

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its rescheduled November meeting, Wednesday, November 19, 2008, at 4:00 p.m. in the King Street Meeting Room, 100 N. King Street, Hendersonville, North Carolina. Those present were: Jim Phelps, Vice-chairman, Jim Crafton, Tony Engel, Ann Pouch, Alternate Board Member Eric Goodman, Associate County Attorney Sarah Zambon, and Secretary to the Board Karen Ann Antonucci. Alternate board member JoAnne Telker was present in the audience to observe. Chairman, Dean Bonessi and Zoning Administrator Toby Linville were not present.

Vice Chairman Phelps called the meeting to order at 4:11 PM. He introduced the board members to the parties present.

Vice Chairman Phelps asked if there were any corrections or additions to the September 24, 2008 minutes. There being none, he asked for a motion to accept the minutes as written.

Jim Crafton moved to approve the minutes as written.

Tony Engel seconded.

All board members were in favor of accepting the minutes as presented.

Vice Chairman Phelps read the first section of the Opening Statement for Zoning Board of Adjustment:

A Quasi-judicial proceeding is much like a court proceeding where an individual's rights and interests are being decided under specific rules of procedure. Parties to this case have the right to present evidence and cross examine witnesses. The burden of proof in these cases typically lies with the Applicant. The extent to which the Rules of Evidence used in courts apply is up to the discretion of the Board

Quasi-judicial proceedings are different than other public hearings in that not everyone has the right to present evidence before this Board and to become a party to this proceeding. Only those who can demonstrate that they will be affected by the outcome of the hearing may become parties. After a description of the person's interest in this case, the Board will determine whether they will be allowed to present evidence as a party. Please note, you do not have to be a party to testify if someone who is a party calls you as a witness. All parties and witnesses who intend to present evidence or testify before this Board must be sworn in.

- Parties- for which case: get name and address
- Witnesses- for which case: name and address
- Swear everyone for all hearings in

NEW BUSINESS

Case A-08-17, George Bennett, Recreational Motor Sports Facility, appeal of Revocation of Special Use Permit SUP-08-12. The Henderson County Sheriff's Department shows proof the permit was violated on several occasions by operating multiple weekdays and outside the hours of operation. The property is located at 198 N. Egerton Road, Mountain Home. Industrial zone, (PIN 9660098902)

Parties to case:

George Bennett – property owner

Lt. Ben McKay – Sheriff's Department

Katie Strickland – property owner near site

Witnesses for case:

Richard Green – grades the track

Jack Collina – grades the track

Vice Chairman Phelps: (to Associate County Attorney, Sarah Zambon). Do we get the parties before the applicant first? Or are all parties determined...

Associate County Attorney, SZambon: Well, Mr. Chairman, a party would be somebody who has kind of an independent basis for having an interest in this case. The standard is usually somebody who has a specialized interest different from an ordinary person. For example they always give is that a general tax payer can't sue because of a tax that is put in because they have the same standing as every other tax payer in that community. For people who - if there are people who want to be parties in this case it would be up to the board to hear whether or not they had a specific interest in this case. If it's just a matter of them wanting to support or oppose someone then they might be better off as a witness. A rule that we have typically used in the past for quasi judicial proceedings before this board and before other boards in terms of a lot of land use stuff is whether or not they're an adjacent neighbor. Or whether or not they're, you know, an adjoining property, or if they are close. Now in this case it might be a little different but it should give you some guidance. And I don't know if Mr. Bennett's attorney, Mr. Edney wanted to weigh in at all on it.

Vice Chairman Phelps: Should we determine if there are people that intend to be a party to come up and we can I guess quiz them on their standing?

Associate County Attorney SZambon: Yes, and again, the board decides whether or not somebody is a party. And just because somebody is not a party does not mean that they won't get to speak if another party calls them. The only thing that really makes - if people just want to speak and have their voice heard they might be better off as a witness. The difference between a party and a witness is that a party has the right to call witnesses, cross examine witnesses – that kind of stuff. While a witness just gives their testimony and will be cross examined or direct examined as the attorneys see fit.

Vice Chairman Phelps: So at this time I would like to call those that intend to be a party and not a witness to come forward and state who you are how you are a party. Is there anyone...

Attorney MEDney: Is Mr. Bennett automatically a party?

Associate County Attorney SZambon: Mr. Bennett is automatically a party as is the County.

Vice Chairman Phelps: And you're his attorney?

Attorney MEDney: I represent Mr. Bennett's interest.

Vice Chairman Phelps: Ok. Is there anyone else who's going to be a party? Ok. Fine. Now, the witnesses – do we have a list of the people who have signed up as witnesses?

Associate County Attorney SZambon: And Mr. Chairman, you may want to ask Mr. Edney how many of these people, you know, you actually want to call verses if you just need them for a rebuttal. Just in terms of swearing everybody in.

Vice Chairman Phelps: Right. Because we do have quite a few.

Associate County Attorney SZambon: Or, I was just giving you that as an option.

Attorney MEdney: Just do the whole room.

Associate County Attorney SZambon: Swear the whole room in? Can you do that? We haven't done that before. It would be a first time.

Attorney MEdney: You can do it with juries. You can just have everybody raise their right hand and affirm. It's a lot quicker.

Associate County Attorney SZambon: That's true. Yes, Mr. Crafton.

JCrafton: That will be correct that a witness would only speak if called upon by one of the parties?

Associate County Attorney SZambon: Um-hm.

JCrafton: So they don't – they are not invited to come by that list there. They are invited to come by a party calling upon them.

Associate County Attorney SZambon: Yes. This is not just for the public's information. This is not a public hearing where, you know, in a normal public hearing, which is not quasi judicial, we have public comment where anybody can come up and speak. Because this is a quasi judicial proceeding the only people who will be allowed to speak besides the parties are the people who are witnesses. And the witnesses are going to be people who are called by one of the two parties. One of the two parties right now unless anybody else wants to be a party.

APouch: I was wondering if people are here are opposed, do they have to – are they a witness or a...

Associate County Attorney SZambon: To the best of my knowledge the County does not plan on calling anybody who is opposed just because I don't know their names. So depending on if they want to be a party they can. Otherwise Lt. McKay may want them called separately if we know they're here.

Vice Chairman Phelps: How 'bout we take your suggestion, modify it slightly and say all those who signed up as witnesses, if you will stand and raise your right hand we will swear you in on mass. Karen Ann, if you would have them affirm...

Zoning Board of Adjustment Secretary Karen Ann Antonucci swore in all those standing and raising their right hand.

JCrafton: Mr. Chairman, it may be useful to remind those in the audience, since all of them now have been sworn in as witnesses and not parties they will not have an opportunity to speak unless there's someone here as a party who will call upon you. And if you're here and feel incumbent to have something to say and there's no one here that you know of who's going to call and invite you to speak, then you need to be a party or establish that you are in fact a party. Otherwise you'll not have an opportunity to speak.

Vice Chairman Phelps: And I would also remind you that when you do speak and the first time you speak, please speak, come up to the podium and speak into the microphone. State your name and your current address clearly. Any other questions?

Associate County Attorney SZambon: Mr. Chairman just from a fire safety point of view I would say that anybody who is standing really needs to take a seat. There are a few seats over here and a few throughout. I'm done now with my fire marshalling duties.

Vice Chairman Phelps: Thank you, Sarah. (at this point Vice Chairman Phelps read the remainder of the Opening Statement for Zoning Board of Adjustment)

At this time we will begin our first hearing. Decisions of this Board are based upon the Henderson County Code. After we hear all the evidence, the Board will discuss the matter and may either vote on the case or continue the case to another date. The Board may direct staff to bring back a draft order for the Board to review at our next meeting. The Board's decision must be made in writing within 45 days of the conclusion of the hearing.

Vice Chairman Phelps: I'll now entertain that we need a motion that we open our hearing.

Jim Crafton: So moved.

Eric Goodman: Second.

Vice Chairman Phelps: All in favor?

All members were in favor of opening the hearing.

We are now open to hear case A-08-17, George Bennett, Recreational Motor Sports Facility, appeal of Revocation of Special Use Permit SUP-08-12. The Henderson County Sheriff's Department shows proof the permit was violated on several occasions by operating multiple weekdays and outside the hours of operation. The property is located at 198 N. Egerton Road, Mountain Home. Industrial zone, **(PIN 9660098902)**

Vice Chairman Phelps: Sarah, are you going to present the County's case?

Associate County Attorney SZambon: Mr. Chairman, Mr. Linville was unable to be here today because he had a training for a certified zoning class so I am going to stand in his stead in terms of calling the witnesses and not planning on presenting any evidence myself. But I will be asking questions. So in terms of the County's first witness unless there's any preliminary motions Mr. Edney wants to make from the County's first witness we would like to call Lt. Ben McKay to the microphone.

Lt. McKay: Good afternoon, I'm Lieutenant McKay with the Sheriff's office, currently assigned in Animal Enforcement. The Sheriffs took that over the first of January and in the process designated me as well as what we commonly refer to as the noise ordinance guru. And therefore in – because of that function I also was assigned by the Sheriff to investigate the complaints in this situation that brought us to this hearing this afternoon. I spent some time gathering information about the situation. I got a copy of permit that was issued by this board and gathered all of the calls that the Sheriff's office had received due to this track being used either at inappropriate times or in violation. The complaint was that they were in violation of the noise ordinance. In doing that research the final conclusion that I came to was that on the week of October the 12th or Sunday, October the 12th the track was in use and I have the call information, detail information of the computer aided dispatch that shows our officers were called by the complainant at 10 minutes after 6:00 on that evening. It's a Sunday afternoon and one of our deputies was dispatched to that location. He met with...

Attorney MEdney: Mr. Chairman, are you going to allow him to – do you want to call it hearsay as far as what he was told? I want to understand what rules we're on. And I'm going to need copies of the dispatch.

Vice Chairman Phelps: I think we have copies of the dispatch sheets right here.

Associate County Attorney SZambon: Well, Mr. Chairman, I think what Mr. Edney is saying and stop me if I'm speaking – saying it wrong – under the rules of quasi judicial proceeding you can't – you can follow the rules of evidence but you don't have too. So some of what Lt. McKay is speaking about is hearsay evidence that he didn't actually do or actually say but that he had heard from somebody. And you can hear that evidence but I do think for Mr. Edney and for the rest of the hearing it would be good for this board to determine whether or not you were going to hear that evidence.

Associate County Attorney SZambon: Is that correct? (to Mr. Edney)

Attorney MEDney: That's correct.

Vice Chairman Phelps: It there's no objection from the board shall we just agree that we will hear full evidence that Lt. McKay has to offer?

JCrafton: I would think if it relates to the documented evidence that we have.

Vice Chairman Phelps: The docket before us which you've already referred to. Well there being no objection, you may proceed.

Attorney MEDney: Ok, I'm sorry. Can I ask -the document that was provided to us has handwritten notes on it. And I'm not sure if these are Officer McKay's notes or notes someone else put on these. I understand the officer saying what he has to today.

Associate County Attorney SZambon: I believe, Lt. McKay, just to direct you, he's talking about the CAD report dated at the top October 13th at 2:00 pm and there are some handwritten notes on page one of two.

Vice Chairman Phelps: So there are two hand written notes.

Lt. McKay: What's the call number that you are referring to?

Associate County Attorney SZambon: The what?

Lt. McKay: Call number. Top left.

Associate County Attorney SZambon: 08090134. Or Mr. Edney has it. And then there are some other places too.

Vice Chairman Phelps: There are three different ones.

Lt. McKay: Ok. That page is a copy apparently that was turned over to Zoning by the complainant not by me.

Associate County Attorney SZambon: And who was the complainant?

Lt. McKay: The Stricklands.

Associate County Attorney SZambon: Ok. Are they here today?

Lt. McKay: I was just introduced to Katie Strickland so I know at least that...

Associate County Attorney SZambon: So Mr. Chairman, you know, depending on Mr. Edney's point of view I would say that regarding the handwritten comments on the CAD report, if we have the person here who can testify to what those say, I would not consider them under Lt. McKay's testimony because he didn't write them and the complainant is here so she can verify those.

Vice Chairman Phelps: Can we call her later to come up and verify after?

Associate County Attorney SZambon: Yes. But Lt. McKay you cannot comment at all on the handwritten sections and just... Is that ok? Is that acceptable Mr. Edney?

Attorney MEDney: It is. You bring up another point. Some of these CAD reports are from dates other that what we're here for. I'll ask the board to disregard those as well.

Vice Chairman Phelps: Are you talking about the September dates?

Lt. McKay: Just for clarification I was simply going to present the three that we're here about today.

Associate County Attorney SZambon: What three? The three complaints?

Lt. McKay: And the 12th, the 14th and the 15th.

Associate County Attorney SZambon: Ok.

Vice Chairman Phelps: Is that clear?

Associate County Attorney SZambon: Is that clear to the board? The board is to only consider the CAD results from those three days, not the preceding CAD results from September.

Attorney MEDney: Thank you.

Lt. McKay: And I'm presenting from my copy that I got from our dispatch center who prints off the CAD reports and they don't have handwritten notes on them. Where was I?

Associate County Attorney SZambon: You were, Lt. McKay you were discussing what led you to determine that the week of the 12th there had been a violation. Can you continue there?

Lt. McKay: Yes. On the Sunday, the 12th in my investigation I did get a copy of the CAD notes and the deputy who investigated that evening reported back to dispatch center and they entered it into the call and you'll see the detail was that the deputy which is referred to as C-2 which is Charlie-2 which is the corporal on that shift, stated that the subject has an agreement with the County that he can be open until 1900 which is 7:00 pm three days a week. He tries to shut it off by 1800 or 6:00 pm on Sunday out of courtesy but could not tonight. I further was made aware that on the 14th which was the following Tuesday that a complaint had been filed that the racetrack was again being in use and the timeframe that that call was received was 12 minutes after 7:00 or 19:12 which is indicated on the – in the CAD notes next to where it says 'time received, October 14th, 2008, 19:12:04. The officer referred to as Baker-6 or B-6 went on scene and the narrative indicates 10-114 which is the 10 code for 'on foot', actually walked into the scene. There's no indication of anything further on that call.

Vice Chairman Phelps: Excuse me, Lt. McKay, which – I guess our sheets confuse – some dates are 10-5 and then we have 10-12...

EGoodman: And 13.

Vice Chairman Phelps: And 13. Is there a 14?

Lt. McKay: Well, I think when you're seeing 10-13 you're probably seeing the date that it was printed.

Vice Chairman Phelps: Alright. And it shows 10-12 that's C-2. But the B-6 I see over here shows 10-5 as a date. Am I missing something?

Lt. McKay: Ok. Yeah, the copy that I have doesn't have a copy of the call detail that I'm speaking from.

Associate County Attorney SZambon: Lt. McKay depending on once you're done with your testimony, what I would suggest to the board is that you take out the CAD reports that you're specifically speaking to and at that point we'll enter them into evidence and we can pass them around instead of you trying to root through all the CAD reports.

Vice Chairman Phelps: That will be good.

Attorney MEDney: For the record, we don't have those either.

Associate County Attorney SZambon: Ok. And we'll also let Mr. Edney and Mr. Bennett see those.

Lt. McKay: Ok. The 14th the officer was dispatched after 7:00 pm. Which actually the call was received at 12 minutes after 7:00 pm and then the officer arrived on scene at 21, (2)(1) minutes after 7:00 pm. and got out and foot patrolled for a period of time, which is not indicated by this CAD report.

Associate County Attorney SZambon: Lt. McKay if I could just stop you for a second and clarify something. You said that the CAD report you were just reading from that was part of the – what you used to base your decision on was from October 12th? Is that correct?

Lt. McKay: The one I just was referring to was October 14th. The first one was October 12th which was Sunday. When I talked about the one on the – on October 14th which was the following Tuesday. And I'll tie that one in, in just a little bit.

Associate County Attorney SZambon: Ok.

Lt. McKay: Ok. If you'll let...

Associate County Attorney SZambon: I just want to – so you talked about the 12th - which was a Sunday.

Lt. McKay: Right.

Associate County Attorney SZambon: And the 14th which was the following Tuesday.

Lt. McKay: Correct. Then on the 15th officers were dispatched out – officer detail which id young-5 which is Officer John Brezilac who works for me now. He was on – he was in the field training at the time and was working in conjunction with Edward squad unit, Kenneth Gaddy. And they were dispatched on the 15th at 17 minutes after 5:00 pm and arrived on scene at 5:30 pm. and 5:33 pm. There was and additional officer, Allen Corthell that arrived on scene at 5:30 pm and John Brezilac arrived at 5:33 pm. These officers were dispatched out on the complaint that the track was open a second day during the week, which had been open on Tuesday when I referred to you a minute ago on the 14th and then this was the 15th on a Wednesday. So they were dispatched out to investigate that. They arrived on scene, spoke with Mr. Bennett and left. I also have an additional CAD report that details my investigation where I physically went out that following – soon afterwards on the 15th and actually got out with Mr. Bennett as well. So you will see that dispatch. And let me then explain why I brought the CAD report about the 14th, it doesn't detail any interaction from the officer. My conversation with Mr. Bennett about what was going on – we talked about the fact that officers had been dispatched out the prior day. He referred to that as being a result of the man who comes to grade his track allows that person – did not identify who that was – that person allows their children to ride on the track while they're out there grading it. And he advised that was what was going on, on Tuesday. He also advised me that what he had stated prior to other officers he thought was correct, that on Sundays he was allowed to go until 7:00 as well as on any other night of the week that he chose to use the track. Our conversation continued where I showed him my copy that I had been given by the County of the special use permit that ya'll had issued where it detailed the times of use of the track, which indicated that on Sundays the time the track had to be closed by 6:00 pm or 1800. And that Saturday could be additional amount of time but closing at 1900 or 7:00 pm. And then one other day of the week the hours could be, the track could be used as the same timeframe as the Saturday hours timeframe. We talked about that. He indicated that he had a copy of the special use permit and brought it to me. His copy did not contain the page that – with the limitations on it. And in our discussion he explained to me that he did not understand he had to close on Sundays at 6:00 pm. That confused me in that he went through the process in trying to get the special use permit and yet didn't know the requirements. So I spoke with him about that. It was amicable conversation. There was no problems encountered with him. I don't have any problem with Mr. Bennett personally, I just was doing what my Sheriff, my boss told me to do. And that's why I'm here, is to present that information that I gathered that I gave to Toby Linville as a result of my investigation.

Associate County Attorney SZambon: Mr. – Lt. McKay, if I could just summarize to try to make it clearer, you have read the special use permit.

Lt. McKay: Yes.

Associate County Attorney SZambon: What time does it say that Mr. Bennett is allowed to be open on Sunday?

Lt. McKay: Let me refer to that. 'Hours of operation, Sunday from 1:00 pm until 6:00 pm'.

Associate County Attorney SZambon: And it is your testimony that from the CAD reports and the information you received he was open later than 6 o'clock on Sunday.

Lt. McKay: That's correct.

Associate County Attorney SZambon: That's correct. Then how late is he allowed to be open during the rest of the week?

Lt. McKay: 'Saturday 10:00 am until 7:00 pm and one day during the week with the same hours as Saturday', so 10:00 am to 7:00 pm.

Associate County Attorney SZambon: To the best of your knowledge was there any time where he was open past 7:00? Specifically, I draw your attention to October 15th.

Lt. McKay: Right. The CAD reports indicate that the complainant called and stated that they were in operation and the time of that call was 7:19.

Associate County Attorney SZambon: The complainant being Ms. Strickland?

Lt. McKay: Yes.

Associate County Attorney SZambon: To the best of your knowledge?

Lt. McKay: That's correct.

Associate County Attorney SZambon: What does it say about how many days in a calendar week Mr.... the special use permit what does it say about how many hours during the week - calendar week Mr. Bennett can be open? Have the track open for use?

Lt. McKay: The facility cannot be open more than three days in a calendar week.

Associate County Attorney SZambon: And to your understanding, the week of October 12th, of October 12th, how many days were people riding on the track?

Lt. McKay: They rode on the track on Sunday and then they also rode on the track Tuesday and Wednesday.

Associate County Attorney SZambon: Ok. And how many days does the special use ordinance reviewed and approved by this board say how many days during the work week Mr. Bennett can be open?

Lt. McKay: Yes, it says, 'One day during the week with the same hours as Saturday'.

Associate County Attorney SZambon: And you stated during the week of October 12th how many days was Mr. opened - Mr. Bennett opened during the week?

Lt. McKay: The track was operating two days, Tuesday and Wednesday.

Associate County Attorney SZambon: So after you had spoken to Mr. Bennett what did you do next?

Lt. McKay: Well I left the facility and compiled my information and notified Toby Linville of what I had.

Associate County Attorney SZambon: And you had notified Mr. Linville because – why did you notify Mr. Linville?

Lt. McKay: He is the arm of the County that enforces this particular section of the code.

Associate County Attorney SZambon: And when you spoke to Mr. Linville, what was your position, or what did you tell him?

Lt. McKay: The information that I just gave you was that in my opinion the actions of Mr. Bennett was in violation of his special use permit.

Associate County Attorney SZambon: Based on the information you had and the special use permit, what specific, what specifically were the reasons he was in violation of the special use permit?

Lt. McKay: Operation past 6:00 pm on Sunday and operation of the track more than one day during the week. Those days were neither Saturday or Sunday.

Associate County Attorney SZambon: So did – during this specific week none of the things that you discussed with Mr. Bennett or you discussed with Mr. Linville regarding his special use permit have to do with the noise ordinance. Is that correct?

Lt. McKay: That's correct.

Associate County Attorney SZambon: Ok. So this was just specifically regarding the conditions in the special use permit, not the noise ordinance.

Lt. McKay: Right. Had there been a noise ordinance violation I would have cited Mr. Bennett.

Associate County Attorney SZambon: Ok. At this time Lt. McKay, can you take out the CAD reports - the specific ones you referred to – the 12th, not sure if it was the 13th or not, you know, whatever ones including the 12th that you would like the board to see.

Vice Chairman Phelps: 14th and 15th also. Right?

Lt. McKay: Right.

Associate County Attorney SZambon: And if you can pass them to Mr. Edney so that he can see them. At this time the county would like to enter these as County Exhibit A, if there are no objections and once Mr. Edney is done reviewing them we'll pass them around to all of you. These should be part of your packets, but , just to make it easier. I don't have any further questions for Lt. McKay at this time. Mr. Edney may and then the board can also ask him questions. I may have some rebuttal questions, though.

Vice Chairman Phelps: Mr. Edney, questions?

Attorney MEDney: I do. Trying to go over these if I may. Trying to look at the dates and times.

Associate County Attorney SZambon: Mr. Edney, do you have any objections to entering these?

Attorney MEDney: My objection would be is that we did not have prior notice to them, but not a real objection.

Associate County Attorney SZambon: So, Mr. Chairman I'll label these 'County A' and then I'll pass them around, if that's acceptable to the board.

Attorney MEDney: You want me to go ahead and start my questions while you're doing that?

Vice Chairman Phelps: Please.

Attorney MEDney: Lt., let me draw your attention first of all to the Tuesday, October 14th day.

Lt. McKay: Ok.

Attorney MEDney: Now first of all you were never there, correct?

Lt. McKay: That's correct.

Attorney MEDney: Any information you are providing to this board is based solely on information provided to you by fellow officers or by other citizens.

Lt. McKay: Correct.

Attorney MEDney: Did you speak individually with these officers or are you going solely on the - what you call the CAD reports?

Lt. McKay: That's what I'm basing if off of, the CAD reports, yes.

Attorney MEDney: So that assumes that the officers' and the dispatcher's information was spoken back and forth and recorded correctly.

Lt. McKay: Yes.

Attorney MEDney: Ok. As I understand from what I've heard you say, the officer arrived at the scene on that Tuesday at 7:21 pm.

Lt. McKay: That's correct.

Attorney MEDney: Now, are you familiar with the scene?

Lt. McKay: Yes.

Attorney MEDney: Ok. Are you aware that on that day at 7:21 the officer had to park up at the road_ walk down because the gate was closed and locked?

Lt. McKay: That's correct.

Attorney MEDney: Ok. Now if the gate's closed and locked, how can you define that as being open to the public for operations?

Lt. McKay: There were motorcycles operating in the park.

Attorney MEDney: Ok. Was the facility opened to the public for operation? Were there...

Lt. McKay: I can't make a comment on that.

Attorney MEDney: Tell the board whether or not the gate was closed and locked.

Lt. McKay: My understanding is that the gate was closed. That's why the officer went 10-114 or the – on foot patrol.

Attorney MEDney: And the man – from your understanding...

Associate County Attorney SZambon: If I could just interrupt, I just want to make sure we get it all on the record. Um Mr., Lt. McKay if you could make sure you talk into the microphone. Karen Ann, are we going to have a problem at all getting Mr. Edney?

Secretary KAAntonucci: No.

Associate County Attorney SZambon: Ok. I know it's tricky because you have one facing that way, so we can pick it all up. Sorry to interrupt.

Attorney MEDney: That's fine. Now the information you have as far as what Mr. Green was doing down at the facility – is that based on the CAD report, which I think doesn't say anything about that, or is that based on your conversation with Mr. Bennett?

Lt. McKay: It's based on my conversation with Mr. Bennett, yes.

Attorney MEDney: Ok. But a – from the County's standpoint a best case scenario is that a man was working down there on the facility and his son may or may not have been riding a motorcycle while his dad was working. Is that a reasonable interpretation?

Lt. McKay: Sure, now that you explained that. I didn't know what you meant by best case scenario.

Attorney MEDney: Well, ok. Have you got the aerial photograph of the property in your pack?

Lt. McKay: Yes.

Attorney MEDney: I assume the board all has a copy of this in front of them.

Associate County Attorney SZambon: They do.

Attorney MEDney: Is Mr. Bennett's property the property sort of in the middle of the picture where you can see lines that basically look like a track?

Lt. McKay: It appears that that's correct because there's North Egerton and the end of North Egerton and the entrance to his property is right there near the end. And so that would correspond from what I've seen out there, yes.

Attorney MEDney: Now, you see in the upper left quadrant the number 44?

Lt. McKay: Yes I do.

Attorney MEDney: Now isn't it true that that is the Strickland property, the primary complainant in this case?

Lt. McKay: I would have to defer to any CAD report. I don't have their address memorized.

Attorney MEDney: Well, if you don't know that's fine. I don't know that it's going to be in the CAD report.

Lt. McKay: Ok.

Attorney MEDney: The property to the immediate left of Mr. Bennett's property, it's like an open field near a lake, do you see that on the map?

Lt. McKay: Right.

Attorney MEDney: Do you recall Mr. Bennett explaining to you that that is not his property?

Lt. McKay: What I recall is him referring to an adjacent property and my understanding was that it was to the – if you're looking at the aerial photograph so that all the typing is in correct orientation – it would be to the right of his property that I recall him referring to.

Attorney MEDney: Across the river?

Lt. McKay: No. Near where the number, in behind where the number 158 is. In that building area.

Attorney MEDney: Let's say for the sake of argument, you guys are mistaken on that, did he talk to you about adjoining property where other people ride motorcycles that he has no control over?

Lt. McKay: He referred to that, yes.

Attorney MEDney: Referring to Wednesday, October the 15th, to your knowledge, there was no operation of the facility after 6:00 pm on that day, correct?

Lt. McKay: I can't testify to any operation past my – the day – the timeframe that I cleared, which was the top CAD report. My call sign is 'Adam 26' so it's...

Attorney MEDney: On Wednesday the 15th, that's where you say that Officer Corthell and some others came about 5:17 – or actually arrived on scene 5:33?

Lt. McKay: Correct.

Attorney MEDney: So to your knowledge there was no operation outside of the timeframes on that day?

Lt. McKay: I cleared the scene at quarter till seven and the operation was still ongoing at that time and that's the latest that I...

Attorney MEDney: On Wednesday the 15th?

Lt. McKay: Yes.

Attorney MEDney: You were personally there?

Lt. McKay: Yes.

Attorney MEDney: Ok. But he's allowed 7:00 pm during the week, not 6:00 pm, right?

Lt. McKay: Correct.

Attorney MEDney: Ok. On Sunday the 12th you say the complaint came in at 6:10 pm?

Lt. McKay: I'd have to refer back to the CAD sheets but I believe you're correct, if you wrote down as I spoke it.

Attorney MEDney: I don't – I believe the CADs say and officer didn't arrive until 6:30 or later. Do you recall that?

Lt. McKay: Correct. The call came into our dispatch center at 10 after 6:00.

Attorney MEDney: Do we have an officer saying whether or not the track was operating when they arrived at 6:30 pm on that Sunday? I can't make heads or tails of your report, so I apologize for that.

Lt. McKay: Referring to the 12th, correct?

Attorney MEDney: Sunday the 12th, yeah.

Lt. McKay: The officer advised that the subject has an agreement with the County. He can be open until 1900 three days a week. He tries to shut it off by 1800 on Sunday out of courtesy but could not tonight.

Attorney MEDney: So we don't know exactly what time it did shut off on that Sunday?

Lt. McKay: I'm sure the Stricklands would probably...

Attorney MEDney: But you don't know?

Lt. McKay: I do not know, you're right.

Attorney MEDney: And the officer didn't say?

Lt. McKay: That's correct.

Attorney MEDney: Those are my questions, thank you.

Associate County Attorney SZambon: Mr. Chairman, if I could just ask one or two rebuttal questions, real quick? Lt. McKay, on the day that you spoke to Mr. Bennett, were there riders on the track?

Lt. McKay: Yes, there were.

Associate County Attorney SZambon: There were. What time was it, when you were out there? I'm sorry, I keep making you go back to the CAD report.

Lt. McKay: I arrived on scene at 19 after 6:00 – 6:18-19.

Associate County Attorney SZambon: At this time you spoke to Mr. Bennett and he even said that there were riders on the track. Is that correct?

Lt. McKay: That's correct.

Associate County Attorney SZambon: At this time did you talk to him about the other complaints that you had gotten?

Lt. McKay: Yes I did.

Associate County Attorney SZambon: Did he – I understand from your testimony earlier he said he did not know about the condition or the requirements on his special use permit.

Lt. McKay: The specifically - that on Sundays he had to close at 6:00 pm.

Associate County Attorney SZambon: Did he deny any of the things that you alleged based on the complaints you had?

Lt. McKay: No he did not.

Associate County Attorney SZambon: Did he confirm any of the things?

Lt. McKay: He confirmed that the subject who grades his track and had done so the night prior, which was Tuesday the 14th, allows his children to ride while he's grading.

Associate County Attorney SZambon: I don't have any further questions, unless the board does or Mr. Edney has further questions.

Vice Chairman Phelps: Questions from the board? Jim?

JCrafton: On Tuesday the 14th, I'm trying to go back on your testimony, the note, the typed note from one of the CAD reports that you circulated to us says, 'still going strong at 7:19'. And this would be the night that the children and the maintenance man apparently was there. But do we have riders as well as riding beyond 7:00 pm, by the note on that CAD report?

Lt. McKay: I don't understand what you're asking me. Do we have anything other than the – this statement?

JCrafton: The typed note on the CAD report says there's a note and a typed note that says, 'still going strong at 7 – still going strong' and the time stamp right above it says 7:19.

Lt. McKay: Right.

JCrafton: My question is: Does that represent riding activity beyond the 7:00 pm time?

Lt. McKay: That is my understanding and I would refer to the complainant who made that statement to our dispatch center.

JCrafton: Is this an officer's statement?

Lt. McKay: That's not an officer's statement.

JCrafton: Ok. Thank you.

Vice Chairman Phelps: You're saying the complainant made the statement?

Lt. McKay: Yes.

Vice Chairman Phelps: Is it Ms. Strickland?

Lt. McKay: Right.

Vice Chairman Phelps: And can we call her to verify that?

Associate County Attorney SZambon: I will be calling her after Lt. McKay.

Vice Chairman Phelps: Any other questions? If not, Lieutenant, thank you.

Lt. McKay: Thank you.

Associate County Attorney SZambon: At this time Mr. Chairman, the County would like to call Katie Strickland.

Vice Chairman Phelps: Please state your name and address.

KStrickland: Katie Strickland, P.O. Box 513, Naples, NC 28760. Do you want me to make statements or do you want me to ask questions?

Associate County Attorney SZambon: I can ask you questions, or it's – I'll ask...

KStrickland: Ok.

Associate County Attorney SZambon: -you questions and then if you have any...

KStrickland: Ok.

Associate County Attorney SZambon: Ms. Strickland, can you please tell us approximately – Mr. Edney had referred to this map – can you point out to the board where your property is and where Mr. Bennett's property is?

Vice Chairman Phelps: 44 is yours?

KStrickland: (Nodded yes)

Associate County Attorney SZambon: At this time the county would like to enter this map as County Exhibit B. If Mr. Edney is fine with this.

Attorney MEDney: That's fine. Yes.

Associate County Attorney SZambon: Ok. Ms. Strickland personally how far – is your property from Mr. Bennett's motor cross track?

KStrickland: Um, it's probably a quarter of a mile.

Associate County Attorney SZambon: A quarter of a mile?

KStrickland: Um-hm. Through the, you know, not on a road.

Associate County Attorney SZambon: Right. But as the crow flies?

KStrickland: Exactly.

Associate County Attorney SZambon: And when Mr. – strike that. Have you – what has been your involvement involving the motorcrossway track?

KStrickland: Well, um, it's basically a overwhelming noise issue that has occurred. Um, you know, the minute they start in you know, even if you're in the house, you know when they've started. And if you walk out the door you're completely bombarded by the noise. At first we thought that perhaps there could be some kind of a compromise, then when we found out what their actual permit hours were we realized it's just completely run a-muck. They run multiple nights a week until dark generally speaking unless the Sheriff's Department shuts them down and then all weekend long. So it renders outdoor time, you know, you're hostage basically.

Associate County Attorney SZambon: So, Ms. Strickland, have you seen a copy of Mr. Bennett's special use permit?

KStrickland: Yes. After we started realizing how often they were out and how much time was being taken and how – it's just exceedingly loud, we got the copy. And that's when we realized that they were supposed to be out only one night a week and that they had certain set hours that they were supposed to work within.

Associate County Attorney SZambon: Were you surprised once you saw the special use permit regarding Mr. Bennett's conditions?

KStrickland: Yes. Yes. Completely surprised.

Associate County Attorney SZambon: And is it your testimony before this board that Mr. Bennett, to the best of your knowledge and your experience that Mr. Bennett violated the conditions of this special use permit?

KStrickland: Yes.

Associate County Attorney SZambon: You heard Lt. McKay talk about the calls to the Sheriff's Department.

KStrickland: Um-hm.

Associate County Attorney SZambon: Were you the one who was making those calls?

KStrickland: It would have either have been myself or my husband.

Associate County Attorney SZambon: Ok. And why were you – why did you call the Sheriff's Department?

KStrickland: Well we first started calling because it was so loud and we wanted to know what is the Noise Ordinance? What is allowed as far as noise-wise? And then once we actually got a copy of the permit and we realized, ok, they have certain hours that they are allowed to operate within and then we realized how often they were operating then we would – that's when we started to call to simply have it shut down after hours times or when they would run a second night of the week, or a thir..., you know, multiple nights of the week.

Associate County Attorney SZambon: What can you tell me from what you remember of the week of October 12th?

KStrickland: The week of October 12th at um, well that was just a, I mean, to be honest it was just another week of another – a lot of noise. So I remember we called as soon as we realized they were after hours we called. Asked the Sheriff's Department for, you know, to tell them it

was after hours, that, to shut, to stop. And when the second night happened, you know the same kind of thing, when you realize oh my goodness they're still - you know they're running again – it's a second night. And then just violating the conditions of the permit.

Associate County Attorney SZambon: Lt. McKay spoke about these CAD reports, the Police Department makes. Did you call the Sheriff's Department on Sunday, October the 12th?

KStrickland: Yes.

Associate County Attorney SZambon: Why did you call the Sheriff's Department on Sunday, October 12th?

KStrickland: Because they were running after hours.

Associate County Attorney SZambon: And what do you mean by after hours?

KStrickland: After 6 o'clock.

Associate County Attorney SZambon: Do you know approximately what time?

KStrickland: Well, we called around 6:10. Ten after six. And I will tell you that when we've called in the past, you know, the Sheriff's Department has other things to do so it's not an immediate, you know, they can't get out there right away. So we got in the habit, as the months went along, to call sooner rather than later, 'cause they would continue to running until dark if the Sheriff's Department doesn't come out.

Associate County Attorney SZambon: So, did you call on October 13th, Monday?

KStrickland: Yes.

Associate County Attorney SZambon: And why did you call on October 13th?

KStrickland: Running after hours.

Associate County Attorney SZambon: And what time did you call on Monday, October 13th?

KStrickland: I don't, I don't remember off the top of my head.

Associate County Attorney SZambon: Ok.

KStrickland: It would have been after, well after six or after seven, yeah, I'm not sure exactly what time.

Associate County Attorney SZambon: Ok. You don't recall exactly what time. Did you call on Tuesday, October 14th?

KStrickland: Yes.

Associate County Attorney SZambon: And why did you call on October...

KStrickland: 'cause it was the second day.

Associate County Attorney SZambon: Because it was the second day?

KStrickland: Um-hm.

Associate County Attorney SZambon: Have you, did you call after the 14th? Did you call the Sheriff's Department regarding the motor cross after October 14th?

KStrickland: Oct,um, is it...

Associate County Attorney SZambon: That would have been the Tuesday of that week.

KStrickland: No. I do not believe that we – I don't believe that I called again after that date, but I'm not positive.

Associate County Attorney SZambon: Ok.

KStrickland: 'cause I'm not sure which day they were actually officially shut.

Associate County Attorney SZambon: From July of this year to October of this year have you experienced the motor, the motor cross track running after 7:00 pm during the week?

KStrickland: Yes.

Attorney MEdney: I have an objection. They are not just the specific days that we are here to talk about.

Associate County Attorney SZambon: Ms. Strickland there were some notes that were brought up earlier.

KStrickland: Yes.

Associate County Attorney SZambon: I'm going to pass these to you and again I just want you to look at the notes, not the CAD reports themselves. But can you identify these notes for me? And make sure you speak up in the microphone just so we get it all.

KStrickland: Ok. The one printed 10/13 that's my husband's. The one printed on, ok another one on 10/13, 'were still riding more than an hour after permitted', that's my handwriting. And then the one 10/13, 'dishonest with officers about the hours', that's my husband's handwriting.

Associate County Attorney SZambon: Because the officers had given you copies of all the CAD reports, ok. Ms. Strickland, can you tell me why you are here today?

KStrickland: I'm here today to – basically because they're operating outside the hours of their permit and it makes life just miserable. I mean, when they're operating and they're fully in use you can't be out side. You can't enjoy – you can't have a cookout. You can't have a birthday party. You are completely at the mercy of their noise and so, you know, we're here, we came because we would just really like to have some kind of a – if they get another permit – have it be a more reasonable amount of time and set times. Or unfortunately maybe no permit at all, if they can't stay within a certain amount of – stay within the times that are allotted to them.

Associate County Attorney SZambon: If, you've seen the special use permit that this board approved.

KStrickland: Um-hm.

Associate County Attorney SZambon: If Mr. Bennett met the special use – if Mr. Bennett met the conditions that were set forth by this board would you consider it as cumbersome to your life?

KStrickland: Yes, because every weekend is just not comfortable. All weekend long, every weekend is not comfortable.

Associate County Attorney SZambon: I don't have any - Do you have anything further you'd like to add?

KStrickland: No.

Associate County Attorney SZambon: At this time Mr. Edney may ask some questions, I may ask some more questions, and then a rebuttal.

KStrickland: Ok.

Attorney MEdney: How long have you guys owned that property?

KStrickland: About four years.

Attorney MEdney: 2004?

KStrickland: Um-hm, about.

Attorney MEdney: So you owned it on May the 19th of 2008?

KStrickland: Yes.

Attorney MEdney: And May the 26th of 2008?

KStrickland: Yes.

Attorney MEdney: And you owned it on June the 4th of 2008?

KStrickland: Yes.

Attorney MEdney: Were you here to provide the board any input as far as the permit or the hearing at that time?

KStrickland: No. We actually were unaware of the hearing that was going to be taking place.

Attorney MEdney: Were there motorcycles going on out there at that time, back in the summer?

KStrickland: Not on June 4th, 'cause we had a birthday party out there.

Attorney MEdney: So you would have not been here, you would have been at a birthday party?

KStrickland: I was at my son's birthday party.

Attorney MEDney: Whenever you made these calls and heard these noises, are you assuming it's coming from that track?

KStrickland: There's no assuming. I can walk across the pastures and look through the trees and see them. And there's no mistaking the sound, I mean it's, you know, you can see there are a lot of people here. There are a lot of people that really enjoy it. It's a loud noise and you know it's going on.

Attorney MEDney: I was just wondering how you can see through the trees and over the river and all that stuff.

KStrickland: Oh, the river's down low and trees are right here. I mean it's a great looking track. They've got huge jumps on it and you can see 'em.

Attorney MEDney: Would you guys like to come over and ride?

KStrickland: Yes! I mean if the hours were more reasonable it would be fun, but it's...

Attorney MEDney: What do you think is reasonable?

KStrickland: I think that, ok, I'll be perfectly frank. I think obviously they're out multiple nights of the week. I think if they had set nights that we knew that those were the nights they were going to ride, and that way we would know. You don't plan to be outside those nights or enjoying a nice quiet night. If you had, you know, set two Saturday's a month where they could ride as much as they wanted, but we would know we're not going to be home those – we'll go hike somewhere else. We'll do something else. We won't plan a birthday party. We won't plan a cookout those days. That to me would be reasonable because then we could enjoy our property and they could enjoy their property. But the way it is now, or the way it was before it was unfortunately shut down, it's just all the time and it's – it's really miserable.

Attorney MEDney: Ok. So this is just a general miserable thing?

KStrickland: It's miserable and it's miserable when it goes till dark. It's just very loud and, you know, it's unrelenting.

Attorney MEDney: And you had no indication that any of this was going on until you starting hearing noises? When did you first start hearing the track run?

KStrickland: Well, we've heard them run periodically before they got their permit. I mean, that would be periodically they'd be out there and that's a more reasonable thing, when you hear it once in a while, here and there. That you can, you can deal with that.

Attorney MEDney: Do you recall him opening the track?

KStrickland: It was the summer. Later in the summer, after July.

Attorney MEDney: Those are my questions. Thank you, ma'am.

KStrickland: Ok.

Associate County Attorney SZambon: At this time I don't think I have any further questions – if the board has any questions for Ms. Strickland?

APouch: I have one. Were one of those calls made at 5:00 in the afternoon?

KStrickland: Yes. And that was for, when they were doing the second day of the week. They were supposed to operate only one day of the week and so the second day of the week was the 5:00 call.

Vice Chairman Phelps: So you're saying on the 15th, which would have been the second week...

KStrickland: Second weekday.

APouch: What's the date on this Sunday at 10 minutes after 6 you called the Sheriff's Department.

KStrickland: Right.

Vice Chairman Phelps: But on that Wednesday, the 15th I think at 6:00 they were still going, I think.

KStrickland: Um-hm. Yes.

EGoodman: Does the track have a light?

KStrickland: No. They stop at dark unless the Sheriff's Department comes, they stop at dark, or right before dark.

EGoodman: Just whenever dark comes?

KStrickland: Um-hm.

Vice Chairman Phelps: Go ahead Jim.

JCrafton: Ms. Strickland I have a couple questions. Alright, on the first weeknight of this week we are talking about, we're speaking of where allegedly the maintenance person's child or children were riding, how many riders did you observe on the track that night?

KStrickland: I did not go out and count the riders, but it was certainly more than just a – my understanding is that there are different sizes of bikes. You could have the small ones, you could have the big ones. And I find it hard to believe that it was just a few children out there riding on small bikes because it's a loud noise and you know it.

KStrickland: The reason I asked the question – in earlier testimony it was indicated that the maintenance person's child, in the singular sense was there.

KStrickland: Right.

JCrafton: And my question is whether we have evidence that there was more than one rider there that day?

KStrickland: My hearing says there were quite a bit more than one rider.

JCrafton: Ok. On another one of the reports you testified – acknowledged that, I believe your husband's note indicating on that same night that, 'they were riding, 'still going strong at 7:19 pm'.

KStrickland: Yeah. Yes.

JCrafton: Would that not have been after dark?

KStrickland: No. Not dark. That was –

JCrafton: Before day-light-savings-time.

KStrickland: Right it wasn't dark yet.

JCrafton: Ok. That's all I have.

EGoodman: Do you know if there's a limit to the number of drivers that can be out there on...

KStrickland: There is a limit. There is supposed to be a limit. I'd have to look at the permit to know.

Vice Chairman Phelps: According to the permit there's 10.

EGoodman: Are these dirt bikes or are they street legal? Probably need to ask that technical...

Attorney MEdney: They're dirt bikes.

EGoodman: Ok. I don't have any more questions.

Vice Chairman Phelps: And really as I understand this Sarah, we're here because of the violation of the ordinance, not whether or not somebody was here in June for a hearing. We are talking this instance now about what occurred on these specific dates and what the violation is and recurring more weekdays than was allowed and going beyond the hours that were set. Just for clarification purposes. So, questions of whether people were aware previously or how they previously operated is really not material to what we determine tonight. Thank you.

KStrickland: Ok.

Vice Chairman Phelps: Sarah?

Associate County Attorney SZambon: I don't believe unless Lt. McKay knows something that I don't...

Lt. McKay: I know a lot that you don't (jokingly to Ms.Zambon)

Associate County Attorney SZambon: I don't believe that in regards to this case we have any further witnesses. That's correct, right? Yes. So the County has no further witnesses.

Vice Chairman Phelps: So we're up now to Mr. Bennett.

Associate County Attorney SZambon: So Mr. Edney.

Vice Chairman Phelps: I would go now to Mr. Bennett.

Attorney MEDney: I'm going to ask Richard Green to come up first.

Vice Chairman Phelps: Please state your full name and address in the microphone please.

RGreen: Richard Green, 6809 Willow Road, Hendersonville.

Attorney MEDney: Mr. Green, are you the person who was out on the track on Tuesday, October the 14th?

RGreen: Yes.

Attorney MEDney: Alright. Face them because they're the ones that are important. Tell them what happened on that day and why it happened.

RGreen: Well, I was out there working on the track and uh, I took a couple of my kids' bikes for a few of my friends to look at to buy. And they came out. We started them. There wasn't no riding. There was riding over in the field to the left of the track. And the officer that came down, you know, it was dark when he got there, but whenever he come down there I told him they'd been riding over there. And he said he would document it and everything.

Attorney MEDney: Can you tell them what time you got there that night, approximately?

RGreen: I'd say it was about 5:00, 6:00, somewhere when I got there.

Attorney MEDney: And what did you do exactly? What were you doing there?

RGreen: Working on the track.

Attorney MEDney: Doing what?

RGreen: Grading it.

Attorney MEDney: And how long were you there, total?

RGreen: I was there a couple hours.

Attorney MEDney: How did you get access to the property?

RGreen: A key.

Attorney MEDney: Did you lock the door, the gate behind you?

RGreen: Yes.

Attorney MEDney: Was the property opened to the public that day?

RGreen: No, it was not.

Attorney MEDney: Was anybody there besides you and your kids?

RGreen: No. Well, my friends come by.

Attorney MEDney: How many bikes were there?

RGreen: Two.

Attorney MEDney: How many were operating at the same time?

RGreen: Neither one.

Attorney MEDney: Running – motors running.

RGreen: Oh, two.

Attorney MEDney: They were never on the track itself?

RGreen: No. They were never on the track.

Attorney MEDney: When the officer got there did – were the people riding on the property that adjoins this property?

RGreen: He got there about five minutes prior to when they were riding. They was riding all the way over there till it was dark.

Attorney MEDney: Ok. Did they ride over there a good bit?

RGreen: Yes.

Attorney MEDney: Do you know whether or not Mr. Bennett has any control that property?

RGreen: No, he does not.

Attorney MEDney: Were you there on Sunday the 12th before Wednesday the 15th?

RGreen: I was there on Wednesday.

Attorney MEDney: Was it operated as normal on that Wednesday?

RGreen: Yes.

Attorney MEDney: As normal before 7:00 pm?

RGreen: I actually pulled the bikes off about a quarter till 7:00.

Attorney MEDney: Was it dark that week? What time did it get dark that week, if you remember?

RGreen: I'd say it's getting dark around 7:00.

Attorney MEDney: And you don't own the track or have any financial gain as far as your testimony here today, do you?

RGreen: No, I do not.

Attorney MEDney: Those are my questions. They may have some for you. If they do please answer them.

Chairman Phelps: Questions?

Associate County Attorney SZambon: I have a few questions Mr. Chairman. Mr. Green, have you ridden on this track?

RGreen: No. My son has.

Associate County Attorney SZambon: Your son has?

RGreen: Yes.

Associate County Attorney SZambon: And you said that on this Tuesday you were out on the track with your sons and your friends?

RGreen: No. I was there working on the track with my tractor.

Associate County Attorney SZambon: But your children were with you?

RGreen: My son was with me, yes.

Associate County Attorney SZambon: Your son was with you and you had...

RGreen: I had a couple of buddies come by to look at his bike for their kids.

Associate County Attorney SZambon: So is that – how many is a couple?

RGreen: Two.

Associate County Attorney SZambon: Two. So there are about four people on the track that day?

RGreen: No. The only person on the track was me.

Associate County Attorney SZambon: Ok.

RGreen: With my tractor, then my friends come by. The bikes were in my truck. The bikes never, you know, we never took them out. We just started them on the – they're just little-bitty 50's.

Associate County Attorney SZambon: Were the bikes in the motor cross park?

RGreen: Yes. They were there.

Associate County Attorney SZambon: On Mr. Bennett's property?

RGreen: Yes.

Associate County Attorney SZambon: And you started the bikes on Mr. Bennett's property?

RGreen: Yes.

Associate County Attorney SZambon: And the bikes were there so that you could show them to your friends who were considering buying these bikes from you?

RGreen: Yes. For their kids.

Associate County Attorney SZambon: For their kids?

RGreen: Right.

Associate County Attorney SZambon: So it's your testimony today that nobody got on the bikes to see how they worked or anything like that?

RGreen: No.

Associate County Attorney SZambon: You just started the bikes.

RGreen: Correct.

Associate County Attorney SZambon: And you currently do service yard work, kind of stuff, maintaining the track for Mr. Bennett.

RGreen: I help him out, yeah.

Associate County Attorney SZambon: And your child has ridden on the track?

RGreen: Yes.

Associate County Attorney SZambon: Were you on the track on Sunday the 12th?

RGreen: No, I was not.

Associate County Attorney SZambon: Were you there on Monday the 13th?

RGreen: No.

Associate County Attorney SZambon: Were you there on Wednesday the – Wednesday the 15th?

RGreen: Yes.

Associate County Attorney SZambon: You were. So you were there Tuesday and Wednesday?

RGreen: Yes.

Associate County Attorney SZambon: I don't have any further questions. If the board does...

Vice Chairman Phelps: Jim.

JCrafton: Mr. Green, is that right? Did I understand your testimony – I'm confused here. At one point it seemed like they only started the motors. In another part of your testimony it seemed like they were riding on what you described as an adjacent field.

RGreen: Yes. There was other people – there's a big field over in front of the track. And there was people over in there riding.

JCrafton: But not your sons?

RGreen: No. I don't know who it was, I mean you could just hear them over there.

JCrafton: Ok. But your sons – you only started an engine. There was no riding of your son at all around the property?

RGreen: Correct. I wouldn't let my son ride with me working the track anyway. I couldn't watch him.

APouch: Where is the field that other people ride?

RGreen: To the left of the track. I guess i'd be north of the track.

APouch: That would be closer to the Strickland's property?

RGreen: Yes, ma'am.

APouch: Ok.

EGoodman: Is there a pond near there?

RGreen: I don't know. I don't know if there's a pond there or not.

Vice Chairman Phelps: That's what I was wondering too, if it's in here. Mr. Green, just bear with me a moment, for my edification. You're in no way related to Mr. Bennett?

RGreen: No, sir.

Vice Chairman Phelps: Your children are not in any way related to him?

RGreen: Not that I know of.

Vice Chairman Phelps: So, the point being he could not say in any way it was relatives using the property?

RGreen: Right.

Vice Chairman Phelps: So you were there to do the work as I understand your testimony, you were there to do the work. You brought the two bikes. Two other people came by to look at the bikes and you just merely started – did you take them out of the truck?

RGreen: No.

Vice Chairman Phelps: So they were just started right there in the truck and...

RGreen: Like I say they are 50s. I mean I couldn't ride them. An adult can't ride them.

Vice Chairman Phelps: Understand that you informed the officer that came there that there were some riders in another property, not Mr. Bennett's property.

RGreen: Yes, sir.

Vice Chairman Phelps: That had been riding.

RGreen: Yes, sir. And he said he would document it.

Vice Chairman Phelps: Anything else?

Attorney MEDney: I'm going to ask, Mr. Green, if you will take this picture and I guess I'll put R1 on it just for 'respondant'. Can you mark the property you're talking about that adjoins the track, and – so we can have an idea what we are talking about here. Is it on this side, or this side? Put a big 'X' on it. Now, just to make sure I understand, by the time the officer got there it was right at dark?

RGreen: Oh, it was dark.

Attorney MEDney: It was dark. And the people who had been riding over there had already left?

RGreen: Correct.

Attorney MEDney: That's all.

Vice Chairman Phelps: Thank you.

Attorney MEDney: I'll offer this into evidence.

Vice Chairman Phelps: Yeah, so we could tell on our maps here where that was marked.

Attorney MEDney: I'll call Mr. Bennett as my next witness, please.

Vice Chairman Phelps: State your full name and address.

GBennett: George Andrew Bennett, 48 Ashworth Drive, North Carolina, 28730.

Attorney MEDney: Mr. Bennett let me start by asking you about the conversation you had with Officer McKay relative to that Tuesday evening. You heard him testify that you told him that you believed that the man who's grading the property, his son was riding while he was grading?

GBennett: Yeah, I just, I wasn't there that Tuesday. I don't know what...

Attorney MEDney: Talk to them. (board members)

GBennett: Ok. I wasn't there that Tuesday, but you know, if he brought his son out and brought a little 50, you know, I don't know if they were riding or not. But he says he wasn't riding. So I mean I wasn't actually on the property on Tuesday. I don't have a tractor. I had to sell my equipment over that past 3 ½ years just to get through this process. And Richard has a tractor – doesn't live far from the track. And he comes down and grades my track for me Tuesdays, Fridays. I also have another guy, Justin Crumb that has some equipment that comes out and helps me with the track. I don't have the equipment to do it myself. I just got back open. I haven't been able to buy the stuff yet. The park needs a lot of work and so he comes out every Tuesday, he'll come out and grooms the track for me. The track is something that has to be kept up.

Attorney MEDney: My question is, when you told Officer McKay that his son was riding, you just assumed that – you didn't know it one way or the other?

GBennett: Actually, I think Officer McKay told me that his son was riding. I don't remember that conversation that well with Officer Ben McKay. I don't remember it going on that – I mean I remember him coming out. I wasn't there earlier in the day when the other two officers came out. I didn't talk to them. I was there when Ben McKay arrived. I talked with Mr. McKay and I told him we did have an issue about times on Sunday. And I told him, I did tell him I was allowed to be open until 7:00 on Sunday. But I told him, you know, when I found out he had the permit – he showed me in the permit where I could close at 6:00. It didn't matter anyway I've never operated past 6:00 on Sunday.

Attorney MEDney: Back to the 14th of October. One thing at a time. Was the track open to the public on the 14th, that Tuesday?

GBennett: No. It was not.

Attorney MEDney: When it is open to the public do you charge admission?

GBennett: Yes.

Attorney MEDney: Did you make any money on admission or anything else on Tuesday, the 14th from the operation of the track?

GBennett: No. I haven't made any money off the track in five years, but no, Tuesday I didn't make any money.

Attorney MEDney: So you contest the track was not open and was not in operation on Tuesday, the 14th.

GBennett: Yes. It was not open and not in operation on Tuesday.

Attorney MEDney: Ok. Was it open and on operation on the next day, Wednesday, October the 15th?

GBennett: Yes. It was

Attorney MEDney: And did it operate pursuant to the rules and close at the appropriate time on the 15th?

GBennett: Yes. It did.

Attorney MEDney: Ok. Now on Sunday the 12th was there an issue? Did it actually stay open a little bit later on that day?

GBennett: Yes. It did and that was the Sunday – what happens is I have to split the – split the bikes up. I have to...

Attorney MEDney: Get away from the mic a little bit.

GBennett: Alright. I have big guys and little guys that, you know, I have to separate so that there's not too many of them on the track at one time. I have to keep everything separated. And I let them go 15 minutes at a time. And I'd skipped over the little kids, the little 50s. And so at 10 till 6:00 I'd pulled the big bikes off and I let the kids go back on for the last 10 minutes. And my track's a mile long right at a mile long. Sometimes it takes the 50s, the smaller bikes, it could take them five minutes to get around the track. That day I was pulling them off the track. I've got one place where you get on the track, one place where you get off the track. Couple of little kids didn't see me. I was waving them off the track. They went around and the officer came – was at my track. I thought it was 20 after 6:00 when he got to my track and there was nobody riding. Everything was loaded. And they did go till about 5 minutes after 6:00 on that one particular Sunday. 'Cause it just took me that long – there were probably three or four small bikes out on the track, but it took – they went an extra lap, but it took me that long to get them off.

Attorney MEDney: Have you done your best to comply with the requirements this board set in place?

GBennett: Yes. I have. I worked 3 ½ years to get that permit and you know, I just, I wouldn't violate the conditions.

Attorney MEDney: Your right to operate the track was suspended on October the 17th?

GBennett: Was that a Friday?

Attorney MEDney: Well, roughly that date.

GBennett: Yeah.

Attorney MEDney: Have you operated it since that time?

GBennett: No. I haven't.

Attorney MEDney: Could you tell the board roughly how much you've been penalized as far as how much money you would have made that you have not made because of this suspension?

GBennett: Actually, this is the busiest time of the year for me. The weather's cool. There's not much – there's not a lot of racing going on. Most of the motor cross race series are over. So when everybody comes to practice, I would say between \$1,500 and \$2,000 every Saturday and Sunday and probably \$500 every Wednesday. So roughly \$3,000, \$4,000 a week.

Attorney MEDney: And do you have payments on this track you have to make every month?

GBennett: Yes.

Attorney MEDney: And you depend on the income to try to keep you out of the poor house?

GBennett: Yes. I do. I depend on the income to keep the track up. It's a very expensive operation, keeping the track up. I'm trying to buy equipment, you know. And I've bought a water truck, bought quite a few things. Put quite a bit of money into that track, you know, I mean money that I didn't have because, you know, I mean, I didn't, I had to get the track open to make the money back. So I had to put money that I couldn't afford to put into it to get it open. And it was a critical time for me. I really needed to operate the past six weeks. I mean, you know, I didn't violate the conditions of my special use permit. I did that Sunday by five minutes, you know, but it just couldn't be helped. I mean, you can't tell the kids to turn their bikes off in the middle of the track and then walk down there and have them – they couldn't push their bikes up anyway. They're not physically able. But, you know, I mean, they were off 5 minutes after 6:00. I think it was wrong that you come on a Friday at 4:30, no - and schedule a hearing six or eight weeks later. I loose all that income. No – I had no idea. I talked with Ben McKay on Wednesday afternoon – Friday the track – my permit was revoked.

Attorney MEDney: Ok. Those are my questions that I have.

Associate County Attorney SZambon: Mr. Bennett, I do have some questions for you. On that Wednesday, I believe the Wednesday is the 15th, you spoke to Lt. McKay?

GBennett: Yes. I did.

Associate County Attorney SZambon: On – at that time you admitted to Lt. McKay that – you told Lt. McKay there were riders on the track on that Tuesday.

GBennett: I didn't tell Ben McKay that there were riders on the track on that Tuesday. I told him I wasn't there on Tuesday. The track wasn't open on Tuesday.

Associate County Attorney SZambon: Did you tell Lt. McKay that you weren't sure what time your track was supposed to close on Sunday?

GBennett: No. We argued about that and he showed it to me. I was sure that it was – that I had till 7:00 on Sunday. He told me it was 6:00. Well, he didn't tell me it was 6:00, he kept saying, "Are you sure about that? Are you sure about that?" And, I'm like reasonably sure and he said, "Well show it to me." So I went over – I didn't have the sheet. He showed me on his it said 6 o'clock. And I said, "Well, you know, irregardless, I thought it was 7:00, it was 6:00, it doesn't matter." Nobody's rode here on Sunday after 6:00 anyway. I close the track at 6 o'clock.

Associate County Attorney SZambon: Your testimony was just that they were riders on the track after 6 o'clock.

GBennett: One time. Five minutes after 6:00. It took me that long to get the little bikes off. I did say that but I didn't tell Ben McKay that – that I'd rode past 6 o'clock on Sunday.

Associate County Attorney SZambon: Ok. You told Lt. McKay that you didn't know what time you were supposed to close on Sunday. Is that true?

GBennett: No. I told him 7:00, that I was supposed to close at 7:00 on Sunday. But I also told him that I'd never ridden past 6:00 after he showed me his sheet – said it doesn't matter, I close at 6:00 on Sunday because there's a church right up the road.

Associate County Attorney SZambon: So your testimony is that on the 12th you *did* ride past 6:00, but on the 15th when you talked to Lt. McKay, you told him you *never* ride past 6:00. Is that correct?

GBennett: I don't think so. Say that one more time.

Associate County Attorney SZambon: Mr. – I'm just repeating back to you exactly what you just said. You said that on the 12th you had riders on the track past 6:00 and then when you spoke to Lt. McKay on Wednesday, you did not tell him that you had riders on the track past 6:00. You told him you *never* have riders on the track past 6:00.

GBennett: That's correct.

Associate County Attorney SZambon: That's correct.

GBennett: We did tell him – when we spoke I said that I didn't have riders past – I said irregardless of whether I'm supposed to close at 6:00 or 7:00 I close at 6:00 anyway because there's a church up the road.

Associate County Attorney SZambon: Mr. Bennett, you were here for your special use permit hearing before this board?

GBennett: Um-hm.

Associate County Attorney SZambon: Is that correct? You were here for the whole hearing. Is that correct?

GBennett: That's correct.

Associate County Attorney SZambon: You heard all the testimony given at that time?

GBennett: Um-hm.

Associate County Attorney SZambon: You heard all the discussion of the board?

GBennett: Correct.

Associate County Attorney SZambon: You heard all the conditions they set on you at that hearing?

GBennett: Correct.

Associate County Attorney SZambon: Ok. And then you're aware that it was written into an order?

GBennett: Correct.

Associate County Attorney SZambon: Ok. At this time I would like to see you – show you County Exhibit C. Can you please identify this for me?

GBennett: Yeah. It's my special use permit.

Associate County Attorney SZambon: Ok. And on the – page 5 of 5 of the special use permit can you tell me, is that your signature?

GBennett: Yes. It is.

Associate County Attorney SZambon: Ok. So when did you sign this?

GBennett: The 30th of June.

Associate County Attorney SZambon: The 30th of June. And at this time the Zoning Department gave you a full copy of this permit?

GBennett: Yes.

Associate County Attorney SZambon: Can you read for me from the permit that you stated, the hours of operation, number 1?

GBennett: Hours of operation: 'Sunday 1:00 pm until 6:00 pm. Saturday 10:00 am until 7:00 pm. And one day during the week with the same hours as Saturday'.

Associate County Attorney SZambon: Ok. So you did receive this permit?

GBennett: I did.

Associate County Attorney SZambon: And you even signed for it.

GBennett: I did.

Associate County Attorney SZambon: Can you read for me into the record what it is you signed? It says, 'acceptance by the applicant'.

GBennett: 'I George Andrew Bennett, Applicant, do hereby acknowledge receipt of this order as the agent of the property owner of Recreational Motor Sports Facility which is the subject of the special use permit request. I further acknowledge that no work may be done pursuant to this permit except in accordance with all of its conditions and requirements and that this restriction shall be binding on the owner and his successors in interest'.

Associate County Attorney SZambon: Thank you. I just have a few more questions for Mr. Bennett. You testified earlier that you have two people, I believe, that do track maintenance for you.

GBennett: Correct.

Associate County Attorney SZambon: Do both those people have keys?

GBennett: Keys or a combination.

Associate County Attorney SZambon: Or a combination. And you also testified that you – that they will be on the track when you are not there.

GBennett: They will be on the track working, not riding.

Associate County Attorney SZambon: But your testimony earlier in this hearing was that you don't – you're not there. You didn't know whether or not they rode.

GBennett: Yeah, that's right.

Associate County Attorney SZambon: But you are aware that you're – because of your special use permit you are in charge of when there are riders and when there are not.

GBennett: Right.

Associate County Attorney SZambon: People that you've given a key to or a code to, have you advised them regarding the terms of your special use permit?

GBennett: Yes. Everybody knows about my special use permit.

Associate County Attorney SZambon: But you do not know whether or not people comply with your special use permit when you are not there?

GBennett: They do. I think they do or I wouldn't give them the combination or the key.

Associate County Attorney SZambon: But you can't be sure.

GBennett: Can you?

Associate County Attorney SZambon: It's not my track.

GBennett: No. I can't be sure that they are not doing it. But I...

Associate County Attorney SZambon: Ok.

GBennett: I wouldn't think that they would.

Associate County Attorney SZambon: Ok. So but you – and you weren't there on the Tuesday that's in question?

GBennett: No. I wasn't.

Associate County Attorney SZambon: I don't think I have any further questions. If the board has any questions, or Mr. Edney has any rebuttal. And I will pass around what I'm going to enter as County Exhibit C which is the...

APouch: I think we have that.

Associate County Attorney SZambon: You have it in your packet.

EGoodman: We have it.

Associate County Attorney SZambon: It's the special use permit and Mr. Bennett's signature. I don't have any further questions. If the board does or Mr. Edney does.

Vice Chairman Phelps: Questions from the board? The page 3 of 5, G – says, 'a sprinkler system will be installed to mitigate dust'. Has there been a sprinkler system installed?

GBennett: Yes. And I have a water truck.

Vice Chairman Phelps: Water truck - so it just goes by, drives over.

GBennett: Um-hm. Yeah.

Vice Chairman Phelps: Any further questions? If not, thank you Mr. Bennett.

GBennett: Thank you.

Associate County Attorney SZambon: Mr. Edney, did you have any further questions?

Attorney MEDney: No. I don't. Step on up and tell your name.

JCollina: My name's Jack Collina, address Chowan Drive, Fletcher.

Attorney MEDney: And were you at the track on that Sunday, October the 12th?

JCollina: Yes. I was.

Attorney MEDney: Can you tell the board basically what you can recall from that day?

JCollina: We showed up. We rode and Mr. Bennett pulled the bikes off – did let the little kids go and – go on about 10 of 6:00 and pulled them off right at – was trying to remove the bikes from the track at 6 o'clock.

Attorney MEDney: Ok. Those are my questions. Thank you.

Associate County Attorney SZambon: I just have one or two. You said you were at the track at 6:00. Do you know if all the riders were pulled off the track by 6 o'clock?

JCollina: No. I don't.

Associate County Attorney SZambon: And you weren't – were you – you weren't on the track on Monday the 13th?

JCollina: No. I wasn't.

Associate County Attorney SZambon: And you weren't there on Tuesday the 14th?

JCollina: No.

Associate County Attorney SZambon: And you weren't there – were you there on Wednesday the 15th?

JCollina: Yes. I was.

Associate County Attorney SZambon: You were?

JCollina: Yes.

Associate County Attorney SZambon: Ok. I don't have any further questions. Does the board have any questions?

Vice Chairman Phelps: Questions from the board? Thank you.

Attorney MEDney: That would be our evidence. Thank you, your honor.

Associate County Attorney SZambon: The County doesn't have any further evidence.

Vice Chairman Phelps: If you have nothing further...

APouch: I have one question for Mrs. Strickland.

Vice Chairman Phelps: Ok. Mrs. Strickland, would you please come back up to the stand.

APouch: How do you know for certain whether – if they can ride motorcycles on the property next to this, whether they're there or on the track if you can't see it?

KStrickland: You can. You can look through the tree line and see it when they're on their dirt track.

APouch: On that Tuesday?

KStrickland: On that Tuesday I did not go over to look. I did not go over to look.

APouch: So you don't know for sure?

KStrickland: I don't know for sure, but I will tell you this, that since they've been shut down no one's been riding.

APouch: I just wondered what you were for sure.

KStrickland: So no. I can't say... ok.

JCrafton: I have a question of the Lieutenant.

Vice Chairman Phelps: Lt. McKay, would you please come back to the podium.

Lt. McKay: Yes, sir.

JCrafton: Lt. McKay, it's a challenge for me, I don't know about the other members of the board, to decipher the CAD reports and tell what's there and what's not and what's ever an officers' report and what is a complainant's report. But I wanted to just clarify for my understanding, on Sunday the 12th-

Lt. McKay: Yes, sir.

JCrafton: - Did you or an officer - you said the officer arrived at 6:30 I believe the report says - did that officer observe riding in action at 6:30 pm, when the officer arrived?

Lt. McKay: I would have to refer to the copy that you have up there.

Vice Chairman Phelps: What is 'status REM'? I mean, what is REM, I assume EMR is in route?

Lt. McKay: Removed from - completed their task.

Vice Chairman Phelps: Ok.

Lt. McKay: The information that is available on the CAD from the officer is that, 'he tries to shut it down by 18:00 on Sunday out of courtesy, but could not tonight'.

JCrafton: So that note refers to conversation but not to observation?

Lt. McKay: That's correct.

JCrafton: On the night of the 14th when - did you testify that you were on the scene there and had to park 'cause the gate was locked?

Lt. McKay: No, sir. I was not I that responded but officer...

JCrafton: The officer who did respond to that night and on his report, does he indicate where he saw riding activity occurring?

Lt. McKay: Not in the notes that I have, no.

JCrafton: Thank you.

EGoodman: I got questions. Is there a decibel limit of what type of noise this track is allowed to produce?

Lt. McKay: That was taken out of the Noise Ordinance and the revision that became effective January first if this year. So it was prior - in the prior Noise Ordinance and required a piece of equipment that was expensive and required maintenance that was cost prohibitive. So that - a decimeter, basically.

EGoodman: So how do you determine if something's loud enough or too loud or whatever? That's kind of hard to do, isn't it?

Lt. McKay: Well, the Noise Ordinance is based on what a reasonable person would determine to be - the term escapes me - the term that is used in the Ordinance itself - an unreasonable noise or disturbing noise.

EGoodman: Ok.

Vice Chairman Phelps: I'm reading on here - it's got 18:30 hours, 'noise is still going on, comp is at the entrance to the park and they have not stopped at all per ordinance'.

JCrafton: But who was the author of that?

Vice Chairman Phelps: That's what I'm saying, WPonder, is that the...

Lt. McKay: Right. That's the Sgt. Ponder with our dispatch center.

Vice Chairman Phelps: So at 18:30 he's saying...

Lt. McKay: Actually one of our dispatcher Sergeants who actually is on the - in the communication center, the 911 center.

EGoodman: That's 6:30. Is that correct?

Lt. McKay: That's correct.

JCrafton: But he's not observing that. He's in the dispatch center.

Lt. McKay: That communication is coming from the complainant by phone to...

JCrafton: He's recording the information from the complainant?

Lt. McKay: Correct.

Vice Chairman Phelps: Well I had that same at 18 - then again at 6:30 and in reading this correctly, the officer was out there, arrived at 6:37 - stayed there until approximately 7:12?

Lt. McKay: Which one are you referring to?

Vice Chairman Phelps: I'm still on the 13th call log C2.

Lt. McKay? Oh, you talking about the 12th?

Vice Chairman Phelps: Yes.

Lt. McKay: Ok. Right, the time on scene was 18:55 or 6:55 and time complete was 7:27 or 19:27.

Vice Chairman Phelps: So 6:55, five minutes to seven. The 13th was Monday, but this was printed out the 14th. The incident was on the 12?

Lt. McKay: Yes.

EGoodman: Does it state if anybody was riding when the officer first arrived?

Lt. McKay: Not in this dispatch report, no. and that's CAD report.

Vice Chairman Phelps: Any further questions? Thank you, Lieutenant.

Vice Chairman Phelps: Your case please. (to Mr. Edney)

Attorney MEdney: No further evidence from us.

Vice Chairman Phelps: Any concluding remarks?

Attorney MEdney: I appreciate Ms. Strickland and her concerns but I think those are the concerns that this board heard back in June when you decided that three days a week no later than 7:00 on Sundays and - no later than 6:00 on Sunday, no later than 7:00 on the other two days were reasonable. I think the evidence before you tonight is that on one occasion he did go over by a few minutes to allow some young kids to ride the small motorcycles. So I guess there is that one small technical violation, which I would argue is not substantial violation. I think you also need to weigh the penalties that administrative folks have put on Mr. Bennett by revoking the permit without a hearing and having him shut down without due process for six weeks. That's a lot of money when he should be making mortgage payments and putting money back into the property. So just the system itself has punished him for that minor violation. I would ask you folks just to - if you find any violation at all, find it was not a substantial violation and would not warrant the severe punishment of revoking the permit. Thank you.

Vice Chairman Phelps: Sarah, the County have any concluding remarks?

Associate County Attorney SZambon: I just have some brief summary remarks. Mr. Bennett stated to you when he was testifying that not only did he go past 6:00 on the Sunday in question, that when he spoke to Lt. McKay about it he said that he didn't know about it and that he has never gone past 6:00 on a Sunday. And I just think that this board should consider that in terms of, you know, this board has given Mr. Bennett a chance. You had approved this special use permit. You went over the terms with him. He was here when the terms were established. He signed the thing stating that he knew what the terms were. One of the terms is: 'failure to comply with any of these terms shall result in the immediate revocation of this special use permit'. He knew any violation would revoke the permit. So regarding Mr. Edney's due process and, you know, that he's already been punished argument - Mr. Bennett knew that those were the consequences for riding it - for violating it. Mr. Bennett also testified to you that there are times when he is not on the track, that he doesn't necessarily know what's going on. Ms. - the complainant - Strickland, testified to you that she has - that she observed violations all that week, that she heard bikes. As to the allegations that the noises were coming from another track, those remain largely unsubstantiated. And the fact that we haven't gotten any complaints since Mr. Bennett's track was closed is circumstantial evidence but is

still evidence that any noise was most likely coming from Mr. Bennett. So the County's position is that we've given Mr. Bennett a chance. We've given him a special use permit and he considers to flaunt it and not abide by the terms. If this board revokes his special use permit he can apply again. The Land Development Code does say that he can apply again for a special use permit. He'd have to put the money forward. There'd be another hearing – all that stuff. But there is no as I read it – there is no timeframe for how – if he has to wait at all. He could apply whenever. So that I just think, you know, there is a clear violation. He clearly violated this order and one or two, you know, one or two or three places and that for those reasons his appeal should be denied.

Vice Chairman Phelps: Do I hear a motion that we close the hearing?

JCrafton: So moved.

TEngel: Second.

Vice Chairman Phelps: All in favor, I.

All board members were in favor of closing the hearing.

Vice Chairman Phelps: Hearing is now closed. If the board will consider this I would like to declare a five minute recess for – before we start our discussion, if that's acceptable to you all – members of the board – stretch our legs. We'll reconvene in five minutes.

Vice Chairman Phelps: I think we're all back. Let's reassemble and proceed. Ok. We are now in closed session and open for discussion for the board. Comments?

APouch: From what I've heard tonight, the main complaint everyone concluded, is that he didn't close exactly at 6 o'clock on Sunday night.

Associate County Attorney SZambon: Ann, make sure you talk into the mic just because you talk quietly.

APouch: I'm sorry. From what I heard, our main complaint has been he was – he did not close at exactly 6 o'clock on Sunday, that Sunday. The other times he said he was not on the track, the Tuesday and then Wednesday he was in compliance if he weren't open on Monday. So what we're discussing as far as – the way I see it – is the one thing that he didn't close exactly at 6 o'clock on Sunday.

Vice Chairman Phelps: Eric?

EGoodman: The only other issue was in the order that the board granted back in, when was it? May?

Associate County Attorney SZambon: The order was signed and approved in June.

EGoodman: June – that he's responsible for whatever goes on on that track. And evidently there may have been some times when folks were there without his supervision. Is that something we need to consider or...?

Associate County Attorney SZambon: That's up to the board.

TEngel: Well, the question is was he in violation? And if we think he was in violation then we'll have to take steps accordingly.

Vice Chairman Phelps: Jim?

JCrafton: My turn. I don't think there's any question that the operation of the track is noisy, but that's not the issue here. In the ordinance the orders and the conditions didn't stipulate that. That would come under a separate Noise Ordinance. That's not our issue today. I would suspect – can you adjust this, Karen? I would suspect that the report of the riders being on an adjacent piece of property may very well have been drawn there because the track is there and riders are used to coming to the area. But that's not Mr. Bennett's responsibility either. As unfortunate as it is, it may have attracted other activity outside of the track that Mr. Bennett can't control. And we can't hold him responsible for. I do find that it was poor judgment on Mr. Green's part to have the motorcycle engines started in order for a customer to look at them in

my experience whenever I worked on an automobile engine and you wanted to check it out you're revving it and more than once. And revving engines can be very noisy and that was on the property at the time. But having said all that I find there's really insufficient evidence to find Mr. Bennett in substantial violation of the special use permit. The officer's reports are very unconvincing – inconclusive. I have ask questions and we don't have any indication of any officer recording the observance of riding happening after the stipulated hours. No observation of riding on the track on the second day which would have been a Tuesday that Mr. Green was there but rather apparently someone in an adjacent piece of property. Unfortunately we only have this one weekend and these dates to deal with although Mrs. Strickland has suggested that in her view the violation has occurred on numerous occasions. In voting on what's before us today I'd have to vote not to uphold the revocation. But invite Mrs. Strickland and any others that are concerned about the issue and the Sheriff's Department to accumulate better and more specific information to prove their case. These reports are difficult to read and are not very well detailed to give me the information to make the judgments. I don't find sufficient evidence here to support the revocation of his operating. That's just my point of view.

Vice Chairman Phelps: I tend to disagree. It says right clearly on here that Mr. Bennett's own testimony that he could not shut it off by 16 – 6 o'clock on that Sunday.

JCrafton: Well I don't deny that but the question is if he stayed open five or ten minutes beyond that one occasion that's before us as evidence, is that substantial violation of his special use conditions as the only evidence we have is he stayed open ten minutes too long one night.

Vice Chairman Phelps: But according to this it was still going on at 6:30.

JCrafton: According to Mrs. Strickland. So there you have a 'he said, she said' situation. Since we don't have any police officer stipulation of having come out and observe that. We have Ms. Strickland's word and Mr. Bennett's word.

Vice Chairman Phelps: It disturbs me thinking back over the history of this case and I think this board was very specific in its instructions and Mr. Bennett agreed to them that he would adhere to every element of it at all times. And I think the intent was to mitigate the nuisance factor as much as possible – with the noise but I really agree to limit the days, limit the hours and limit the number of riders. I think we've heard enough and enough conflicting things here that he has violated the special use permit. And I think '*6-failure to comply with any of these terms*' – doesn't say to what extent – '*shall result in immediate revocation of this special use permit*'. So I think it should be upheld. And think if he wants to reapply for another special use permit and show us that, you know, real intent to honor the commitment to this special use permit. I think that's a different matter, but I think here tonight I just really have not seen evidence of a real good faith all out effort to comply with this special use permit. That's just what I got out of this. Now grant it, it's probably not like you said, it didn't go till 9 o'clock or got six different days where they violated it, but the only thing that was limited in here was two instances of violations of noise. Other than that, one incidence would require the revocation of the special use permit. But that's my take. Do we have further comments or do we have a motion?

JCrafton: Well you need a motion. I'll make one then you see how you go with it. I would make the motion and I'm not sure of the right terminology, Sarah, but in regard to this hearing number. What's our number? You'll fill in the blanks of the proper designation of this particular hearing. I would move that the Zoning Board of Adjustment – what I want to say is: not uphold the revocation. Do I want to say revoke the revocation?

Associate County Attorney SZambon: You could say: overturn the revocation.

JCrafton: Ok. Thank you. My motion would be then that the Zoning Board of Adjustment overturn the revocation of Mr. Bennett's special use permit based on lack of substantiated evidence of violation or evidence of any substantial violation with the evidence and timeframe that we were given to look at tonight.

Vice Chairman Phelps: Is there a second?

APouch: I second, but I want to clarify, if I may ask you...

Vice Chairman Phelps: You may speak to the motion.

APouch: Pardon?

Vice Chairman Phelps: Yes. You may speak to the motion.

APouch: I'll speak to the motion. You were saying that you disagree with Zoning's decision to cancel his permit – his special use permit?

JCrafton: Right. My motion is that we overturn the revocation.

Associate County Attorney SZambon: And you're second Ann?

APouch: I'll second.

Vice Chairman Phelps: Any discussion on the motion? If not – come to a vote. All in favor of the motion say, 'I', raise your hand.

Jim Crafton: I

Ann Pouch: I

Vice Chairman Phelps: All opposed, 'no'

Tony Engel: No.

Eric Goodman: No.

Vice Chairman Jim Phelps: No.

Vice Chairman Phelps: The motion is defeated. The revocation is upheld. The case is closed. Now Mr. Bennett you heard the ruling of this board. Your permit has been revoked as stated by - you may reapply for a special use permit, but under the current conditions you're denied – your appeal is denied.

A man from the audience: What's it cost to reapply? We'll help you, I mean that's ridiculous.

Vice Chairman Phelps: Sorry. You're out of order. We'll proceed now. Is there any new business to come before this board? We have a proposed schedule.

(Audience became very loud. The board could not be heard.)

Associate County Attorney SZambon: You have to quiet down. Mr. Chairman you have to close this hearing.

Vice Chairman Phelps: Do I have a motion for that? To close the hearing?

TEngel: I make a motion that we close it.

Vice Chairman Phelps: Motion made, is there a second?

APouch: Second.

Vice Chairman Phelps: All in favor?

All board members were in favor of closing the hearing.

Vice Chairman Phelps: The hearing is closed.

Associate County Attorney SZambon: Mr. Chairman the only other thing we have on the agenda is the schedule for next year. Karen Ann should have put it in your binder. And the December meeting will be rescheduled for January 7th. It will be the December meeting. So in January there will be two meetings, unless there isn't anything to do and we just cancel.

JCrafton: Ok. I see, the 7th and the 28th.

Vice Chairman Phelps: Right.

JCrafton: And no December meeting.

Associate County Attorney SZambon: No December meeting because our December meeting will normally fall on I believe, December 30th.

Vice Chairman Phelps: Any comments or objections on the new schedule? There being no objections, we accept this. Any other thing? If not we'll entertain a motion to adjourn.

TEngel: So moved.

All board members were in favor of adjourning the meeting at 6:16 pm.

Vice Chairman Phelps: So moved, so done. Thank you.

Vice Chairman Jim Phelps

Karen Ann Antonucci, Secretary