

MINUTES OF THE HENDERSON COUNTY  
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regular May meeting, rescheduled to Wednesday, June 4, 2008, at 4:00 p.m. in the Emergency Operations Center, 211 1<sup>st</sup> Ave. East, Hendersonville, North Carolina. Those present were: Dean Bonessi, Chairman, Jim Phelps, Vice-chairman, Jim Crafton, Tony Engel, Ann Pouch, Alternate Board Member Brandon Yelverton, Zoning Administrator Toby Linville, Associate County Attorney Sarah Zambon, and Secretary to the Board Karen Ann Antonucci.

Chairman Bonessi called the meeting to order at 4:00 PM.  
Chairman Bonessi introduced the Board members to the parties present.

Chairman Bonessi asked if there were any changes or corrections to the April 30, 2008 minutes. There being none, he asked for a motion to accept the minutes as written. Jim Phelps moved to accept as presented. Tony Engel seconded. All board members were in favor of accepting the minutes as presented.

**Case A-08-05, Gene A. Wilkie, Trustee**, appeal of Compliance Order Notice of Violation LDC 200A-62. Under the Land Development Code, Community Commercial zones may not be used for automobile sales and service business without a valid Special Use Permit. (PIN 9651519293)

Associate County Attorney SZambon: Explained that the property in Case A-08-05, Gene Wilkie, is being reviewed by the Board of Commissioners. The Board of Commissioners asked the Zoning Board of Adjustment not to hear the case until their July meeting, when the rezoning will be complete. She presented 3 copies of a 'Stipulation of Parties' for Chairman Bonessi and Mr. Wilkie to sign. This would indicate the board will defer the case until the July meeting. JPhelps: Motion to table it to the July meeting. JCrafton: Seconded. All board members were in favor of moving Case A-08-05, Gene A. Wilkie to the July 30<sup>th</sup> meeting.

**Case A-08-03, Donald and Lynn Burnett**, appeal of Compliance Order Notice of Violation. LDC 200A-37 for 42 Walnut Cove Rd, Hendersonville (PIN 9556540765). Under the Land Development Code, R-40 zoning shall ONLY be residential uses. No businesses may be located in R-40 zones.

Associate County Attorney SZambon: Proposed moving Case A-08-03, Donald and Lynn Burnett, to the end of the agenda, as Mr. Burnett would be late to the meeting, due to a funeral. JPhelps: made a motion to move to the end of the agenda. TEngel: seconded. All board members were in favor of moving the case to the end of the agenda.

There was a brief discussion on other possible dates for June meetings to hear any cases not heard this evening. Those dates were: June 12<sup>th</sup> in the King Street meeting room, June 11<sup>th</sup> and 18<sup>th</sup> in the Emergency Operations Center, and the regular June meeting, held on June 25<sup>th</sup>.

**Case A-08-04, Larry Holbert & Ronnie Gray** appeal of Compliance Order Notice of Violation for (PIN 9650877993). Under the Land Development Code, Community Commercial zones may not be used for automobile sales and service business without a valid Special Use Permit.

Associate County Attorney SZambon: Suggested the board move this case to the end of the agenda because no one was present to represent the case at that time. JPhelps: Motion to move the case to the end of the agenda, following Burnett case. TEngel: Seconded. All board members were in favor of moving Case A-08-04, Larry Holbert and Ronnie Gray, to the end of the agenda.

Chairman Bonessi read the quasi-judicial proceedings to those present.

Associate County Attorney SZambon: suggested that anyone who plans on providing testimony today as a party or a witness be sworn in at once and then as the cases progress the board can determine who are parties and who's going to be witnesses.

All who were planning on providing testimony as a party or witness were sworn in by Zoning Board of Adjustment Secretary, Karen Ann Antonucci.

**Case V-08-06, Stephen M. Ledbetter**, requesting a variance for front, side and rear setbacks. Zoned R-40. Location: 2207 Kanuga Road, Hendersonville, on 2.073 acres (**PIN 9567163952**).

**Witnesses for case V-08-06:**

**Debbie Courier – Adjacent property owner**

**Angela Beeker – Ledbetter attorney**

**Jimmy Edney – Henderson County realtor**

**Mark Parris - Surveyor**

Chairman Bonessi asked for a motion to open public hearing for case V-08-06, Stephen Ledbetter. JCrafton: motion to go into public hearing on stated case. TEngel: seconded. All board members were in favor of going into public hearing on case V-08-06.

Chairman Bonessi asked those present who wanted to speak as a party in this case. Debbie Courier stated she is an adjacent property owner. Angela Beeker, attorney for Mr. Ledbetter stated that Jimmy Edney, Henderson County realtor and Mark Parris, surveyor were her witnesses.

JCrafton: I move that we include Miss Courier as she has a stake in the matter as an adjacent property owner. TEngel: Seconded. All board members were in favor.

Zoning Administrator TLinville: If the board so chooses, I'll read the staff report into the record. Your first sheet is the cover letter concerning his variance. Pertinent information about variances from the Land Development Code is listed on the first page. Staff recommends denial. Although this parcel could accommodate two lots if build correctly the two existing homes on this lot do not meet setback requirements. A hardship is not proven because the homes can be sold together as one lot. The next item is your variance application with all the pertinent information and the difficulties are presented by the applicant. The next page is an aerial photograph showing the two homes on the lot. The next page is the site plan, the dotted lines are the minimum setbacks that shows the front home would pretty much be outside the setbacks. The rear home is in the setbacks. This is R-40 so the side and rear setbacks are 35 feet. The front setback is measured 60 feet from the centerline. That's all the information you have in your packets.

ABecker: Our evidence shows that these existing houses pre-date zoning, period. The hardship that we claim is the inability to recoup a reasonable return on this property. The evidence will show that the property was purchased for substantially less than the tax value by my client, Mr. Ledbetter who is a radiologist in Massachusetts and could not be here. The houses as they sit are preexisting on this property and my client, of course would like to subdivide the property so they can be sold as two individual single family dwelling units. There is sufficient acreage there to support two lots. But we do believe that with a variance the lot becomes more conforming. Because under R-40 you could only have one principle dwelling per lot, so with a variance waiving the setback the houses would then be conforming as to everything else. We can say that public policy favors bringing lots into more compliance. Mr. Parris is the surveyor. I'd like for him to review the plan. We struggled with this one because of the unique circumstance. We've had several meetings with the staff to try and find a way to work this out and this is the only way through zoning that we figured out these houses could be separated and sold currently.

MParris: What we did was, through the two houses we have approximately 30 feet, so I split the distance the best I could. And we had to run the flag lot to gain the acreage. Under the right-of-way

would not be counted towards lot #1. And we are proposing a recreation area in the back for both lots, but it would be a part of lot #2.

APouch: If you're going to divide it, for 2 separate and then they're going to share a recreation?

ABecker: Yes, ma'am. That is part of my argument. It is proposed to be an easement. A private recreation easement, not apart and separate from any lot. We tried to draw something that would be a little bit of common sense. This flag is not proposed for any ingress or egress to anywhere. It is a walking path for the owner of lot #1 to be able to get up to recreational area. That will be an easement for both to share. Mr. Parris, could you talk about the lay of the land as you go toward the easement?

MParris: The lay of the land is actually pretty flat, but it all rolls down to the recreation area.

ABecker: Is the recreational area flat?

MParris: Yes.

ABecker: Would it serve as a good spot to have picnics or bonfires, or not bonfires, but camp fires?

MParris: Certainly.

APouch: Who does that property belong to? Which house?

ABecker: Both houses currently sit on 1 lot.

APouch: I know that. If you divide them, who has this recreation place? Which lot does that go with?

ABecker: Well, it would sit on the property owned by lot #2, but lot #1 would have a right to use it for recreation as well.

JPhelps: This walking path, where is that on this?

ABecker: It's the big strip.

JPhelps: Oh, it's this wide strip.

ABecker: It's at the end of the property to walk up and have access to that area.

JPhelps: So you have full access by both of these houses by use of that strip

ABecker: That's correct – to the recreation area and that's the reason for that. Both houses would have the right to use it. And we would have to, in the deed, in the note, it should be already on, it would be subject to deed restrictions so that it could never be used for anything other than. To be used for only recreational area. Just to have a strip running up along the side doesn't make sense, but we were trying to make it marketable, as well as reach acreage requirements.

JCrafton: You refer to that strip as a walking area so the front property owner has access to the recreation area. If I understood you correctly early on in your presentation that strip is also is zoning ordered to generate enough acreage to qualify that for which you're asking us for. So walking path or not, you need that strip 22 feet wide to add the acreage to your front property. Is that true?

ABecker: Not to meet the variance. To meet the lot size requirement, yes.

JCrafton: What is unique and significant to designate or plan a recreation area on a residential piece of property?

ABecker: We don't have to have that.

JCrafton: I know, I'm just – you're making a thing that's an important piece of your presentation. To the homeowner that doesn't identify with the site plan a designated recreation area in his backyard.

ABecker: We're treating this as a minor subdivision. Just like a 10 lot subdivision might have a recreational area, this is a minor subdivision to create 2 lots so that both have a recreation area that you might find in a larger subdivision.

JCrafton: We're talking subdivision so they would have a relationship as being part of a minor subdivision.

ABecker: Absolutely. This will be a minor subdivision but we cannot do a minor subdivision without the variance. Because the lot, the setbacks, they can't do a subdivision where the setbacks are going to be violated. So that's the purpose for the variance so we can do a subdivision.

Chairman Bonessi: You said your client purchased this. How long ago did he purchase this?

ABecker: In December.

APouch: Is he going to live here? Or is this just an investment for him?

ABecker: He does have a home here and his mother lives here and he does come and visit. But this is clearly and an investment for him.

Chairman Bonessi: Your client bought this as an investment without – the previous owner, how long did they have that property?

ABeeker: I don't know. I'm sorry he bought it in December 29<sup>th</sup> of 2006.

Chairman Bonessi: So it was in effect at that time. And he purchased this as an investment to make a return for substantially less than the tax value

ABeeker: In my closing remarks I indicate the marketability of it. The seller received substantially less than even the tax value on it. If I could let Mr. Edney come up, he's going to talk as to the marketability of the properties with similar situations, as to the hardship.

JEdney: My name is Jimmy Edney. I'm a realtor in Henderson County and have been for over 50 years. I sell a little bit of everything, residential, developments, and commercial. I'm not here to establish the value of this property. I'm here to explain the marketability of this piece of property. In looking at this property, when we're going to go out and sell it we say what's the highest and best use of the property so that we can get the most value for the people we are selling it for. It's been my opinion and my findings in the past a piece of property with 2 houses on it is a thousand times harder to sell than a piece with 1 house on it. So if this were allowed to be split into 2 separate lots and they did qualify when they were built. I think one of the houses was built in '45 and the other one in '53. So that was before we put zoning in that area in 1969. There are a thousand people that want one house on a piece of property for everyone that wants a house with a rental unit next to it. The marketability here as I am here to testify to is very slight. A good example of it is right down the road. A half a mile from there is a property with 3.65 acres. There is a house with another one behind it. This was before zoning also. Phil died about 8 years ago and that property with 2 houses on it has been on the market since before Phil died. That shows a house in that neighborhood, less than a half a mile away is harder to sell than the 1,000 or so that have been sold within that time.

Chairman Bonessi: How familiar are you with this property? Are you representing anyone for this property?

JEdney: No, they just asked me for my opinion. I've known the house and the property, well I went to school with the boy's mother, the parents that built it, so 50 years.

ABeeker: Is it your opinion as a realtor that Mr. Ledbetter would be able to make a reasonable return on his investment with the houses as they sit on it?

JEdney: In today's market it would be very difficult. I would go back to Phil Mann situation. Last year it was on the market for \$525,000 and this year it went back on the market, last month, for \$425,000 so it fell \$100,000 dollars in a year. With the market right now it would be very difficult to sell a piece of property with 2 houses.

Chairman Bonessi: But markets change and people are having trouble right now with anything.

JEdney: I've been doing this for a lot of years. In days gone by we'd have people say, "well I want to bring my parents here to have a home. Occasionally you would get that, but 950 to 50 would just want 1 home and not a rental house next to it.

ABeeker: Mr. Chairman, if I may, I've got property records. It will establish the tax value and it show what we've paid. This is an aerial so that the board can see the actual homes.

Chairman Bonessi: The question I have is what is a reasonable return? Everyone's got an opinion on that as to what is a reasonable return on this property. If I bought it two years ago, in today's market what would a reasonable person expect to receive in today's market or anything, what are these 2 houses...

JEdney: Well, in recent markets a person's happy to get 8, but will take 6 on his return. In the past the market in Henderson County has jumped 24-25% in a year. So it has slowed down in the last year to year and a half.

JCrafton: What was the date we established that Mr. Ledbetter purchased the property? Was it December 2006 or 2007?

ABeeker: It's '06. It's on the property record card.

JCrafton: And the Land Development Code was in place at that time?

Chairman Bonessi: Not what we have now but...

JCrafton: Were the setback requirements in place at that time?

Associate County Attorney SZambon: They would have been different. The current Land Use Land Development that we use was approved September '07.

Zoning Administrator TLinville: This particular district, R40 hasn't changed.

ABecker: It would have been the same. However R40 is a special exception to the Land Development Code because there were a group of R40 property owners who wanted to keep R40 as it is. If this were any other residential districts that we have this would be allowed. So our contention is that it does meet the spirit and intent of the ordinance because it would be allowed under the current ordinance. It's just because he is in this group of R40 and we cannot apply for a rezoning because it would be spot zoning because it is only 2 acres and would be surrounded by a much larger area of R40. So our options are limited as to what we could do. So that's why we came for the variance.

JCrafton: The reason I raised the question, one of the stipulations and guidelines we have for variance is the reason for request is the property going to be more profitable. That clearly is not an allowable reason for a variance. If he bought the property for investment purposes and now needs a variance in order to increase his return, it seems to me that that is an attempt to make the property more profitable which is clearly indicated in the statutes that do not allow for a variance on that basis. Is statute the correct word?

Associate County Attorney Zambon: It's in the Land Development Code 200A-335. It's not that if it's more profitable this way then you shouldn't allow it at all. It's that you can't use that as your primary reason. If it meets all the other factors: unnecessary hardship, spirit and intent of the law. It's just that that shouldn't be your primary reason, 'that this way it's more profitable'. Because there are a lot of other things that could be more profitable.

JCrafton: That is the primary reason.

JEdney: I'm not saying that he'll make more money be dividing it. I'm saying that he will sell it quicker and they are easier to sell. I'm not here to testify to the value of what he's going to sell it for. I wouldn't swear that he's going to make any more.

JCrafton: Time is money.

ABecker: If I could address that more. That came from the case Lee vs. Board of Adjustment which the language and it is up to this board to interpret the language of the Land Development Code in your decision. So this particular language I don't believe was in the prior zoning ordinance so this is maybe this board's first opportunity to interpret that particular language. But in that case that this language came from it was a use variance. It was a case in which somebody wanted to put a gas station in a residential area so they applied for a use variance. And the court said that the fact, and there was one other factor – the primary basis was for the man's income. It was personal to him and we're not saying that my client needs this money to make a living like in that case. In that case the property owner had an option too. The property owner didn't already buy the property so there are some things to distinguish it and what the court said was that the fact that the use could be more profitable, a gas station could be more profitable rather than a residential use would not serve as the basis for a variance. So there was a use variance involved. Here is a setback and of course it's an investment, but he may not be able to sell it at all, like the Mann property. I believe that this property was inherited and it was the heirs that sold it to my client, so it's a little bit different situation because the hardship is going to run with whoever buys it. The heirs suffered a hardship because they had to sell it at a lower value than even the tax value, which we know; everybody knows the tax values are usually low on properties. And so the hardship is going to run as far as a hardship with whoever buys it as far as a reasonable return. So you can't judge the return that the heirs made because they inherited what they inherited. Where on the Mann property, they've not been able to sell it for a reasonable return. Our contention is if time is money, than that will factor in that he may not be able to sell it as it sits. He did take a risk but he did not create the hardship. The hardship was there when he bought the property. The impact on the community also needs to be considered and be weighed and balanced. Further impact on the community is the houses are already there. They are already too close to the line so the impact is what the impact is going to be. And if anything, if the value is increased, that could help the value of neighboring properties rather than severely discounted sale like what we had here. What is unique about the property is that there aren't many properties in Henderson County that have 2 houses that predate the initial zoning. And I don't know that the uniqueness about the property has to be uniqueness of nature. I mean it's not like there are tons of people out there that are going to come

forward with this same variance request but a text amendment – I think our only avenue at this point is to come and ask for a variance.

Chairman Bonessi: Now when your client purchased this property, it sounds like he purchased this with the intent to subdivide. Was that the intention?

ABecker: I wish he could be here to speak for himself. All I can say is he did purchase it for and investment and he came to me to come up with a way that he could get it resolved.

Chairman Bonessi: Had he already purchased it before he came to you?

ABecker: Yes.

APouch: So he was well aware of the problems that this property had?

ABecker: I cannot say that he was aware, have you talked to him before Toby? as to whether he could subdivide it or not. He was looking for a way to have a return on his investment.

APouch: Which would have to be to divide it.

ABecker: Yes.

Chairman Bonessi: This is something, did he have any assistance with this or...

ABecker: I don't know. Sorry, I don't know.

JPhelps: For the point of absolute clarification – prior to the zoning this could have been subdivided at anytime.

ABecker: No

JPhelps: No. So it could never have been even before the zoning.

ABecker: Prior to R40 in '69 it could have been, yes.

JPhelps: The initial zoning is what stopped it.

ABecker: Yes.

JPhelps: So it just continued till the current.

ABecker: Yes, sir. The hardship has been there for years and years and years. It's not a newly created situation.

APouch: When were the houses built?

JEdney: 1945 and 1953.

ABecker: They both pre-date zoning.

Chairman Bonessi: Your client wonder why he got a good deal on the property?

APouch: He could tear down one and make a real big house out of it.

JPhelps: Would it be possible to physically move one of the houses further away?

JEdney: It's possible, but expensive.

JPhelps: Which would probably would defeat your purpose.

Associate County Attorney SZambon: Miss Courier do you have any questions for Mr. Edney or Miss Beeker?

DCourier: I don't particularly have any questions. I have comments.

Associate County Attorney SZambon: Miss Beeker do you have anything right now besides the closing argument?

ABecker: no

Associate County Attorney SZambon: Miss Courier if you want to come forward and say your comments to the board.

DCourier: I'm Debbie Courier. My husband and I own the adjoining property to this property. I would ask that the board deny the variance. I know that you have a map with the aerial view but if you were actually there you can practically touch the two houses. They are so close together. They are right on top of each other and Mr. Ledbetter bought these houses a year and a half ago with the full intention of trying to get a zoning variance. He bought them as an investment. He's a radiologist in Massachusetts. And he could sell both houses and end up with two families right on top of each other, which, I mean, zoning laws are there for a reason. And I see potential problems with two families right on top of each other.

TEngel: Which property is yours?

DCourier: My property is 2215 Kanuga Road.

BYelverton: Miss Courier how do you know that Mr. Ledbetter intended to have a variance when he bought the property?

DCourier: Because they started remodeling the houses immediately as soon as he bought the houses, with the intent to sell them.

BYelverton: Intent to sell them -how do you know he was going to request a variance to sell them?

DCourier: Just from talking to the realtors when they were on the market. When I questioned the realtors myself and asked if they could ever be divided, if it could ever be commercial property, they assured me – absolutely not. That they were zoned as residential properties and we wanted to know what could potentially move into a residential area. Almost all my neighbors are retirees.

BYelverton: So just to be clear, Mr. Ledbetter never said to you he was intent on asking for a variance.

DCourier: I'm just saying from talking to the realtors.

BYelverton: You're assuming?

DCourier: Assuming, from talking to the realtors. When I questioned the realtors about the property and what its potential use could be, they said somebody needs to buy it and have a mother-in-law in the other house. It's a residential property.

JCrafton: Miss Courier your comment is so far related to the opinion to the use of their property, how would what they do with a variance effect you?

DCourier: I guess potential for problems. My house is very close to the front house. Looking in each other's windows. And if it's divided and sold as two separate properties, just the amount of people that could be living in those two houses and the potential for problems. They are right on top of each other. And they've been that way since they were built. And Mr. Ledbetter bought them knowing they were right on top of each other. He bought them with the full knowledge that these two houses were in each other's back pocket.

BYelverton: What do you mean by right on top of each other? Do you know exactly how many feet they are apart?

DCourier: I believe they are 30 feet apart, but I think they are less than 30 feet because of the porches that jut out and some are diagonal. Some of the walls of the house are diagonal. When you stand in the back yard you feel that if you stretched your arms you could touch both houses. That's why I'm saying that if you saw the property they are much closer than a map or an aerial view would show.

JPhelps: How would that differ from living in one and renting the other? You could have two families. It seems like it would be better if they actually owned the house and renting a house.

DCourier: Well I guess because the property owners have more rights than rental people have. And if there is a problem with rental people you can ask the rental people to leave.

JPhelps: You couldn't but the owner could.

DCourier: No, no. The owner of the property. This is my say now. And just to make a comment on what the realtor had said before about property at 800 Kanuga, a half a mile away. If you are familiar with Henderson County at all, a half a mile away on Kanuga is a whole different neighborhood. One cannot stand in for the other and I think that there are three houses on that property. And this is a quiet residential neighborhood with mostly retirees. It was built to be a quiet residential neighborhood.

Associate County Attorney Zambon: Miss Beeker, do you have any questions for Miss Courier?

ABeeker: Not at this point. Brings up a good point of the rentals because you can clearly subdivide probably how Mr. Ledbetter is going to get a return on the property, by renting both of them. The county can't regulate ownership and renting or selling so he would rent them both to rental people. So as far as people being on top of one another it's possible to get along with them.

Chairman Bonessi: If there are no further questions for the parties we can go ahead and discuss this as a board. We have over a full board here. In those situations only the 5 standing members are allowed to vote. At this time we're not going to take any more public comment. We'll discuss this as a board.

APouch: He hopes to make a good profit. I don't think you can blame anyone for wanting to do that. But I don't think it's up to us to change things to make it possible for him. And I don't mean – I just don't think so.

JPhelps: I think this is a unique situation and I don't see any harm. They've got approximately an acre assigned to each of them, close proximity, they've been that way for 50 years. So I don't see it changes the neighborhood or anything like that. It does hopefully better option as being able to sell them as

individual properties. As she pointed out each needs to be rented separately even though they are on the same lot. I see no harm in splitting them up.

JCrafton: I see several problems. Number 1: the present owner bought it with full knowledge of the nature of the property. His major intent is to sell it and make a profit. That's perfectly in order but I don't think it is up to us to change the rules and enable him to do that. I think leaving it as a property and calling it a subdivision is a strange subdivision, with a 22 wide strip all the way down there, just to assign proper acreage to the lot. And further our staff has also recommended denying it because a hardship has not been proven. He purchased the hardship in full knowledge. So I'd be inclined to deny the application.

TEngel: He knew about the 2 separate houses on 1 single piece of property and at that point they wouldn't be sold separately and the price had been adjusted for that. So really it has not created a tremendous hardship as far as price goes. It would be better not to divide it up and to leave it as it is.

Chairman Bonessi: I think I'm more inclined – my thoughts are, he bought it at a discount so I think the hardship was more towards the original owners, or in this case the people who inherited the property.

Any other discussion? If not I'll ask for a motion.

JCrafton: I move that the Zoning Board finds and concludes that this variance application, V-08-06, does not comply with the Henderson County Code of Ordinance for reasons: #1- it is not a proven hardship and #2 - there is not sufficient justification for a variance given the guidelines we have for a variances.

TEngel: I'll second it.

Chairman Bonessi: All in favor of the motion? All opposed?

Chairman Bonessi – yes

JCrafton – yes

TEngel – yes

APouch - yes

JPhelps – no

Zoning Administrator TLinville: Let me say this for the sake of the board and for Angela too. The county Commissioners are getting ready to take up part of the old ordinance that didn't make it into this ordinance which was the conservation subdivision. It allows reduced setbacks for preservation open space.

Associate County Attorney SZambon: And the change the Board of Commissioners is making is you can do it in the other zoning districts now. It is a change the Board might make. But this would apply specifically to R-40 that you could do conservation development. So that might help and you might want to talk to Anthony and you might want to figure out when it's going to be on the Board's agenda.

Chairman Bonessi: Motion to close case V-08-06?

JPhelps: so moved.

JCrafton and TEngel: seconded.

All board members were in favor of closing case V-08-06.

**Case V-08-07, Anthony & Veronica Piscopo**, requesting a variance for rear yard set back to construct addition to SFD for medical hardship. Zoned R-40. Location: 121 Arthur Lane, Hendersonville, on approximately 0.38 acres, **(PIN 9640634263)**

**Witness for this case:**

**Dawn Piscopo – daughter of applicant**

**Anthony Piscopo – applicant and property owner**

**Ed Hosack - contractor**

Chairman Bonessi: The next case we will hear is V-08-07, Anthony and Veronica Piscopo, Variance for the rear yard setback due to hardship. Is there anyone here to speak or present evidence on this case?

Chairman Bonessi: Motion to open this case?

JCrafton: so moved.



JPhelps: seconded.

All board members were in favor of opening case V-08-07.

APiscopo: My daughter, Dawn Piscopo and my contractor, Ed Hosack will speak on my behalf. My wife could not be here.

Zoning Administrator TLinville: If it pleases the board, I'll read this information into record. The first page is the staff report, includes the text information concerning variances. Staff recommends approval. This subdivision was established long before zoning and was given an R-40 designation and with the lot size, half the size that that required, half that of the required 40,000 sq. ft. Next page is a copy of the site plan then the application for variance. And the last is a letter from their family doctor explaining that there is a medical hardship that requires the daughter to live at home and build the addition for the extra space for the daughter.

JCrafton: What is the proposed space to be? What is the utilization of that space?

EHosack: A bedroom on the second floor. It is a living room on the first floor.

JPhelps: Toby, in both cases they seem to fall under the same thing – preexisting. You recommend denial of one an approval of the other. Help me here.

Zoning Administrator TLinville: The other case was where a gentleman bought 2 houses already existing on a lot. Had he been needing an addition or wanting to change the footprint of the house for a more specific reason we may have recommended differently. He just wanted to split the lot up and it wasn't suitable for that. This subdivision, when built, there was no zoning, built in the 60's. The house is already built outside the setbacks of R-40 because there was no R-40 when it was built. This side addition encroaches 15 feet, it's less encroachment and it was divided half of the minimum lot size of R-40. The house is as centered up as can be. It's just that it's too small to meet the setbacks. And that's no one's doing. The hardship there is a later zoning designation.

Chairman Bonessi: So what is the size of the lot? It's in an R-40 district.

APouch: How large is the addition? What are the measurements?

DPiscopo: She read a statement as to the cause of the hardship. Her sister was raped and cannot live by herself and has post dramatic stress disorder and must live with her parents and herself.

JPhelps: You stated that the Rice's have no objection at all, that they would be the one closest to the addition.

DPiscopo: No, sir. Karen thinks it's a great idea because she does know of my sister's situation.

JPhelps: And you said also there is a partial lot that actually increases the space even with this addition to where the Rice house would be.

DPiscopo: Yes, sir. They own a partial lot between the two of us so one side would not be on top of her in any way.

JPhelps: Is that just vacant?

DPiscopo: It's vacant.

Chairman Bonessi: How large – do you have a plan showing the outline? OK, I see it.

JPhelps: You say its two rooms?

EHosack: One on top of the other.

JPhelps: Is it called a 'split level'?

Zoning Administrator TLinville: Yes, split foyer. It's two stories.

JPhelps: So one step up one step down?

Zoning Administrator TLinville: Yes. So that will be two stories on that end.

JPhelps: Will it go significantly higher than the existing structure?

EHosack: Not significantly. Possibly 4 feet. But the roofs can be tied together. The addition roof we're turning the gable front to back.

JCrafton: The plans don't serve any purpose for us at the moment, I don't think. The only issue we're addressing is they want a variance to go over the setback limits. We are not dealing with the nature of what they are doing.

Chairman Bonessi: Is there a reason that extension couldn't be put on the other side?

EHosack: To put it on the other side you'd be covering 2 garages, the doors on the bottom and you'd have to go through the upstairs to get to the new section.

DPiscopo: It would be more expensive. Two windows in the bedroom would be totally gone and my sister feels claustrophobic on that side. She likes the idea of the empty lot on the other side. How she sees things that side has only 1 house and the neighbor is always in Florida. The other side has many homes and men living there.

JCrafton: How long have you lived in the home?

DPiscopo: I've been with my family for about 4 years.

JCrafton: How long do you plan on living, I'm talking about the duration to serve your needs?

DPiscopo: My sister cannot live alone so she will live there permanently and I have no plans to move.

APiscopo: I'll be here until I'm dead.

Zoning Administrator TLinville: The question about moving it from the garage end, aside from losing all their storage, there's a grade issue there, that would require more site work. And there are 2 septic systems, one in the front and 1 in the rear, so that was an issue – dealing with the septic lines.

TEngel: Is there a reason the house is L'ed with an indentation along the addition, rather than to move the addition flat against the house?

EHosack: They are trying to save a window into the basement.

TEngel: Is that the reason?

EHosack: That's my understanding. I didn't draw the plans. They are trying to keep that window that goes into the basement to allow ventilation and light. The light will be cut considerably, but the ventilation is needed.

TEngel: Create a little ally-way.

EHosack: Like a foyer going across the landing to the new addition from the dining room. They are not having to go through a bedroom.

Zoning Administrator TLinville: You've also got a chimney on that side and I assume you stepped away from that.

EHosack: Yes, and right behind the chimney is a window.

Chairman Bonessi: Is all of this subdivision an R-40?

Zoning Administrator TLinville: Yes, and the majority of the lots in that subdivision are 1/3 of an acre.

Chairman Bonessi: That's my question.

Zoning Administrator TLinville: It should have been R-20, 30 years ago when the original zoning was given.

JCrafton: You have an R-20 type lots with R-40 restrictions.

Chairman Bonessi: With the current code what are side yard setbacks?

Zoning Administrator TLinville: It would be 10 feet in the side and rear.

Chairman Bonessi: Does anyone have questions for Mr. Hosack or the Piscopos at this time?

JCrafton: How long ago did you say this hardship had begun? You said in 07 you tried to work through what you thought might be a zoning change and that turned out not to be. When did this whole process, this need begin?

DPiscopo: Approximately 2 years ago when my sister moved in and we've been – every step we take seems to put us back. We're here today because it's 1 of our options. Anthony Starr was as shocked as we were when the R2 didn't go into our neighborhood. You could tell that gentleman felt for us. You could hear it in his voice, he was shocked. As shocked as he was is how devastated we were.

JCrafton: How many rooms have as it now stands?

DPiscopo: 2 bedrooms, living room, dining room, kitchen.

JCrafton: 3 bedrooms? How many square feet?

EHosack: I don't know. It's a typical Donald Thompson house. Split foyer with a family room downstairs and 2 car garage. I'm guessing 1,600 square feet.

JCrafton: I'm gathering the need is for independent space for your sister. Not so much to have a bedroom that you don't have. You have 3 bedrooms for 4 people.

DPiscopo: It's a spot for her to feel that she has her own privacy. Originally we had been thinking about having a door on the front part of her property, but my sister didn't want to go for the door because she feels more safe with no entrance from the outside. That's just the way she feels after having been attacked.

JCrafton: So structurally you wouldn't be allowing that's outside the building code, would you?

EHosack: No.

DPiscopo: And there is a bathroom downstairs.

Chairman Bonessi: Let me ask Toby, what other options would they have?

Associate County Attorney SZambon: I would caution you that that shouldn't be a consideration in your determining a variance.

Chairman Bonessi: I know.

Associate County Attorney SZambon: I think an appeal on this would go to superior court. Or they'd have to go to court. They would have an appeal, but I don't know that there is anything else within the county they could do. But again that should not be a factor in considering the variance.

Chairman Bonessi: The side yard set back – let me get a number here.

EHosack: The remaining would be 20.6.

Zoning Administrator TLinville: 14.4 feet is the variance.

Chairman Bonessi: My question I have is, are we granting them a variance for that 14.4 feet, or are we granting it for the set back to be reduced to 20 feet?

Zoning Administrator TLinville: That's the same thing.

Chairman Bonessi: It is now, but if this property were to ever get rezoned to R2 would some future land owner be able to reduce that set back?

Zoning Administrator TLinville: If it were R2 the set back would be 10 feet.

Associate County Attorney SZambon: If this property is at some point zoned as R2 and they have currently a set back of 20 feet, who ever lives there can reduce it down to 10 feet. However it does not go the other way. If you have a variance so that the set back was 8 feet and it's made into 10 feet because you have a variance on the property they can't make you go back to the 10 feet. You could not get closer than either the variance would permit. I would suggest that you should say whether or not you have a variance of 14 feet vs. you set back is now 20 feet. I would say that you should say both of them. I will put them both in the order and that will be the law.

Chairman Bonessi: My question is if we gave them a variance for 14 feet and sometime in the future they get reduced then somebody would say hey I got a variance I can go to 5 feet off my property line.

Zoning Administrator TLinville: No. At that point it would be legal the issue would go away because the zoning changed.

Chairman Bonessi: Ok. Does anybody else have any questions? At this time I'd like to discuss this as a board and not take any other public input.

JCrafton: They meet circumstances. They do meet hardship and it is not of their making. The lot itself is odd for the circumstances. The lot is only 1/3 the size of R-40 and so I would be in favor of granting the variance as requested. I drove out there and looked at the property. It would not be out of hand in the area.

TEngel: There's still a substantial side yard and think that it would be in harmony with the neighborhood.

JPhelps: I concur with Jim and Tony.

APouch: They can get a reasonable return but we're looking for a reasonable use. I think that's what they want. That's what they need.

Chairman Bonessi: I struggle with some of these because this is obviously not R-40 in my opinion and I really don't think we should do that because none of these lots fall in that zoning. The reasonable return question is there but realistically this...

JPhelps: I think, to me it overrides, will the variance do substantial justice and it certainly seems that in this case.

Chairman Bonessi: If there's no other discussion I'm going to ask for a motion.

JPhelps: I move we grant the application for variance. With the conditions stated as a rear setback 14.4 foot variance making the setback no less than 20.6 feet on the side yard.

TEngel: seconded.

All board members were in favor of the motion.

Chairman Bonessi: I need a motion to close the Piscopo case.

TEngel: So moved.

JPhelps: Seconded.

All board members were in favor of closing the Piscopo case.

**Case V-08-08, Lois Schweinler**, requesting a variance for front and rear setbacks. Zoned R-40. Location: 1693 Holiday Dr., Hendersonville, on approximately 0.95 acres, (PIN 9556719069).

**Present for case V-08-08**

**Fred Reidinger – architect**

Chairman Bonessi: I need a motion to open public hearing for Case V-08-08.

JPhelps: So moved.

TEngel: Seconded.

All board members were in favor.

Only the architect, Fred Reidinger was present for the Schweinler case.

Associate County Attorney SZambon: The applicant or a lawyer must represent the case because this is a quasi-judicial proceeding and it's like court. And just like court you couldn't represent the woman in court in a civil proceeding. That is the ruling from the state bar. Karen Ann also just advised me that it was also stated in the notice letter.

Chairman Bonessi: Motion to continue to the June 25<sup>th</sup> meeting.

TEngel: So moved.

APouch: Seconded.

All board members were in favor of continuing the case to June 25<sup>th</sup>.

Zoning Administrator TLinville: Will notify Miss Schweinler that her case is continued to June 25<sup>th</sup> and that she or her attorney must be present.

**Case V-08-09, Patricia L. Scoggins**, requesting a variance for side setback. Zoned Local Commercial. Location: 389 Courtland Blvd., Mountain Home, on approximately 0.37 acres (PIN 9650890098).

**Witnesses for case V-08-09:**

**Pat Scoggins – applicant – owner**

**Jack Tate – attorney for Miss Scoggins**

**Wylie Yarborough – adjacent property owner**

Chairman Bonessi: I'd like to ask for a motion to open case V-08-09.

JCrafton: So moved.

JPhelps: Seconded.

All board members were in favor of opening the case.

Zoning Administrator TLinville: If it pleases the board I'll read the packet information into the record. This is again a variance application. Staff recommends approval. This lot has been recombined but was once 2 individual lots. The homes are existing and no changes are proposed other than this subdivision. The next page is the site plan showing the 2 individual lots. One is the larger, is the bed and breakfast. The smaller is the care takers home. Next you have the variance application. Then the aerial of the property. This is local commercial zoned, 10 foot side set backs and the front is 25 foot setbacks. And that's your variance. This property has been rezoned several different times and was once separate lots. If you look at the aerial you see the dotted line that shows that there was once a property line there. I'll entertain any questions.

Chairman Bonessi: So these lots were joined and were originally 2 separate lots then combined for whatever reason?

Zoning Administrator TLinville: Correct and Mr. Tate will show that that may have happened by instrument, not by survey or any kind of recorded plat. I just found that out today. This may be a greater legal issue than regarding a variance, but it happened and was recorded as 1 lot.

JPhelps: You're saying there were 2 different deeds on the property?

JCrafton: And the end result, if the variance is granted would these 2 lots or either 1 be out of compliance if the re-dividing occurs?

Zoning Administrator TLinville: They would not meet the front yard setbacks. There is adequate room between the 2 structures. It's not a side yard variance, it's just they can't meet the 25 foot front yard setback.

Chairman Bonessi: And they do now as a whole?

JCrafton: As a non-conforming use.

Zoning Administrator TLinville: Correct, and by subdividing this - it's not allowed without a variance.

JTate: I would like to make a brief opening. Miss Scoggins wants to retire but keeps getting this property back. The property was 2 separate parcels combined into 1 during the period of time in which she sold the property and has been forced on 2 occasions to buy it back in foreclosure. She lives in the larger property and needs to either rent or sell the adjoining property. We ask that it be divided as it was in previous years. I will produce evidence for you of when that occurred and how the property was and has been operating as a bed and breakfast. Would you tell us, Miss Scoggins about your ownership of this property?

PScoggins: I think it was in 1995 that I bought it. I ran it for about 4 years with my sister her husband and they moved back to Texas and so I sold it, but it came back to me. This time I remodeled it and did a lot of work on it and intended to run it but my partner backed out on me. So now I'm alone. I'm just using it as a residence with my sister and her husband. And I hope to sell the other because I can't afford to keep it up.

JTate: You indicated you owe money on this property you fixed it up. What was the condition of the smaller residence when you took the property back?

PScoggins: It was bad. Just hadn't been taken care of. I put a new roof on and redo the wood floors. We put new air conditioning and new windows. It was just pretty run down.

JTate: Is there any realistic possibility you could move either one of these residences?

PScoggins: No, because of the cost.

Chairman Bonessi: You indicated you sold it as a bed and breakfast to a Mr. and Miss Hocksfield? And they ran it as a bed and breakfast for a while.

PScoggins: They lived in the smaller residence.

Chairman Bonessi: How did you come to acquire the property back?

PScoggins: Because of their health they just returned it back to me.

JTate: You then in turn sold the property to McDermitt, LLC and you then acquired it back again. How did that occur?

PScoggins: I went to foreclose and they bankrupted.

JTate: Did you have to purchase it in a foreclosure proceeding? On the court house steps – did you have to purchase it the last time?

PScoggins: My lawyer took care of all of that.

JTate: Were you able to obtain the full balance for your note on that?

PScoggins: No.

JTate: How much were you owed at that time? Was that the \$340,000?

PScoggins: Yes.

JTate: How much did you buy it for?

PScoggins: I didn't buy it back.

JTate: So you got the entire piece turned back over to you with no one else bidding in the foreclosure – so you just acquired it back to protect your investment?

PScoggins: Yes.

JTate: You initially acquired that property in these 2 deeds, one was from Robert Marriott and his wife and these were in 2 parcels at that time?

PScoggins: Yes.

JTate: Tract #1 was .23 acres, tract #2 was .13 acres?

PScoggins: Yes.

JTate: Did you take any steps yourself to have this property recombined.

PScoggins: No. I did not.

JTate: That was all just handled by your lawyer in Asheville?

PScoggins: Yes.

JTate: Do you have any other possible use of the property other than a residence?

PScoggins: No.

JTate: And how about the other piece of property?

PScoggins: No.

JTate: Do you have any way to make other than renting it or selling?

PScoggins: No.

JTate: What do you intend to do when you sell the small piece?

PScoggins: Pay the mortgage.

JTate: And you are retired now?

PScoggins: Yes.

JTate: And do you have income to pay your mortgage?

PScoggins: No.

JTate: And you never chose to acquire this property back – didn't want it back?

PScoggins: No.

JTate: Submitted into evidence - deed by which Miss Scoggins acquired the property the last time in 2007, title search on the property showing it all as one parcel, deed by which Miss Scoggins deeded it to McDermott Manor, the owner prior to Miss Scoggins last foreclosure, document of 1 parcel description, document of when Miss Scoggins acquired the property back from Miss Hocksfield, (at that time it was in 2 parcels – August 2002), Plat slide 4320 (when the recombination occurred & when McDermott Manor, LLC owned the property), deed by which Miss Scoggins acquired the property the first time, in July 1996, from Mr. and Mrs. Marriott, showing 2 tracts of land, and the deed by which the Marriott's acquired the property from the 2 different deeds, from Nancy Wilson and a Miss Stovall. He provided tax maps that were dated in the 1980's, showing 2 separate lots.

Mr. Tate indicated there was really no way of knowing why the lots were combined and separated several times.

JTate: Certainly I think what is shown is not of her own making. She didn't create this.

APouch: Do you get 1 or 2 tax bills?

PScoggins: I used to get 2 now I get 1.

JTate: Sometimes lots are combined to lower the taxes.

JTate: Miss Scoggins you testified that - would you be able to sell this property as it is?

PScoggins: No, not really.

JTate: You tried that before. And you sold it as a bed and breakfast and you got it back each time. And you sold it last time at \$320,000. In the foreclosure you did not receive any bids over that. Do you know how long the residences have been there on the property? To the best of your knowledge do they predate 1969?

PScoggins: I think they were built in 1940.

JTate: And you didn't go out and build them in the setbacks?

PScoggins: No.

Chairman Bonessi: They were both acquired by the variance on 2 different dates, predated to Miss Scoggins. All during that time it was 2 separate lots. You then deeded it to McDermott Manor. Am I missing a link in the chain? And then McDermott Manor, after bankruptcy court allowed a foreclosure, she then through her attorney acquired the property back.

JCrafton: We have 2 documents, 1 of them refers to 2 tracts.

JPhelps: This smaller lot looks like the whole front is concrete.

JTate: The concrete drive, a good bit of it is out to Courtland Blvd. and way into the right-of-way. As a practical matter it appears there is much further distance. Those roads, despite having a 60 foot right-of-way.

JPhelps: And it's a very small. Approximately 24 ½ by 30.5 at the longest. So is it 2 bedrooms or 1 bedroom?

PScoggins: It has 2 floors.

Chairman Bonessi: And that was used previously as the innkeepers residence.

JTate: Do you feel that you physically would be capable of running another bed and breakfast?

PScoggins: No. I wouldn't be.

JCrafton: Question Toby, I'm trying to go back to figure out what are you asking of us and on the memorandum, it says she seeks a variance on her property side setback.

Zoning Administrator TLinville: It is the front setback. That's a typo. It is the front setbacks.

J Crafton: Not the side setback. I'm sorry. And the minor site plan review, has that been accomplished?

Zoning Administrator TLinville: Yes.

Chairman Bonessi: So on 9/11, 2002, Miss Scoggins received this property back?

JTate: That sounds right. It was actually recorded on 9/11, 2002. The deed document was dated August 26.

Chairman Bonessi: And at that point in time it was still 2 tracts of land?

JTate: Yes sir.

Chairman Bonessi: And on 10/13, 2002 she sold this to McDermott Manor as 1 tract of land?

JTate: That sounds correct. That would be the deed from her to McDermott Manor.

Chairman Bonessi: That is correct. So it sounds like to me that while it was in her possession it was when the transformation took place.

JTate: Well it took place as part of that conveyance and also as a part of...

Chairman Bonessi: It appears it was conveyed to her back as the 2 parcels.

JTate: It was. And for whatever reason it was conveyed from her to someone else as 2 parcels. It was conveyed – the plat slide 2343- which was recorded in October of 2002 was done as a legal recombination and was prepared by Laughter, Austin and Associates.

PScoggins: I provided the old survey. I don't know if he had the right to change it.

Chairman Bonessi: Did you direct anyone to recombine them? Did you even know it was occurring?

PScoggins: No.

JTate: You just did what your attorney said and signed the deed to sell it.

PScoggins: Yes.

JTate: I don't understand. It was recombined. The plat shows the dotted line and I can only guess that perhaps someone at the Laughter, Austin and Associates firm thought that it was appropriate to make sure that there was no gap or gore in the lines, at a, maybe overabundance of caution. But it's not something that she created. It occurred as part of that transaction. Also back at the time they were constructing Courtland Blvd., it would have been a much more narrow roadway. It's part of the reason, that is part of the right-of-way, as I recall it is now a state maintained road. That's why it's got 60 feet, as a practical matter it's a 2 lane road.

WYarborough: I'm here to just find out what was going to take place there. I can give you a 5 minute history lesson about the property.

Chairman Bonessi: Do you have any questions?

WYarborough: No. The man that she sold it to didn't keep the place up and she came back and I watched her methodically spend thousands of dollars to renovate it. My concern would be as it effects me is when they remodeled that in 1983 as a bed and breakfast from a private summer residence, Mr. Stovall is the one who did that, they had to get an easement for the septic tank system that goes into the field of my adjoining neighbor behind this. It's got 9 lines because it went from a 5 bedroom house and a dental office to a 7 bedroom b&b, but because of the lot size they couldn't use the existing septic system so they had to get an easement from Mr. Pace, behind there and put in a 9 line system. There is a switching valve on it and it is my understanding the Wolf house is utilizing the same system. So if it gets separated there won't be enough land behind that house. If the main system ever went bad to put one in without maybe having to come to me or get a court order to move it over to the left. That's my concern. I had a fellow put a piano restoration business in on the other side me with a north airflow blowing toxic chemicals coming in my house. Toby knows this, he's been in my house. There was never a zoning hearing that took place about that. It just happened.

The one thing is about this water flow coming off this massive drain field comes my direction. If it ever starts to percolate, which it looks like there's a couple of lines that are getting weird looking, it's coming in my direction. I just want to be reassured that we're not going to have that problem.

Chairman Bonessi: I don't know that any one can assure you of that, right now, even as it stands. What we're looking at is a front yard setback.

WYarborough: I want to make sure that is she can cut that piece off that nobody is going to put something there that would drag this piece of property down that has been in my family for decades. I'm a life long resident of that property. I grew up in the house that she lives in. I love what she's done with it and I feel sorry for her. I have no objection to splitting it. All I want to do is make sure they don't put any kind of mess in there. It sounds like you guys got no control over that.

Chairman Bonessi: We're not changing the use. None of that is changing. Do any of the other board members have any other questions?

There were no more questions from the parties or the board members.

Chairman Bonessi: At this time I'm going to shut this hearing down for public input. We'll discuss this as a board.

APouch: Her request is to change this so she can sell the smaller, or the larger piece of property, so there will be 2 different pieces, is that what we're doing?

Associate County Attorney SZambon: The request is to reduce the front yard setback to what it, if I understand correctly, what it is now. The front yard setback could never meet true zoning. So the splitting it is not where the variance is requested. They can meet the setbacks on the side yard. It's just that the front yard has never complied and won't be able to comply after the split.

JPhelps: It seems from what I've heard from Toby, the attorney and Miss Scoggins, it was originally 2 lots. It got combined possibly without Miss Scoggins' knowledge. Toby in his testimony said it was originally 2 lots. So all we're doing is restoring a condition that was preexisting. The setbacks don't comply and won't change anything. So I see no reason not to grant the petition to split.

TEngel: To simplify things – I agree with you.

JCrafton: I'm in agreement. Granting the variance doesn't have any impact on any neighbor or the neighborhood or anything at all. It's only a technicality. By granting a variance for something that already exists and has for years we just allow them to proceed with dividing the property which is not under our jurisdiction. So having said all that, yeah I'm in agreement.

Chairman Bonessi: Do I have a motion?

APouch: I make a motion that we grant the variance for V-08-09.

TEngel: Seconded

All board members were in favor of granting variance for V-08-09.

Chairman Bonessi: I need a motion to close this case.

JPhelps: So moved.

TEngel: Seconded.

All board members were in favor of closing case V-08-09.

After noting the time and duration of the meeting and due to the fact that no witnesses were present for the Holbert case, Chairman Bonessi asked for a motion to move cases A-08-03, Burnett and A-08-04, Holbert to the June 25<sup>th</sup> meeting.

JPhelps: So moved.

TEngel: Seconded.

All board members were in favor of moving the cases to the June 25<sup>th</sup> meeting.

Chairman Bonessi allowed for a 5 minute break.

**Case V-08-11, George Bennett, Recreational Motor Sports Facility**, requesting a variance from fencing requirement SR 4.14 for placement of fence in flood way. Location: 198 N. Edgerton Road, Mountain Home, on approximately 18.13 acres, Industrial zone, (PIN 9660098902).

**Witnesses for case:**



**Doug Dunlap – property owner ½ mile away from site**  
**Blake Kehoe – manager from Clement Pappas, Inc.**  
**Stan Kumor – witness for Mr. Dunlap**  
**George Bennett – property owner – applicant**

Chairman Bonessi asked for a motion to open case Bennett Recreational Motor Sports Facility V-08-11 and SUP-08-12.

Associate County Attorney SZambon: Mr. Chairman I would like to advise the board that you have to handle these matters separately and I know a lot of the members of the board have seen this case or an incarnation of this case previously. You should not use any of that stuff you heard in the previous hearings in this hearing.

Chairman Bonessi: I think in regards to Mr. Pace's request, we have already gone too long and have 2 cases to hear before his. I think we should give him the benefit of the doubt but we don't want to be here until 10:00.

JPhelps: I make a motion that if we can't get to it by 7:45 P.M. we'll hear case SUP-08-10, Pace, at the June 25<sup>th</sup>.

APouch: Seconded.

All board members were in favor of moving the case to June 25<sup>th</sup> if it could not be heard by 7:45 P.M.

Chairman Bonessi: Mr. Pace, do you understand? Ok. So if we get to it by 7:45 we'll hear it. If we don't we'll hear it June 25<sup>th</sup>.

Chairman Bonessi: At this time the folks that are here for the Bennett motor cross facility will you come forward and be sworn and determine if you have standing or not. So please come up and say your name and tell us how any decision on this property would effect you.

BKehoe: I'm Blake Kehoe with Clement Pappas. We own property adjacent to the site.

Chairman Bonessi: So you are representing?

BKehoe: Clement Pappas.

Associate County Attorney SZambon: Are you an employer for them or a CEO?

BKehoe: Engineering manager.

Associate County Attorney SZambon: It's up to the board. Can you sign contracts on behalf of the company?

BKehoe: Yes.

Associate County Attorney SZambon: So he does have some legal standing with the company as agent. There is no entity who is the company.

DDunlap: I'm Douglas Dunlap. I live at 331 Brookside Camp Road. My property does not directly tie to this property, but I live in close proximity. I live just across the hill. There are 2 businesses between our property and the site, about ½ a mile as the crow flies.

TEngel: How much property do you have over there?

DDunlap: 25 acres.

JCrafton: Are you on the same side of I26?

DDunlap: Yes.

JPhelps: Could we see on the attachment where you're located?

Mr. Dunlap pointed out his property to Mr. Crafton.

JCrafton: Bottom right hand corner where you see Quality Rubber, he's just to the right of that.

Associate County Attorney SZambon: Are there any other witnesses or parties?

SKumor: I'm just here as a witness for Mr. Dunlap.

Associate County Attorney SZambon: We have to decide if Mr. Dunlap is a party.

DDunlap: I understand there are 2 separate items on the agenda tonight. This is the third hearing I've been to and you guys might have to ignore the other hearings, but I don't. I presume there is a motion to continue to do that and it is an issue of noise. I don't know what he proposes, but I just have to come and see.

JPhelps: How adjacent do you have to be for standing?

Associate County Attorney SZambon: The 'rules for standing' is you have to have a more particular interest than any general person in the community. For example, being a tax payer is not enough of a reason to complain about taxes because you are the same as everyone else in the community.

JCrafton: I think the question is it reasonable to expect that any noise generated from a motor cross facility carry to this person's property.

APouch: But they're manufacturing plants. It isn't a quiet neighborhood.

Associate County Attorney SZambon: The question for you all is whether or not he is close enough to have a specific interest as related to the property -different and more worthy than anybody else.

JCrafton: Mr. Chairman, I suggest we accept him with standing then we can measure his degree of his concern and whether he has merit or not.

Chairman Bonessi: Ok.

Chairman Bonessi: I need a motion to open the hearing of case V-08-11.

TEngel: So moved.

JPhelps: Seconded.

All board members were in favor of opening case V-08-11.

Zoning Administrator TLinville: If it pleases the board I will read the staff report into the record. The staff report has the supplemental requirement for a Recreational Motor Sports Facility. You heard a previous appeal of a road classification requirement. The only other requirement that Mr. Bennett cannot meet is the requirement for an 8 foot security fence around the property. That's not an issue with Mr. Bennett. It's an issue with the flood damage prevention ordinance – it is not allowed – anything in the flood plain, any type of construction. The variance request is more for conflicting ordinances than any problem he has with that. After this went through the Technical Review Committee this was the recommendation, that he apply for a variance and not be responsible for that.

APouch: He doesn't have to have a fence. We'll give him a variance for a fence.

Associate County Attorney SZambon: If you give him a variance you will be allowing him not to have the fence. As Mr. Bennett has proposed as it is right now he cannot put a fence in the floodway.

Zoning Administrator TLinville: And that will be just the area that is in the floodway. Just the part along the front and down the side so to that point would be fenced. If this variance isn't granted then you can't here the special use permit. Or if you did and everything went through then he would be in violation by building that fence.

Associate County Attorney SZambon: Again, the previous hearings we've had on road classifications and any potential special use hearing we may have do not play into this at all. This hearing is only about the variance about the fence and the floodplain.

Zoning Administrator TLinville: The Technical Review Committee recommended approval of the variance because our ordinances conflict. In order for you to consider the special use permit. Without that step you can't go that far. In your packet is the variance application form, as well as an attachment that further shows the hardship. And the rules from the flood damage prevention ordinance that say 'no construction in the floodplain'. And finally an aerial map showing the property.

Chairman Bonessi: Mr. Bennett have you been sworn?

GBennett: Yes, I was here for that.

Chairman Bonessi: Mr. Bennett, do you have anything to add?

GBennett: The security fence and the chain on the fence has nothing to do with noise barrier. I don't have a problem with the fence. It's just that you can't put one in the floodplain. I need the variance to do anything else. As far as fencing, if you've seen the aerials you see it is impenetrable. You couldn't come in from that side any way. A security fence really isn't necessary.

JCrafton: To save a little time and because it's only a technicality that won't allow a fence and in order to get to the real reason he's here – to get his special use permit – I'd be in favor of approving the variance just so we get on with the other business at hand.

DBonessi: We're still obligated to listen to any parties. Does the board have any questions of Mr. Bennett at this time, in regards to the fence?

JCrafton: The only question you could ask is about concern for the absence of the fence. That is itself creates a problem because there won't be one there.

JPhelps: Nobody comes into it from that side. The park's been broken into several times and they just cut the fence from the front. Brandon Wire already has a security fence going in from one side. I would have a fence at the top. There is a scrap yard on the other side that has security fence, so you couldn't get down that side.

TEngel: Security fences work in 2 directions. Keeping people off the property or keeping people in.

GBennett: You couldn't get in or out that way. If you're going to break into or out of the place there are 3 easier places to do that.

Associate County Attorney SZambon: Toby can you do a no rise or 20% fill on this?

Zoning Administrator TLinville: That would be up to the surveyor measuring all the elevations determining that this area would speak to a no rise certificate, has to be drawn by an engineer that says that if you use this on your property you will not adversely effect the property. The fence is in the floodway. That's a pretty large area. We guess that it probably wouldn't qualify for a no rise certificate that's why we suggested this.

Associate County Attorney SZambon: And the 20% fill doesn't apply either.

Zoning Administrator TLinville: No. 20% fill is for the floodplain. There's no filling in the floodway.

Chairman Bonessi: At this time if we don't have any questions for Mr. Bennett I'd like to ask the people that have been named as parties, and again we've just got to keep it to the fence. If there's any questions you'd like to ask Mr. Bennett or any statements you'd like to make to us in regards to the inability of Mr. Bennett to put up a fence because of the floodway restrictions.

There were no questions for Mr. Bennett from the parties.

Chairman Bonessi: At this time I would like to have the board discuss this matter.

APouch: I have no objection. I don't see a problem on the fence, it is a variance for where he can't put the fence because of the flood zone.

JPhelps: No comment.

TEngel: Indicated he had no comment.

JCrafton: Indicated he had no comment.

Chairman Bonessi: At this time I'd like to ask for a motion.

Associate County Attorney SZambon: And whoever gives the motion, can you give me the findings of fact too?

JCrafton: I move that we grant the variance applied for by Mr. Bennett and the finding of fact being there are practical difficulties that aren't necessarily hardships in that other regulations or restrictions of the flood code prohibit such a fence.

APouch: I second.

All board members were in favor of granting the variance for case V-08-11.

Chairman Bonessi: Congratulations Mr. Bennett. I need a motion to close case V-08-11.

TEngel: Made motion.

APouch: Seconded.

All board members were in favor of closing the case.

**Case SUP-08-12, George Bennett, Recreational Motor Sports Facility**, requesting a special use permit for a Recreational Motor Sports Facility -required in Industrial zoning as defined by SR 4.14 in the Land Development Code. Location: 198 N. Edgerton Road, Mountain Home, on approximately 18.13 acres, (PIN 9660098902).

**Witnesses for case:**

**Doug Dunlap – property owner ½ mile away from site**

**Blake Kehoe – manager from Clement Pappas**

**Stan Kumor – noise level expert**

**George Bennett – property owner – applicant**

Chairman Bonessi: At this time I would like a motion to open SUP-08-12, special use permit for a recreational motor sport facility, which is required in an industrial zone.

JCrafton: So moved.

JPhelps: Seconded.

All board members were in favor of opening case SUP-08-12.

Zoning Administrator TLinville: If it pleases the board I'll read the material in you packet for the record. First you will see the special use application, then the letter from the Technical Review Committee to Mr. Bennett and that's their approval with the following corrections, which have been made to the site plan. It reflected there can only be 100 occupants, there's only 1 track and there's not fencing constructed in the floodway and to make the variance application, which he has done. The next piece is an aerial of that property. Then the SR for supplemental requirements for recreational motor sports facility. And then the major site plan.

JPhelps: Is there any recommendation?

Zoning Administrator TLinville: Yes, they recommend approval which just means that you can hear it. The major site plan meets those requirements, barring those other things, and those have been corrected.

JPhelps: And all have been?

Zoning Administrator TLinville: Correct.

JCrafton: Toby, what relevance would the noise ordinance have regarding noise that's created by such activity?

Zoning Administrator TLinville: We don't know. It hasn't been tested in this way. The new ordinance call for, if a sheriff's officer receives a complaint, if they feel the complaint is real, is valid then they set up a camera at the property line. And that's the evidence to determine if it is a violation of the noise ordinance. A video camera.

Associate County Attorney SZambon: That's just to bring to court. It's a complaint driven ordinance which means something could be in violation, but if no one complains then it wouldn't be enforced against them necessarily just because the county doesn't have the resources to just drive around listening for noise. On the face of the noise ordinance, if I understand what Mr. Bennett's proposing I believe it would technically be a noise violation. Because there are things like motorized cars and stuff like that, that are noise violations. However, if nobody complains about it then the Sheriff's office is not going to enforce it. If the Sheriff's office did get a complaint and went to enforce it then they might write a citation after observing themselves. If the case got taken to court they may go set up a video camera at the property line. They could get further in but the whole point is whether or not you could hear it off the property so that we would have evidence to bring to court.

JCrafton: One of the public concerns about such a facility seems likely to be a noise issue and since we have a noise ordinance I just want to be sure that we deliberate – is there anything about the ordinance that we need to take into consideration. I don't think any of us have the expertise to make a judgment as to what noise level Mr. Bennett's activity would produce and whether that would be an objection or not. But there is a noise ordinance and it's complaint driven.

Associate County Attorney SZambon: Yes. And when Mr. Bennett came in to talk to Toby and I after the road classification issue was taken care of, I did advise him regarding the noise ordinance – that there was this noise ordinance and depending on the noise of his facility and how far away it is and people may complain and we would have to shut him down.

TEngel: that's a sizeable investment that he might not be able to use.

Associate County Attorney SZambon: And it's happen in other instances with the noise ordinance. With the motorized car guy.

Zoning Administrator TLinville: The RC track. So that was the first test of the ordinance.

Associate County Attorney SZambon: It didn't go all the way to court. He just got cited.

Chairman Bonessi: Mr. Bennett, if you have anything to offer.

GBennett: After they told me there was a noise ordinance I talked to the Sheriff's Department about it and it is complaint driven. If I'm driving home and I pass somebody on 64 with their lawnmower with

their muffler off and I call the Sheriff then they use their judgment to see if it's too loud or not. Another thing with the noise ordinance is motor vehicles don't apply. If it was a factory motor vehicle. That was a problem before, but it could help me now. I'm not out to make too much noise, my track is not that loud. They've called the Sheriff before and they came and stood at the top of the road and didn't know there were people down there. I'm sure it can be heard certain times. If they ask me to stop then we will stop. I'm willing to test the noise ordinance in court. It's an industrial park. The noise ordinance didn't apply to industrial parks.

Zoning Administrator TLinville: I don't want to stop the board from thinking about noise, but recognize that a lot of this is hearsay and since we don't have a representative from the Sheriff's Dept. to talk about the noise ordinance, just take that note.

TEngel: Do you check any of the vehicles to see how much noise they are making? Whether they are stock or standard?

GBennett: We wouldn't allow the kids to have an aftermarket bike on the track. Everything has to be stock. In the past we've had public hearings. We've had decibel readings. They've been on the property line with 20 motorcycles riding at the same time and it didn't change the decibel level. With the railroad tracks and I26 it doesn't change it. You can get right behind one and stick it in the tailpipe and it's going to change. If the Sheriff stood on the property line with a noise meter and 20 bikes rode and 20 bikes stopped, he would get the same reading.

TEngel: So you'll have roughly 100 bikes running?

GBennett: No. According to my site plan, I can only have 20 bikes at a time. Maximum capacity is 100 people in the park. The majority of my riders are under 18. When they come to the park they have to have both parents. They sign a waiver to come to the park or a notarized letter from an attorney in a case if they are divorced, notarized permission from the other parent for them to bring the child. You might have one 5 year old kid who might have mom, dad, grandpa and grandma.

DBonessi: According to this you can't have more than 20 contestants.

GBennett: 20 riders on the track.

Chairman Bonessi: This says 10. At any one given time.

GBennett: Is it 10? OK. It was 20.

JPhelps: 20 total but only 10 at the time.

GBennett: I don't really understand that. You can have 20 but only 10 ride?

JPhelps: If you had a contest you could take 20 contestants but you'd have to have 2 separate events.

GBennett: Well we do that anyway. We hardly have more than that at a time. At times there'll be 20 or 30. Back in 2001 and 2002 they did 20 -30 riders at a time. Now that you only have 1 track you wouldn't ride the kids with the adults anyway. If there's a 17 year old kid you wouldn't want him riding with a 7 year old kid, so you break it down into groups and they ride 15 minutes at a time.

Chairman Bonessi: How many races are you going to have a year? How many practices are you going to have?

GBennett: None.

Chairman Bonessi: No races.

GBennett: This is purely recreational. There's nowhere for these kids to go. They've tried to open tracks. No matter where you put this thing it's going to cause a problem.

Chairman Bonessi: So how often are you going to practice?

GBennett: I was just hoping Saturday and Sunday and maybe 1 day during the week. In 2002 there were 22 weekends when the property couldn't open because the property is flood plain and it's under water. In the winter time it doesn't dry out very much. There are some days if it's too dusty and the sprinkler system can't handle it you just can't open. If it's too hot and dry you can't open it. If it's too wet you can't open it.

TEngel: You're not going to be open during the winter, then?

GBennett: I will try to open in the winter. We've had some mild weekends but you're still lucky to get 1 or 2 weekends in a month.

Chairman Bonessi: So you're looking at 3 days a week?

GBennett: 3 days a week. Sometimes you can't open. I've seen the property under water for a month.

TEngel: It may be that when the leaves fall the sound travels further.

Chairman Bonessi: What kind of hours are you going to keep?

GBennett: Saturday, I'd like to open from 10:00 in the morning until 7:00pm. and Sunday 1:00pm to 6:00pm. I'd like to have everybody out of the park by 6:00 because I have another job. I don't want to be there all the time.

Chairman Bonessi: My question with the SR 4.14 – it specifies restrictions for racing. It says nothing about practice events. It doesn't say anything about it.

JPhelps: - or just general recreational use.

GBennett: There is more than 1 type of motor sports facilities. I think there are 5 different ones.

Chairman Bonessi: I'm looking at Recreational Motor Sports Facilities that's in my book.

Zoning Administrator TLinville: There are 3 different types.

Associate County Attorney SZambon: There's motor sports major, motor sports minor, there's...

Zoning Administrator TLinville: They have more supplemental requirements. They are a more intensive use. This is the least intensive of those 3 uses.

Chairman Bonessi: This one only mentions racing events. It doesn't mention practice. It says you can have 5 races per year, but it doesn't say anything about practice.

Associate County Attorney SZambon: A racing event I don't believe is defined, otherwise the definition is what you would commonly understand as to the meaning of the word. But there are hours of operation on #13 that would apply regardless. The only thing that would apply specific to racing events, however you want to define it, would be the number per calendar year, the length of the event – #10, A through D.

APouch: Would we go by 3 consecutive calendar days?

Chairman Bonessi: According to this it's only 5 races a year, maximum.

Associate County Attorney SZambon: When the TRC considered it, to approve the site plan, they delt with #10 as though he would have to meet it. Or did they just ignore it all together? For all of #10 did the TRC say factor #10 the racing event shall be limited? Did the TRC, when they were reviewing it, require him to meet all those things? I don't think most of it came up. The only 1 I remember coming up was the emergency preparedness.

Zoning Administrator TLinville: I think the only discussion was, and I asked Mr. Bennett how many he races he would have and he said that it would be practice and that was the end of that discussion. No one thought further what's different between practice and a race.

GBennett: Has anybody ever been to a motor cross race?

Chairman Bonessi: I raced something all my life.

GBennett: Can you help me explain the difference between a motor cross race event and just going out and letting a 5 year old kid ride.

Chairman Bonessi: I understand.

GBennett: I don't want to have a racing event. I just need a place where they can come and ride. It's not about money. I'm not going to get rich doing this. I'm not going to even pay for the property doing this, but I have kids that ride their bikes and I have a lot of people that are counting on this track to open up. You got 3 dealerships in the county that are counting on this.

Chairman Bonessi: Trust me. Personally I am with you, but I have to consider everybody else.

JPhelps: It looks what we're trying to say – recreational use is not a formal racing event. Somebody can come out any time of the day and buy a ticket and ride as long as they want to ride and pack up and go home. There's no formalized start race time consisting of 10 laps or whatever.

GBennett: You'll have an 8 year old that can ride all day and a 17 year old that rides for ½ hour and is tired. It is a very physical sport.

JPhelps: Which brings me to the question about the track. Is this just 1 track or is it 3?

GBennett and Zoning Administrator TLinville: It's 1.

JPhelps: So is that a technicality? Because it's broken out into 3 separate sections.

GBennett: It's 1 continuous track. What you're seeing is like when you have small kids, they don't have to ride the entire track. There's a beginners section and they don't have to go around the entire track. There's just a little loop that they can keep going on. They would be the only ones on that track. And it would still be one track.

JCrafton: Mr. Chairman, in reference to the racing question, it would seem the ordinance is appropriate for what Mr. Bennett is asking. It's just that item 10 refers to when you have racing events. It we are

inclined to, as we get through this process and grant him a special use permit then I would suggest that we could have 2 conditions, maybe more. One could be that he would not be permitted to have any organized racing events. And second we could set then, as a condition, the hours of operation. Because the ordinance has no parameters for operation other than for racing events themselves and he's not racing. So we have to create something by condition. Good enough, Sarah? So I would say by condition we could set that – that he could have racing and we could set hours.

Associate County Attorney SZambon: There are hours in the SR. The difference is there's not the racing item has days, like you cannot open days in a row, but there is an 'hours of operation', which is #8, the last thing for non-racing and racing.

Associate County Attorney SZambon: Mr. Chairman, unless one of the other board members has questions for Mr. Bennett, I would encourage you to speak to the other parties.

There were no further questions from the board for Mr. Bennett.

Chairman Bonessi: Since Mr. Dunlap is first on the list, I'll ask him to speak first.

DDunlap: I find it shocking that you have to ignore all those other hearings. The noise is my issue. If there is 1 bike running down there, you're welcome to sit on my front porch, I can hear it. I'm in direct line of it. Imagine if there's 20 or 30. Who's going to police this if you do grant this variance? What happened to the consent order that's supposed to be on it at the moment? I've witnessed people down there. The gate supposed to be locked. Everybody in the county because there's pickups and closed trailers on the property with the gate locked. Them trucks and trailers didn't fly over the fence. Who's going to police this? There's a lot of talk about the noise and decibels, but I can hear it. Who's going to police how many is on the track? I'm 5<sup>th</sup> generation here and I'm not an old prude by anyways, but I do not want to listen to a 2-cycle of anything. Motorcycle, ATV, whatever, running and carrying on, on my weekends off. I work in this county. And I think there's going to be some other folks that should have been her tonight - if you guys pass this you are going to hear some more about it because it's just wrong. Why do you think it's been denied in every other county around here? Rutherford, Buncombe, Transylvania county is stopping it right now. I graciously request you folks to deny this and let the consent order that stands now. Toby, does this not still in effect?

Associate County Attorney SZambon: The consent order still is in effect and is enforced by the Sheriff's department. Anytime that you do see people on the property, you should call the Sheriff's department and they will arrest them for trespassing.

DDunlap: I was going to bring you folks a log of how many times they responded, but they could not provide me with that because whichever officer goes – however they type it in on the addressing system- if it's not identical it won't match it up.

Associate County Attorney SZambon: But for this proceeding, the consent order, as it stands, says that if Mr. Bennett gets approval for his motor cross in a legal way – and follows all the county zoning laws, that consent order will no longer be binding. If in an instance where he got a special use permit that would trump the consent order.

DDunlap: The consent order now – I've met with officers down there that weren't even aware that there was a consent order in effect. I just happened to have one. So he read through it, "Oh, I see".

Associate County Attorney SZambon: I've talked to the Sheriff's department many times on that particular issue. Toby and I have done everything we can to make sure they have it. Beyond that we have very little control.

DDunlap: If these folks continue to be in violation, and I understand Mr. Bennett cannot be there to police the property, only 1 time I've seen this gate open. Every other time it's locked, but they're on the inside and now with the vegetation grown up you can't see down there, but you can hear the motorcycles or ATVs or whatever they are running, running so why the people have not been arrested and gone to jail, I don't know. The officers are not enforcing the order that's in effect now. So what's it going to be when there's 20 riding or 10? Or even 1 bothers me. So that's my concern and I hope they don't grant it because I don't plan to leave.

JCrafton: So that is your residence?

DDunlap: Yes, it is – 5<sup>th</sup> generation.

Associate County Attorney SZambon: Mr. Bennett, do you have any questions for Mr. Dunlap?

GBennett: No. I've spoken with your father. I've been down at park and caught people trespassing and called the Sheriff. Your father was down there one day when I went there and I waited on the Sheriff to get there. I don't allow these people to go in. They used to go around and cut the gate off. The lock on that gate wasn't even mine. Somebody cut the lock off and put their own lock. I didn't do it. I was gone for 12 months so I had no control over the place. I cannot be down there every weekend. If the park is open I can be down there every weekend and I could police it. I'm sorry that it bothers you, but the interstate bothers me. But I can't do anything about it. I can assure you that the interstate, at times, is louder than my motor cross park. If there was anything I could do to make it easier for you, I would. I tried to talk with your father and tried to be a good neighbor to everybody around. I really don't want to make your life harder but you've got to look at this – if you can't do it there you can't do it anywhere. It's a growing sport. It's coming. They are riding all around anyway. They are on Couch Mountain. There are tracks all over. They need a safe place to ride. I really don't think the noise is that much of an issue. You got used to I26 and it's not like I'm there every weekend. If it's a nice weekend and it's dry I just can't be there. I don't want to be there every weekend either, I've got a life. It's a worthless piece of property. I know we've had other hearings. I've asked for variances and I meet all the requirements under this order. I meet every single requirement to open this park. I'm not asking to break the law.

Associate County Attorney SZambon: Mr. Bennett, you'll have a chance to respond to everything. Now is just the time if you had any questions for Mr. Dunlap, or if the board has any questions for Mr. Dunlap. Otherwise I would suggest that Mr. Dunlap, did you want to call Mr. Kumor as a witness or no?

DDunlap: Stan, do you have anything to add.

SKumor: Oh yeah. Hopefully this will clarify something about this noise issue. Previously there was a hearing at West Henderson High School in front of the entire County Commission in which Mr. Bennett's expert got up and claimed that 1 motorcycle generates 96 decibels and an additional motorcycle would generate 3 more decibels and that 20 motorcycles would be 96 plus 20 x 3, which would be about 146 decibels. And that's only a 40% increase in noise. Well, the fact is that decibels is a long rhythmic scale like earthquake Richter scales. So when you go from 90 to 100 decibels that's a 10x increase in intensity. So when you go from 90 to 110 that's a 100 times more intense. If you go to 120 that's a 1,000 times more intense. The graph in front of you shows that if you run 16 motorcycles simultaneously, if the base motorcycle is 96 decibels and you add 3 for each additional that's 146 decibels. Which is equivalent to a jet engine on a commercial jet liner. I don't understand why you can't hear 20 of these at the property line and people testified at West Henderson High School who live up on the hills around this area that the vegetation doesn't diminish this noise at all. By living up on the heights, this noise comes straight up off the track to their homes. What I'm saying is I don't understand this whole 'you can run 20 motorcycles and you won't hear anything different than if we run'. That's technically not true. I'm a PHD chemical engineer and this material that you got (*Mr. Kumor handed out decibel and noise study material to support his position*), comes from the physics book that they use in this county to teach physics. I teach physics and also tutor children in physics, so I have some expertise in this. This isn't just hearsay. Thank you.

Chairman Bonessi: My first question is, is the numbers that you're using, are you using his numbers?

SKumor: Yes. That's what he testified. That's what their tests showed – that 1 motorcycle generates 96 decibels. And they said that their test shows that by putting a second bike next to it increased it from 96 to 99 and so on and so on. I'm using their testimony.

Chairman Bonessi: Do you think that's correct?

SKumor: Probably. Basically, if you really look through this, intensity is one thing, loudness is another. Intensity goes up by a factor of 10. But loudness goes up, for every 10 decibels it goes up double. So when you go from 96 to 146, the loudness goes up 16 times. Not 1,000 – 16 times. So 16 motorcycles sound like 16 motorcycles. That's what that data says. It seems to me to be reasonable that my data says that if you've got 16 motorcycles that they sound like 16 motorcycles. The loudness of the noise is going to be 16 times louder.

Chairman Bonessi: My only thing is I question the numbers, but anyway. Sound is a rhythmic function. If I go up by 10 db it's significant intensity.





Associate County Attorney SZambon: Again, we can't evaluate the past testimony. I would just evaluate what's in front of you. And I would call Mr. Kehoe.

BKehoe: I guess our only real concern is the additional traffic. We have a warehouse across from that property and 50 plus or minus trucks a day. A concern we have of course, is one of those tractor trailers hitting someone coming out or something along those lines. We have no control over the speed that those trucks go down that road. That's our real concern.

GBennett: It's an industrial park. They do have quite a few trucks going in and out but a stop sign at the top of my road would stop that problem as far as congestion or anything like that. There'd be far less traffic going in and out of my hours of operation than there would be in an industrial park because there's not that many people in an industrial park. They do run in shifts on weekends every now and then but the majority of them aren't there during the week.

BKehoe: Well the only thing I would suggest is maybe some speed bumps. On both sides, to help alleviate that. No trucker wants to hit a speed bump, something along those lines.

GBennett: What about a stop sign and a caution sign?

Associate County Attorney SZambon: Are those publicly maintained roads?

Zoning Administrator TLinville: North Egerton is, yes.

Associate County Attorney SZambon: So you all know, regardless of which every way you go on this you cannot make a condition of speed bumps or stop signs.

GBennett: Where does that actually stop?

GBennett: I thought it stopped at the top of my road where the pavement is. Because the guy that owns the scrap yard across from me has to keep up that and maintain the road.

Zoning Administrator TLinville: The right-of-way is drawn to the edge of the scrap yard. But you'd have to see a D.O.T. maintenance schedule to see where they actually maintain that to.

Chairman Bonessi: Would there be anything that you could do on your property?

GBennett: I could put up a stop sign and my top gate I could keep it closed and have somebody let them in and out. But basically all you can do is put up a stop sign. But there are quite a few trucks that come up through there.

BKehoe: Yeah, and like he says, it varies depending on the day.

GBennett: The only thing I could do to guarantee that there would never be an accident – it's just like pulling out of a driveway, any of those other driveways. As far as I know there hasn't been an accident by anybody coming out of any of the other driveways. They come down Industrial Park Road and come down the long straight. I could just post a stop sign like everybody else. The only other thing would be to stand up there and actually let them out.

Chairman Bonessi: I was thinking along the lines of some kinds of an engineered solution. I don't know if you could put some kind of a speed bump on your property to catch people from zooming out.

GBennett: Well, I have enough right-of-way that I could make a turn at the top. If you're pulling a trailer coming out you'd have to go around a turn, but other than that the only thing is just a warning sign and a stop sign. I do talk to everybody that comes into the park. When I'm there they have to come – there's one way in and one way out. There is an emergency out if there's ever an emergency, but there's only one way in and one way out. They have to talk to me before they come to the park. I have to have them sign waivers and make sure their parents are present. And when they go out of the park, they have to go right past me.

Associate County Attorney SZambon: Mr. Dunlap, do you have any questions for this party?

DDunlap: No.

Chairman Bonessi: Does anyone on the board have any questions for any of the folks giving testimony?

JCrafton: Looking over the criteria of the special use permit that we can ask or require of the applicant, one of the items is for him to demonstrate to us that his use is located and developed in such a manner as to minimize the effect of noise, glare, dust, solar access an odor on those persons residing or working in the neighborhood, so we've had some information – that information presented by Mr. Kumor, regarding noise levels in reference to some information that was presented at West Henderson High School and some of that would have been here-say that we can address, but it does introduce the

idea of technical information that is not really available to us as a direct submittal regarding this. So I guess my question is of the applicant, is can he demonstrate to us that he with his use would minimize noise and I guess in this case – it would also be another matter- it's a dirt track – to such a degree to meet our current ordinances. My only concern is that our noise ordinance is not very specific. It's only complaint driven so there are no standards to measure by. Is that correct?

Associate County Attorney SZambon: It's a reasonable person's standards for noise, so, I should have brought it, but I can't get onto my server, but it's a reasonable person's standards. And a reasonable person is determined by the Sheriff's department once they go out to investigate a complaint. So for example I can think my neighbors are being too loud. The Sheriff comes out, or I could just hate my neighbors and want to get them in trouble. So that's why the Sheriff is the one who determines what the reasonable noise is. If it's unreasonable for that location because in the middle of a very rural area there, loud noises would be different from them on Main Street in Hendersonville.

JCrafton: So then it's extremely subjective because the Sheriff's department doesn't have a standard either. It's just the viewpoint of the deputy that shows up at the time.

Associate County Attorney SZambon: And that is why they have the video camera, so that they can record the noise so that when we go to court the judge can assess whether or not that's reasonable. I was there during the creation of that ordinance and they debated back and forth whether it should be a reasonable noise standard, which is common in the law. The reasonable person's standard happens all the time, especially with a lot of tort stuff, dangerous products. Or if they should have all the Sheriffs officers get devices that measure noise. They decided the devices that measure the noise aren't really appropriate because a noise at 11:00 in the morning is a lot different than noise at 4:00 am. So they decided that because it was so situational and the circumstances could differ so much that an objective standard – 50 decibels or whatever you want to say – would not be appropriate.

GBennett: I can't get an answer.

TEngel: If Mr. Bennett would get 10 motorcycles on there and we would go out to the property and listen to the noise.

Associate County Attorney SZambon: You should just evaluate it based on the factors of the special use permit. If you think that Mr. Bennett has done everything he can do or what is reasonable to mitigate noise, glare, dust, and just look at the factors of special use permit. Not necessarily those factors in the noise ordinance because that's enforced by the Sheriff's department.

APouch: Well, it's noisy and nobody wants it next to you. So we can't discuss all that.

JCrafton: That's true. But my point was I didn't want to see us approving something that by it's very nature would be in violation of another ordinance we have if we had some standard of noise measurement.

Associate County Attorney SZambon: There is no standard for noise measurement. It is a reasonable person's standard.

GBennett: The way I understood it, I couldn't get a straight answer from anybody either. But if Mr. Dunlap called the Sheriff's department and they came out. If it was 9:00 on a Sunday morning and they determined that it was too loud then I would be in violation. If he called them at 4:00 on Saturday afternoon it may not be too loud. If the foliage was off the trees they may come out and determine that it's too loud. If the foliage is thick he may determine – it would just be up to the Sheriff's department.

DDunlap: They can't even enforce a consent order now with people on the property. How are they going to do a noise ordinance?

Associate County Attorney SZambon: The noise ordinance is slightly different than a consent order. A consent order is more in line with serving warrants. I will say this, I think it is hard for them to keep track of all the consent orders and all the different things on individual people and individual properties overall. The noise ordinance applies to the whole county overall except for the municipalities. So they all know about it. I wrote the citation for them. If they don't know about the noise ordinance then we have other problems. I don't think the consent order and the noise ordinance are a fair comparison.

JCrafton: I'd like to ask Mr. Bennett one question. Mr. Bennett, Mr. Kumor presented this graph that he apparently presented at West High School, indicating the decibel level based on the data input from your expert. Do you dispute the conclusions he draws on this graph?

GBennett: I don't have any idea what that is. We hired an expert. I didn't do it. I don't know if that came from my hearing or not. He says it did. I don't know where he got it. I honestly don't. My public hearing is a matter of public record.

JCrafton: He's giving you the opportunity. He's presenting some facts as a witness for Mr. Dunlap and I'm giving you the opportunity to say if you dispute his conclusions to a technical statement.

GBennett: I'm sure that an expert did that and that's probably how it plays out in physics but what's on paper and what you actually hear standing out there, I'm sure are different. You can get an expert to say anything. I don't know where that came from. He said he got it from my hearing. He has no reason to lie, but I don't have a copy of that. That public hearing was in 2003. It was over a period of 6 months. Associate County Attorney SZambon: Is your question whether or not the testimony given at the previous hearing is valid, because you can't look at that. Your question is if a motorcycle has 96 decibels, whether or not the calculations are correct, right?

JCrafton: No, my question has to do with- entered into evidence tonight was this chart from Mr. Kumor, as a witness for Mr. Dunlap. And I'm asking the applicant, does he dispute this data? Because this is testimony before us to use as an indication or some measure. And I'm just asking him if he refutes the technical veracity of this data.

GBennett: If he says it came from there I have no reason to doubt that. I don't know where it came from.

JCrafton: Not where it came from but whether it is an accurate representation of noise issues.

GBennett: Whoever the expert was that did that, it is accurate representation. I'm sure of that. But like I said, you can get an expert to do anything. I don't understand that – the 96 +3 +3 +3 where it gets up to as loud as a jet engine. I would dispute that. The only other thing you could do out there is an airport and have helicopters. I'm sure 1 helicopter would drown out 100 dirt bikes running at the same time. If 1 bike is 96 then 20 more would get it up to a jet engine. I would dispute that because I've been in the presence of 100 dirt bikes and I've been in the presence of 1 helicopter and I can assure you that you would here the helicopter and not the bikes.

Chairman Bonessi: Any other questions, if not I'll suggest that we discuss this as a board.

APouch: We know it's noisy but he still has a right to do this and the operating hours according to the regulations here are 8:00 to 8:00 and he can only be there 3 days in a calendar week. He said he'd be open weekends and 1 day during the week. Now do we hold him to that or do we say, which we really can, he can be open when the weather's nice and people want to be there.

Chairman Bonessi: Well, I've got concerns about the hours of operation and the number of times a week. Naturally the noise is always an issue. I think it's one of those things that there's always something in between as far as - day to day operation. Jim, what are your thoughts?

JPhelps: I struggle with this. The question has been raised – where do you put them? Can you find a place in the county that somebody isn't within ½ a mile that's going to complain. Yet we've heard and read in the paper this question with the noise ordinance and the pros and cons and the problems with that. This, for the most part, if the noise level ordinance is a separate part, we're not here to consider that, I don't think.

Associate County Attorney SZambon: You are there just to consider the factors in the special use only. Cheat Sheet.

JPhelps: That's what I'm trying to get down to.

TEngel: if you read this, it's part of the factor

Chairman Bonessi: What is minimize, though? It doesn't say illuminate. What does minimize mean? To bring to a certain level?

TEngel: That it doesn't have an effect on the neighborhood.

JCrafton: We're minimizing the length of this meeting, but it's still a very long meeting.

APouch: We're such a bunch of old fuddy-duddies, let's let somebody have some fun.

JPhelps: We're in an industrial park. I would think we may be faced with restricted hours of operations, maybe limitations of weekends. Maybe as a way of compromise.

APouch: When the weather is good and the days are long they are going to want to be there longer.

JPhelps: I still don't see past 7:00. Once you get past those hours it will become more of a problem.

TEngel: We could say Saturday 10 to 7 and Saturday 1 to 6.

JPhelps: Yes, that's what I'm saying. We could formalize that, right?

TEngel: One other day a week, that's what he said.

Chairman Bonessi: I would be more inclined to say, at least follow some kind of guideline that we have here around 6 hours a day.

APouch: Me too.

Chairman Bonessi: I'd like there to be some kind of consistency with what the intent was.

JPhelps: Motorcycles are noisy. We've all heard them rev them up and increase the pitch.

TEngel: All you do when you go on the throughway when you see a whole bunch of motorcycles passing, even if you have all your windows closed. It does get noisy.

JCrafton: I'm torn.

Chairman Bonessi: I'm torn as well.

JCrafton: Obviously there is a noise issue. It's an industrial park, but in that area there are a lot of residences just the other side of the highway that are as close as Mr. Dunlap is. A lot of them.

APouch: That airport – airplanes fly out there too. And jets.

Chairman Bonessi: I think Mr. Kumor's done a pretty good job of detailing the differences of what sound is. I question, though, he wasn't sure about the actual of their numbers. I really didn't have a feel for the actual increase in level.

JCrafton: I wish there was a way to try and see, but we can't do that.

Chairman Bonessi: No, that ain't going to happen.

JPhelps: We didn't ask, but is there any way to secure keys? Apparently people are getting in and unlocking. Because this thing does require to be secured and locked during non operating hours. Are there authorized people with keys?

Chairman Bonessi: I think if a person had a key they can unlock it unless they're breaking the law and that's something we have no control of.

JPhelps: I assume under the noise ordinance if you get numerous complaints that are valid you may be closed down anyway.

JCrafton: How many property owners, what proximity of property owners were notified about this hearing?

Chairman Bonessi: Only adjoining.

JCrafton: Only adjoining?

APouch: We've only got 1 property on here.

TEngel: I didn't realize that if you had 1 motorcycle and you add 5 it would be the same sound.

Chairman Bonessi: The value is going to increase but I question Mr. Kumor's...

Chairman Bonessi: Well limiting the numbers of bikes on at one time would be minimizing and reducing... I'd say they don't spell out much in this ordinance.

APouch: What is your objection with this?

Chairman Bonessi: I really struggle with this for a couple of reasons. Obviously I've been involved and I certainly share - see people need a place to go. Again, where is a good place to do something like this? I am also sympathetic with the people around that have to listen to this as well. I think hours of operation and all that stuff are certain restrictions that should be included but as well I'd say it's - I don't want to totally ignore Mr. Bennett as well.

APouch: I think all of us are objecting because it was loud. We shouldn't discuss it because it was loud, we can't do that.

Chairman Bonessi: Do we have any recommendations? Are we ready to say it might work, if we do this.

JCrafton: You might look at it and say, well he wants to take the risk that the noise ordinance doesn't shut him down.

Chairman Bonessi: I've been thinking that way as well.

JCrafton: Does the noise ordinance have enough teeth in it that if the neighbors have a complaint and they come down and they get the right deputy with the right ear tone and he says they are beyond the noise limits. They can even make him reduce the noise and his inability to do that would shut him down he as the option to reduce the noise. How much teeth does the noise ordinance have in it?

Associate County Attorney SZambon: In terms of enforcement I think it has a lot of teeth. There's criminal and civil penalties they can attach like any of our ordinances. We haven't really tested it. We've had it since January but nobody's really – we've had some barking dogs, we take away barking dogs all the time. Anybody who has a violation has to meet with Lieutenant McKay and talk about ways they can mitigate the noise so they won't annoy their neighbors. And he has the option of giving them a citation or waiving the citation. If they do it again, I think we're prepared to take it as far as it needs to be.

Chairman Bonessi: That's a barking dog.

Associate County Attorney SZambon: A barking dog can cause a lot of trouble.

Chairman Bonessi: my question is, is it for private individuals not for businesses?

Associate County Attorney SZambon: It is for businesses.

APouch: Dean, if we put down you may be open certain hours and he can make noise while he's open and in business. I mean if it was only 10 to 5, or 10 to 8, it's only normal and natural that it's going to be loud but it may not be before those hours and after those hours. I mean it's part of his business.

Associate County Attorney SZambon: There's no business exemption. Mr. Bennett's right in that motor vehicles, general motor vehicles are not covered but there is stuff for like revving your engine and jack rabbit starts and a lot of stuff related specifically to motorcycles.

Zoning Administrator TLinville: It says motor vehicles.

TEngel: Does it define what a motor vehicle is?

Associate County Attorney SZambon: No, we would just go under the common definition of motor vehicle.

TEngel: I don't think we need to open Pandora's Box.

JCrafton: I'm inclined – I haven't heard any serious objection to the proposal outside of the noise issue that I can think of. I'm inclined to put some conditions on it and approve it and let our noise ordinance manage the noise issue. And if that becomes a problem then he has a problem with the noise ordinance.

JPhelps: Would you like to specify some of the conditions?

JCrafton: We can identify some hours of operation.

Chairman Bonessi: He's given us some. I like the 6 hours a day. I'm just trying to keep in the spirit and that's for racing.

TEngel: That really cuts his time down.

JPhelps: Would you also include the maximum motorcycles on the track at one time?

Chairman Bonessi: I think so too. I think that's a way of saying we're minimizing the noise.

TEngel: It's a way of cutting the noise in between a car horn and the threshold of pain.

Associate County Attorney SZambon: Are you cutting the number of riders on the track at one time or the number of contestants in general?

Chairman Bonessi: Riders on the track.

TEngel: Riders on the track.

GBennett: We've already cut that. The 20 is a cut.

Associate County Attorney SZambon: Mr. Bennett, at this point there's no more comments.

APouch: Can we go by this – it says no more than 10 on a track at any given time?

Chairman Bonessi: I think that language is probably appropriate.

JCrafton: I would add another condition. Jumping outside of the time limitations, but add condition of no organized racing. He stated he wanted recreational purposes and we're looking beyond the racing intent.

JPhelps: Say no organized racing.

Chairman Bonessi: To me that doesn't bother me that much because you've got a limited amount of time and it kind of spells that out. So I don't know that we could...

JCrafton: So your saying leaving #10 in there allow organized racing under the restrictions of #10.

Chairman Bonessi: Right.

JCrafton: And then the restrictions we're talking about would apply to recreational – non racing events?

Chairman Bonessi: Right.

JPhelps: If he were to have racing, he would have to comply with this.

Chairman Bonessi: He has to comply with this anyway and in addition to that we're going to impose restrictions on hours of operation, numbers or days a week, and number of hours per day.

Associate County Attorney SZambon: So, if he were to have racing events he'd have to comply with #10 of the SR.

Chairman Bonessi: Fully comply with SR4.14 and then we'll add the restrictions of 10 motorcycles on the track at one time.

APouch: We're just going to scratch out the racing?

JPhelps: No, if he has a race he has to comply and we're going to impose certain other requirements.

Associate County Attorney SZambon: If I'm to understand it he can't have people out there more than 6 hours a day racing or non-racing. He can't have more than 10 riders on the track at any time, racing or non-racing. But if he has a race then he has to meet these additional conditions, like having EMT there and whatever. So are there other conditions that this board would like?

TEngel: I think he needs more than 6 hours.

JPhelps: Let's set a time frame.

TEngel: Yeah, but are we going to limit the number of days also?

Chairman Bonessi: 3 days a week, that's kind of what he said and I don't...

JPhelps: We could set the hours, you are entitled 8 hours between 10 and 7, maximum 4 days operation per week.

TEngel: But less on Sunday.

JPhelps: On Sunday hours we'll say you can't start before 1 and you must close at 6.

Associate County Attorney SZambon: And if he's in violation of the special permit it becomes void. So Karen Ann and I missed what you just said.

Zoning Board Secretary KAAntonucci: May I repeat the conditions back to the board?

-6 hours per day

-Sunday 1 to 6

-number of motor bikes on the track – 10 at a time, either racing or non-racing, (maximum)

-racing must comply with SR 4.14 #10

- the overall 'gig' must fully comply with SR 4.14

-I did not catch the number of days of operation. Have you mentioned that yet?

Chairman Bonessi: We talked about 3.

JPhelps: Do we want to restrict the hours?

Chairman Bonessi: I guess it could get stick as far as who's going to be there to see what time they're opening up and closing?

JPhelps: I think the 10 to 6:30 or 7, whatever you want to put in there that's the easiest way. And then if it's a race event you've got to comply with all the other things so it's a shorter time frame any way.

Associate County Attorney SZambon: So are you doing away with the 6 hours then?

JPhelps: Yes.

TEngel: How about must comply with the sound ordinance? That way if for some reason they don't comply with the sound ordinance that make sense.

JCrafton: I don't know why we would have to stipulate that. It's an ordinance and everybody in the county has to abide by that.

JPhelps: So, you'd have to abide by all applicable ordinances.

Associate County Attorney SZambon: What I could put because this complaint driven but everybody is required to abide by all the laws and ordinances of Henderson County – if this board wanted I could put in - if you get a noise violation or are charged with a crime under the noise ordinance then the order becomes void. Conviction, citation?

APouch: I don't like that. So many people are going to be calling about the noise all the time so if he gets 1 conviction then we're saying that he can't be in business.

JPhelps: I think the first time you need to say you need to make corrections.

APouch: How are you going to correct a motorcycle?

Chairman Bonessi: If there are things that if it got out of hand, you could do. I'm ok to say that if there's 2 convictions this order is void.

Associate County Attorney SZambon: And with the understanding that the Sheriff's department will take care of the noise ordinance and may shut him down.

Chairman Bonessi: I think what that does – what's the remedy if you get shut down? How many times can you reopen?

APouch: 3 strikes

Zoning Administrator TLinville: This isn't California.

Associate County Attorney SZambon: They do a warning and meeting with Lt. McKay thing before they do a conviction.

Chairman Bonessi: I'm ok with that in there.

JPhelps: So do you want to read the summary.

Associate County Attorney SZambon:

-To mitigate noise maximum number of riders on the track is 10.

-The racing event has to comply with SR 4.14 section 10 – specific to racing events and non-racing events

-He can only have it open 3 days a week.

-Sunday 1-6

-Saturday and during the week 10 to 7

-If 2 convictions on the noise ordinance, then this order becomes mute and void

Zoning Board Secretary KAAntonucci: You also had said at one point 'fully comply with SR 4.14, it wasn't for an event.

Associate County Attorney SZambon: I had it for racing events, fully comply with all parts of 4.14

JCrafton: I don't think you need to say 'for racing events' just say he has to comply with this ordinance and this ordinance covers that.

TEngel: 10 on the track at one time.

Associate County Attorney SZambon: OK. At one time.

JCrafton: Should we ask him have we constructed it – it's up to us to say if we grant this thing or not – bit we should probably find out from him if the conditions are viable for him to operate.

Chairman Bonessi: I don't really think we've changed...

TEngel: Well, we could ask him.

Chairman Bonessi: We talked about not taking any other input.

Associate County Attorney SZambon: Then you have to open it up and close it.

TEngel: We didn't close it

Associate County Attorney SZambon: You closed it from public comment.

JPhelps: Do you want to reopen it and recluse it?

TEngel: It would only take a second.

JCrafton: The only question I have is we spent some time now structuring his hours and his days...

Chairman Bonessi: That's what he said.

Associate County Attorney SZambon: I'm pretty sure Toby said they matched with the site plan.

TEngel: I see his smile.

Chairman Bonessi: I think we're reasonable.

Chairman Bonessi: Do we have a motion?

APouch: The case of SUP-08-12, George Bennett, Recreational Motor Sport Facility I move that we approve his conditional use application with these provisions –

Associate County Attorney SZambon: repeated the conditions and Ann Pouch agreed as part of her motion.

JPhelps: Seconded.

All board members were in favor of approving special use application SUP-08-12.



Chairman Bonessi: At this time I need a motion to close this hearing.

JPhelps: So moved.

TEngel: Seconded.

All board members were in favor of closing hearing SUP-08-12.

Chairman Bonessi: I need a motion to move Mr. Pace's, Sun Rise Knoll Retirement Park hearing to June 25<sup>th</sup>.

TEngel: Made first motion.

APouch: Seconded.

All board members were in favor of moving the Sun Rise Knoll Retirement Park case to June 25<sup>th</sup>.

Mr. Pace expressed his disappointment of his case not being heard this evening. Chairman Bonessi told him he was sorry.

There being no further business, Chairman Bonessi asked for a motion to adjourn the meeting. JPhelps: made first motion. APouch: seconded. All Board members were in favor of adjourning the meeting at 8:43 PM.

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Dean Bonessi, Chairman

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Karen Ann Antonucci, Secretary