

**WARREN COUNTY RURAL ZONING  
BOARD OF ZONING APPEALS**

**406 Justice Drive – Lebanon, OH 45036  
PHONE: 513-695-1294 FAX: 513-695-2657**

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

June 18, 2020

Wellness Property Group LLC  
832 S Garfield Avenue  
Hinsdale, IL 60521

and

SMC DOXA LLC  
11619 Grandstone Lane  
Montgomery, OH 45249

Re: Conditional Use Case # 1002-2020 CU  
Proposed Conditional Use: Substance Abuse Rehabilitation Facility  
Subject Property: 5778 Route 350, Oregonia Washington Township, OH 45054  
Parcel No. 13-05-400-005 (120.641 acres)

As Chairman of the Warren County Board of Zoning Appeals (“BZA”), I am writing to notify you of the BZA’s decision in the above referenced matter.

**I. FINDINGS OF FACT.**

A Conditional Use hearing was opened by the BZA on 3/24/20 whereupon the BZA voted unanimously to continue the hearing in progress without testimony due to the COVID-19 pandemic. The BZA reconvened on 4/21/20 whereupon the BZA voted unanimously to continue the hearing in progress without testimony again due to the COVID-19 pandemic. The BZA reconvened on May 12, 2020 and the BZA Chairman, Chris Koch, called the administrative hearing to order at 6:45PM. The hearing was conducted with some BZA members, county staff and witnesses present, and other BZA members, county staff and witnesses participating by video conference. The BZA members that participated in the hearing in person or by video conferenced were Chris Koch, Pam Jones, Louis Hornberger, Jason Schmidt and Jeremy Magrum. Also present were the Warren County Chief Zoning Inspector, Michelle Tegtmeier, and the BZA’s legal counsel, Assistant Prosecutor Bruce McGary. The BZA’s Secretary, Jackie Hankins participated by video conference. In response to the Chairman’s request, the BZA’s secretary stated on the record that an Application for Conditional Use was filed 2/18/20; written notice of the hearing was published in the Journal-News Pulse of Lebanon and

Mason Newspaper on 3/1/20; that written notice had been sent to the Applicants and all owners of property within 500 feet from the subject property on 2/24/20; that the Zoning Department sent letters requesting comments on the application to various governmental agencies on 2/26/20, and, the subject property had been posted with signage beginning on 2/24/20 through the date the hearing began. All persons who testified during the hearing were sworn or affirmed an oath administered by Mr. Koch in his capacity as the BZA Chairman. The hearing was tape recorded, and the BZA's secretary kept minutes.

The BZA first heard sworn testimony from Warren County Chief Zoning Inspector. Ms. Tegtmeier described the filings and content of the Conditional Use application for a Substance Abuse Rehabilitation Facility that would use most of the existing buildings and features on the property, plus construct two new dormitories to house 22 residents, and four additional cottages to house four to six residents per unit, for a maximum capacity of 90 residents. Ms. Tegtmeier used a power point presentation that identified the property as 120.641 acres located at 5778 Route 350, Oregonia, Washington Township, Warren County, Ohio previously operated as Kings Domain. She testified the property is currently zoned "RU" rural residential; that the most recent use of the property was park land/campground; and, that the future land use map suggests a parks & recreation – open space use. She testified that the surrounding zoning is RU to the north, west, south and east. Ms. Tegtmeier shared comments she received from various reviewing departments, including: the Warren County Health Department who commented that the applicant should contact the Ohio EPA regarding the wastewater system and the County Health Department's Plumbing Division to obtain necessary permits prior to construction or alteration of existing plumbing; the Warren County Soil and Water Conservation District who commented if plans for the new use requires disturbance of natural features, an environmental study will need to be conducted to determine any local/state or federal permitting necessary, and if the new use requires construction that would disturb one acre or more of earth, an earth disturbing permit will be required; and the Warren County Regional Planning Commission who provided comments including analyzing some of the review criteria in Zoning Code Section 1.306.5 and recommended approval subject to five conditions consisting of (1) compliance with standards of the Warren County Rural Zoning Code – more specifically Section 1.306, (2) Review by the Salem-Morrow Fire District for the provision of emergency services, (3) The applicant providing to the Zoning Inspector prior to the development permit approval a copy of the easement agreement that allows access to the site, (4) prior to the development permit approval the applicant conducting a traffic impact analysis if deemed necessary by the Warren County Engineer's Office, and (5) that an increase in residence, beyond the 90 residents proposed should require a revised conditional use approval. Ms. Tegtmeier instructed the BZA that the issues for consideration were to be reviewed based on Zoning Code Sections 1.306, 2.205, and 3.203.3 (A). The power point presentation was identified as Exhibit ZI-1 and the BZA made it a part of the record. The BZA offered and the Applicant declined the opportunity to cross-examine Ms. Tegtmeier.

The BZA asked the Applicant to present its case. The Applicant was given a reasonable opportunity to present its case by presenting witnesses and documentary evidence in support of the Conditional Use Application. The Applicant was represented by legal counsel, Ben Yoder. Mr. Yoder introduced witnesses on the Applicant's behalf including Ted Paarlberg, Doug Smith and Greg Dale. Mr. Yoder and both witnesses participated by

video conference. Mr. Paarlberg testified that he is the one of three owners and serves as the C.E.O. and C.O.O. of the applicant. He further testified as to his education and experience in operating similar facilities and represented he would be on site running the day to day operations of the substance abuse rehabilitation facility that will be known as Cedar Oaks Wellness Center. Mr. Paarlberg used a power point presentation to aid the presentation in support of the request for a conditional use permit. The power point presentation was identified as Proponent's Exhibit 1 and the BZA made it a part of the record. Mr. Paarlberg's testified the property is the former Kings Domain site which was used for years as a campground but currently sits vacant; that Cedar Oaks Wellness Center would accommodate 24 residents in the early stages and will eventually have 90 residents at full capacity which is anticipated to take four to five years; that all residents of the facility would be on a 100% volunteer basis where they have to admit themselves and can check themselves out at any point during treatment; that the treatment is overseen by a licensed physician and the programs will included life skills classes before residents re-enter their day-to-day lives without drugs or alcohol. The presentation included representations that the access to the property would be from State Route 350 via an easement through Fort Ancient; that there will be minimal impacts to the Site by this land use and the existing tree canopy will be preserved and most of the existing buildings will be reutilized. The presentation further included an analysis of the review criteria in Zoning Code Section 1.306.5, the use standards in Section 3.203.3, what the personalized patience experience would be like, and the types of services and programing Cedar Oaks Wellness Center plans to offer its patients. Mr. Paarlberg also shared comments he received from the World Heritage Director of Ohio History Connect as to the proposed use, and comments from a representative of the Ohio Department of Mental Health and Addiction services indicating the applicant must apply for eligibility for certification to operate such a facility at this location.

Mr. Smith testified he is a civil engineer with McGill Smith Punshon, an architectural and civil engineering firm, that is working on the Cedar Oaks Wellness Center project. He testified the existing campground would be reused with minimal changes and utilize the same access off State Route 350 that that Kings Domain used. Mr. Smith used a map to illustrate the site and its existing features, and to show where the new structures would be constructed among the existing structures. He testified the site has an existing water supply and an onsite wastewater system, and that the applicant will make any required upgrades. He also stated that State Route 350 is under ODOT's control and the applicant will comply with any requirements to conduct a traffic and safety study. In response to a question from the BZA, Mr. Smith testified he was not aware of the age of the wastewater system, but he knew it had an existing valid permit.

Mr. Dale testified he is a principal with the land use planning firm of McBride Dale Clarion. Mr. Dale stated that the closest residence is 2,600 feet from the subject property, the closest building on the Salvation Army's property is 1,025 feet from any building on the subject property, and the applicant's use would virtually be invisible to the adjacent properties. Mr. Dale testified that the application complies with all of the applicable requirements of the Zoning Code including without limitation the proposed use would not be detrimental to the surrounding properties and it would be harmonious to the surrounding area.

The BZA allowed proponents of the proposed Conditional Use Application to testify. The BZA heard sworn testimony from several proponents including: Steve Tufts, Pastor of Silver Grove Baptist Church, 7770 State Route 350, Oregonia, OH; Lindsey Thaler of 1537 Race Street, Oregonia, OH; Christye Leasure, 4710 State Route 350, Lebanon, OH; Kimberly Slavens, 498A Yale Drive, Lebanon, OH; and, Dan Griffin, 1550 Lewis Center Lane, Lewis Center, OH. The applicant nor the BZA asked any questions to these witnesses. Witness, PJ Hughes, 9848 State Route 123, Clarksville, OH testified by asking a question to the BZA whether the residents at this facility would be court ordered. Mr. Koch responded that the information provided by the applicant states the residents will be voluntary only. Mr. Hughes stated that makes the client base completely different and based on this information he would support the application. Witness, Brian Kocourek, 1130 Middleboro Road, Oregonia, OH also asked questions to the BZA including whether residents would not be sent to this facility by the county or the court. Mr. Koch responded with the same information he provided Mr. Hughes. Mr. Kocourek inquired if the facility attempted to get court ordered patients later in time would such a request have to go through another hearing like this one. Mr. Koch responded that he believes the BZA would stipulate that this facility would have to be a voluntary admitted program and to change that would require the applicant to reapply.

The BZA allowed opponents of the proposed Conditional Use Application to testify. Each opponent was given five minutes to testify and Mr. Koch asked each witnesses: (1) what is the approximate distance of the witness' property from the parcel where the conditional use is being sought; (2) did the witness receive a letter from the Zoning Department as a property owner within 500 feet of the subject property; and, (3) for the witness to tell the BZA specifically what unique harm the witness will suffer if the conditional use application is granted. Mr. Koch further advised each witness that unique harm does not mean something that affects the character of the neighborhood, it means harm that is unique to the witness or the witness' property.

The BZA first heard comments from legal counsel, Bill Duning, on behalf of his client, the Salvation Army. Mr. Duning presented exhibits marked Army 1-7 which the BZA identified for the record as Opponents Exhibits A-F that were made a part of the record. Mr. Duning introduced witnesses on the Salvation Army's behalf including Mark Longnecker and Michael Battoclette who testified to the content of the Opponents Exhibits A (marked Army 1) and B (marked Army 2). Mr. Longnecker testified he is the past Chairman of the Salvation Army who runs Camp Swoneky for underprivileged children which is located next to the subject property. He testified that the Salvation Army is the largest provider of alcohol and rehabilitation services in the United States; that one of his main worries is that one of the applicant's clients could wonder onto Camp Swoneky or one of Camp Swoneky's children could wonder onto the applicant's property and be exposed to their patients; and, that he was worried about EMS runs and fire trucks that would go there which is near where Camp Swoneky's children sleep and this would be very disruptive to the children. The BZA allowed Mr. Yoder to cross-examine Mr. Longnecker who testified in response that there are concrete roads used but he doesn't know where they stop. Mr. Battoclette testified he has been a Salvation Army Board member for over 30 years, and he is an architect by profession. He testified there is an open boundary of 150 feet which is prohibited, that the proposed use does not meet the Zoning Code, and the proposed use would be detrimental for the children at the Salvation

Army property. Upon cross-examination by Mr. Yoder, Mr. Battoclette testified the closest structure on the subject property is 150 feet from the boundary line based on the application not 1,025 feet as testified to by the applicant's witness; and, that he is not an attorney.

Mr. Duning presented photos which were part of Opponent's Exhibit C (marked Army 3). Mr. Yoder objected to one of the photos on the ground it was taken on the subject property not as represented to be on the Salvation Army's property. Mr. Koch noted the objection for the record and overruled it. Mr. Duning was unsuccessful after being given multiple opportunities by Mr. Koch to contact Salem-Morrow Fire Chief Bill Harrison by telephone to testify regarding Opponent's Exhibit D (marked Army 4). Mr. Duning advocated that in accordance with Opponent's Exhibit E (marked Army 5) that the applicant could not meet general licensure requirements to operate the Cedar Oaks Wellness Center. Mr. Duning also advocated that while his client's position is the conditional use application must be denied, he submitted Opponent's Exhibit G (marked Army 7) as proposed conditions / modifications in the event the BZA approved the application.

Mr. Duning introduced Justin Bates, 3412 State Route 350, Lebanon, OH who testified as to the data contained in Opponent's Exhibit F (marked Army 6). Mr. Bates explained that the applicant attended a Washington Township Trustees meeting to discuss the proposed use and represented Cedar Oaks Wellness Center would be modeled after Mount Sinai Wellness which averaged 9.83 EMS & Police callouts per month over a 29-month period. Mr. Bates testified there is a need for a facility like this, but this is not the best location because it backs up to a children's campground, a public bike path, and Morgan's Canoe. He testified that this site does not comply with the Ohio Department of Mental Health and Addiction Services rules which requires a 500 feet separation from a child servicing agency and an opioid treatment program; that he was worried about security issues with the property; and, this site would be a financial burden to Washington Township trying to maintain the roads. Mr. Koch asked Mr. Bates to clarify his testimony regarding the roads because the access road is a state route maintained by the State of Ohio and no interior roads on the site are owned or maintained by Washington Township. Mr. Bates admitted he was incorrect about the roads. Upon cross examination by Mr. Yoder, Mr. Bates testified he was concerned about the noise and sirens and that Kings Domain normally did not have EMS calls, nor does he recall hearing sirens from nearby Camp Kern or Ft. Ancient; that he prepared the exhibit regarding Mount Sinai Wellness but he was not aware of the total capacity of Mount Sinai; and, he is not an attorney.

The BZA heard sworn testimony from Washington Township Trust Board President, Paul Schaefer. Mr. Schaefer testified he has been a trustee for 24 years and currently is the Board President; that he was participating in this hearing on behalf of the Board of Trustees; he has been a resident of Washington Township for 45 years and a farmer for 55 years; that Washington Township contracts for fire and ems services in this area; that the Washington Township Trustees are concerned what the increased costs will be should there be additional fire and ems runs; that State Route 350 gets blocked six to eight times per year by Semi-trucks coming down the hill and it takes three to four hours to remove them which results in delayed fire and ems response time. Upon cross examination by Mr. Yoder, Mr. Schaefer testified he was not participating in the hearing as an opponent

but only as the Board of Trustees representative with financial concerns; admitted he did not know that Kings Domain was exempt from paying real property taxes, and if the applicant is a for profit organization, as Mr. Yoder represented, should the real property taxes paid by the applicant cover the fire and ems runs then Washington Township would have no issues with the conditional use application. Mr. Koch asked Mr. Schaefer if he had knowledge of a letter from the Salem-Morrow Fire Chief to which Mr. Schaefer responded that he had not seen the letter, but he knew of it.

The BZA heard sworn testimony from several other opponents including:

Sara Kocourek, 1166 Middleboro Road, Oregonia, OH. Ms. Kocourek testified she is worried about no security to prevent a patient from leaving the facility; it would have a negative impact on property values; and, it would increase the area with petty crime. She testified the unique harm to her or her property would be the potential for increased crime in the community and increased traffic.

April Wood, 7652 Paddock View Court, Clarksville, OH. Ms. Wood testified she is worried the patients would have access to the bike path and trails and questioned whether registered sex offenders would be patients and if the community would be notified.

Keith Slutz, 7000 State Route 350, Oregonia, OH. Mr. Slutz questioned whether the applicant submitted a three to five-year business plan and if the applicant projects the capacity would grow beyond 90 residents. Mr. Koch indicated that the applicant would have to reapply if the applicant ever wanted to increase the capacity beyond what the current application provides. He testified the unique harm to him or his property would be increased traffic, change in traffic patterns, deterioration of road, and the decrease in property values. Upon cross examination by Mr. Yoder, Mr. Slutz testified his basis for suggesting a decrease in property values is because the patients are basically criminals that are drug abusers.

Tammy Stewart, 3775 Springboro Road, Lebanon, OH. Ms. Stewart testified she visits the area all the time and she is concerned about the decrease in property values in this location. She testified the unique harm to her or her property would be to her recreational time and the risk to her children when there. Upon cross examination by Mr. Yoder, Ms. Stewart testified she lived more than five miles away from the site. In response to questioning by Mr. Koch she admitted she lives 15-20 miles away from the site.

Timothy Kirby, 1087 S. Nixon Camp Road, Oregonia, OH. Mr. Kirby testified he is worried about criminals because all drug users are criminals, and that he is concerned about not having security on the property. He testified the unique harm to him or his property would be the impact on the recreational use of the area by his children.

Amber Gandy, 1439 S. Nixon Camp Road, Oregonia, OH. Ms. Gandy testified she was concerned about the location for this type of facility. She testified that the unique harm to her or her property would be the dangers of traffic and the criminals around her children.

Amberly Kirby, 1087 S. Nixon Camp Road, Oregonia, OH. Ms. Kirby testified she is concerned for the safety of her family and the increase in traffic. She testified the unique

harm to her or her property would be traffic, the safety of her children, and the proposed use degrading the neighborhood.

Charles Slutz, 7000 State Route 350, Oregonia, OH. Mr. Slutz questioned whether the 90-patient opioid clinic would only be for onsite patients, not outpatients. Mr. Koch responded the application was for a facility where patients go and stay to receive treatment and the BZA could only consider what is on the application. Zoning Inspector Michelle Tegtmeier also responded that the application shows that all patients will be staying at the facility. Mr. Slutz testified the unique harm to him or his property would be stoned drugs destroying his property or taking his life.

Casandra Pritchett, 348 Natalie Lane, Lebanon, OH. Ms. Pritchett testified she is concerned about the safety of her family, and that is the unique harm she or her property would suffer.

No other opponents asked to testify.

The BZA allowed the applicant the opportunity to offer rebuttal testimony and documentary evidence to the testimony and evidence presented by the opponents. Mr. Yoder recalled the applicant's C.E.O./C.O.O., Ted Paarlberg. He testified there will be a criminal background check on all patients to be admitted to the facility; and, that the applicant would be submitting an application and obtaining a certification for the operation of this facility which will have strict guidelines to meet and follow. Mr. Paarlberg also testified that there will be a security gate at the front of the facility and persons entering will have to identify themselves and sign in and out; that the facility will be staffed 24 hours a day; and, the facility will only have two to four admissions per week which he did not believe would create a traffic issue. Mr. Duning was offered the opportunity to cross examine Mr. Paarlberg. Mr. Paarlberg responded to Mr. Duning's questions by testifying some of the patients will come from both Warren County and outside the County, from Southwest Ohio and other parts of Ohio, and even from other states; that the buildings on the subject property and the Salvation Army property are much more than 150 feet apart but he did not know the exact distance; that the path between the subject property and the Salvation Army is overgrown and difficult to traverse including there is some flat terrain but it would be difficult to walk; and, that he was aware that in the past the camp director at Salvation Army's Camp Swoneky has had authority to travel between the two properties and enter onto the subject property.

Mr. Yoder recalled Mr. Dale who testified the 150 feet testified to by the Salvation Army is from the nearest building to the property line to the north – the 1,025 distance he testified to earlier is the distance from the closest buildings on the subject property and closest building on the Salvation Army's property. He emphasized all the required setbacks in the Zoning Code are exceeded. Upon cross examination by Mr. Duning, Mr. Dale testified in one area the distance from the ridge top cabins on the subject property and the common property line with the Salvation Army appears to be 152 feet which is 3 times the requirement in the Zoning Code, and that there is a ravine. Mr. Dale pointed out that Mr. Duning was asking questions relating to an area in a different direction that contains an old logging road that connects to Camp Swoneky to the subject property but

he has traversed it and it is not smooth or easy to walk. He agreed someone could walk the old logging road but it's a distance of at least 1,000 feet.

Mr. Yoder also called Steve Cesler who is the current owner of the subject property. Mr. Cesler testified he was a former board member of Kings Domain and acquired the property when Kings Domain closed. He testified he has never been able to see any buildings on the Salvation Army property from the buildings on the subject property. He stated one of the photos used by the Salvation Army was actually taken on his property.

The BZA allowed the applicant's attorney to make a closing summation. Mr. Yoder commented that no one testified to unique harm to themselves or their property, except perhaps the Salvation Army. Mr. Yoder represented the applicant would be complying with all requirements placed on the conditional use permit including such things as licensure requirements to operate the facility, and satisfaction of any issues of the fire department. Mr. Yoder asserted the issues raised by the Salvation Army are not grounds to deny the conditional use permit when such issues addressed in conditions of approval. Further, the proposed use will be for patients with a disability and the Americans with Disabilities Act prohibits discrimination against such use.

The BZA asked the applicant to identify for the records all documentary evidence in support of the application for Conditional Use the Applicant requests the BZA to consider. Mr. Yoder identified Applicant's Exhibit 1 and all filings with the Zoning Department. The BZA did not refuse to accept any documentary evidence.

Applicants' legal counsel was asked a litany of questions by Mr. Koch. Mr. Yoder responded: i) that the applicants was not denied a reasonable opportunity to present its position, arguments and contentions; ii) that the applicant was not denied the right to offer and examine witnesses; iii) that the applicants was not denied the opportunity to cross-examine witnesses in opposition; iv) that the applicant was not denied a reasonable opportunity to offer evidence to refute evidence or testimony offered by the opponents; v) that the BZA did not refuse or fail to compel any witness' appearance or evidence at applicant's request; and, vi) that the applicant had no objections to any of the opponent's exhibits made a part of the record by the BZA.

The BZA allowed legal counsel for the Salvation Army to make a closing summation which Mr. Duning declined. The BZA also asked Mr. Duning if he wanted to proffer any objections into the record, and he did not.

All testimony was concluded on 5/12/20. The BZA voted unanimously to close the hearing to any further testimony or documentary evidence, and voted unanimously to deliberate in private. At that time, the BZA announced its deliberations would take place at 5:00 PM on 5/19/20 and 6/10/20, and that the BZA would reconvene at 6:30 PM on 6/10/20 to vote on a decision.

At 6:30PM on 6/10/20, the BZA reconvened.

## II. CONCLUSIONS OF LAW.

During deliberations, the BZA discussed the applicable law, including without limitation, RC 303.14 (C); the review criteria in Zoning Code Section 1.306.5, and the applicable use standards in Zoning Code Section 3.203.3.

Based on the whole record, a part of which is described above and the entirety of which is incorporated by reference herein, the BZA reached the following conclusions.

A) The Proposed Land Use. RC Section 3.14 (C) enables the BZA to grant conditional use certificates for the use of land if the specific uses are provided in the Zoning Code. The application herein is for a Conditional Use permit for a Substance Abuse Rehabilitation Center in a RU- Residential Zoning district. Zoning Code Section 2.205 [Table of Uses by Zoning District], under the Use Group captioned *Community Facilities and Essential Services Uses*, and the land use column for *Institutional Care, Substance Abuse Rehab Facility*, provides a substance abuse rehabilitation facility may be permitted as a Conditional Use in an R-U Zoning District subject to BZA approval and Site Plan Review. Accordingly, the BZA concluded that the proposed land use is provided in the Warren County Zoning Code, and the BZA may grant the application for a conditional use permit for the Substance Abuse Rehabilitation Center at the subject property through this administrative hearing process.

B) Review Criteria. Zoning Code Section 1.306.5 (A) provides in reviewing a [proposed] conditional use, the following factors to be considered and weighed by the BZA include but are not limited to the following, but no single factor controls in making a decision, nor must all the factors support the decision. The BZA reviewed each review criteria and reached the following conclusions:

- 1) the proposed Conditional Use application may be permitted at the subject property located in an RU Zoning District, subject to BZA approval including special and use specific conditions.
- 2) that the Comprehensive Plan (Future Land Use Map) suggests the subject property be used for Parks & Recreation – Open Space. The comprehensive plan is not binding under Ohio law, and the content of the application for the proposed Conditional Use and testimony of applicant’s witnesses support that the open space existing features will not change, and the proposed Conditional Use will satisfy many other components of the comprehensive plan.
- 3) the proposed Conditional Use will not be detrimental to surrounding properties, or alternatively reasonably anticipated adverse impacts may be sufficiently mitigated by imposing special conditions.
- 4) there was ample testimony, including testimony by some opponents, that the proposed Conditional Use will provide a necessary service.
- 5) the proposed Conditional Use will not cause a burden to public services, or alternatively, any such burden can be sufficiently mitigated by imposing special conditions.
- 6) the proposed Conditional Use will be served adequately by essential public facilities including access to a public road, internal streets, fire & ems protection, a public water supply and an onsite wastewater sewage system permitted by the Ohio EPA.

- 7) the evidence does not prove the proposed Conditional Use will adversely impact traffic conditions, or alternatively ODOT will determine in its discretion whether there may be an adverse impact and impose requirements on the applicant that will sufficiently mitigate adverse impacts.
- 8) the proposed Conditional Use will be harmonious in appearance with the existing or allowable uses of surrounding area as the applicant's witnesses testified the existing campground would be reused with minimal changes and the surrounding area uses including other campgrounds such as Salvation Army and Camp Kern, and Morgan's Canoe Livery.
- 9) the proposed Conditional Use will be operated, maintained, and will function in a manner that is appropriate with the intended character of the surrounding area.
- 10) the proposed Conditional Use will not result in substantial destruction, loss or damage of significant natural, scenic or historic features as the applicant's witnesses testified that the existing tree and vegetative canopy will be preserved.

Much of the opponents' testimony consisted of generalized fears and speculation, and related to anticipated harms to the community at large, not harm unique to themselves or their property.

After weighing and balancing the review criteria, the BZA concluded that a preponderance of substantial, reliable and probative evidence in the whole record was presented by the applicant to justify the BZA approving the conditional use application for a Substance Abuse Rehabilitation Facility subject to special conditions of approval that would mitigate any reasonable adverse impacts articulated during the hearing.

3. Use Specific Standards. Zoning Code Section 2.205 [Table of Uses by Zoning District], under the Use Group captioned *Community Facilities and Essential Services Uses*, and the land use column for *Institutional Care, Substance Abuse Rehab Facility*, requires such land use to also comply with the Use Specific Standards in Section 3.203.3. The BZA concluded that the application and testimony proved the use specific standards applicable for conditional use approval have been met consisting of the submission requirements, facility requirements (including existing and new structures will be compatible with the neighborhood), and the use standards requirements applicable to all zoning districts.

#### C. DECISION.

On June 10, 2020, the BZA voted 4-0, to approve the application for Conditional Use, referenced as Case # 1002-2020CU, for a Substance Abuse Rehabilitation Facility at 5778 State Route 350, Oregonia, Washington Township, Warren County, Ohio, identified as Parcel # 13-05-400-005, subject to the following special conditions:

1. Prior to issuance of the Conditional Use permit, the applicant must obtain and shall comply with all licensure requirements for applicant to operate a substance abuse rehabilitation facility on the subject property.
2. The maximum capacity for the substance abuse rehabilitation facility shall not exceed 90 patients receiving inpatient services on the subject property, and

any expansion of the maximum capacity and change of use approved herein shall require a revised Conditional Use application and administrative hearing process.

3. The substance abuse rehabilitation facility operated on the subject property shall be restricted to inpatient treatment services, except any patient that has received inpatient treatment services at this facility may be allowed to return to this facility for periodic outpatient treatment not to exceed four times per year.
4. All patients of the substance abuse rehabilitation facility shall be on a voluntary basis – no court ordered treatment will be permitted.
5. The substance abuse rehabilitation facility shall be staffed 24 hours per day.
6. Prior to issuance of the Conditional Use permit, the applicant shall comply with all requirements deemed necessary by the Salem-Morrow Fire Department as specified in the letter introduced into evidence during the administrative hearing.
7. Prior to issuance of the Conditional Use permit, the applicant shall comply with all requirements deemed necessary by the Warren County Soil and Water Conservation District, including without limitation obtaining an earth disturbing permit prior to beginning earth moving activities if construction would disturb one acre or more.
8. The applicant shall comply with Ohio EPA regulations and obtain a permit for the onsite sewage treatment system.
9. The applicant shall obtain all necessary plumbing permits from the Warren County Health District Plumbing Division prior to beginning construction or alternation of existing plumbing.
10. The applicant shall comply with the Ohio Department of Transportation's Access Management Regulations for an access permit; produce a traffic impact study, if required by ODOT; and, construct any public road improvements required by a traffic impact study to the satisfaction of ODOT.
11. Prior to the issuance of the Conditional Use permit, the applicant shall provide a copy of an easement agreement that grants rights of ingress and egress to the owner that will be the actual means of access from State Route 350 to the subject property.
12. The applicant shall preserve as much of the existing tree and vegetative canopy as reasonable possible.
13. Compliance with the applicable requirements and standards of the Warren County Rural Zoning Code.
14. Only one conditional use shall be allowed on the subject property.
15. The Conditional Use certificate shall not be issued until the applicant completes a Site Plan Review hearing and obtain approvals as required by Sections 2.505 and 1.303 of the Zoning Code.

Please be advised that this is a final decision, therefore, any appeal must be brought within 30 days of this written decision in the Warren County Court of Common Pleas in accordance with Chapters 2505 and 2506, Ohio Revised Code.

Sincerely,

Chris Koch, Chairman

cc: Zoning Dept. (Michelle Tegtmeier, Chief Zoning Inspector)  
Prosecutor's Office (Bruce McGary, Asst. Prosecutor)

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BZA Chairman, Chris Koch opened the Site Plan Review administrative hearing at 6:40PM. The hearing was conducted with some BZA members, county staff and witnesses present, and other BZA members, county staff and witnesses participating by video conference. The BZA members that participated in the hearing in person or by video conference were Chris Koch, Pam Jones, Jeremy Magrum and Jason Schmidt. Also present were the BZA’s Secretary, Jackie Hankins, and the BZA’s legal counsel, Assistant Prosecutor Bruce McGary. In response to the Chairman’s request, the BZA’s secretary stated on the record that an Application for Site Plan Review was filed 2/18/20; written notice of the hearing was published in the Journal-News Pulse of Lebanon and Mason Newspaper on 3/1/20; that written notice had been sent to the Applicants and all owners of property within 500 feet from the subject property on 2/24/20; that the Zoning Department sent letters requesting comments on the application to various governmental agencies on 2/26/20, and, the subject property had been posted with signage beginning on 2/24/20. All persons who testified during the hearing were sworn or affirmed an oath

administered by Mr. Koch in his capacity as the BZA Chairman. The hearing was tape recorded, and the BZA's secretary kept minutes.

The BZA heard sworn testimony from Warren County Chief Zoning Inspector, Michelle Tegtmeier who participated by video-conference. Ms. Tegtmeier used a power point presentation identified as Exhibit ZI, and the BZA made it a part of the record. The BZA offered and the Applicant declined the opportunity to cross-examine Ms. Tegtmeier.

The BZA asked the applicant to present its case. The applicant was given a reasonable opportunity to present its case by presenting witnesses and documentary evidence in support of the Site Plan Review application. The applicant was represented by legal counsel, Ben Yoder. Mr. Yoder introduced witnesses on the applicant's behalf including Doug Smith, Greg Dale and Ted Paarlberg. Mr. Yoder and the three witnesses participated by video conference.

Mr. Smith testified under oath that he is a professional engineer with McGill Smith Punshon, the civil site engineer for the applicant. Mr. Smith used a power point presentation identified as Applicant's Exhibit 1 and the BZA made it a part of the record. He testified the existing campground and amenities would be reused with minimal changes. He elaborated on what buildings would be reused, what few buildings would be demolished, and regarding new buildings planned to be constructed including where each new building would be located by illustrating on the Site Plan. He explained the on-site wastewater treatment facilities permitted by the Ohio EPA, and he testified about traffic and safety.

Mr. Dale testified under oath that he is a professional planner and he is a principal with the planning firm of McBride Dale Clarion. He testified that the Site Plan application meets all requirements of the Zoning Code. He explained the applicant's plan is a reuse of the existing footprint. He claimed that there would be less activity and use of cars than the use before as a camp. He stated that it was about a half mile to the closest residence with a complete natural land and tree buffer, and that the site being developed would basically be invisible. Mr. Dale represented the topography of the property (referring to a slide in the Power Point) shows how the ravine is substantially lower. Mr. Koch asked Mr. Dale if the bottom of the ravine was roughly 170 ft down. He replied the topo map shows the lowest elevation is 697 to 698 compared to the highest elevation of 900. Mr. Dale referred to pictures in power point slides that showed there was not any land use around. He testified about the Site Plan Review criteria in Zoning Code section 1.303.6 and asserted all applicable criteria have been met and how all the special use regulations pertaining to 3.203.3 will be addressed prior to opening or that they have been addressed already in the Site Plan. Mr. Magrum asked Mr. Dale how the new structures will be harmonious with the existing structures. Mr. Dale testified the floor plan had been submitted and the applicant will be keeping the layouts the same. Mr. Smith was also asked, and he replied that the buildings will be similar in size and the outsides will have the same look as the old. Mr. Paarlberg was sworn in and verified Mr. Dale's and Mr. Smith's testimony was correct.

The BZA allowed proponents of the proposed Site Plan Review application to testify. No proponents asked to testify.

The BZA allowed opponents of the proposed Site Plan Review application to testify.

The BZA heard comments from legal counsel, Bill Duning, on behalf of his client, the Salvation Army. Mr. Duning referred the BZA to exhibits "Army 1-7" from the Conditional Use hearing (which were identified by the BZA as Opponents' Exhibits A-F in the Conditional Use hearing). Mr. Duning asserted that illegal drugs cannot be kept out of the Rehabilitation facility as evidenced by Army 6 (Exhibit E) proves his contention. Mr. Duning also asserted there is 4,054 feet of open boundary with access to the Salvation Army's Camp Swoneky and the BZA should require the applicant to insulate its facility from Camp Swoneky or there will be problems. Mr. Duning asked the BZA to impose as conditions the items listed in Army 7 (Opponents' Exhibit F). The BZA offered Mr. Duning the opportunity to cross examine the Zoning Inspector and the applicant's three witness which he declined to do.

The BZA heard sworn testimony from Charles Slutz, 7000 State Route 350, Oregonia, OH 45054. Mr. Slutz's testimony was limited to objecting to the statement made by the applicant's witness that the traffic that would be generated from the Cedar Oaks Wellness Facility would be less than the historical traffic. Mr. Slutz asserted the applicant had not shown any data to support that contention.

No other opponents asked to testify.

The BZA allowed the applicant the opportunity to offer rebuttal testimony and documentary evidence to the testimony and evidence presented by the opponents.

Applicant's legal counsel declined the opportunity to offer rebuttal testimony or documentary evidence. Mr. Yoder asked the BZA to make a part of the record for the Site Plan Review hearing the exhibits and audio recording of the Conditional Use hearing. The BZA asked Mr. Duning if he objected. Mr. Duning had no objection and agreed the request should be granted. The BZA made the exhibits and audio recording from the Conditional Use hearing a part of the record of the Site Plan Review hearing. Mr. Yoder made a closing summation. Mr. Yoder represented the applicant had attempted to communicate several times with the Salvation Army and the only response received was the demands in Exhibit F. Mr. Yoder argued that the BZA is not allowed to impose unreasonable conditions, and that imposing conditions that would not otherwise be imposed on other users protected by the Americans with Disability Act (ADA) would violate the ADA.

Applicants' legal counsel was asked a litany of questions by Mr. Koch. Mr. Yoder responded: i) that the applicants was not denied a reasonable opportunity to present its position, arguments and contentions; ii) that the applicant was not denied the right to offer and examine witnesses; iii) that the applicants was not denied the opportunity to cross-examine witnesses in opposition; iv) that the applicant was not denied a reasonable opportunity to offer evidence to refute evidence or testimony offered by the opponents;

v) that the BZA did not refuse or fail to compel any witness' appearance or evidence at applicant's request; and, vi) that the applicant had no objections to any of the opponent's exhibits made a part of the record by the BZA.

The BZA allowed legal counsel for the Salvation Army to make a closing summation which Mr. Duning declined. The BZA also asked Mr. Duning if he wanted to proffer any objections into the record, and he did not.

All testimony was concluded on 6/10/20. The BZA voted unanimously to close the hearing to any further testimony or documentary evidence. The BZA voted unanimously to deliberate in private. At that time, the BZA announced its deliberations would take place at 5:00 PM on 6/17/20 and that the BZA would reconvene at 6:30 PM on 6/17/20 to vote on a decision.

At 6:30PM on 6/17/20, the BZA reconvened.

## II. CONCLUSIONS OF LAW.

During deliberations, the BZA discussed the applicable law, including without limitation, the review criteria in Zoning Code Section 1.303.6, and the applicable use standards in Zoning Code Section 3.203.3.

Based on the whole record, a part of which is described above and the entirety of which is incorporated by reference herein, the BZA reached the following conclusions.

A) Review Criteria. Zoning Code Section 1.303.6 provides the site plan review is conducted to determine anticipated impacts on the public health and safety, as well as public convenience, comfort, prosperity, or general welfare, as applicable, and lists sixteen factors to be considered and weighed by the BZA but no single factor controls in making a decision, nor must all of the factors support the decision. The BZA reviewed the review criteria and concluded that the Site Plan satisfies the applicable review criteria, or the applicant will have to comply with such criteria to open the facility in accordance with an approved Site Plan. Thus, after weighing and balancing the review criteria, the BZA concluded that a preponderance of substantial, reliable and probative evidence in the whole record was presented by the applicant to justify the BZA approving the Site Plan Review application for the Substance Abuse Rehabilitation Facility subject to special conditions of approval that would mitigate any reasonable adverse impacts articulated during the hearing. However, the BZA found the proposed conditions in Army 7 (Opponents' Exhibit F) to be unreasonable.

B) Use Specific Standards. Zoning Code Section 2.205 [Table of Uses by Zoning District], under the Use Group captioned *Community Facilities and Essential Services Uses*, and the land use column for *Institutional Care, Substance Abuse Rehab Facility*, requires such land use to also comply with the Use Specific Standards in Section 3.203.3. The BZA concluded that the Site Plan and supporting testimony satisfies the applicable specific standards or the applicant will have to comply with such criteria to open the facility in accordance with an approved Site Plan.

C. DECISION.

On June 17, 2020, the BZA voted 4-0, to approve the application for Site Plan Review, referenced as Case # 1002-2020 SP, for a Substance Abuse Rehabilitation Facility at 5778 State Route 350, Oregonia, Washington Township, Warren County, Ohio, identified as Parcel # 13-05-400-005, subject to the following special conditions:

- 1) Compliance with the standards of the Warren County Rural Zoning Code, including without limitation sections 1.303 and 3.203.3 (A).
- 2) Preserve the existing tree canopy that would serve as a natural buffer from neighboring properties and to compliment the adjacent Fort Ancient Archeological Park landscape.
- 3) Erect and permanently maintain two posts 16 feet apart with a cable stretched between said posts affixing a two-sided no trespassing sign to the cable at the old logging trail along the common boundary line between the Site and Camp Swoneky.
- 4) Any new buildings including without limitation cottages and dormitories shall be constructed similar in design and character to the existing structures on the Site.
- 5) Revise the Site Plan to identify the number of parking spaces and locations (both existing and proposed).
- 6) The special conditions of the Conditional Use approval are incorporated by reference herein.

Please be advised that this is a final decision, therefore, any appeal must be brought within 30 days of this written decision in the Warren County Court of Common Pleas in accordance with Chapters 2505 and 2506, Ohio Revised Code.

Sincerely,

Chris Koch, Chairman

cc: Zoning Dept. (Michelle Tegtmeier, Chief Zoning Inspector)  
Prosecutor' Office (Bruce McGary, Asst. Prosecutor)