

**XENIA TOWNSHIP BOARD OF ZONING APPEALS**

**August 6, 2012**

**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.**

Board of Appeals members present: Don Harner, Ken Penewit, Charles Bingamon and Ed Jacobson, Chair. As well as Stephanie Hayden of the Prosecutors Office; Trustee Jim Reed; see list

Ed Jacobson called the meeting to order at 7:08 P.M. He presided at the Hearing and welcomed the people in attendance. He went over the rules of the meeting. All cell phones to be turned off. Everyone must sign in. The application will be read by the Zoning Administrator. 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, 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. Under ORC 2506.04, aggrieved individuals may appeal the decision to Common Pleas Court. The audience joined the Board in the Pledge of Allegiance. Jacobson swore in the audience. He asked that everyone in the audience who wishes to participate, to raise their hand and swear to tell the whole truth and nothing but the truth so help you God. Jacobson asked Alan Stock, zoning inspector, if the applications are lawful to be heard by the Board and if all advertisements and notices had been made, and she replied affirmative to both.

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

Jacobson: Read a brief summary of the requests from Kil-Kare. At a recent meeting on March 27<sup>th</sup>, the Xenia Township Board of Zoning Appeals granted Conditional Uses for 1 parcel of Kil-Kare. Kil-Kare is requesting additional Conditional Use Permits for 11 more parcels, to essentially include the entire complex.

Hayden: Stated an application was received in the spring by the Xenia Township Board of Zoning Appeals for Conditional Use Permit for Parcel ID # M3600010016000200, approximately 36.2 acres. They are requesting the same expansion and same usages for 11 additional parcels. They are Parcel ID #'s:

M36000100150003200; M36000100160003500; M36000100160002900; M36000100160004000;  
M36000100160003800; M36000100160002800; M36000100160005400; M36000100160005500;  
M36000100160004600; M36000100160004500; M36000100160000400

One Parcel ID#: M3600010016000400 has been removed from the list because it is legally owned by the Greene County Commissioners.

---

The Parcels listed are either owned by Kil-Kare or by 1030 Dayton Xenia Road, LLC.

Hayden then read a list of the permitted conditional uses:

1. Carnival and amusements, rides, merchandise and food vendors
2. Music festivals for Bluegrass, Doo-Wop, 60's, 70's and 80's music
3. Haunted Trail
4. Lighted Christmas walk with horse drawn carriage rides
5. Motorsport swap meets with merchandise and food vendors
6. Truck and tractor pulls

Jacobson asked about the conditions for approval passed in March.

Hayden read the conditions required for granting the Conditional Use Permit in March. They are as follows:

1. Kil-Kare, Inc. shall provide a schedule of events to the Xenia Township Zoning Inspector to include specific date of activity, duration of activity (including times and number of days), and estimated attendance no less than 60 days prior to any event scheduled to occur on or before August 1, 2012 or 90 days for any event held thereafter.
2. Each activity will be coordinated and approved in writing by all potentially impacted agencies that service Xenia Township, including the Greene County Sheriff's Office and the Xenia Township Fire Department, 30 days prior to the event to ensure a safe and compliant atmosphere. Kil-Kare, Inc. will have the number of law enforcement and/or fire department personnel on site as determined to be required by the Greene County Sheriff's Office and/or the Xenia Township Fire Department. Kil-Kare, Inc. will be required to pay any costs associated with this additional manpower as billed by those agencies. Additional support will be provided by Kil-Kare, Inc. as requested and approved by the requesting agencies.
3. Traffic flow (including facility entrance, exit and parking) will be coordinated and approved by the Greene County Engineer.
4. All necessary permits, licenses and the like will be obtained from the Greene County Combined Health District, Greene County Department of Building Regulations or any other required licensing agency for each event.
5. All events scheduled to occur Sunday – Thursday will be completed by 10:00 PM; all events scheduled to occur on Friday or Saturday will be completed by 12:00 AM (midnight); any music festival will be completed by 7:00 PM, regardless of on what day of the week it occurs, unless prior written approval is obtained from the Xenia Township Zoning Inspector.
6. Kil-Kare, Inc. shall provide copies of appropriate liability insurance for scheduled events.
7. Any scheduled activities involving children will have appropriate supervision.
8. Site and activities will be inspected by the Xenia Township Zoning Inspector frequently. Failure to comply will result in the immediate removal of these Conditional Uses.
9. Kil-Kare, Inc. shall ensure adequate access to the facility to all emergency vehicles at all times.

10. Kil-Kare, Inc. shall comply with Xenia Township Zoning Resolution Section 517.1(G)(5), which provides: "Special event signs and temporary rental signs shall be permitted for a period of thirty (30) days prior to the event for advertisement purposes only. The sign shall not exceed 32 square feet in size and must be placed at the site of the event only. No other sign will be permitted along roadside or other sites. A temporary sign permit shall be required. All signs must be removed the day after the close of the event."
11. These conditional uses apply to the property. Any change in property ownership, corporate name, organization type or structure does not negate the necessity of complying with the above outlines conditions as they relate to the conditional uses granted herein .

Jacobson: Stated there was a new audience tonight. He stated that two letters were received stating concerns for the expansion of the conditional use. He asked that the representative for Kil-Kare, Inc. take the podium first to explain the plan, and that the people who submitted the letters or have concerns take the podium afterwards to express their views.

Marshall Foiles, Vice President of Kil-Kare: Explained his desire to make Kil-Kare a family, fun venue. He states that Kil-Kare has complied with all the conditions put forth in the Conditional Use Permit. He states there are more Sheriff's Department officers present. He states they have had very few problems this year. Traffic is running smoothly with a few exceptions and plans have been approved by Bob Geyer to help alleviate the traffic backup onto Dayton-Xenia Road. Any problems have been addressed and handled promptly.

Jacobson asked that anyone who has questions please take the podium or if they speak loudly, they may ask questions from their seats.

Robert Scott: Asked if there was going to be an expansion of the race tracks. He also asked for a clarification of the Parcel locations on the map.

Foiles: Clarified the boundaries of the map. He showed the locations of new entrance and parking on the map. He also stated that most dirt roads have been paved to reduce dust in the area.

Vernon and Margaret Stickley: Asked for more property line clarification.

Foiles: Pointed out Parcel lines in answer to the question.

Thomas Sears: Asked for clarification of Parcels to be included in the expansion of the Conditional Use Permit.

Foiles: Stated he has surveys of the property lines.

Terrie Scott: Asked questions regarding any amusements and where they would be located. She asked if any amusement structures would be permanent.

Foiles: Stated that there would not be permanent structures built on the parcel. He also stated most amusements would be located on the southern parcels to reduce noise for the homes located nearby.

A question was raised regarding tractor pulls and revving engines.

Foiles: There may be such events once and twice a year.

Stickley: Questioned increase in noise

Foiles: Does not believe there would be an increase over the existing noise level.

Phil Filson: Stated his concern that granting the additional Conditional Use Permit would allow Kil-Kare to make use of any parcel for any granted use. He has concerns regarding the noise. He asks that the number of Parcels granted Conditional Use Permits be limited.

Foiles: States that there are already limits for hours of operation that were put in place when the Conditional Use Permit was granted in March. He states they have been obeying the rules. There would be a process to change the usage of the land. He does not believe there would be an increase in noise.

Richard Chrysler: Has issues with the driving of patrons leaving the area. Patrons speed and spin their tires. Also, the noise on Sunday morning begins far too early.

Foiles: States that the Sheriff's Department has increased patrols in the area to cut down on driving problems of patrons leaving the area. He states that Kil-Kare cannot be responsible for activity after patrons leave, but that he is working closely with the Sheriff's Department to stop any problems. He states there are some events scheduled for Sunday.

Robert Nutter: How loud can the decibel level be for Kil-Kare? States Kil-Kare is a lousy neighbor. He also has issues with lighting from Kil-Kare. There is a problem with noise on Sunday morning.

Foiles: Does not have the specifications for the area. He will look into the noise starting early on Sunday morning.

Dean Fox: Questioned safety and EMS presence in the area.

Foiles: Stated there are emergency personnel on site at all events and that two ambulances are onsite also.

Jacobson asked if there were any more questions.

Hayden: Asked if they have used Kil-Kare for any of the granted Conditional Uses.

Foiles: Replied they had not had any of the granted conditional use events as of yet and the noise was a result of regular race track operation.

Jacobson: Asked that anyone with concerns come to the podium to address the concerns with Marshall Foiles.

Thomas O'Diam: Attorney for the Nutter family. States the Nutter family own approximately 1200 acres in the planned community of Stonehill Village. He did submit a letter with his concerns. There is a huge concern with the noise issue. He stated the prior resolution did not address the noise associated with start times only the ending times. Noise is a major issue and to expand the uses for Kil-Kare would only compound the noise problem. He states that he was present on the Nutter family patio during an event at Kil-Kare. He did have a decibel meter with him at that time. The decibel meter registered a reading of 92 decibels at the Nutter home which is ¼ mile away from Kil-Kare. They could hear every word from the loud speakers at Kil-Kare. The Zoning Code states that loud speakers should not be heard beyond the building. He states the Zoning Code prohibits Conditional Uses that would have an adverse effect on the neighborhood. The only granted Conditional Use that does not increase noise is the winter walking trail. He feels that the application should be denied. He feels it is not in compliance with the Zoning Code. He states it is not wise to expand something that is already a problem. He feels there needs to be a comprehensive noise study

Jacobson: Thanked Mr. O'Diam for his comments. The noise associated with a race track was grandfathered in. He asked for any other speakers who would like to voice their opinions.

Thomas Sears: States he is under oath. He has been going to Kil-Kare since the 50's. Boards may only grant Conditional Use for allowed uses. He has had much experience with festivals and fairs. He believes noise and traffic will be a problem. He believes that the Conditional Use Permit should not be granted. There are people living on the property in trailers which is not allowed. The noise and problems at Kil-Kare affect the entire county. There is a negative history with Kil-Kare. He believes there have been deceptive practices used by the new shareholders of Kil-Kare. He believes the Conditional Use Permit that has been granted goes beyond the scope of the Board.

Jacobs: Asked for any further comments.

Nutter: Acknowledges he is still under oath. Nobody is aware of the specific plans for the Kil-Kare expansion. He also requests a sound study. He believes that Kil-Kare has lied in the past. They have not been a good neighbor. He is interested in hearing what was "grandfathered in."

Hayden: Stated that there was an agreement that the noise from Kil-Kare end by midnight. The noise associated with a race track was "grandfathered in."

Sears: Would like to see the text of previously granted conditional uses.

Jacobson: Not sure of what is being asked. Asked for clarification.

Hayden: Stated that Mr. Sears wants the resolution reviewed for legality. She asked that the current resolution which was passed be marked as exhibit A; the letter from Mr. O'Diam, Nutter family attorney, be marked as exhibit B, and the email to Alan Stock, Zoning Inspector, received from Lucinda Jett be marked as exhibit C. Hayden clarified the process of the Boards decision making in response to a question regarding procedure.

Motion was made by Charles Bingamon and 2<sup>nd</sup> by Don Harner to go into executive session at 8:25 P.M. , returned back into session at 8:57 P.M.

There will be a work session concerning the Conditional Use expansion on August 9. 2012. The work session will begin at 1:00 p.m. with the Board going into Executive Session until approximately 2:30 p.m. At 2:30 p.m. a Public Hearing will be held to announce the decision of the Board.

There being no further business, Motion to adjourn was made by Charles Bingamon and 2<sup>nd</sup> by Ken Penewit.

Meeting adjourned at 8:58 P.M.

ATTEST:

---

Alan Stock  
Zoning Inspector