but he said his home is 1,000 feet away. He said that he should not be experiencing as much noise as he is 1,000 feet away. Bob Nutter advised that the Board of Trustees have received sound studies in the past that showed people have sustained damage from the noise levels coming from Kil – Kare.

Mr. Miller asked for any further comments.

Marshall Foiles, representative of Kil – Kare Incorporated, said that he just wanted to speak on the comments made about the sewage and water. He said that there are checks and balances in place in the system that if Kil – Kare wanted to build something that required sewage and water then the County would stop them from getting the building permit. Marshall Foiles referenced a parcel of land located across from Knickerbocker Pools and said that it is zoned B – 3, which is the same as what they are asking for, and it has store – in – locks build on it. He said that those store – in – locks do not have sewage and water. He advised that this was not something new to the Township; it is just in a different place. Marshall Foiles informed that the checks and balances in place would prevent them from building many of the things allowed under B – 3 zoning because Kil – Kare would be unable to get a zoning permit.

Mr. Miller asked if there were any final comments from anyone. There were no further comments. Mr. Miller asked if there were any questions about the public comments made. There were no further questions. Mr. Miller made a motion to close the public comments section of the hearing, Mrs. Spradlin seconded. Roll Call: Mr. Miller – Aye, Mrs. Spradlin – Aye, Mr. Combs – Aye. The motion was passed by a roll call of 3 – 0, the public comments section was closed.

Mr. Miller advised that this gives the Trustees the time to deliberate and discuss what they have heard and been given. Mr. Miller said that the first part he wanted to discuss was the document given to the Trustees by Nick Pieczonka. He informed that he had not yet had a chance to read it, and that he wanted to make a request to continue the Public Hearing so that he would have the time to look it over. He said that if any of the other Trustees had comments or questions they could ask.

Mr. Combs agreed that it would have been helpful to receive the packet sooner. He advised that he had read all of the letters the Trustees were given and looked them over with the exception of the packet. Mr. Combs advised that he keeps hearing comments made about sewage and water, but he does not see how that plays into building store – in – locks. Mr. Combs said that he did not feel it was necessary to have sewage and water for a store – in – lock. Mr. Combs advised that if this was a more complex development then he could see why sewage and water would be necessary. Mr. Combs stated that from the noise standpoint, the store – in – locks could create more traffic in the area but generally speaking store – in – locks usually are not a nuisance because of loud sounds. Mr. Combs shared his concern with the B – 3 zoning and the lack of checks and balances in terms of what Kil – Kare may put on the parcel. He shared that he likes to take people for their word but has learned that that is not always possible. Mr. Combs addressed

the comment made about the rezone effecting Agricultural business and said that to his knowledge, the parcel in question has not been used for agricultural purposes for quite some time. He said that if we compare the foot prints being left on the land between the development in Stonehill and Kil – Kare, he said that we can see that there is less of a mark left behind.

Bob Nutter, of 925 Hilltop Road, asked if they would have 250 acres of green space.

Mr. Combs advised that he did not believe they owned 250 acres.

Bob Nutter, of 925 Hilltop Road, asked if 25% of the property would be in green space.

Mr. Combs was unsure. Mr. Combs stated that he was just commenting that Stonehill makes the bigger footprint. He also said that his concern is only with the B – 3 zoning, and that it is nothing personal. Mr. Combs said that what is being talked about is store – in – locks so that is what needs to be built out there, and he felt that the Board of Trustees needed some form of control over making sure that is what actually happens.

Mrs. Spradlin apologized for not being able to read the packet given by Nick Pieczonka due to the lack of ample time. Mrs. Spradlin stated that she would not consider viewing the packet which Mr. Pieczonka prepared and had dropped off 2 and ½ hours prior to this hearing as this had been scheduled for at least 30 days prior. Mrs. Spradlin acknowledged that not everyone is going to be completely happy. Mrs. Spradlin said that we have a good Zoning Board that reviewed the rezone and raised good questions, comments, and concerns. She said that one of Donna Randall's concerns, a member of the Zoning Commission, was the list of the structures including gas stations and restaurants that are allowed under B – 3 zoning that Kil – Kare management could build if they decide to change their minds on the store – in – locks. Mrs. Spradlin advised that she had some of the same concerns with the B – 3 zoning. Mrs. Spradlin said that she heard the request was for store – in – locks and she thinks that is a good idea, and does not see a better place for storage space because it will benefit the racers at the Kil – Kare track. Mrs. Spradlin advised that both the Zoning Commission and Greene County Regional Planning do not think the rezone is a good idea. Mrs. Spradlin said there have been many complaints from neighbors. She said she heard comments about Kil – Kare having been built before many of the homes around it, so the people living there should deal with the noise. Mrs. Spradlin informed that Kil – Kare has been in operation since 1951, and used to have a train that ran through the park. She said that people would get off the train and spend time there relaxing. She advised that it was a relaxation spot and place of enjoyment. She advised that before people did not mind Kil – Kare was there, and many just came to enjoy and relax. Mrs. Spradlin said that in light of this, she believes that each entities rights are just as important regardless of how long they may have been around. Mrs. Spradlin said that both the rights for peace and quiet and the ability to enjoy a hobby should be given, and that there has to be a way for both sides to work together so there is only a little bit of a sting on both sides. Mrs. Spradlin said that she does not have a problem with the store – in – locks themselves, but she does have a problem with giving Kil – Kare the whole range of B – 3 zoning. Mrs. Spradlin advised that she has done extensive research and found that storage units can be built if it is zoned under PUD. Mrs. Spradlin said PUD zoning will not allow the other structures that are cause for concern. Mrs. Spradlin said that she agrees with Mr. Combs on wanting to take people at their word.

Mr. Combs said that he is also a representative of Xenia Township at the Greene County Regional Planning meetings, and that he was at the meeting the night that the Kil – Kare rezone was recommended to be denied. He said that from what he could tell the sole reason for the denial was the lack of water and sewage. He said that he agreed with Mrs. Spradlin, and said that if they wanted to build the store – in – locks, they needed to go about it in a better manner.

Mr. Miller advised that noise does not pertain to this request, and he said that he could not see how store – in – locks could create a noise issue. Mr. Miller said that in that respect he does not put a lot of credence in the noise portion of the argument against. He said that he heard a comment from Les Pitstick that mentioned they owned a business nearby Kil – Kare and they were concerned with the look and feel of the area. Mr. Miller said that a business is built in and inviting atmosphere that is conducive to the type of business is being run and is in a good location to get business in. Mr. Miller said that he looked at the business mentioned and he said the he believed Les Pitstick had done just that. Mr. Miller said that he did not feel water and sewage played a part in what was needed here. Mr. Miller agreed that not having water and sewage would prevent Kil – Kare from building many of the things allowed in B – 3. Mr. Miller said the he understood the request being made, and said that while B – 3 is broader than what is being asked, he felt that there are other checks and balances in place to help restrict that. Mr. Miller said that he had nothing further to share, and said that unless the other two Trustees had anything further to share; he would like to request a continuance of the hearing to another date.

Mrs. Spradlin advised that she wanted to share one more item. Mrs. Spradlin said that zoning B – 3 could allow for another Cruise Fest to happen, not that it would, but it gives Kil – Kare the capability.

Mr. Miller asked for anything further. There were no further comments from the Trustees. Mr. Miller requested that the Hearing be continued to another date. Mr. Miller advised that there was another Public Hearing schedule for the next meeting on June 16, 2016. He proposed that he continuance be held July 7, 2016 at 6:00 p.m.

Mrs. Spradlin asked why Mr. Miller wanted to continue the hearing.

Mr. Miller advised that it was because he wanted a chance to look through the packet Nick Pieczonka had given them.

Mrs. Spradlin pointed out that there was notice 30 days prior that the meeting was going to happen and when, and that there was plenty of time to get the packet to the Board of Trustees instead of handing it in 2 and a half hours prior.

Mr. Combs advised that Nick Pieczonka had said that the statement he gave summed up the packet given to the Board of Trustees, and asked Nick Pieczonka if there was anything he wanted to add. He had nothing further to add. Mr. Combs asked if Mr. Miller still wanted to have the continuance since it was confirmed that the statement made summed up the packet.

Mr. Miller said that he wanted to look into it personally.

Mr. Combs said that he did not feel he needed to read the packet.



Mr. Miller made a motion to continue the Hearing on July 7, 2016 at 6:00 p.m. The motion died to lack of a second. Mr. Miller asked if the other Trustees were ready to make a decision. Mr. Combs and Mrs. Spradlin confirmed they were. Mr. Miller clarified that all motions be made in either a positive or negative connotation, meaning a motion to approve or deny.

Mrs. Spradlin said that the Zoning Commission met and sent their recommendation to the Board of Trustees, which was a denial for the rezoning of Kil - Kare to B - 3. Mrs. Spradlin made a motion to accept the recommendation.

Mr. Miller requested that the motion be either in the terms of an approval or denial.

Mr. Combs seconded Mrs. Spradlin's motion to accept the Zoning Commission's recommendation for the denial of the Kil - Kare rezone to B - 3. Roll Call: Mr. Miller - Nay, Mrs. Spradlin - Aye, Mr. Combs - Aye. Motion was carried 2-1.

**RESOLUTION NO. 2016-117**

Mr. Miller asked if there were any further questions and if everything was clear.

Mrs. Spradlin asked if there was any way that they could try to get the rezone under PUD and not B - 3 without having to reapply or go to the Board of Zoning Appeals.

Mr. Stock said that voting this down locked them out of a zoning change for 365 days.

Mrs. Spradlin asked if this was the case even if they went through the Board of Zoning Appeals.

Mr. Stock said that Kil - Kare could ask the BZA a variance on agricultural use for a specific use, but they cannot ask for a rezone.

Mr. Miller asked for any further questions. There were none. Mr. Miller made a motion to adjourn the Public Hearing, Mrs. Spradlin seconded the motion. Roll Call: Mr. Miller - Aye, Mrs. Spradlin - Aye, Mr. Combs - Aye. Motion was passed 3 - 0. The Public Hearing was adjourned at 7:49 p.m.

2016-136  
Resolution #

6-16-16  
Date Approved

ATTEST:

Sheila Seiter  
Sheila Seiter, Fiscal Officer

XENIA TOWNSHIP BOARD OF TRUSTEES  
Scott Miller  
Scott Miller, Chair

Susan Spradlin  
Susan Spradlin

Steve Combs  
Steve Combs

