

HENDERSON COUNTY PLANNING BOARD MINUTES

The Henderson County Planning Board met on February 3, 2004, for a Special Called meeting at 7:09 p.m. in the Meeting Room of the County Administration Building, 100 North King Street, Hendersonville, NC. Board members present were Tedd Pearce, Chair, Walter Carpenter, Vice-Chair, Leon Allison, Cindy Dabaibeh, Paul Patterson, Mike Cooper and Tommy Laughter. Others present included Karen Smith, Planning Director, Brad Burton, Zoning Administrator, and Kathleen Scanlan, Secretary. Board members Todd Thompson and Vivian Armstrong were absent.

Chairman Pearce called the meeting to order.

Special Use Permit Application # SU-03-01 and Related Variance Application # BOCV-03-01 for a Proposed Motocross Racing Facility off North Egerton Road – J. Michael Edney, Agent for George Andrew Bennett, Property Owner. Two Board members asked for recusal from any discussion or decision on this matter. Paul Patterson stated that he is the engineer who did the site plan for this project and Mike Cooper stated that he is currently constructing a facility for a local motorcycle dealer and did not want to appear to be voting with prejudice. Leon Allison made a motion to accept both Paul Patterson's and Mike Cooper's recusal. Chairman Pearce seconded the motion and all members agreed on the recusal.

Ms. Smith gave some history behind the application. She stated that on December 10, 2003, Mr. J. Michael Edney on behalf of Mr. George Andrew Bennett submitted application # SU-03-01 and related materials for a special use permit to allow operation of a motocross racing facility in an I-2 general industrial zoning district. The Henderson County Zoning Ordinance allows motor sports facilities in the I-2 District as a special use provided that certain site specific standards are met as well as general standards. The motor sports facility is proposed for a tract of land that Mr. Bennett owns at 198 North Egerton Road behind the Mountain Home Industrial Park. She stated that the Board of Commissioners is actually the approval authority for special use permits and Sections 200-56 and 200-70 of the Henderson County Zoning Ordinance require that the Board of Commissioners refer applications for Special Use Permits to the Planning Board for review and recommendations prior to the Board of Commissioners holding a public hearing.

Ms. Smith stated that in addition to the Special Use Permit application, there is also a request for variances for some of the specific site standards for motor sports facilities, application # BOCV-03-01. She said that on January 15, 2004, Mr. Edney submitted an addendum to the variance application, which explained in more detail the degree to which they were requesting the variances.

The Henderson County Zoning Ordinance allows the Board of Commissioners to look at variances that are related to Special Use Permits. She stated that typically a variance would go to the Board of Adjustment, but for Special Use Permits, those could be considered by the Board of Commissioners. The Henderson County Zoning Ordinance does not specifically require that the Planning Board make recommendations on variances as it does for Special Use Permits, however, the Planning Board may need to consider those variances in order to fully assess the special use permit application. At the December 17, 2003 meeting, the Board of Commissioners voted to refer the Special Use Permit to the Planning Board for review. On February 2, 2004, Mr. Edney submitted a letter along with a revised site plan, which each Board member has a copy of. She stated that in addition, there are copies of correspondence Staff

received from citizens regarding the application and she mentioned some other attachments that each Board member should have for review.

Ms. Smith stated that the subject property is in county I-2 General Industrial District, adjoins the Mountain Home Industrial Park and is bordered by Mud Creek on the northeast. Ms. Smith showed on a map the location of the subject parcel in relation to the surrounding area. She reviewed the current general land uses surrounding the proposed motocross racing facility. She said that the site plan submitted by the applicant indicates that much of the property is located within the 100-year floodplain and a portion is within the 500-year floodplain. The topography of the subject parcel is flat.

Ms. Smith indicated that the revised site plan indicates that the proposed motocross facility will consist of a 3,250-foot long main track and a 930-foot beginner track. There is a gravel patron area, a parking area, a gravel drive, a registration pavilion, a concession stand, portable toilets and a hand wash station that is proposed on the revised site plan. The application also indicates that water and sewage disposal service for this site is private and according to the City of Hendersonville, there is public water available on North Egerton Road. The closest public sewer, which is a force main, is located on North Egerton Road, according to the Henderson County Utilities Department. Ms. Smith stated that there are photos of the subject property available and distributed them to the Board members. Mr. Allison asked whether the parking area is paved or graveled? Ms. Smith said that it appears it will be graveled, but it needs to be clarified by the applicant.

Mr. Edney, agent for the applicant, noted a correction to what Ms. Smith had stated regarding that this parcel adjoins the Mountain Home Industrial Park. It actually is part of the Mountain Home Industrial Park. Mr. Edney gave a brief history of the development of the Mountain Home Industrial Park. He stated that the subject parcel is roughly a 15 or 20-acre tract, which remained, since 1965, undeveloped as an industrial site. It is in a floodplain and would take a considerable amount of fill to build the property up for any type of development of any type of permanent structures on the site. He stated that in July 2001, Mr. Bennett bought the property and purchased it for \$ 75,000. At that time, he borrowed money from a bank and the issue of his use of the property was brought up at that time and discussed. Mr. Bennett mentioned to the bank that he intended to use the property for a motocross facility. The bank looked into the matter and referred to the Henderson County Zoning Ordinance at the time and basically discovered that the Ordinance did not prohibit that from occurring. Mr. Edney said that in 2001, there was a stand-alone Motor Sports Facilities Ordinance, which was not part of the Zoning Ordinance. He feels that this is the only reason why this issue was not addressed at that time. Mr. Edney stated that his applicant is before the Board to ask for a positive recommendation to the Board of Commissioners for a Special Use Permit to allow the motocross track to operate and to grant the variances in addition to the Special Use Permit. He stated that in December 2003 his applicant filed this request and the Planning Staff reviewed the request along with various review agencies. He stated that they have put together a revised packet in response to the input from Staff and the various agencies and this is the plan the applicant wants to go forward with.

Mr. Edney reviewed several points that Ms. Smith had previously brought up. He said with regard to the parking, the applicant intends to have it as dirt with some gravel base. The roads coming into the facility will be graveled and wide enough for fire and rescue requirements. Mr. Edney stated that the property would not be improved nor paved, which will prevent run-off going into Mud Creek, which is supported by the old Land Use Plan. He stated that his applicant is in the position to comply with everything that Staff and the various review agencies

have suggested except the 500-foot setback requirement and the 2-mile separation requirement from a nursing facility. He stated that his applicant is now able to comply with the 100-foot buffer from all property lines and has made the following adjustments:

Reduced the track from 4,500 feet long to 3,250 feet long, losing approximately 100 feet all the way around.

He stated that within this 100 feet, the proposal is for a patron area for 300 people and riders as opposed to 500 people. Reduced the parking from 167 spaces to 100 spaces. The registration pavilion is a structure with a roof on it, but no walls. There will be fire trucks on site that are fully functional and will be manned by trained personnel (volunteer firefighters) during times of track operation, and the water will come from Mud Creek. The track does have a working sprinkler system and this system is fed by pumping filtered water from Mud Creek for dust control. There is an entry to and from the track, as a safety issue. The track will comply with all relevant AMA national association rules and procedures regarding bikes and such.

Mr. Edney stated that this type of track is considered a "mom and pop" small track where children can ride. He mentioned that they have worked with the YMCA in Asheville to let some of those children ride on the track. He said that some of the dealerships want to use the area to basically help sell their products. He said that they are asking for the Special Use Permit in the I-2 District. He feels that the I-2 District is the most intensive as you can do things in this district that you cannot do anywhere else in Henderson County. He stated that prior to a few years ago, before the Open Use District was approved, there were a lot of unzoned areas of the County in which the facility could have gone, but with the Open Use District, I-2 zoning is the most intensive use district within Henderson County. He said that this land has been industrial since 1965. He mentioned that there is one home that adjoins the property, but otherwise the river, the industrial park, I-26, and the soon-to-be five-lane US 25 North surrounds the subject parcel. He stated that Park Ridge Hospital has mentioned that they have no problems with the motocross track as well as a nearby nursing home, Heritage Hills. He stated that Clement-Pappas, an industry in the Mountain Home Industrial Park, has mentioned that they have concerns regarding traffic. He said that if there is a motocross track anywhere in Henderson County, other than on the top of Bearwallow or a place similar to that, this is the place to put this facility. He feels that there will be some noise, but he feels that there is no reason not to approve it.

Mr. Carpenter questioned set hours of operation for the track. He said that the hours should be defined for this facility. Mr. Edney stated that they would define the hours of operation and they would be a condition of the permit. Mr. Carpenter asked whether the secured fencing has been addressed. Mr. Edney stated that three sides of the property are fenced now, and the fourth side will be fenced and will comply with the specifications of the fencing. Mr. Carpenter asked whether the facility needs to have any loading requirements? Mr. Edney stated that it does not feel it is required. Mr. Edney mentioned that fire extinguishers will be present in the area where the

vehicles will be fueled, as designated on our Plan. Mr. Carpenter also inquired about the noise mitigation. He said that in the application materials it reads the noise factor to be from 60-70 decibels and asked where those figures come from? Mr. Edney stated that they came from his research on the Internet of what the motorbikes do. Mr. Carpenter asked, "How far away are the 60-70 decibels, for instance a half mile away or right on the property line?" Mr. Edney stated that it was on the property and is basically consistent with an industrial type use. Mr. Carpenter stated that these figures were an assumption, not generated by anyone who knew what was going to occur at this site. Mr. Edney stated that is correct, it is an educated guess. Mr. Allison asked, "On a given day, how many riders will there be on that property?" Mr.

Edney said at a major event, there will be 30 – 40 riders on 3,000 feet and at the start they will be bunched up but then will be spread out. Mr. Edney stated that the majority of time there will be a maximum of 20 people practicing. Mr. Edney indicated that most of the time the track will be used for kids practicing. Mr. Allison asked, “When there is a race scheduled, how many teams do you anticipate being there?” Mr. Bennett said that there have never been more than 100 different trucks, cars and trailers on the property. Mr. Bennett stated that it is more of a practice track, not a racetrack, as it is too expensive to put on a race. Mr. Bennett said that on a good practice day, there could be as many as 50 – 60 riders for the entire day. He said it is a tough, physical sport that can’t be done all day. Mr. Allison asked, “How do most of the motor vehicles come to the track?” Mr. Bennett stated most of the vehicles come in the back of a pick-up truck. Chairman Pearce asked that when they are having a big event, are there larger trailers, motor homes, etc. present? Mr. Bennett said that when there is a large event, there could be motor homes, but they mostly have local events. Chairman Pearce asked, “What is the history of the events that you have had in the past?” Mr. Bennett stated that at their best event they had one hundred sign-ups dealing with two children’s class events. Mr. Allison noticed that there is an area of the parking lot where the beginner track participants come off and on and he had questions as to how the traffic would be controlled. Mr. Bennett stated that on the drawing it shows it too far out. He demonstrated the location of the entrance to the children’s track and the entire facility. Chairman Pearce asked what year was the Motor Sports Facilities Ordinance passed? Ms. Smith stated that it was adopted April 21, 1999 and was repealed July 2, 2001. Chairman Pearce said that when the Ordinance was repealed, why was it repealed? Ms. Smith stated that when the Board of Commissioners adopted the Open Use zoning district they also amended other districts, and in doing that, they had incorporated motor sports standards for the I-2 District as well some other zoning districts. Chairman Pearce asked whether there was a Motor Sports Facility Ordinance in effect at the time this property was purchased? Ms. Smith stated, “yes.” Chairman Pearce asked, “How does that differ now under the new rewrite, are there any differences that need to be discussed? Ms. Smith stated that even if the property was purchased in July 2001, they were under the amendments to the I-2 district as of May 16, 2001. Chairman Pearce asked whether there are any significant changes in the Ordinance now than what it was before that time? Ms. Smith stated that the 500-foot setback that applies was the same and the two-mile separation still existed. She said that the Motor Sports Facilities Ordinance required a special permit and there were standards that were imposed if the track was to be located in certain relationships to other types of uses, such as the two-mile separation from any health care facility. The specific site standards under the old ordinance applied if the new motor sports facility was within two miles of any portion of property on which there was a school, library, institution or residential dwelling. She added that under the old ordinance it was more restrictive in the sense that it applied standards in those cases. The standards are similar as far as the buffer and the setback. She added that when those standards were applied, it would be a little more restrictive. Mr. Allison asked Mr. Bennett, “When you bought the property you were under the assumption that you could have a motocross track?” Mr. Bennett stated that he looked under I-2 and saw “minor” and “major” but was not aware that there was an Ordinance that strictly applied to motocross tracks. He said the bank got a copy of the Zoning Ordinance but did not get the whole thing. They just looked at I-2, which had amusement parks, recreation parks and such.

Ms. Smith reviewed the site plan comments as follows:

- (c) This item has been satisfied regarding showing the parcel identification number for the subject parcel.
- (e) The metes and bounds were shown, but the question was whether the survey lines were

surveyed by an active North Carolina registered land surveyor. She said Staff also needs

to know the highest point of elevation shown on the site plan.

- (f) This item has been satisfied as they have shown the dimensions of all structures and areas not within structures devoted to principal uses.
- (g) The concession stand and registration pavilion have been shown, but dimensions on the refueling area size, (it appears to be 50 feet by 50 feet) needs to be indicated.
- (h) The applicant has shown the stated minimum buffer and the proposed 100-foot setback, but since they cannot meet the required 500-foot setback or the 2-mile separation, they have not shown the dimensions of the stated minimum setback and separation.
- (j) This item has been satisfied as the applicant has shown the passenger loading areas.
- (k) The applicant has shown the grade on the typical entrance road, but the typical gravel section did not show grade. The property is flat, and Ms. Smith does not feel that this will be an issue.
- (l) This item has been satisfied as the applicant has shown an 18-inch culvert

Mr. Patterson addressed the site plan issues that Ms. Smith reviewed. Mr. Patterson stated that regarding Item (e), he stated that is something he never addresses because if there is not a note saying that it was provided by another surveyor, that is implying that the engineer has surveyed the parcel. He didn't want to stamp as both engineer and surveyor. Mr. Carpenter asked Mr. Patterson if it had been surveyed and if the calls were from a survey and Mr. Patterson replied, "yes," to both questions. Mr. Patterson stated that regarding the size of the refueling area; the size is 50 feet by 50 feet.

Ms. Smith reviewed the Special Use Permit application and variance application. She stated that the motocross facility would be classified as a minor motor sports facility standard and that the specific site standards for minor motor sports facilities regarding hours of operation should be specified at a minimum.

Fencing. She stated that the applicant would need to modify the present fencing that is already out there in order to meet the standards and a condition should be established to determine when the fencing would be installed.

Buffer. Ms. Smith stated that they have met the 100-foot buffer requirement and that they have moved structures on the site plan and the parking area to comply. Ms. Smith clarified for the record that the variance request for the buffer is being withdrawn.

Ms. Smith stated that the minimum setback is 500 feet for minor motor sports facilities and because of this requirement, there is no buildable area on the subject property. She stated that on the revised site plan, the applicant is proposing a 100-foot setback that would match up to the 100-foot buffer requirement. She said the applicant is requesting at present, a 400-foot variance on all sides of the property and asked that the applicant formally indicate that he is amending his application to request such a 400-foot variance. Mr. Edney acknowledged that the applicant is amending the variance application as described by Ms. Smith.

Ms. Smith stated that the specific site standards such as the setbacks were established to help mitigate the impacts of proposed uses, such as motor sports facilities, on neighbors. She said that while the degree of the variance needed on some sides of the property has been reduced from

what the applicant originally requested, this is still quite a large variance when the standard is 500 feet and they propose a 100-foot setback. She said she does not believe the applicant has provided sufficient reasons based on the findings that the Board of Commissioners will need to make in granting a variance. Chairman Pearce asked whether there is any difference in the findings that the Planning Board has to make as far as its recommendation and the Board of Commissioners' findings? Ms. Smith stated that the Planning Board is reviewing the Special Use Permit itself and making recommendations whether to grant it or not or grant with some of the proposed conditions. She said that regarding the variance, the Planning Board does not have to make specific recommendations, but without the variances the applicant will not be able to do the project. She said that the findings for variances are shown on the application, and include items such as practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance. She stated another is that if the applicant complies with the provisions of the Ordinance, the property owner can secure no reasonable return or make reasonable use of his property. Other findings noted on the application include: the hardship for which the applicant complains comes from unique circumstances related to the applicant's land and not the result of the applicant's own actions; the variance needs to be in harmony with the general purpose and intent of the Ordinance and preserves its spirit; and that granting the variance secures the public safety and welfare and does substantial justice. She stated that Mr. Edney did provide responses, but she is not certain that they get to the heart of the granting of variances. She stated that similar findings are required on the two-mile separation.

Parking requirements. Ms. Smith stated that the applicant has reduced the amount of parking because they have reduced the number of patrons and riders expected, so 100 spaces is the minimum that is required. She said that the applicant will need to meet any handicap accessible requirements for parking. The applicant has expressed that the parking will not be paved or graveled; it will be, as it exists now. Chairman Pearce asked if the noise mitigation and the parking are considered to be issues other than the fact that there are specifics that the Board needs to add to the conditions? Ms. Smith said that regarding the parking, Staff would like the applicant to address whether or not the applicant would need to use any adjoining property in the event that there are more than 100 vehicles for an event. She added that the applicant also needs to specify that they complete the parking prior to operations, if there was any additional work that needed to be done.

Access Road Corridor. They have addressed the vertical clearance standard on the site plan. She said that the site plan indicates that the entrance road will be upgraded and if the application is \

granted, the Board should impose a condition regarding the timing of such upgrading.

Fire protection. Ms. Smith clarified that Mr. Hyder's comments were based on the National Fire Protection Association standards that are required to be met for this. Mr. Hyder had mentioned to Ms. Smith that because they have fire protection and are in a fire district, that is all that is required but that they needed the portable fire extinguishers for high hazard areas, which would be the refueling area indicated. The applicant has satisfied this.

Noise mitigation. There has not been a sufficient noise mitigation plan provided, particularly since the applicant cannot meet the two-mile separation from the health care facilities.

Lighting. Ms. Smith stated that since they will not be operating after dusk, she feels that the

conditions need to specify that lighting will not be required because of the hours of operations specified.

Health Care Facility Separation. The applicant has requested a variance from the two-mile separation requirement. Ms. Smith indicated that there are six healthcare facilities identified within 2 miles of the subject property. The applicant has requested that the separation be reduced from 2 miles to 1,760 feet or 1/3 mile, which would constitute a 1 and 2/3 mile variance. Chairman Pearce asked whether the Heritage Hills facility is approximately that distance? Ms. Smith stated that it is. The separation standard was intended to mitigate the impacts of uses such as motor sports facilities on the neighborhood and the health care facilities.

Protected Mountain Ridge requirements. She indicated that the motor sports facility is in a very low lying area of Henderson County and that this standard has been satisfied.

Types of Equipment and Materials. She indicated that the applicant needs to further explain the types of materials and equipment that will be used on site.

She added that the applicant needs to provide a copy of the Erosion Control Plan prior to beginning operation, if this application is approved.

She stated that the next group of comments deals with the general site standards for Special Use Permits.

Comment 1. Establishments requiring a special use permit shall not be located or developed in such a manner as to adversely affect the health or safety of the persons residing or working in the neighborhood of the proposed use and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood.

Ms. Smith stated that they are, once again, requesting the reduction of the two-mile separation and the reduction of the setback. If the Ordinance standards cannot be met and the variances are not granted, it appears the proposed use will not be able to satisfy this general site standard.

Comment 2. Establishments requiring a special use permit shall be located or developed in such a manner as to minimize the effects of noise, glare, dust, solar access or odor on those persons residing or working in the neighborhood of the proposed use, and the property and public improvements in the neighborhood.

Ms. Smith stated that defining the neighborhood that could be impacted by the proposed use is difficult. The specific standards for the buffer, the setback and the separation from healthcare facilities, are intended to help mitigate the impacts of the proposed motor sports facility on the neighborhood. The applicant would be required to submit a noise mitigation plan for approval by the Board of Commissioners. The applicant has indicated what the estimated decibel level will be and that noise mitigation provided through "space and natural vegetation." She stated that the applicant has also indicated that noise containment is "accomplished through distance to working areas." Ms. Smith indicated that in order to better address this general site standard, the applicant should address the noise issue in more detail as to how noise is controlled. The applicant addressed the dust issue, saying it would be

controlled through a sprinkler system, which is located on the property. Ms. Smith feels that regarding dust, they have satisfied this issue.

Chairman Pearce asked whether the County had been working on a Noise Ordinance? Ms. Smith stated that the County does have a Noise Ordinance. Chairman Pearce asked whether there were some decibel studies from that Ordinance? Ms. Smith stated that she did not work on that Ordinance and that the Sheriff's Department enforces the Noise Ordinance. Chairman Pearce asked what the standard provisions are in the Ordinance? Mr. Russell Burrell, Assistant County Attorney, mentioned that the standards are 80 decibels during daytime hours and 60 decibels during nighttime hours. He stated that the Noise Ordinance does not apply to normal operations of any construction, commercial, industrial or agricultural activities or operations unless they are electronically amplified or any uses that are prohibited under the Ordinance.

Comment 3. Establishments requiring a special use permit shall not be located or developed in such a manner as to seriously worsen the traffic congestion so as to endanger the public safety.

Ms. Smith stated that North Egerton Road is state-maintained. There have been comments from the North Carolina Department of Transportation that the applicant must apply for and obtain a street and driveway access permit from the District Engineer office prior to connecting any roads or drive to a state-maintained road and prior to issuance of any building permits. This would be a condition of approval. Ms. Smith stated that it will need to be determined whether the site and the parking area can handle the actual anticipated number of patrons and riders. She stated that Staff received a letter from a representative of Clement Pappas, an industry located on North Egerton Road in the Mountain Home Industrial Park, that it intends to move much of its warehousing and shipping operation to a warehouse located on North Egerton Road, which, according to the letter, would be across from the entrance of the subject parcel, causing an increase in traffic Ms. Smith stated that the applicant has not adequately addressed the types and frequency of weekend events and how many riders and patrons to expect and how they would access the property from US 25 North and be directed to the site. Therefore the applicant needs to provide additional information regarding these issues.

Comment 4. Establishments requiring a special use permit shall be located or developed in such a manner as to comply with all applicable federal, state and local laws, rules and regulations.

Ms. Smith stated that the applicant needs to provide a copy of the erosion control permit that the applicant stated that they have applied for. She stated that the applicant would need to address if any contact has been made with the Army Corps of Engineers regarding possible wetlands on the property, and if a permit is required. Building permits and all other proper permits would be required if any structures are constructed such as the pavilion, and, possibly the concession stand as specified. She mentioned that depending on the operation of the concession stand, the applicant might need environmental health permits.

Comment 5. Establishments requiring a special use permit shall be located and developed in such a manner as to be consistent with the "goals and objectives" as outlined in the Henderson County Land Use Plan.

Ms. Smith stated that the applicant does not feel that the proposed use would violate any of the goals and objects of the Henderson County Land Use Plan. She said that the 1993 Land Use

Map designates the site of the proposed motocross facility as well as adjoining land for agriculture uses. She said that agriculture designation is due to the subject property and other parcels being within the 100-year floodplain of Mud Creek. The I-2 zoning in the area was completed prior to the 1993 Land Use Plan. She added that this property falls within the study area that Staff is looking at for the US 25 North Corridor study, and it may come up for possible rezoning in the future.

Comment 6. Establishments requiring a special use permit shall be located and developed in such a manner as to be consistent with any approved official thoroughfare plans of Henderson County or any municipality therein.

Ms. Smith stated that the County at this time does not have an official thoroughfare plan, but NCDOT is working on one.

Comment 7. Establishments requiring a special use permit shall be located and developed in such a manner as to minimize the environmental impacts on the neighborhood including the following: groundwater, surface water, wetlands, endangered and threatened species, archeological sites, historical preservation sites, and unique natural areas.

Ms. Smith stated that there have been some comments from Mr. Bob Carter, District Conservationist for the Soil and Water Conservation Service, who expressed the need for buffering along Mud Creek as well as along the northwest side of the property due to the amount of non-vegetated soil on the site and the potential for flooding. She said that there was a similar comment by Diane Silver, Mud Creek Watershed Coordinator, who stated that she is concerned with the loose soil and sediment carried by floodwaters and its impact on Mud Creek. Ms. Silver suggested vegetated buffers. Ms. Smith stated that the applicant should address what buffering will be provided or maintained on the subject property or what will be required by the State as part of the erosion and sedimentation control plan approval. She said that Planning Board may want to consider whether to recommend that a vegetated buffer be provided or maintained.

Other considerations.

Ms. Smith said that the applicant should comment on the following:

How pedestrian, automobile and rider traffic will be managed on the site.

Buffering with regard to what existing vegetation that will remain on site and if any additional buffering material will be provided.

When the remainder of the junk vehicles and other items will be removed.

Whether there will be a sign for the project on the project site as well as any signage off-premise. Ms. Smith stated that Mr. Edney has stated in his letter that they will comply with the Henderson County Sign Ordinance. Ms. Smith suggested the applicant also comply with the Henderson County Zoning Ordinance, if they are any requirements.

Ms. Smith stated that Mr. Edney has indicated that the applicant would like to retain the right to apply for up to two temporary use permits in a year under the standards for Temporary Use Permits for isolated racing events. The Zoning Board of Adjustment would issue those permits. Staff feels that perhaps they could be rolled into the overall Special Use Permit. She said that one of the standards for a Temporary Use Permit for an isolated racing event is the two-mile separation from health care facilities. She said that she is not sure if the variance is granted, if it would be carried over to a Temporary Use Permit. The intent is, if there is an event that is bigger than what they are anticipating in the Special Use Permit, that they would be able to apply to the Board of Adjustment for that one or two time event. Temporary Use Permits for isolated racing events must meet other standards and they also are granted for a fixed time. Chairman Pearce asked, "Does the Board of Adjustment have a right by law to grant a temporary use permit, whether the Planning Board addressed it or not?" Ms. Smith stated that she feels that they do, but she wanted to make the Planning Board aware that there could be racing events on this property, if a temporary use permit is issued, that would exceed what the Planning Board is considering for this Special Use Permit. Mr. Allison asked if they exceed the number, they would need to get another temporary use permit? Ms. Smith stated that the applicant could apply to the Board of Adjustment for that if they knew ahead of time that a bigger race would occur. Chairman Pearce asked if the Planning Board could include in its recommendation an addition that the Board recommends that the applicant be allowed two temporary use permits? Ms. Smith stated she only wants the Board to recognize this issue, as she is uncertain whether the applicant can meet the standards for a temporary use permit.

Mr. Edney addressed the comments mentioned by Ms. Smith. He stated the following:

Hours of Operation. He suggested 10 a.m. to 30 minutes before sunset.

Off-site Parking. If that ever becomes necessary, for the purpose of this permit he would not address that as an issue. He said that if there should be a special event, once or twice a year with a temporary use permit, off-site parking might become an issue.

NCDOT Permit. Mr. Edney stated that they are meeting with NCDOT to find out whether they will need a permit for the driveway.

Number of Events. There will be no more than eight small events per year.

Permits. Mr. Edney said they will acquire any permits needed or required. He feels that the applicant does not require a permit from the Army Corps of Engineers. Regarding what the NCDNR requires, regarding more bushes, shrubs, trees, etc., the applicant will meet with them and work on what is required, so that when Mud Creek floods, it will do as little damage as possible.

He reminded the Board that this property is in an industrial park and has been undeveloped for almost forty years because it cannot be developed for anything else. He stated that in theory it could be a fair, carnival, an amusement park or any other industrial use. The use that the applicant is proposing is less intrusive than some of those mentioned. Chairman Pearce said that when looking at variances, normally we are not looking at eliminating most of the standard. He asked how such a large variance was justified? Mr. Edney stated that because they are located in an industrial park, which has been in place since 1965 and other uses have grown up around the subject parcel, he feels that there are few sites in Henderson County that could meet these requirements. He said that if a use of this type (motocross facility) were to be in the County, he feels it would only make sense to put it in an industrial type area. Chairman

Pearce stated that he is concerned with the noise issue and was surprised at 60-70 decibels. Mr. Edney said all of the bikes have mufflers. Chairman Pearce said there is a difference between 1 bike and 20 to 50. He feels that the reason why this use was allowed in an industrial district was because the immediate worst parts of the noise would be absorbed and would not be as bothersome in an industrial setting, and that residential noise would be handled through separation. He stated that you are requesting the Planning Board to make a substantial departure from the Ordinance. Mr. Edney noted that Park Ridge Hospital and Heritage Hills have submitted documents declaring that it is not an issue with either of them. Chairman Pearce stated that he notes that they have some information from others who say it is an issue to them. Chairman Pearce added that the applicant is asking the Planning Board to recommend a substantial change. Mr. Edney said that noise would always be an issue. Mr. Carpenter asked Mr. Edney, "How long was this track going before it was stopped or closed?" Mr. Edney stated that it was approximately a year and a half.

Chairman Pearce opened public input.

Bill Harper, III. He stated that motocross racing has changed in the last twenty years and that it has become a family-oriented sport. He mentioned that there are no areas of the County for this type of sport and he feels that it is a sport that is wanted by the youth in this County. The County spends millions maintaining parks and this is an opportunity for a facility at no cost to the County. The Zoning Ordinance is a police power ordinance to protect public health, safety and welfare. There is no hazard. He feels that this type of sport would keep the money in this County rather than people going to other counties to spend their money. He is for the motocross track.

Davison Jones. He stated that he feels that this motocross track is a way of family togetherness and it is good, wholesome family fun and helps build community and good citizens. He is for the motocross track.

Dorothy Freeman. She stated that she owns a farm approximately one mile from the subject parcel and stated that the track promotes noise and she feels that a motocross track is not industrial usage. She stated that with the US 25 North widening project, there would be a back up of traffic to the interstate with the additional people that would be generated by this type of sport facility. She opposes the motocross track.

Doug Dunlap. He stated that he lives one-half mile from the subject parcel. He is also concerned about the noise from the track. He questioned how it came into existence and had called and complained about it. He opposes the motocross track.

Ralph Turnberg. He said that he is the Vice-President (and past President) of the Board of Directors of the Foxwood Property Owners Association and that their subdivision is within the two-mile radius of the motocross track. The Association had opposed a previously proposed racetrack because of noise and did noise reduction research. Over time, 72 decibels does damage. He said that on behalf of the association, they are not in favor of the motocross track because of the noise factor. A number of residents heard the bikes last summer.

Paul Koch. He said that he represents the development of a continuing care retirement community located in Mountain Home called Ashmount, which is north of Fernvilla Road and is within the two-mile radius of the subject parcel. He said that they are concerned with the noise levels that could be offensive or disturbing to their potential residents. He is surprised with the figures of 60-80 decibels of peak noise levels given by the applicant as one lawnmower gives

about the same level. He feels that those decibels are on the low side and would like to know where they got those figures. He is also concerned with the requirements of a natural vegetative buffer and distance from health care facilities and questions whether they are adequate for noise mitigation with regard to the motocross track. He opposes the motocross track.

Jack Reed. He stated that he is past chairman of the nursing home committee and he still visits most of the nursing facilities and that surrounds the subject parcel. He said that he heard that Park Ridge Hospital and Heritage Hills management did not object to the motocross track. He said that he spoke to the patients and residents of Henderson's, Park Ridge Living Center, etc., and said that they are very much against the racetrack. He mentioned that he lives in a subdivision development called "Cannon Woods" which is within the two-mile radius and that he can hear the noise of the racetrack, even with windows closed. He added that he feels that the racetrack will devalue his home.

Bob Halsey. He said that he is speaking on behalf of the Schroeders who owns the Honda dealership and they generally have the same feelings as Mr. Harper commented on. He favors the motocross track.

Brad Reems. He said that he is the Sales Manager for Dal Kawa Cycle Center. He stated that the children of Henderson County need this track as well as the local cycle shops. He said that it could create a few jobs and increase the revenue from sales from the taxes that are collected from the local cycle shops. He feels that the motocross track is good recreation for children and keeps them off of drugs and other undesirable things that can sway their minds. He said that the local cycle shops need a place to test ride bikes and it also gives them a place to send riders. He also feels that the track could enhance the quality of life in the County by collecting sales tax from the sale of cycles. He favors the motocross racetrack.

Pat Murphy. She is the President of the Whispering Hills Homeowners Association and regretfully opposes the racetrack. She said she realizes that the children need a safe place to play with their cycles and grow familiar with each other. She said that they do not oppose the site for this activity but they are concerned with the noise issues. The subdivision faces this subject parcel and is within the two-mile radius. She stated that this facility has no benefit to the homeowners of this area because 90% of the homeowners are senior citizens. She said the new management of Park Ridge does not understand the issue. She also supports the comments of Susan Lane regarding the Adventist community.

Kenneth Pearson. He said the children need a place to ride. He feels that this motocross track is a safe, supervised place to ride cycles. He said that there are several adults there to supervise. With regard to the parking, he said that Branford Wire Company has given authorization to use their parking lot and mentioned that the Company said since the time the track was operating, they have had no evidence of vandalism as they had previously. He stated that it is a motivation for children. He feels that the track gives children motor skills that can be helpful when they start learning to drive a motor vehicle.

Josh Clark. He stated that he is a racer, a rider and a parent of children that ride motorcycles. He feels that there are not enough benefits for children of this County. He feels that this activity keeps them from drugs and other types of mischief. He feels that it is good for family life and for children. He favors the motocross track.

Laura Clark. She stated that at their residence, they have a small personal track in their front yard that the neighborhood kids and adults can come and ride on. She said that she has asked the nearby neighbors and said that they have no complaints. She said they do hear the noise of the cycles, but the riding goes on within decent hours. She feels that it is good for children and feels that there is a mutual bond among the riders and their families. She also feels that it would bring in revenue from other counties. She favors the motocross track.

Joann Manzi. She favors the motocross track and agrees with all the ones that have spoken in favor. She knows where the kids are. She would like the Board to consider making a favorable recommendation for this track to keep it for the owners and the people who go to the track.

Chairman Pearce called for a five-minute recess.

When the meeting reconvened, Chairman Pearce stated that looking at this special use permit from a practical standpoint, the variances become an integral part. He said that typically the Board is looking at two different issues, a special use permit and a variance, but there couldn't be a special use permit without the variances. He called on Assistant County Attorney Russell Burrell to address this item. Mr. Burrell suggested that whatever the Board's recommendation is, that the Board frames it in terms of "if" the variances are granted, then the Board can state the recommendations. He said the Board has to recognize that this project is not possible without the variances. Chairman Pearce asked, "What legal ramifications or precedents are there when you are looking at variances in general, regarding size, etc.?" Mr. Burrell said that he is not aware of any indications of which variances are easier to grant than others. He said basically you look at the facts of a given case and if the variance is justified under the facts of that given case and given whatever Ordinance you are dealing with, it is granted and if it is not justified, it is not granted. He feels that you cannot say a variance is more likely to be granted because it is only five feet than it is fifty feet, without knowing all the facts that go behind those numbers. He said, for instance, setbacks are the most common variance for a house and a five-foot setback sounds like it is more likely to be granted than moving a setback twenty feet, unless the facts of a particular lot, such as topography which would make it impossible any other way except for a twenty foot variance, suggest that a twenty-foot variance is likely to be granted. He stated that it is very fact-specific and that is the reason it is heard before a Board that has to take sworn testimony and that makes finding of fact. He feels that there is no general rule. Mr. Laughter asked, "What Mr. Burrell stated is a variance does not impact favorably or unfavorably future requests and that others can not use this issue as a precedence?" Mr. Carpenter said he doesn't feel that is what Mr. Burrell is saying. He said he feels you would have some difficulty if it was the same issues and you could say that if it was granted over there, it should be granted here. He said that you usually never have the same types of facts. Some of the facts might be similar and then that would be a reasonable argument to make that it should be granted. Mr. Burrell added, "That is why you have courts, or in this case, the Board of Adjustment, to hear all of the facts and decide based on all of the facts."

Mr. Allison said that he sympathizes with both sides. He personally has four grandchildren that could ride at this track sometime in the future but he is concerned that the two-mile radius and the five hundred foot setback were set for the purpose of protecting the health care facilities. To change it from 2 miles to 1/3 of a mile is a big change. He is for the young children, but said he could not support the 2-mile radius change. He added that he also has reservations about the Heritage Hills statement because if you polled the neighbors you would get some opposition from that retirement center.

Mr. Carpenter stated that he hasn't considered the 2-mile radius when there is a interstate highway in between four of the health care facilities. He feels that the interstate highway makes more noise than anything he can think of. He stated that the request is a huge change and when you look at what you need for a variance, some of which are: *practical difficulties, unnecessary hardships, can't secure a reasonable return or make reasonable use of the property, and a hardship that results from unique circumstances relative to the land not resulting from the applicant's own actions.* He feels that none of those are really present in this case and you need all of them. He said he feels that there might not be a better place to have a small facility than in an industrial area. He feels that the location of the subject parcel for a track is reasonable for its use, but he cannot get past the practical difficulties or unnecessary hardships that are resulting from unique circumstances of the land. He said the only unique circumstances is where it is, but that is going to be the case with any piece that you want a variance for as that fact is always going to be there. He feels that it is not practical to use that piece of the property for industrial use because it is in the floodplain but one could have cows, race, etc. He is concerned with the requirements of the variances. He mentioned that he does not have a problem with the special use permit because he feels that the standards have basically been complied with. He said basically, if the Board was not dealing with the variance, he feels the motocross track would be okay as a special use because it is in an industrial zone designed for this use. He said that he is not concerned with traffic as it is far enough away from US Highway 25. He also stated that he was not concerned about the amount of people who would attend the facility, as it is relatively small. He said that with regard to the variance, he cannot find facts that support the issues needed. He mentioned that he is also aware of the people that live in the area of the subject parcel and how the noise could impact the people and because of that, he does not feel he can get around the variances.

Chairman Pearce stated that the variance issue becomes a part of the special use permit because the special use permit requires showing compliance with the setbacks and separation requirements and they are unable to provide a site plan showing the required setbacks and separation without the approved variances.

Chairman Pearce said that with the Planning Board members' approval, he would like to recommend that the Board of Commissioners consider the issue of motorcycles versus motor vehicles in general and how they apply in the concept of motor sports facilities. He feels that drag racers, stock cars and motorcycles do not seem to fit in the same type of category. He also feels the Board needs to study the buffering, distance requirements, etc., as a separate issue regarding motor sports facilities. Mr. Carpenter said that when it is zoned I-2, you expect some noise and smell.

After some further discussion, Chairman Pearce made a motion to request that the Board of Commissioners study motocross facilities in relation to motor sports facilities as defined in the *Henderson County Zoning Ordinance* and ascertain whether they should have different requirements placed on them then for other types of motor vehicles. Leon Allison seconded the motion and all members voted in favor. Chairman Pearce then made a motion to recommend to the Board of Commissioners deny Special Use Permit application # SU-03-01, for a proposed motocross racing facility off North Egerton Road, because of the size and magnitude of the variances requested. Leon Allison seconded the motion and all members voted in favor. Several members indicated that the recommendation was made with regrets.

Adjournment. There being no further business, Leon Allison made a motion to adjourn

and Walter Carpenter seconded the motion. All members voted in favor. The meeting adjourned at 9:38 p.m.

Tedd Pearce, Chairman

Kathleen Scanlan, Secretary