

Ch. Calabro called the September 8, 2021 regular meeting of the Board of Zoning Appeals to order at 7:02 p.m.

Ch. Calabro noted that this meeting is being taped for transcription purposes only and the written minutes and attachments, if any, will serve as the official record of this meeting.

Roll Found: Calabro, Hoop, Zeleznak, Mainzer and Budd with Alternates Schaefer and Wolny present.

Also in the audience: Trustee Burns and Zoning Inspector Wilson

Ch. Calabro stated that Mr. Wolny is recused and Ms. Mainzer is in the audience. Mr. Schaefer moved to a voting member for today's meeting.

Ch. Calabro stated that on behalf of the virtual audience, we ask that the public joining us in person approach the podium in the event they would like to speak, they should announce their name and address prior to speaking and we ask the audience to save any personal conversation for after the meeting as additional voices cause confusion for those attending virtually.

Ch. Calabro stated that they have two sets of minutes to approve.

Ch. Calabro asked if everyone had a chance to review the minutes from the Regular Meeting of August 11, 2021. All answered yes to received. She asked if there were any questions, comments, additions or deletions. There were none.

Ch. Calabro asked for a motion to approve the minutes from the Regular Meeting of August 11, 2021. Mr. Budd moved and Mr. Hoop seconded. There was no further discussion. The Board was polled and all were in favor.

Ch. Calabro asked if everyone had a chance to review the minutes from the Public Hearing for Pettry – Buzzard Cove Scream Park from August 25, 2021. All answered yes to received. She asked if there were any questions, comments, additions or deletions. Mr. Zeleznak reviewed his changes which were noted on the final copy of the minutes.

Ch. Calabro asked for a motion to approve the minutes, as amended, from the Public Hearing for Pettry – Buzzard Cove Scream Park from August 25, 2021. Mr. Zeleznak moved and Mr. Budd seconded. There was no further discussion. The Board was polled and all were in favor.

Ch. Calabro stated they have an agenda item in response to a letter received from Todd Hunt regarding the Tire Max Conditional Use Request AP0255 which was voted on July 28, 2021. Ch. Calabro asked if everyone received a copy of the letter and everyone stated yes. Ch. Calabro stated that Mr. Hunt is

asking the Board of Zoning Appeals to reconsider its vote of July 28 and to re-hear the case at this meeting. Ch. Calabro stated that what they will do is have a discussion regarding the consideration and they will not be able to re-hear the case this evening, and then they can take a vote if they want to reconsider it. Ch. Calabro stated if they do, it will be heard at the next Public Hearing or at a Special Meeting date that they would determine. Ch. Calabro asked Mr. Hunt to step up to explain his reasons for his reconsideration request.

Mr. Hunt stepped to the podium and thanked the Board members. Mr. Hunt stated he was brought in late to this matter, he represents both Tire Max of Ohio and Emil Wolny Properties, LLC the owner of the property. Mr. Hunt stated that when he read the minutes from July 28 he did not have a clear understanding of what services were going to be offered at this particular proposed facility and he stated he didn't think it was very clear. Mr. Hunt stated that some of the Board members had tried to put into evidence some findings that they had made. Mr. Hunt stated he would like the opportunity for his client to present clearly and concisely exactly what services are going to be provided and he feels that those services fit within the Township Zoning Resolution and the definition of Automobile Service Station. Mr. Hunt stated the other really important thing is that at a previous meeting before July 28, the Board requested a consultant's report and that report that Mr. Hunt and his client got was several days after July 28 and they saw that the consultant had at least made a finding conclusion that Mr. Hunt thought was favorable to his client to the types of services that were being provided that fit within the conditional use provisions of the Township Zoning Resolution. Mr. Hunt thought it would be important to put that into evidence in support of their application. Mr. Hunt stated those are the two reasons he is putting forth for reconsideration and he is asking that the Board move this evening to reconsider and that it's fine to set a new hearing. Mr. Hunt stated that he has a deadline of Friday that he has to file in Court an administrative appeal of the July 28 decision and he prefers not to do that, but he will have to do that on behalf of his clients if this is not reconsidered.

Ch. Calabro apologized for not swearing in Mr. Hunt and then Mr. Hunt was sworn in accordingly. Mr. Hunt stated he certifies everything he said prior to being sworn in is the truth.

Mr. Hunt stated again that those are his reasons for requesting a reconsideration.

Ch. Calabro stated that the reason they cannot rehear tonight is due to timing and Mr. Hunt stated he certainly understands. Mr. Hunt stated he has been a law director for almost 40 years and attends zoning meetings monthly where he is a law director and he represented Townships in Medina County because he has lived here for 24 years.

Ch. Calabro stated that it was said that the Board didn't have a clear understanding of the services that were proposed and this is a use variance and what is new about the use.

Mr. Hunt stated this is a Conditional Use Permit not a use variance. Ch. Calabro asked if there is a significant, substantial change from what was originally presented.

Mr. Hunt stated that when he read the minutes it was not clear exactly what was going to be done here. Mr. Hunt stated maybe part of it was Mr. Lydon's fault and he knows that a couple Board members put their thoughts into evidence. Mr. Hunt stated he would like to clarify exactly what is going to be done.

Ch. Calabro stated the other thing she wanted to address is the OHM Report. Ch. Calabro asked if everyone on the Board received and considered the report as part of their decision and everyone stated yes. Ch. Calabro stated even though they did not mention it during the hearing, in the minutes and it wasn't read into the record doesn't mean they didn't consider it. Ch. Calabro stated that what the report says is up to interpretation to each member.

Mr. Hunt stated that he understands that the Board of Zoning Appeals interprets the Zoning Resolution, but they did hire a consultant to give them advice and an opinion on this and he feels it is important. Mr. Hunt stated he feels the more important thing is they were not provided a copy of that prior to that hearing, which Mr. Hunt stated he feels is pretty important. Mr. Hunt stated it sounds like it was provided to the Board that day because the date on it is July 28 and so he feels this is important that they didn't have the opportunity to present that. Mr. Hunt stated it's not even in the record of the Board of Zoning Appeals.

Ch. Calabro stated that really wasn't part of it and that it was for their consumption to consider in making their decision and Mr. Hunt stated he thinks it was incumbent upon the Township or the Board of Zoning Appeals to provide it to them prior to a decision being made because he does believe it is helpful to them.

Mr. Zeleznak asked Mr. Hunt if he read the minutes from both meetings or just the one. Mr. Hunt stated he believes he saw the minutes from the earlier June meeting and he did look at them at one point, and he thoroughly read the minutes from July 28. Mr. Zeleznak thought it was pretty laid out between the two meetings what the services would be. Mr. Hunt stated he did not get that impression. Mr. Zeleznak stated that looking at the website also lays it out and Mr. Hunt stated that looking at the website does lay it out pretty well. Mr. Zeleznak stated he is just wondering what new interpretation of the services would be brought up for them to re-hear this.

Mr. Hunt stated he doesn't think there is any new interpretation other than what is on the website for the other two stores, that is what this store wants to do. Mr. Hunt stated the issue though is that a lot of those things aren't really done very often, they don't do major transmission work, they don't replace transmissions but they fix them, they just don't have the space.

Mr. Zeleznak stated he thought it was pretty well laid out.

Ch. Calabro stated they will take a vote on it.

Mr. Budd stated they used the documentation submitted, plus the presentation that was made during the meeting to make their decisions. Mr. Budd asked if Mr. Hunt is saying there is a gap between what happened in the meeting and the minutes.

Mr. Hunt stated he is not saying the minutes are not accurate, but when he read the minutes he could not get a clear understanding of what the services would be and he was not sure if the Board could get a clear understanding of what the services would be.

Mr. Budd asked what was lacking in the documentation and Mr. Hunt stated he is not sure the Board actually got a whole list of services on paper which he thinks is important.

Mr. Budd asked if Mr. Hunt is telling the Board that there was information missing from the presentation and documentation. Mr. Hunt stated that there may have been. Mr. Hunt stated the questioning back and forth to Mr. Lydon and the presentation by 2 Board members as to what they had found on their own was very confusing. Mr. Hunt stated he would like the opportunity to clarify that.

Ch. Calabro stated that she thinks what Mr. Budd is trying to say, which she has the same question, is that the Board's issue that they didn't understand what was being presented and Mr. Hunt stated he doesn't think the Board understood what was being presented and part of it may have been the way it was presented.

Ch. Calabro stated that if Mr. Hunt is telling them that there is substantial or significant information that was not presented for them to make an informed decision then Mr. Hunt can either stick with the decision made or they can reapply. Mr. Hunt stated he doesn't think they can legally submit a new application. Mr. Hunt stated he thinks the main thing is the BZA consultant's report that was not made part of the evidence. Mr. Hunt stated that he and his client would have made that part of the evidence and it was not and it is helpful to them. Mr. Hunt stated that is the main issue he is asking for reconsideration. When the record is filed, the report won't be filed because it was not put in evidence as part of the record and he has to have it because he believes it is a key piece of evidence.

Ch. Calabro stated it's a key piece of evidence in the way Mr. Hunt interprets it. Ch. Calabro stated that she does agree with Mr. Hunt that maybe it should have been in the record, however it doesn't mean they did not consider it. Mr. Hunt stated if it was considered it should have been in the record and they should have had a copy of it on the 28th of July, they didn't get it until August 4.

Mr. Zeleznak asked if they have an avenue for reconsideration, he stated he doesn't see it in the Regulations. Ch. Calabro stated that they will make a motion to see if they want to reconsider this. Ch. Calabro stated that she wanted the Board, as a whole, to have a discussion regarding whether they should reconsider. Ch. Calabro stated she feels they have the option to file an appeal if they didn't like the decision and the second option, if they have substantial new evidence, they can reapply. Mr. Hunt stated he doesn't believe they can do that in this circumstance.

Ch. Calabro asked Zoning Inspector Wilson if they ever had someone submit a new application and Zoning Inspector Wilson stated not in the last six years that he has been there. Ch. Calabro stated she asked Ms. Peterlin and it has been done, there would have to be substantial changes. Mr. Hunt stated they are not going to change anything in their proposal.

Mr. Hunt stated the Board is focusing more on the presentation of the proposal than the report from the Board's consultant which they commissioned at a previous BZA meeting on this hearing and they did not get a copy of it and it was not presented into evidence and he thinks that is a major issue.

Ch. Calabro stated that the way Mr. Hunt is presenting it is the report is a definite yes that this is a permitted use and that's not what the report says. Mr. Hunt stated the report does say it is permitted and conditional.

Mr. Hunt stated he doesn't have anything else to add and he thanks them for their time.

Mr. Zeleznak stated before he can vote yes or no he needs to know if this is something they can do procedurally. Ch. Calabro stated they can, although it is not typical. Mr. Hunt stated he has been doing this for 40 years and there is ample case law that says within the 30 day period the decision can be reconsidered, after the 30 day period is up they cannot and that is why he is here. Mr. Zeleznak stated this would be the first time he has heard of this in 30 years.

Zoning Inspector Wilson asked Ch. Calabro if their legal counsel said they could do this when they talked to him. Ch. Calabro stated that if they as a Board decide to reconsider this, then they can do that. Mr. Hunt stated he talked to Mr. Richter himself and Mr. Richter said the same thing.

Mr. Zeleznak asked if there would be another fee and Ch. Calabro stated yes and that is an administrative matter. Ch. Calabro stated they could accommodate the applicant by doing a special meeting or schedule a public hearing for October 27. Ch. Calabro stated if they decide to do a special meeting it can be done as soon as September 29 or the next regular meeting which is scheduled for October 13. Public notice would be required.

Mr. Schaefer stated that his opinion is that if they believe this report should have been mentioned and they have the right to it, he thinks ^{we} they should err on the side of caution and give him the rehearing. Mr. Schaefer stated that as far as this not being presented as to what they are doing, the way the Board questioned and the answers that were received were very clear.

Mr. Budd stated the normal way with approaching is if there is disagreement with the Board's decision an appeal would be the appropriate way to go and that has happened in the past a number of times when there was disagreement or dispute with the way they ruled and that should be the accepted way of handling the situation.



Ch. Calabro asked if anyone else had any comments and no one did.

Mr. Hoop made a motion to hold a public hearing to rehear the case and reconsider the BZA decision of July 28, 2021 on Tire Max Conditional Use Request AP0255.
Second by Mr. Zeleznak

Vote: Calabro – no; Hoop – no; Zeleznak – no; Schaefer – no; Budd – no

Ch. Calabro stated motion denied 5-0.

Ch. Calabro stated the next Board of Zoning Appeals Regular Meeting will be October 13, 2021 at 7:00 p.m.

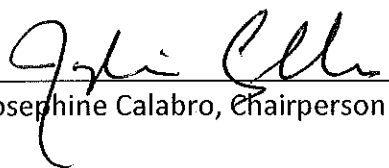
Ch. Calabro stated she had nothing further and there were no comments from the Board.

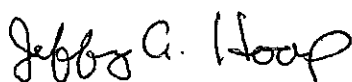
Ch. Calabro stated she would entertain a motion to adjourn the September 8, 2021 Regular Meeting. Mr. Schaefer moved and Mr. Budd seconded. The Board was polled collectively and all were in favor.

The Regular Meeting was adjourned at 7:30 p.m.

Judi Stupka, Recording Secretary

Minutes Approved: 10/13, 2021

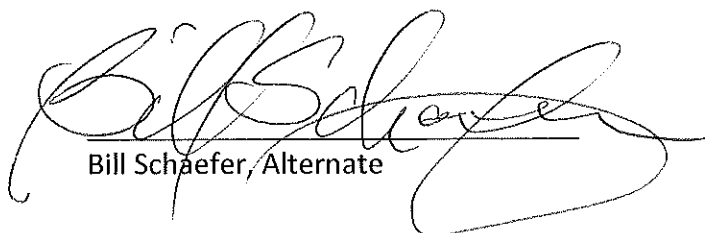

Josephine Calabro, Chairperson


Jeff Hoop, Vice-Chairperson


Dave Zeleznak, Member

N/A
Julie Mainzer, Member

Bill Budd, Member


Bill Schaefer, Alternate