

MINUTES OF THE HENDERSON COUNTY  
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regularly scheduled March meeting on Wednesday, March 28, 2007, at 4:00 p.m. in the Board of Commissioners Meeting Room, 100 King Street, Hendersonville, North Carolina. Those present were: Vice Chairman Jim Phelps, Tony Engel, Ann Pouch, Alternate Members Jim Crafton and Suzanne Holbert, Zoning Administrator Natalie Berry, Associate County Attorney Sarah Zambon, and Secretary to the Board Joyce Karpowski. Member Gary Griffin arrived 30 minutes late.

Vice Chairman Jim Phelps called the meeting to order at 4:16 PM. Chairman Phelps presented the minutes of the meeting from February 28, 2007. Mr. Engel moved to approve the minutes, Mrs. Pouch seconded, and all members voted to approve the minutes as presented.

**Case V-06-15, (continued) Sandra D. Donaldson (petitioner)**, requests a forty-five (45) foot variance from the front yard setback requirement of seventy-five (75) foot at 459 Sandy Flat Mountain Road. The property is zoned RC.

Chairman Phelps called Case V-06-15. Associate County Attorney Zambon said that the same members of the Board who heard the case in November would have to hear and vote on the case today. Since there were 2 alternate members here today, there are not 4 members to vote on the case. The Board discussed options and asked the petitioner's representative what he would like to do. Mr. Brookshire said they would like to have it heard today. Chairman Phelps said they would move this case to later in the meeting.

**Case N-07-01, (continued) Richard Leon Lamb (appellant)**, Appeal of Notice of Violation and Declaration of Public Nuisance, 500 Brookside Camp Road.

Chairman Phelps called Case N-07-01 and said that there was another appeal by the same appellant and questioned if they should be heard together or separately. He called the appellant to the podium. Mrs. Pouch made a motion to go into public hearing, Mr. Engel seconded and all voted in favor. He said the hearing would be informal. At the podium were Tom McGraw Henderson County Code Enforcement Officer and Chris Stepp Attorney for Mr. Lamb. Mr. McGraw said the notice of violation was issued to Mr. Lamb on December 27, 2006. He said that since then Mr. Lamb has almost totally cleaned the property up. He said there is one trailer left in a difficult place to get to. He said he is willing to give Mr. Lamb another 30 day extension to remove it. Mr. McGraw referred the Board to the photographs but didn't bring a recent photo of the cleaned property. Mr. Stepp said he would join in requesting for the 30 day extension. He said Mr. Lamb did not own the trailer and Mr. Lamb would have the owner remove it or remove it himself. Associate Attorney Zambon explained the duties of the Board in relation to the Nuisance Ordinance and suggested the Board continue it for 30 days or dismiss it today and then bring it back if it hasn't been abated. She said since it wasn't quasi-judicial we wouldn't need the same five people.

Mr. Engel made a motion to continue the hearing to the April meeting and Mrs. Pouch seconded the motion. All members voted in favor of the continuance.

Ms. Berry stopped the meeting and Mr. Crafton stepped down and Mr. Griffin joined the Board.

**Case N-07-02, Richard Leon Lamb (appellant)**, Appeal of Notice of Violation and Declaration of Public Nuisance, 655 Brookside Camp Road.

Chairman Phelps called Case N-07-02. Mrs. Pouch made a motion to go into public hearing and Mr. Engel seconded. All voted in favor. Chairman Phelps called the parties to the podium. At the podium were Lyle Case Henderson County Zoning Enforcement Officer and Chris Stepp Attorney for Mr. Leon Lamb. Mr. Case said the initial complaint had been received around July 23, 2005, about the property at 655 Brookside Camp Road. That was taken care of and, after the Nuisance Ordinance went into effect, another complaint was lodged concerning several junk vehicles on the property and also operating outside of what the C2P zoning district allowed (outdoor sales and storage). Mr. Lamb filed an appeal within 10 days of the notice of violation. Mr. Case said there were pictures of the property current as of last week.

Mr. Stepp said that he wanted to clarify some of the issues. Mr. Stepp asked about the zoning issue and if the problem was operating outside of an enclosed structure. Mr. Case said yes. Mr. Stepp asked if the zoning ordinance says you cannot operate a business outside of an enclosed structure. Mr. Case said that's correct. Mr. Stepp asked if the sale of cars outside was the problem. Mr. Case said yes. Chairman Phelps asked about the indoor sale of antiques. Mr. Case said Mr. Lamb said that was what the building was used for. Mr. Case said one of the complaints said there was a car lot on the property. He said there was a sign for the car lot and that has been removed. In a C2P district, business must be inside an enclosed building. Mr. Case said the storage of the cranes and farm equipment gives the impression of a business being conducted outside the building.

Associate Attorney Zambon said that she wanted to remind the Board that the zoning issue is a peripheral issue. The main issue is the nuisance issue. The zoning may play in, but the Board is not deciding today whether or not this is a non-conforming use or if the zoning is correct. Attorney Zambon asked if there were a copy of the violation.

Attorney Stepp asked about the zoning issue also, because it was marked on the violation notice. He said so that will not be addressed today. Attorney Zambon said no, this is purely nuisance ordinance. Mr. Stepp supplied a copy of Notice of Violation and Mr. Case entered it into evidence.

Mr. Case said, from the nuisance standpoint, we deal with significant outdoor storage of solid waste and accumulation of rubbish or junk becoming dangerous to the health and safety of the public. There are junk vehicles without a valid vehicle restoration permit and improper outdoor storage. Vehicles are stored on the property; some are farm vehicles which don't require license plates, which causes an issue with the violation notice. Some look like they are being restored. There is some storage of engine parts. The property has been significantly cleaned up.

Mrs. Pouch asked if Mr. Lamb is working to clean it up now and if there has been progress. Mr. Stepp said yes and asked Mr. Lamb to speak to the Board.

Richard Leon Lamb came to the podium and showed a stack of papers saying this is what has been hauled off. He said that a 56 Chrysler, which he pays tax on every year, is left. There are a couple of old fire trucks there. He said people do park their vehicles there. He said he will comply with anything that is not right. He has removed over 30 truckloads from the property. Mr. Lamb said the property is about 2 acres and borders Brookside Camp Road. He has the building full of antique stuff or junk. He has farm equipment (tractors) and boom trucks parked there. But they are his and he has 20 tags for them – 10 dealer tags and 10 transporter tags. He said as far as the car business, when it runs out in August, it will be finished. Whatever is there will be his own. Attorney Stepp showed the registration for the 10 vehicle transporter tags. Attorney Stepp asked if the tags cover the vehicles parked on his property. Mr. Lamb said when he moves them, the tags cover them. Attorney Stepp asked what was Mr. Lamb's intention with the motor vehicles. Mr. Lamb said he is planning to retire and will probably sell some of them. Attorney Stepp asked if Mr. Lamb owns all the vehicles on the property. Mr. Lamb said not all of them. Attorney Stepp asked Mr. Lamb to name all the individuals who own vehicles on Mr. Lamb's property. Mr. Lamb said Felix Sanchez, Tony Ward, and Mr. Hodges. All these vehicles have license plates and are registered to the owners. Attorney Stepp said the zoning ordinance defines

a junk automobile as a vehicle that does not have a current license plate or vehicle registration. Vehicles on the property are insured and covered under the transporter tag or owned and registered to someone else. He said Mr. Lamb is no longer operating the car business from the location and has removed the sign. Mr. Case said he is okay with the transporter tags.

Chairman Phelps asked about the violation concerning the Vehicle Restoration Permit. Attorney Stepp says that Mr. Lamb is operating under the transporter tags and pays taxes and insurance on all the vehicles. Attorney Stepp said that they can't do the restoration permit because it's more than one vehicle and they don't believe these are junked vehicles and they are tagged. Chairman Phelps asked if they were operable. Mr. Lamb said yes, except one and he hasn't unloaded that yet. Mrs. Pouch asked if they were all cars there. Mr. Lamb said there were no cars there to sell. Attorney Stepp asked Mr. Lamb to tell the Board what is on the property. Mr. Lamb said there is one mobile home mover truck, a couple fire trucks, 2 trucks to take vehicle or machinery, 2 cranes, asphalt truck, 2 or 3 van trucks, a green pickup truck and an asphalt roller.

Attorney Stepp addressed another violation – significant storage of outdoor waste. He read the definition of solid waste from the nuisance ordinance, which he said is a broad definition. He said there has been significant effort by Mr. Lamb to clean up the property and comply.

Mr. Case said he would be glad to reinspect the property and report back to the Board. He said that Mr. Lamb has been very helpful through the process. Attorney Stepp said that he would like a decision on the tags. He said they believe they are complying with all the issues raised and Mr. Case could inspect the property and then report back to the Board.

Attorney Zambon suggested the Board could separate the issues into the solid waste storage and continue that until the next meeting and then deal with the car issue today, if that is what Attorney Stepp would like. Attorney Stepp agreed. He said he had one more document to submit to the Board – a car dealer's license through which he owns the cars on the property. That again brings up the zoning issue.

Mr. Case said he would be glad to go to the property to inspect it again, check tags, and take photographs and report back to the Board.

Chairman Phelps asked who would bring zoning violations to the Board. Attorney Zambon said that could be brought by Code Enforcement but it would not necessarily be through the nuisance ordinance, except for 126-2.04, which she read. So it is up to the Board to determine if Mr. Lamb's cars fall under the nuisance ordinance in the first place and secondly, if they fall under the business exception. The Board's real job is to determine whether or not it is a nuisance and you can consider whether or not it is a business and therefore fall under the outdoor storage under a business exception.

Mr. Case said the evidence submitted by Attorney Stepp today is new to him, so he learned about it the same time as the Board. Chairman Phelps said it would fall to the Board to understand the legal issue of the transporter or vehicle tags being sufficient to store a vehicle on a lot. Mr. Case said he could check the state law for the transporter and vehicle tags. Chairman Phelps said it seems like we need to defer both issues. Mrs. Pouch said Mr. Case could check all these issues and report back to the Board next month. Attorney Zambon asked if this would be acceptable to Attorney Stepp and Mr. Lamb. They said yes. Mr. Lamb said he has not been operating a business there since the violation.

Mrs. Pouch made a motion to continue this hearing to the April meeting, Mr. Griffin seconded the motion and all voted in favor.

**Case V-06-15, (continued) Sandra D. Donaldson (petitioner)**, requests a forty-five (45) foot variance from the front yard setback requirement of seventy-five (75) foot at 459 Sandy Flat Mountain Road. The property is zoned RC.

Chairman Phelps called case V-06-15. Mr. Engel made a motion to open the hearing and Mrs. Pouch seconded the motion. All voted in favor. Attorney Zambon said that, because this a continuance, only the members of the Board who had heard the previous hearing can vote today. Because there are only 4 members today who have attended the previous hearing, all votes must be affirmative for the variance to be granted. Chairman Phelps explained the quasi-judicial proceeding. Chairman Phelps identified the parties to the proceeding: the petitioner, Sandra D. Donaldson; Henderson County staff; Damion Brookshire, Mrs. Donaldson's contractor representing her; Chris Hunter, Mrs. Donaldson's son-in-law; Elaine Stennett, adjoining property owner, 130 Mountainside Lane, Fletcher. Attorney Zambon said that traditionally the only people who can represent the petitioner are the petitioner himself or an attorney for the petitioner. Since Mrs. Donaldson is not here, normally we could not proceed, but since we have already started this hearing and her son-in-law is here and Mr. Brookshire had been made a party last time. I just wanted to make sure the Board was aware of that but I think that we can proceed. Ms. Berry said Mrs. Donaldson was here last time. Attorney Zambon said they were sworn in last several months ago, so probably should swear them in again. Chairman Phelps swore in the three parties to the proceedings.

Chairman Phelps asked Ms. Berry for her presentation. Ms. Berry said she has none since she hasn't received anything from the petitioners. Mr. Phelps asked Mr. Brookshire for information.

Mr. Brookshire said, "I received a letter from the Board with points that the Board wanted him to address to get this through. The first point was that while the Board acknowledges that the location of the well must be more flexible, concerns were raised regarding the approval and location of the septic system. We didn't ask for a continuance this time, although the situation kinda called for it. I've been dealing with the Henderson County Environmental Health on the septic system permit for that property lot #1 459 Sandy Flat Mountain Road and they came out, they did their thing and they did not disapprove or approve it. What they did ask is that they have a regional guy from the state of North Carolina come investigate the septic situation because of the severity of the slope. And since the very first meeting, or since prior to the very first meeting, we had a septic system permit applied for and since that time they have been unsuccessful getting this representative of the North Carolina Environmental Health here. He is here today and tomorrow according to Jeff Stepp which is my Environmental Health representative that I have been dealing with. Jeff is trying his best to get me the information required from this guy today or tomorrow. Obviously I don't have it today, but I would like to proceed anyway with the evidence I have speaking to Jeff and the other guys at Environmental Health. The situation with the septic system – it's on a very severe slope – we discussed that last item and that's the reason for the request for the variance. We have possible three options – one option being, well until this there may be even more options but I know of three for sure. One is an expensive system called a drip irrigation system used on severe slopes and whatnot for type of septic system. That's one option we have. Another option is, she owns seven acres of this property. We were informed by one of the other agents that she could give herself an easement onto another lot and just simply pipe the septic system to another lot. The same was done for another house on the mountain. So she has two lots available to do that with. So those are our other two options so that gives us three options. The site plan that I had at the original meeting, as far as the proposed septic area, this is the best location on the lot determined by the Environmental Health for the septic area as it stands right now. Barring that, we go onto another lot with the septic field. Now the septic tank can be on this property – it doesn't affect anything, but obviously with severe slope you're worried about waste water leaching out above the ground and becoming an environmental hazard. So those are our three options and after the regional guy looks at it we should be able to hopefully have a few more options and with the flexibility of the well. If the septic system is no longer on this piece of property and is on another lot that she gives herself an easement for, the flexibility of the well is endless. We can put the thing anywhere - we have requirements – we have to stay off the property line, and off of the house, and off of the septic system. But if the septic system's not there, we can put the well in a lot more locations. So those two kinda go hand in hand. That was the first point. The second was, and I want to comment about that. I called the Environmental Health continuously week after week tried to get Sommers off to the situation of the septic system and they had nobody in this Henderson County location office to make the decision on

this case. They were waiting on a regional representative to come look at it. He had 36 counties that he was responsible for and it apparently took him a long time to get to Henderson County and his first stop was in Transylvania County. I think he's on his way here. He was here today and tomorrow. Jeff told me when the representative gets here, one of the responsibilities when he gets here is to authorize a new member of the Environmental Health Department of Henderson County to do what the other fella can do. That being said, that's been the delay in the septic system, although it has been applied for even prior to our variance request. And it's been somewhat aggravating, that's why we're trying to move forward with this thing instead of continuing it at all."

"The second point on here when this was mailed out – the possibility of different locations of the house and the grading of the land and the lot. The location in the existing site plan is the best location for any structure on this property. The reason being – the way the land lays, it's severely sloped in certain areas and I don't feel like it would be a good situation to put it anywhere than where it's located. So we looked at that to see if we could move it around, obviously can't move it further down the mountain because it's so steep. You could move it toward the septic area. There again, if that becomes our septic area, we want to be a certain distance away and we don't want to have any problems. We don't want to put the house in a place that's going to create another situation for our septic system. So that being said, the location that we have drawn is what we feel to be the best location for the house. We have 25 to 30 feet lateral movement up and down the hill. I don't know if you have a copy of the site plan that I had originally. If you don't, I'd like to try and show you what I'm talking about, so it wouldn't be confusing anybody." Ms. Berry said, "They should have their packages." Mr. Brookshire said, "If you notice the dash line on the site plan – that is what I call the breaking point, where the lot starts to severely slope. We have the options of moving laterally along that line but not across the line due to the severity. So we do have a little bit of movement there. But we don't want to jeopardize our situation with the septic system."

Mrs. Pouch asked, "Is this a 7 acre lot." Mr. Brookshire said, "No ma'am. This is a 1.7 acre lot. She owns a total of 7 acres. She just recently purchased 7 acres of land from the existing homeowners in the area last year. And she had it subdivided in order for her residence there. And she has a son and daughter and grandkids. She wanted to have like a little family type community situation going on there. But anyway, we could have the opportunity to move that laterally along that line and that would give us a few options as far as locations. But there's just not that many to speak of. So that is the flexibility with the location of the house. Although I think here in a minute I'm gonna make a better point about the house itself."

"And then the third point is several comments made regarding how to modify the house plan – reduce the size of the house, narrow the house, or arrange the house differently on the lot to reduce the setback variance required. If you notice on the plan, it shows a 61 x 42 overall dimension of this house, which is a pretty good size footprint for a house. What we kind of propose, and if you mathematically speaking on the variance request, the original request for a 45 foot reduction which gives us a 35 foot setback from the centerline of the road or her property line, whichever way you want to say it, with 42 feet of house, that puts us 72 deep from the centerline of the road. And if you notice on my site plan, I have approximately 80 feet from centerline of road to the breaking point of the lot where the land becomes severely sloped. So mathematically speaking, I've thought about this, if we go back to standard size home, maybe a smaller size home or elongated home an approximate dimension of 28 – 30 feet deep, we could take a reduction of the setback down from the 45 foot reduction request down to a 35 reduction request. And if you have a 28 – 30 foot deep house, instead of 42 feet, it comes up approximately the same dimension of 73 – 75 feet from centerline of road. So we are still able to keep the house on buildable land versus trying to do the same house plan with a reduced variance request, a reduction from the setback. I know I may have confused, I kinda confused myself a little bit, but basically we're offering to, if you guys see fit to give us a variance, we will completely throw out the idea of a 42 foot deep house. We'll go to a narrower house, something that we can fit with less of a reduction in the setback, keeping the house farther away from the road, which I think will be more in keeping with the way it's zoned as RC. The ??? comes into play there, once we get past 28 feet deep,

we start getting down into some real small narrow footprints. I live in a house that's 28 feet deep and most doublewides can be anywhere from 24 – 28 feet wide, depending on how wide a doublewide is. We're trying to go as small as possible and still build a stick-built home on this property. We have not entertained any ideas of any kind of modulars or anything like that. We want to build a nice structure on the property that's pleasing to the eye and landscape it in a way that's gonna be non-intrusive to the environment up there in the mountains."

"So, that being said, mathematically speaking we will be willing to suggest, instead of asking for a 45 foot reduction in the setback of 75 feet, we would like to reduce that request to a 30 foot reduction, which saves 15 feet. And hopefully, that right there along with some other things will allow us to turn out a positive thing for us."

"I think that kind of took us into the fourth point on this letter that I received. And that's ways to cut down on the size of the variance. So, I guess, everything I said pretty much sums up to this. We would like to cut our variance request down from a 45 foot reduction to a 30 foot reduction, putting us 45 feet away from the property line, change the size of our house to a smaller house, keeping with the request of the Board from the last meeting." Ms. Berry asked, "Would that be from the property line or the centerline of the road." Mr. Brookshire said, "In this case, the way the property line is drawn, it's both." Ms. Berry said, "I just wanted to clarify that." Mr. Brookshire said, "The way the survey reads, it's both in this case. I think if you go with a smaller house and push the house, lose the other 15 feet that we'd like to change our request to, we'd be far enough from the road not to be on top of the roadway. The only thing that I recall haven't been able to do, that's been real disappointing to me and everybody involved, Ms. Donaldson, is the deal with the septic system. There are options and some of them will fall within normal building procedures. The drip irrigation system is going to be an expensive option, but it is a system that the County or the state allow. It's a different type of system for severely sloped lots. So we do have some options there. Some things I need to mention that would probably be better in a minute. She purchased 7 acres of land in order to build herself a house and her son-in-law and daughter a house and her other son a house. Because this variance situation is taking, she started this deal about last May and because this is taking about 4 months or 5 months total, she went ahead, she had another lot down the hill, and we went ahead and started building what we're calling the Donaldson residence for her residence, whatever, and in order for her to keep her original idea of making this property a family type community for her and her family, we do need this variance request in order to build a house on this property. Otherwise this Lot 1 that she owns really becomes useless to her in any capacity, as far as I know. Other than owning a piece of property. There's a for sale sign down as you come up the mountain and she owns a total of 4 lots, Lot #1 being one of them. Lot #1 being her lot of choice because it's on a ridgeline and give her the mountain views that a lot of people would like to have. The 'For Sale' sign was put up due to frustration on her part because of this obvious situation of waiting this long to be able to decide what to do with the property. And I haven't mentioned the financial thing, and I try not to say much about it, but she is obviously financially tied to this thing greatly because of the cost of the land that she's paying on. So the 'For Sale' sign's been put up in frustration but, at the same time, she has other lots that she may not use, 1 or 2 lots possibly, and if somebody so choose to buy one of those lots from her, she'd be more than willing to sell it. I just wanted to sum those things up in case those things were brought up at a later time. I hope that I spelled out what we're trying to do and what we wanna do and we've tried to figure out ways that we could reduce all of our requests and all of our ideas to meet your ideas that was presented to me in this letter. And kinda hope for a positive outcome but that'll be up to you guys. And I think that's all I have right now, until you guys have questions."

Mrs. Pouch said, "You mentioned earlier that there was a level spot where you thought the septic tank would be, that you could build there." Mr. Brookshire said, "Well maybe I got you a little bit confused. What I said was the only level, semi-level spot, wouldn't even call level, was where the house is shown on the site plan. The area where the proposed septic area is, is the least, how do I say, it is the only area after digging seven test pits up there with the backhoe that the Henderson County representative of Environmental Health found that was acceptable to put the septic system in. So that septic area that

I have outlined right there was tested with a backhoe and with a representative on site as far as septic location. But the only level spot, or semi-level spot, is what I'm showing where the house would actually go." Chairman Phelps said, "So at this point, your best solution for the septic is where it's shown on this." Mr. Brookshire said, "According to Jeff Stepp, again the guy who's doing it, he came out one time, looked at the situation with a hand auger, which they normally do, he found because of the severity of the slope and soil type, that he needed a little further investigation, so we hired a guy, a backhoe operator, to come up there and dig several test pits pretty deep to allow Jeff to come in and take soil samples and everything. No problem with them – they're pretty thorough about what they do. So because the type of soil and everything, that's why they wanted to have this other representative come in. They could have made a decision already, I'm sure, but they've given us the opportunity to have another party come in and tell us what to do. The site plan is kinda the best layout as of right now. We can reduce the size of the house – that gives up some kind of flexibility there. We can also move along that dashed line. And then the septic area – the flexibility we have there is either put it in the spot shown on paper or put a septic tank in and pipe the septic down to another lot. And we have 2 of the lots that we can do that on and she'll have to give herself an easement in that case. But one thing I'd like to point out is, and I think I probably stated this, is without the variance, the lot doesn't do us – without the variance, you couldn't build anyway, so without the variance, the septic is a moot point. So that's why I want to go ahead and proceed even without the final findings of the Environmental Health Department."

Mr. Griffin said, "If your septic goes across the road and you slide the house up the line, the dotted line, how much could you gain as far as setback?" Mr. Brookshire said, "Nothing." Mr. Griffin said, "I mean it would basically be the same that you were asking for whether you moved it up the line if you did away with your septic tank and you moved it across the road and you go up your diagonal line, you still say you'll stay the same distance from the road." Mr. Brookshire said, "Yes, sir. The reason being, on that dash line without being able to walk the property, which is pretty difficult along that line, you could get a better understanding. Along that line are several, what I would call rock faces. Some of these rock faces are 20 -30 feet straight down. So once you crest over this hill, there's a lot of laurel thickets. Well just on the other side of these laurel thickets are these rock faces so everything has to stay basically within those parameters that we have right there. And we have the lateral movement but the distance from the road, the only way we could move is closer to the road. I mean to get it farther away from the road, and we can reduce the size of the house and reduce our setback because of that, because obviously the house being 42 feet deep, if we say we went to 28 feet deep, and then like you say mathematically, if you have a 45 foot setback, and you have a 28 foot deep house, that puts you 73 feet from the centerline of the road. And obviously 73 feet falls within our 80 feet of useable space that we have there. The septic system and the house, we can't have all that but in this case without the variance. We don't have enough usable land to even where it wouldn't do us any good. So I guess what I'm asking for is hopefully finalize this thing today and reduce our setback reduction request, our variance request. We'll do anything we can just to make this Lot # 1, 459 Sandy Flat, a buildable lot. I don't think anyway, she's not wanting to do anything that'll damage the area. She just wants to be able to build a house up there. That's our request and hopefully we've met some of the requirements that you guys have put forth at the first meeting."

Attorney Zambon said, "Just for the record and for everybody's information, the letter that Mr. Brookshire keeps referencing, I think I gave a copy to you guys at the December meeting, is just the letter that I'd given him from my office, basically summarizing the conversation that had gone on at the first part of this hearing. It is no way binding on this Board, I repeatedly said if you could fix all these things it doesn't influence the Board's decision. It was just to give him some kind of idea about the things you had mentioned at the previous hearing."

Mr. Brookshire said, "I remember at the first meeting a few months ago, things went pretty well. And I remember a lot of the questions were what flexibility do we have with this whole situation. And I hope, maybe my verbiage isn't that great, but I hope that I've outlined what flexibility that we've found that we

have in the situation. We just hope that you guys will see it that way. I think that's all I have unless you have further questions."

Chairman Phelps asked, "Any further questions from anyone." Mr. Engel said, "So the amount of setback that you are now requesting, you're moving the front of the house back 15 feet." Mr. Brookshire said, "Yes, sir. We're basically changing our request by 15 feet. We're trying to give 15 back to the setback." Chairman Phelps said, "As it would read now, you're asking for a 30 foot reduction in the front yard setback." Ms. Berry said, "That's my understanding." Mr. Brookshire said, "The way we're trying to gain that is, because we don't have that much flexibility, is by reducing the house size which is also a topic brought up in that first meeting." Chairman Phelps said, "Yes I think we were talking you could elongate it this way, reduce the depth." Mr. Brookshire said, "At first she picked a house plan and she liked it and that's what we tried to do. Since then, obviously, with all the stuff going on, we need to do something other than that the house plan to make this work. And we want to do whatever it takes to make it work. So hopefully it will work."

Chairman Phelps said, "Well thank you, it seems like you addressed the issues in the letter." He asked for any other questions. He asked Chris Hunter if there was any evidence he wanted to present. Mr. Hunter said, "No, Damion did a great job. Chairman Phelps said, "So that's all the evidence we have." He asked if there was one other party that wanted to speak.

Mrs. Stennett said, "I just wanted to make sure I understand – Ms. Donaldson is requesting, is it a 40 or 45 foot variance?" Chairman Phelps said, "It is now 30 reduction in the front." Mrs. Stennett said, "30 foot reduction in the 75 foot variance that would need a 45 foot." The Board answered "Yes." Mrs. Stennett said, "In view of the circumstances I feel that that would be acceptable. And I appreciate the work that's been done in order to bring about the changes. I did not want to be unreasonable and to create a situation where Ms. Donaldson would not be able to build a house up there. But I did see that there were possibilities that a change could be made in order to help to maintain some of the brow? conservation area that we have there on the mountain. I appreciate everything that you've done. Thank you." Chairman Phelps thanked Mrs. Stennett for her comments. He asked for any additional.

Mrs. Pouch said, "I do have one additional. If the property is for sale, is this going to be a spec house or is it?" Mr. Brookshire said, "The way it stands right now, no ma'am. The property is just, the for sale sign that's there could be for any of the other lots – she has 5 total, for any of the other property that she doesn't so choose to use. The only thing about that is this, Lot 1 was her lot of choice because it's a ridgetop lot and that's the higher in commodity, I guess you could say. So some of the other lots, if somebody chooses to buy them, there's a couple lots that are for sale. She has a lower meadow lot that's at the very bottom of the property. She has a lot that I spoke of that I'm doing the residence on right now. She started that and put the sign up out of frustration. Not only that, she bought the property at a pretty good price for the type of property that it is, so she would like in some way to recoup some of her money. The total amount of property were not. You know, what I mean, I hope I answered that."

Mr. Hunter said, "Damion didn't tell you this, but on the house that we're building right now, we had to combine 2 of the lots, so now there's only 4 lots. There's the one meadow, and then the 2 lots that we combined, and the lot that's at the top and then there's one that might be buildable but even to put a driveway and foundation in there, it's going to be astronomical. So the chance of even selling that lot would be pretty crazy. The pasture itself, she might keep that for her son or sell it. It depends on what happens with the variance." Chairman Phelps said, "So the way I understand it, you're in the process of constructing one house right now." Mr. Hunter said, "Yes." Chairman Phelps said, "And this one is for one son to build the second one." Mr. Hunter said, "The first one is for my family." Chairman Phelps asked, "The one that's under construction now?" Mr. Hunter said, "Yes. But it is under her name, since the loan and everything was for her." Chairman Phelps said, "Right, I'm just trying to get a total count. One house that you will occupy, this house that we're talking about today is the house that she wants to occupy and there's a potential for a third house." Mr. Hunter said, "Which would have been her son's house. If not she would sell the lot." Chairman Phelps said, "And that's all that you

contemplate at this time.” Mr. Hunter said, “Yes.” Chairman Phelps said, “I just wanted to clarify it for me, thank you.” Chairman Phelps asked for any other questions.

Mr. Griffin said, “If we pass the variance it travels on with the lot if she sells it, right.” Chairman Phelps said, “That’s the way I understand it, correct Natalie?” Ms. Berry said, “It goes with the land.”

Chairman Phelps said, “Do I need a motion now to close the public hearing and go into private hearing?” Associate County Attorney Zambon said, “You need a motion to go out of public hearing, yes.” Chairman Phelps said, “Do I have such a motion?” Mr. Engel said, “I move that we go out of public hearing” and Mr. Phelps seconded. All voted in favor.

Mr. Engel said the motion would have to be made with the reduction of the front yard. Mrs. Pouch spoke about a buyer having other ideas about placing the house. Mr. Engel said they would still have to meet the requirements of the variance. Mr. Engel said they have determined it would be pretty rough to build anywhere else on the lot. Mr. Griffin said they’ve done pretty much everything they can do. Mr. Engel said the neighbor isn’t objecting anymore. Mr. Griffin said at this point he doesn’t have any objection and the neighbors don’t. Mrs. Pouch said so we have to say, instead of 45 feet, we give him 30 feet. Mr. Engel said they will get a septic system no matter what, that’s sort of irrelevant at this point. The Board discussed what they had to do to make the variance now 30 feet.

Mr. Engel made a motion to reduce the request to 30 feet for the reduction in the front yard setback and we agree to accept his amendment to his application. Chairman Phelps summarized the motion to the Board agrees to accept his amended application for a 30 foot reduction in a 75 foot setback. Mr. Griffin seconded. Chairman Phelps asked for any discussion on the motion. There was none and he called the motion.

Mr. Griffin	-	Yes
Mr. Engel	-	Yes
Mr. Phelps	-	Yes
Mrs. Pouch	-	Yes

Chairman Phelps said the motion is carried by 4 votes. Mrs. Pouch made a motion to go out of closed session and Mr. Engel seconded. All voted in favor. Ms. Berry said the written variance decision would be brought back to the Board at the next meeting in April for approval and that they didn’t have a variance until that time.

Chairman Phelps called for a 5 minute recess.

The Board returned from recess.

**Case V-07-03, Steve Pope (applicant), Lohren Pope (owner)**, continued, are requesting a ten (10) foot variance from the side yard setbacks and an eight (8) foot variance from the front yard setbacks required on a parcel to construct a single family dwelling. The property is located at 208 Tree Haven Boulevard and zoned R-30. The parcel is a pre-existing non conforming lot of record at the time of the ordinance.

Chairman Phelps called Case V-07-03. Mrs. Pouch made a motion to go into public hearing and Mr. Engel seconded. All voted in favor. Chairman Phelps said we are now in public hearing. Chairman Phelps asked if he needed to read the quasi-judicial statement again. Attorney Zambon said not as long as all the parties understand what their rights are in a quasi-judicial. Chairman Phelps said you heard it earlier when he read it. Mr. Crowder said okay.

Attorney Zambon wanted to explain to the Board what Mr. Crowder was doing. Since Mr. Pope is not able to be here today, it is her understanding he travels a lot and his wife cannot be here, under normal

circumstances and circumstances that we will tell people from now on, only the petitioner and the petitioner's attorney can represent the petitioner in a quasi-judicial hearing. In this particular instance, since Mr. Pope is not here and that he travels a lot and that we continued this case from last month, Mr. Pope is on the phone and he is just going to call Mr. Crowder as his witness and then Mr. Crowder will present Mr. Pope's variance request. Does that make sense to the Board?

Mr. Crowder asked if Mr. Pope could hear him and put Mr. Pope on speaker phone. Mr. Pope said he could hear. Chairman Phelps asked if we should swear him in by phone. Attorney Zambon said we don't have to swear him in. Attorney Zambon said you just need Mr. Pope to state his name and that he is going to call Mr. Crowder as his witness. Mr. Crowder said hear that Steve. Mr. Pope said yea I think heard some of it. Mr. Pope said this is Steve Pope and I call on Mr. Crowder to speak on my behalf. Ms. Berry said you need to call him as a witness instead. Mr. Pope said okay I call Mr. Crowder to be my witness. Ms. Berry said okay, that's what we need. Mr. Pope said okay very good, thank you. Chairman Phelps asked Mr. Crowder to please state his name and position. Mr. Crowder said Thomas Crowder and Ms. Berry said Natalie Berry, Zoning Administrator. Chairman Phelps swore them in. Mrs. Karpowski asked how Mr. Crowder spelled his name which he spelled out.

Chairman Phelps said as he understood the case you are requesting a 10 foot variance from the side yard setbacks and an 8 foot variance from the front yard setbacks on a parcel to construct a single family dwelling. The property is located at 208 Tree Haven Boulevard and zoned R-30. The parcel is a pre-existing non conforming lot of record at the time of the ordinance.

Ms. Berry said she would present her part first so Mr. Crowder could sit down. Ms. Berry said, "This particular subdivision was subdivided back in, I believe it was 1963. It's item #12 on the third page. I want to point that out to begin with because this case kind of builds on the fact it's a non-conforming lot of size. The subdivision was subdivided in '63. The Ordinance came into play in '81 and it asks for 30,000 square feet minimum lot size for all houses to be built on in that zoning district. Well all the lots in this neighborhood were almost half of that, they were almost 15,000 square feet. So what you have in this neighborhood is you have a lot of houses that are already encroaching into their setbacks on the side and in front, due to the fact that the lots were already small, the houses were already built, so it's basically a non-conforming subdivision. We had a couple of vacant lots in the subdivision. This particular lot was the septic lot or well lot. I believe they called it the well lot, where they had 2 wells on this particular parcel so they didn't plan on building on it at the time. Now they're on city water so they abandoned the wells. So what Mr. Pope did was, he had the wells filled up with cement and abandoned to where they're no longer in any use and purchased the lot so that he could build his home on it. The subdivision was drawn up and subdivided by his grandmother, Lohren Pope and then she left it to him when she died. So that's kind of the scenario that we have here in this case. What I did is, I put together a few things to show you what the general neighborhood looks like. Exhibit C is his septic permit. Like I said he's on city water now so he doesn't need a well but he does have a septic system. He has several constraints on his property."

Chairman Phelps said, "Sorry but he has water but no sewer system, is that what you're telling me so he will have a septic tank?"

Ms. Berry said, "What I meant to say was he needs a septic tank but not a well dug – he's on city water. Sorry, I didn't say that quite right. But what the problem is on this parcel is on top of it being less than 30,000 square feet, he has a utility line easement running across it for the power line. If you see the bottom left corner of Exhibit C, where it says, power line, and on the power line, you can't build under the power line – I think it's 100 feet all the way across. So it's probably 50 feet from the centerline and you'll see the dotted line going up right beside the house. He has to stay outside of that line. The septic system has to go where they put it on the bottom part of the property for it to work properly. So that's been an approved septic system. He has not installed it yet because he didn't want to put the cart before the horse. He needed to make sure he could get a variance before he put that much money

into the property. So that's the restraints we happen to have on this house is a utility line and the septic system placement as well as the lot size being smaller than normal."

Chairman Phelps said, "I'm sorry, where did you tell those power lines ...?"

Ms. Berry said, "It's on Exhibit C, it's the yellow sheet. It's on the bottom left." Chairman Phelps said, "Oh, I'm sorry. It didn't take on mine." Ms. Berry said, "Look at the page before that. Go back one." Chairman Phelps said, "I'm sorry." Ms. Berry said, "No problem."

Ms. Berry said, "What Mr. Pope did is, if you look at Exhibit D, he had his architect or his engineer, I'm not sure, looks like engineer, looks like Jon Laughter did this. But what he did was, he had Jon take the setbacks that exist on this parcel and basically draw him a building envelop, so you see the dash line on the parcel – he has to stay within that dash line. So you see what he's got left to work with."

Chairman Phelps asked, "The one that looks like a seven?" Ms. Berry said, "Yes, that's it. It's the one that says Exhibit D in the right corner, cause I believe there's 2 sheets that look a lot alike, so make sure you've got that one. I think the other one had some other things on it. What we were trying to do is show what limited area he had to work with. When he first came in he wanted to put a garage behind the house for a car. I told him you're already asking for encroachments into the setbacks, so you need to reduce that. So what he did, was, he changed his house plan and put the garage under the house. So he's done as much as he can with what he's got to try to alleviate all his requests down to exactly what he needs. We had talked about it at length and he came back several times with different proposals before we got down to the bare bones of what he needed."

Ms. Berry said, "Exhibit E is the order that I gave to him back in 2005 and that's the Order granting an existing lot application so that you have the paperwork that you need to give you the ability to be able to reduce the setbacks because of it being a pre-existing lot. It doesn't tell you that you can knock him down 20 feet or anything. It just says what's practical to do what you need to do, but that does give you a little more leeway than an average variance request."

Ms. Berry said, "Exhibit F is just the legal notice that I put in the paper for the last month's meeting. Then we carried it over to this one. Exhibit G is the restrictive covenants for the neighborhood. And I put them in here just so you could see what he is requesting is not against the restrictive covenants and it doesn't have anything in there that says he cannot do this. Exhibit H is a picture of the house plan that he has chosen to put on the property. It's a ranch home called the "Caldwell" and you can look at Exhibit H and there's like 3 or 4 sheets. You can get back to the actual inside house plan, but it's just a basic fairly small house. It's 1600 square feet. And then if you look at Exhibit J, you'll see some of the neighboring homes. What I tried to do is show you the neighboring homes and how their setbacks looked. And on this first picture I have up here, it was hard for me to get a shot for you to see where the property lines end, but this is the neighbor's driveway and this is the next house over and their property line is halfway between this wall and this driveway. So that just shows you how most of the houses there are already relatively close to their side yard setbacks. This one, there's trees in the way where I couldn't really get it. This one's next door to the lot that he wants to build on. His would be on this side. This is the biggest setback in the neighborhood – on this lot on the side yard. So what I'm getting at is it would be in the same spirit as the rest of the neighborhood." Chairman Phelps said, "Consistent with existing." Ms. Berry said, "That's not the word I was looking for – in harmony. It would be in harmony with the other lots."

Ms. Berry said, "And I tried to put this together – this last sheet that gives you more of a bird's eye view of where we're at. The lot he's looking at is the green one. And the lots of the pictures that I've taken are showing you where these houses are – like this particular house is on this side of him, this particular one's on this side. And then these houses are down at the end of the road. Like I've said, most of the setbacks on their sides. Now the front yard tends to be about the same too, but the side yard was the one that needed the most variance, so I kinda more than anything, zeroed in on the side

yard as to how they looked in the neighborhood. But I took as many pictures of all the houses as I could to show what we were looking at here. If you look at this picture right here, this is the property. It's the third one down on the big picture. That's the property from the backside, me taking a picture up the hill and the power line is on your left with all these trees."

Ms. Berry said, "If you look at Exhibit L, what I did is I went in to every lot in this neighborhood, not just the ones around it, and if you'll see, the square footage is written on every one of them, telling you what the general square footage is for each lot in this subdivision. And it averaged out to around maybe 19,000 square feet. Mr. Pope's was 13,939, so it was relatively small. But he picked a house of 1600 square feet and tried to ask for the least amount that he could and he opted to get rid of the garage and put it in the basement to try to do everything he could to try to fix it. He's gone down to, I think it's 8 foot reduction on each side and, I don't remember the front. Let's see, what was the front yard?"

Mr. Crowder said, "He's asking for 8 in the front and 10 on the sides."

Ms. Berry said, "That was why I wrote in on the side then because the side was the larger. But what we did was, instead of asking for 20 foot setback on the left side or the right side, he tried to center it to where it would be equal encroachment on each side and not offend one neighbor. You understand what I'm saying? He tried to center it to cause the least amount of harm to anybody. That's all I have for my presentation. I'm here for questions, though." Ms. Berry submitted her packet into evidence and the application. "Do you have any questions for me? Would you like the applicant?" Chairman Phelps said, "Please."

Mr. Crowder said, "The only update I have for you is the power lines. He talked to Duke and talked about moving that pole off of it, the corner of the house. The last time I talked to Steve. It's a quick recap on Steve. Steve's a great guy, we've been friends forever. I apologize for his not being here tonight. He's a major league scout for the Seattle Mariners and he's in Arizona right now. He grew up in Horse Shoe and he's wanting to build a house back here to retire - he and his wife and 2 girls. So that's his situation with that. So if he can get the variance, he'd really appreciate it. I guess that's about all I can say in the matter."

Mr. Engel said, "I know that you said the garage is going to be in the basement." (Everyone spoke at once.) Chairman Phelps said, "It's supposed to be a drive under garage?" Mr. Crowder said, "Yes, since the setbacks were so much, building the garage beside the house would encroach those, so he put in a full basement. That would give him a garage and he wouldn't be encroaching. His basement would encroach just 8 feet on the front and 10 feet on each side, which would make it 20 foot on the setbacks, which Henderson's 29 with 60 on the centerline in the front. He's just asking for 52." Mr. Engel asked, "So the entrance to the garage will be where?" Mr. Crowder said, "From the left hand side." Ms. Berry said, "If you look at the septic permit, it's got a drawing. You drive down and it comes around the house." Chairman Phelps said, "That's what - C?" Ms. Berry said, "Yes, it slopes downhill from front to back, so it would be a lot that's suited for a basement without doing a whole lot of digging down."

Mr. Engel said, "Are you putting a stairway in from the lower level going to the upper level?" Mr. Crowder said, "Yes, sir." Mr. Engel said, "Okay cause it doesn't show it on the plan." Ms. Berry said, "Well on the septic permit, he had applied with the garage in back at the time. Then whenever I explained to him about the situation with the setbacks, he took it out and tried to resituate the house. So the septic permit's not an exact replica of the house itself. But he does have other site plans in the package that do show the house itself." Mr. Crowder said, "The steps would be basically on the left side of the living room, there." Ms. Berry said, "It should be Exhibit H, I believe. This is it. On this back one here, living room here." Mr. Engel said, "So these are the dimensions that are on this, of the house itself?" Mr. Crowder said, "Yes, sir. I think it's 58 by 28." Mr. Engel said, "Yes, 58 by 28. Is there a site plan showing the house spotted on there." Ms. Berry said, "No, just the site plan showing the building envelop that he was going to try to stay within. And then he saw that it was so tight that he

needed a little bit of room. So basically I can show you, each one of you.” Ms. Berry pointed it out to each Board member.

Chairman Phelps asked, “Are there any further questions. There being none I’d entertain a motion to go into closed hearing. Do I have such a motion?” Mr. Griffin made a motion to go into closed hearing and Mrs. Pouch seconded. All voted in favor.

Chairman Phelps asked for comments. Ms. Holbert said it appears that he’s pretty much done everything he can possibly do. So, adhere to what limits he can, and the subdivision being from 1963. Mr. Engel said that was before zoning. Chairman Phelps said and you see other lots about 13 square, 13,000. Ms. Berry said, I think the average was a little bit higher, but you had about a third of them that were small. Chairman Phelps said one was almost 10 something. Ms. Berry said, yes there was, there definitely was. Chairman Phelps said, so it’s not inconsistent, what was the word you used? Harmonious?

Attorney Zambon said, Mr. Chairman, just to direct the Board to the variance sheet I gave you guys. If you want to refer to that in your decision. Chairman Phelps said factors to consider. Are there practical difficulties or unnecessary hardships in meeting the letter of the law? Well, seems to be that and as you say, the law goes back to, actually taking effect after the subdivision was in place. Can a reasonable return or reasonable use be gotten from the property if applicant complies with literal terms of the law, which would be almost impossible to do. Were there unique circumstances related to the land? Well the shape of the lot is certainly unique. Ms. Berry said what I guess we need to do is go down each one and state what makes it meet that particular one. Like the utility line, the septic system, lot size, pre-existing lot determination, subdivision being 1960, those type of issues. Is that right? Attorney Zambon said that is right. Mr. Engel said did you get all that down. Ms. Berry said I was just trying to give them an idea. Mr. Engel said you’ve covered it all. Chairman Phelps said is the hardship the applicant’s fault. Mrs. Pouch said no. Chairman Phelps said is the variance in harmony with the spirit and intent of the law? Mrs. Pouch said yes. Chairman Phelps said will the variance protect public safety and welfare? Mr. Engel said it really doesn’t have an effect. Chairman Phelps said will the variance do substantial justice? Mrs. Pouch said yes, it gives the owner a right to use this property. Mr. Engel said otherwise what could you do with it?

Chairman Phelps said do not consider non-conforming uses in the neighborhood or other districts – they are not a reason for a variance. We can put that in the record. Mr. Engel said everything is non-conforming in the entire neighborhood, isn’t it. Ms. Berry said you do have a section in the zoning code that does say though, if it’s a pre-existing lot that’s not as large as other lots, you do have a little more leeway. It doesn’t say how much leeway, but it says that you do have some leeway. Chairman Phelps said the applicant is not asking for a great deal variance, what 2 feet one way. Ms. Berry explained how she advises applicants to make the variance as small as possible, and some applicants listen and some don’t. And Mr. Pope did exactly what I asked. If you notice this thing’s been going on for over a year. So he’s been working on it for quite a while. I try to tell the applicant in the beginning what the law says and what they have to meet or it’s not going to work out. So they try to stay within what the law says. But I do believe Mr. Pope did his best to do that. Chairman Phelps said any other discussion or questions? Mrs. Pouch said no. Chairman Phelps asked for a motion.

Mrs. Pouch made a motion that the Zoning Board find and conclude that variance application V-07-03 complies with the necessary provisions of Henderson County Zoning Ordinance and he be granted a 10 foot variance from the side yard setbacks and an 8 foot variance from the front yard setback required on a parcel to construct a single family dwelling and I further move that the variance be approved subject to the following conditions: as presented in the application. Mr. Engel seconded.

Mr. Griffin	-	Yes
Mr. Engel	-	Yes
Mr. Phelps	-	Yes

Mrs. Pouch - Yes  
Ms. Holbert - Yes

Me. Engel made a motion to go out of closed hearing and Mrs. Pouch seconded. All voted in favor. Ms. Berry explained that the variance would not become effective until after the next meeting when the Board approves the written decision. Mr. Griffin made a motion to close the hearing, Mr. Engel seconded and all approved the motion.

**Case A-07-05, George Andrew Bennett (appellant)**, appealing the denial by the Zoning Administrator for a Zoning Permit for the operation of an amusement park in the Mountain Home Industrial Park based on dirt bikes being a portion of the amusement park activities. The property is located at 198 Egerton Road, approximately 18 acres in size, and zoned I-2.

Mrs. Pouch made a motion to open the public hearing and Ms. Holbert seconded the motion. All voted in favor. Chairman Phelps asked if the parties would waive their rights to having the quasi-judicial procedure read and explained. George Andrew Bennett said yes and he and Natalie Berry, Zoning Administrator were sworn in by the Chairman.

Ms. Berry said as you know I have been the Zoning Administrator for a couple of years and this is my first appeal. I did encourage him to appeal because I think everybody has a right to appeal if I deny something because I can make a mistake so I had him bring this to you. I don't know if you all remember or not, this is a parcel of property in Mountain Home Industrial Park that had the motocross on it at one time, maybe a year or 2 ago. He had applied on a special use permit and was turned down due to a variance he couldn't get on the property to be able to operate within the zoning code. So he came back to me February 27 with a site plan entitled Mountain Home Extreme Sports Amusement Park and Fair Grounds and he drew up a site plan and sent me a narrative of what he wanted to do on the property. I took the \$45 permit fee and reviewed the permit and denied the permit on March 8. I called Mr. Bennett and went over the reasons I denied it and I'm going to outline them here in just a second. I told him his next step was to appeal to this Board if he didn't like what I wrote. Basically, I'll read you the narrative which is Exhibit 4.

Ms. Berry read Exhibit 4. "An amusement park or fairgrounds with extreme sports attractions would be an asset for Henderson County. The cost and liability to the County would be nothing. Local youth and their families would have a park where they could come and spend a morning or afternoon enjoying mechanical rides, skateboards, BMX bicycles, mountain bicycles, inline skates, picnicking, play grounds, air soft course and walking path beside clear creek. There would also be summer day camps for youth to learn safety and skills in extreme sports that the park would offer. We have in the past and would continue to work with the YMCA at risk youth program and Henderson County DARE program. There will be no unsupervised activity in this park, no alcohol or drugs, this will be family oriented facility that Henderson and surrounding counties can be proud of. There are no losers, the winners would be the families and youth in the area. These activities have become mainstream in the last few years and continue to grow as major sports. Not all kids play baseball, football, or basketball like they did 20 years ago in fact the majority of youth choose alternative sports such as soccer, skateboarding, biking, dirt bike riding. In short these sports that were called extreme 10 years ago have become the mainstream, because there are no benchwarmers, second teams, 6<sup>th</sup> man or 2<sup>nd</sup> strings everyone can participate and be a part of the sport they choose. They can learn at their own pace and as they learn gain confidence and feel like they are part of something, they can have fun and learn skills without the pressure of coaches, teams, score boards and that's why these sports have become the mainstream its because everyone can participate.' I'm going to stop there because that is what I wanted to hit upon. We'll go to the next page. It says 'According to Henderson county zoning ordinance in effect at the present time amusement parks, fairgrounds, and carnival grounds are permitted and a use by right in the I-2 district.' And that's a true statement. 'Amusement parks allow mechanical rides and other attractions. Definition of a mechanical ride includes a dirt bike so it would be possible to ride a dirt bike inside an amusement park on a course for amusement or recreation without violating the county zoning

ordinance or being a motor sports facility as defined in ordinance no racing events would ever be conducted on mechanical ride area. There would be no time, speed or distance competitions, practice sessions, time trials, qualification rounds, or any other similar activity riding would be for amusement only.' That's Mr. Bennett's writing. And I just wanted you to see that before I go over why I said no to the permit. If you turn to Exhibit 3, this is what I wrote, I didn't see any reason to really try to come up with a second summary of issues when the letter is exactly all the issues, so I just gave you a copy of the letter itself. But basically what I saw is, I didn't feel like I could call it an amusement park and fairgrounds due to one option. It was the I-2 district which says, fairs, carnival grounds and amusement parks are an allowed use by right, like he stated. If you look at the definition for amusement parks on the front page, our definition says 'establishments of the type known as amusement parks, theme parks and kiddie parks which group together and operate in a whole or in part a number of attractions, such as mechanical rides, amusement devices, refreshment stands and picnic grounds and all associated activities. This definition specifically excludes camps, motion picture theaters, museums, art galleries, arboreta and botanical and zoological gardens.' So for purposes of the open use district, amusement parks less than 200 acres in size, inclusive of all land used for park purposes, shall not be regulated. And since this is in the I-2 district, that last sentence does not apply to this particular parcel. But in 200-7, word usage and definitions, for word interpretations, it tells me that all words used in the chapter have their customary dictionary definition. For the purpose of this chapter, certain words or terms used herein are defined as follows. What I did is I got with Sarah and we looked at the North Carolina state definition for amusement parks. 'The term amusement park shall mean any mechanical or structural device or attraction that carries or conveys or permits persons to walk along, around or over a fixed or restricted route or course or within a defined area including the entrances and exits thereto, for the purpose of giving such persons amusement, pleasure, thrills, or excitement. The term shall include but not be limited to roller coasters, ferris wheels, merry-go-rounds, glasshouses, waterslides, and walk-through dark houses. This term shall not include the following: skateboard ramps or courses, all terrain vehicles, motorcycles, bicycles, mopeds.' And that is what I based my decision off of, is it did not include these items. The next paragraph is where I told Mr. Bennett that he could appeal my decision – that would be his next step. That is all I have. Do you have anything to add, Sarah?"

Attorney Zambon asked, "Would you like to enter that into evidence?" Ms. Berry said, "Yes I would like to enter this into evidence. I'm going to get that eventually."

Chairman Phelps said, "I have questions. I guess I have 2 problems. One, with one of your statements." Ms. Berry said, "Okay." Chairman Phelps said, "One of yours you shall have to deny the application, content include dirt bikes, skateboards, assuming there are ramps built. Well according to the way I read the definition up here, if there's a course as well as ramps, but it doesn't have to be just a ramp if you build a course at all." Ms. Berry said, "You're correct." Chairman Phelps said, "And the second thing is in his statement, and we can talk to him later, it says there would be no time, you know no racing events, no time competition, blah, blah, blah, and I'm questioning and we know this would continue to be the case, how? I mean, that may be his statement at this point, but doesn't mean that it couldn't change once it was built, right?" Ms. Berry said, "Yes. Would you like Mr. Bennett to explain his." Chairman Phelps said, "Those were the 2 things in reading all this that came to mind. Any other questions of Ms. Berry?" Ms. Berry said, "And then I'll let him explain the reason he doesn't agree with me."

Chairman Phelps said, "And now we will hear you, if you will approach the podium and give us your presentation please." Mr. Bennett said, "This is pretty complicated. This has been going on for over 3 years. I don't know if anybody's familiar with it. I'm sure most of you are, if you've been around for awhile. But when I started I applied for, I made a mistake applying for a motor sports facility. I had bad advice from an attorney, but I hired another attorney and I was already in the process, so we just went ahead and went through with it. Can I use the old attorney's name? Is it okay to say names or whatever?" Attorney Zambon said, "Yes, you can say whatever you want, pretty much." Mr. Bennett said, "Anyway, I hired J. Michael Edney in Hendersonville and he's a really good attorney and we went through, it took us almost a year to get through public hearings and we had several meetings and I was

turned down. Well, the next day Michael Edney wanted, we had to go ahead and finish these hearings, since we'd already started them and we knew we weren't going to get anywhere with them, but we had to keep going. After we were turned down, the next day we applied for a permit to open an amusement park, because in the application, when Mr. Edney filled out the application he put down that we wanted to open an amusement park because it was a legal use. What we were doing was actually legal under the ordinance that's in effect right now. I'm sorry, I'm kinda nervous in front of people, but, anyway, we got to, the next day we opened up and the reason this was a legal use, we were denied the application, the very next day we were denied the application for an amusement park. The night before we'd finished the public hearing and there was some arguments between Mr. Edney and the zoning coordinator and it was some pretty heated debates that night. And the next day, I opened my park, he said whatever you do, don't close it down. What you're doing is legal and it's defensible in court. He explained the reasons to me. So I went ahead and I opened the park, I did like he said. And a couple of weeks later, I was served with a cease and desist order. So I went to see Michael Edney, and the same day that they served me with a cease and desist order, they served Michael Edney with an order saying that he couldn't represent me anymore, that he couldn't talk to me, couldn't advise me, couldn't do, I mean if he even talked to me on the phone, he could make a phone call, call me and couldn't represent me anymore, it was conflict of interest. And that's the last time that I got any advice or legal help from J. Michael Edney. But the problem was, there was a cell phone tower, there was a case over a cell phone tower that was 11 years old that was still pending in Henderson County and the next day or I guess after my hearing the County Attorney or the zoning coordinator at the time had dug this up and realized that Michael Edney still represented Henderson County and so, in the zoning case, so he couldn't represent me in another zoning case. So, here I am, I don't have an attorney, I've got a cease and desist order, and I'm back to square on, I've started all over. So I go and hire another attorney and we go over, you know I don't have enough information, I don't know all the reasons that Michael Edney said that I could open and operate as an amusement park, but the reason I applied for an amusement park is the definitions in the Ordinance, if you have a question about like say a mechanical ride, you use the definitions that the US Census Bureau uses. That's how you define anything that you don't understand. If there's a definition or a term or something in there, you go to the Census Bureau. And the definition that they use is the definition that applies. Or if you go to the Us Census Bureau, a motorcycle can be a mechanical ride or is a mechanical ride. That's the point that I applied for this permit on. That's the reason that I applied. Or appealed the permit. It doesn't exclude it or include it under the definition that the Census Bureau uses. What I'm doing is really not, the way the Ordinance in Henderson County is written, it's really an unfair Ordinance. This whole thing has gotten way out of hand. What I was doing, it was there for a year and a half. I bought the property in 2001 and one of the conditions on buying the property, you know I borrowed the money from Blue Ridge Savings Bank to buy the property. Well they had me come down, one of the conditions for them to give me the loan was what I was going to do with the property, was it a doable thing. So we talked to the zoning coordinator at the time and he said yea, I don't see a problem with that and it wasn't a race track, it wasn't a motor sports facility or whatever. And the zoning coordinator pretty much said he couldn't find a reason to give me the permit, he couldn't find a reason to deny me a permit. So he said right now you don't really need one, just operate, nobody's complaining, you don't need a permit. If you apply and we turn you down, then you've got a problem. So I opened it up, I operated for over a year, never had a single complaint. Nobody even knew it was there. I made a mistake, I had a show for the kids. I put on a racing event. It was a local thing, all the kids came and road there, it was just a little race, no money, just prizes and trophies, stuff like that just for the kids that came to my track and kids in the area. And I also had a freestyle event. I had some riders come that do that, it was just a show that do the really stupid things on dirt bikes. They're professionals, they do the x-game stuff, back flips and stuff like that. It was just a show for the kids. Well, the newspaper came out and wrote an article about it and the paper, it was a nice article. And the next they, they just came out of the woodwork to close me down. They thought I was building the Charlotte Motor Speedway, which wasn't the case. Half the people that complained about my track couldn't find it, if you drew them a map to it. That's when I had to apply for the Special Use Permit and then I had to hire J. Michael Edney to help me get through that. But the problem with the Ordinance in Henderson County that we're under right now is a motor sports facility. There's really no provision for... If you owned a hundred acres in Edneyville and you had a 10

year old kid. He had a friend come over for the weekend, that friend brought his dirt bike, and your son had a dirt bike, if you rode on that hundred acres, you would be running a motor sports facility under the Ordinance in Henderson County. If you do not own that property, you can't ride a dirt bike on that property. You'd be operating a motor sports facility. As reaching as it is, there's some mistakes and some loopholes in it. And the amusement park is one of the things. The definition of a motor sports facility, I think I have, anyway as long as there's no racing events, time or speed, or qualifications or anything like that."

Ms. Berry said, "Here you go, if you want it. There's the definition right here. Just find the one you're looking for."

Mr. Bennett said, "What I'm actually doing is, to be able to do it inside an amusement park, ride the dirt bikes on a fixed course, as long as you weren't racing or doing time trials or competitions or anything like that, as long as it was just for amusement only, then you could ride a dirt bike as a mechanical ride. It's really not what people think it is. This is a bad time, I know. They're trying to build a racetrack and there's a lot of attention being brought to motocross the past couple of months. Nothing's been going on for over a year, since I got turned down. But what I'm trying to do is, we just need a place in Henderson County where kids can come and ride a dirt bike. We need a place in Western North Carolina, there's not a place in Western North Carolina where you can go ride a dirt bike. And if you look at where this property's at, I'm in an Industrial Park. I'm in the flood plain, there's no other, you can't use the property for anything else. You can't build on it, you can't do anything else with it. The only thing you can do is some of recreation or park. It's not all about dirt bikes, it's not a bunch of people coming out there and tearing up land and everything. It's in awful shape right now, but at one point, I've been closed for over 2 years, every bit of extra money I've had has went to some attorney, Michael Edney or Robert Dungan or somebody. The thing is, at one point that park was very nice. When I bought the property, we spent over \$50,000 just cleaning it up. It was such a good deal when I bought it that I couldn't see anything, it was grown up and there was a 6 foot car path all the way around it where you could go and just ride the property line. And I knew there was nothing in the middle. But when I bought it we hauled over 50 junk cars, probably 20 loads in a dump truck to the land fill, refrigerators and pots, people had been using it for an illegal dump for years. The property had been vacant since, I don't think anything, I think they had some bean fields on it back in the 60's. We cleaned up the bank and had picnic tables, there's a playground out there, cleared the roads going into it and fenced the whole place in, planted some, we had gardens, had a bicycle path and a walking path down by the river, had a sprinkler system. That was one of the things that we were worried about at the public hearing, was dust issue. My motocross track, the way it lays, it takes up about a quarter of the property but it's over a mile long just the way it serpentine and loops and stuff like that. I have my sprinkler system is over a mile long and covers the entire track. And then I have a small track for kids. It is supervised. We have, like big bikes can't ride with little bikes. Adults can't go out with the kids. Everything separated, everything's supervised. We're willing to do skateboards and air soft. We had a deal worked out with Southern Concrete has a depot about 2 miles down the road from where my track is and they'd agreed to donate the concrete to build a skatepark. When trucks go out, they always go out with more concrete than what they need so they don't have to come back or quit in the middle of a job and come back and get another load. Well, they can't go back in the evenings with those trucks full of concrete. So anything left, you might get a yard, you might get 3 yards. It just depends on what's left over in that truck. But they have to have a place to slag it out. And we're gonna build a skatepark out of concrete. We had big plans for the place. It was a really nice park. It's beautiful in summer and spring when you go down there. There's apple trees. It's completely buffered. Where it's located, it's not disturbing anybody. On one side there's about half a mile of pasture land that one of the clients uses. They pump all their pulp across the thing and filter it through that field. And on the other side of that field, there's I-26 and a weigh-station. And if you go on the opposite side, there's railroad tracks, an industrial park, several plants and then a five-lane. And on the other side, there's nothing but swamp and Duke Power land. And on the other side, it's all industrial park, rubber plant, Branford wire. It's in the middle of nowhere. That's really all I have to say. I think under the Ordinance and if you look at that definition from the Census Bureau, the only problem with the park

would be the dirt bikes. And I think, if you look under the Ordinance now, if you look at the definition of the Census Bureau has, it does include, it can include a dirt bike. A dirt bike can be a mechanical ride.”

Mrs. Pouch said, “If you don’t have the dirt bike track, what would you do with the property?” Mr. Bennett said, “Well, I’ve tried to do several things. At one point I was going to sell it to a guy.” Mrs. Pouch said, “Would you still put like rides, amusement rides or just...” Mr. Bennett said, “I really need the skateboards and the dirt bikes. Those are the most important. The airsoft and everything else, it would be fun, but in order to pay for the park and keep it up, you really do need the dirt bikes and the skateboards. Those are the two most important.” Chairman Phelps said, “So mountain bikes, non-motorized, wouldn’t work.” Mr. Bennett said, “Actually yea, it would and I planned to do that. I do have area for, I don’t know if it’s on this site plan. I don’t know if we talked about it or not. But I had, one of the site plans that I had submitted did have mountain bikes. But it wasn’t actually mountain bikes, but it was a BMX bike.” Chairman Phelps said, “One that they have to pedal and use some calories instead of sitting on their can.” Ms. Berry said, “That wasn’t a problem as far as, I think his application in the narrative, he did mention BMX bikes and mountain bikes as well.” Mr. Bennett said, “But the reason that dirt bikes would be so important in this County, a lot of people don’t realize it, but within five miles of where we’re at right now, there are 4 motorcycle dealers. The biggest Kawasaki and Suzuki dealer in West North Carolina is right down the road on Kanuga Street. Then there are Harper’s, Schroader’s. Their bikes are pretty big business around here. I grew up in Fairview and that area over there, I’m forty and 20 -25 years ago, I could take my dirt bike and I could push it out, push it down the road and anywhere a 30 minute push from my house, I had 15 different options in places to go ride. You cannot find one (someone coughed). There’s just nowhere. The closest place that you can go ride legally would be Tennessee, up near Morristown Tennessee. There are a few places in South Carolina but 2 of them are gone now. There was one in Brevard, that’s the one that was just in the paper recently and it’s no longer there.”

Chairman Phelps said, “You said it is basically an industrial park area that this is in.” Mr. Bennett said, “Yes sir.” Chairman Phelps said, “And I assume no objection from the immediate adjoining.” Ms. Berry said, “The adjoining property owners aren’t notified when it’s permitted by right. You just walk in the office and apply of a permit. Your adjoining property owners aren’t notified.” Chairman Phelps said, “They would not know of this hearing.” Ms. Berry said, “I believe Joyce did go ahead and notify the adjoining property owners to be on the safe side. Our Ordinance didn’t require that we did it, but we did it anyway.” Mrs. Karpowski said, “Of the hearing, of the hearing tonight.” Chairman Phelps said, “That you would be considering in the notice.” Ms. Berry said, “It said in the notice that Mr. Bennett appealed my decision for an amusement park, I believe is what it stated.” Chairman Phelps said, “And no response, Joyce.” Ms. Berry said, “We had one gentleman here a while ago, but he was for, it wasn’t about this issue. It was about another issue.”

Mr. Bennett said, “There has been opposition to my track, all the way from Flat Rock. One guy in Flat Rock said that the noise was so unbearable that he couldn’t sit on his porch. There was opposition but to be honest, I don’t know if you guys come to the Commissioners meetings or the Planning Board or anything like that, the people that oppose my track are here every Wednesday, every open hearing, and if it’s not my track, they’ll find something on the agenda and they’ll, the same poems, the same speeches, just different, they’ll just change the thing. There’s going to be opposition no matter. There’s not a person in the County that wouldn’t say it’s a great idea. But nobody wants it in their backyard. That’s the thing about an industrial park, it’s not in anybody’s backyard. And if it is, that industrial park was there before it was their backyard. If you’re gonna do it, this is the place to do it. There’s not a better place. It’s load and noisy there anyway. You’ve got railroad tracks, interstate, a five-lane. And actually, my opposition, the closest people to my track actually didn’t have a problem with it. One guy did but, it wasn’t so much him as it was his son. I really don’t think noise was an issue. I did a lot of work at my first public hearing and I was pretty naive and thought I could win. I thought it was a no-brainer, that it was gonna, that I was gonna get my permit. You know I did everything that I could possibly do, I had piles and piles of petitions. I even hired the Sheriff’s department and paid for a noise meter to go to different places and conducted tests. We got permission from the Zoning coordinator to

go out there and have 20 of the biggest, loudest dirt bikes that they make and ride. And it didn't change the noise level one bit. You could stand up at the road, you can park at top of my gate and 20 people can be riding and you can't hear. My driveway's probably two tenths of a mile long and you can sit up there, unless you can actually see into the park, you won't know that anybody's there. The complaints that I've had lately, I was really surprised when I didn't get my permit from the Commissioners. I really thought that I was going to win my public hearing. All through the public hearing I thought I was going to win. I started out with about 50 opponents to my track, and as soon as they found out what it was, I invited them all down to my track when we were doing the noise test, and I invited them all down and they all came. The public hearing was continued and the second time I had a public hearing, it went from 50 opponents to 10. There's just a few that are really opposed to it. They're never gonna, well they're opposed to everything. If I tried to build this track out in the middle of Edneyville, out in the sticks of Edneyville, they'd be opposed to it. It doesn't matter where this track goes, or this amusement park goes, they're gonna be opposed. They oppose everything else, that's just. If you stood outside in front of Ingles or Wal-Mart or anywhere else in Henderson County and you asked the first 500 people that came out, could you have a track right here, would it be a good idea, 499 of those people would either not care or think it was a great idea. You'd be hard pressed to find anybody opposed to it if they actually knew what it was and what it was about."

Mr. Engel said, "When did you do the noise meter, what time of the year?" Mr. Bennett said, "It was in the fall, cause we had to wait till the leaves, we had to wait until everything was dead. Cause I've got a really thick buffer." Mr. Engel said, "The leaves were off, because I know it makes a big difference along the thruway during the winter versus during the summer." Mr. Bennett said, "It was late fall cause they wanted it with, you know, cause I have a thick buffer in the summertime. I mean it's invisible in the summertime, that's how thick it is. But we had to do it in the wintertime, I think it was in October when we did it. I'm not sure, it's probably in the records of the public hearing, but we did have to wait until the leaves were off. And actually you could stand in my park and the way my track's built, is the very bottom part is where the motocross would be. It's in the bottom. You go in and it slopes, it just drops off and the track's in the lowest bottom part. Cause it's under water, if it's gonna flood whenever it has a hard rain, that's where it's gonna flood. And you can't actually hurt the dirt track, it actually helps it when it floods. It brings in a lot of silt and stuff like, but the skate park would be up at the top and it's not very loud. You might hear kids yelling or something like that, but the skate park wouldn't make a lot of noise. But the dirt bikes, if you're standing at the top part of my property on the high ground and there's dirt bikes riding, you can actually hear the trucks on I-26 going down. I mean it's no louder than the interstate. You cannot find a better place."

Mr. Engel asked, "Do you have liability insurance for these uses?" Mr. Bennett said, "Not right, I did however, when I was open. I don't have it right now, cause it's closed down, I couldn't afford it." Mr. Engel said, "I'm surprised you can get it." Mr. Bennett said, "Would you believe it's cheaper for the motocross track or the skateboard park than it is for, if I had a restaurant my insurance would cost more than what it cost. But there's only 3 companies in the world that I found that you can get it from. It's basically like a ski resort, that's just the nature of sports. If you go skiing, if you're an avid skier and you go every weekend, you're gonna break a leg, sooner or later. Or you're gonna hit a tree or something, something's gonna happen to you if you're skiing. That's the way they look at it. Skateboards are dangerous anyway. I think skateboards're more dangerous than a dirt bike, actually. There's more injuries, wrists and ankles and stuff like that on the skateboard. In my park, people get hurt there, I've had people break their wrist, had one guy break a femur, and there was a serious accident there one time, but it's just one of those things. Kids are gonna do it, they're gonna go and they're gonna get hurt." Chairman Phelps said, "Do they sign for events when you come in?" Mr. Bennett said, "Well you have to when you come in the park. You have to sign a rule sheet and a release. If you don't have the safety gear, you can't come in my park. If you don't have pads, if you don't have helmet, if you don't have boots, you gotta have every bit of equipment available to ride in my park." Chairman Phelps said, "And there's someone there monitoring that?" Mr. Bennett said, "Yes, when you come in, you sign that waiver, and then you sign a rule sheet, and on the back of that rule sheet it'll tell you what gear you have to have for the sport. We'll look at it and, if you don't have it or we catch you without it, we'll make

you put it on and if you don't, then you'll have to go. It's just the nature of the sport, you have to be strict, it has to be controlled and you have to have rules. We have people every day getting hurt in this rock quarry over here and people still go up on Couch?? Mountain and ride when they're not supposed to. If you have a place where they can go where it's controlled, there's still gonna be accidents but they're gonna be less and they're gonna be less severe because there are gonna be rules. If you're not following the rules and you're dangerous to others, then you're not gonna be there. Like I say, it's a family oriented park. And we get a lot of teenagers. When the teenagers come they, if you're under 18, you have to have your mother and father with you when you're at my park. You can't just have, both parents have to come and sign the waiver." Mr. Engel asked, "What if they're divorced?" Mr. Bennett said, "Well then they have to have a letter, a notarized letter from the parent that's not there. And you can do that. It's not that hard to do. There's a lot of divorced parents there, but it does happen and it's not that hard. Just have the other person write a letter and have it notarized. And that's fine, that'll work. Believe it or not, when a kid comes to ride, you'd be surprised, even if their parents are divorced, they still both come out and hang out. It's a lot of fun. It's fun to watch. Most of the people that came to my park were there to watch. I might have 20 riders, but I'd have 75 people in my park.'

Chairman Phelps asked, "Any further questions? If not, thank you very much for your presentation. Any further remarks on your part?" Ms. Berry said, "No." Chairman Phelps said, "Then I guess I need a motion that we close the open hearing and go into closed session." Mrs. Pouch said, "I so move that we go into closed session." Mr. Engel said, "Second." Chairman Phelps said, "All in favor say aye." All said aye. Chairman Phelps said, "All opposed say no. The ayes have it. We're in closed session"

Chairman Phelps asked for discussion or questions. Mr. Engel asked Attorney Zambon what the Board is supposed to find – if it meets the requirements of an amusement park. Attorney Zambon said the Board is to decide whether to uphold or overturn the Zoning Administrator's decision to deny a permit. And her decision was based on the definition of an amusement device and mechanical ride, terms used in the definition of amusement park in the Henderson County code. So it comes down to whether a dirt bike is an amusement or a mechanical ride. Attorney Zambon explained that the County code defined amusement park, not amusement device. The Board must find if the dirt bike or any other device Mr. Bennett proposes for the park fall under that definition of amusement park. She explained that the definition of amusement device was taken from the North Carolina State definition and Mr. Bennett contends it should be from the Census Bureau, classifying businesses and industries in the United States. Henderson County code says to base definitions not defined in the code on customary dictionary usages, which is difficult because of the two words used together. It's up to the Board to determine what was meant by mechanical ride and amusement device under the terms of allowing an amusement park.

Ms. Berry cited Section 200-7 for word usage and definitions and explained how she determined her decision using the state definition saying amusement device didn't include dirt bikes and skateboards. Mrs. Pouch asked if there was any approved place for skateboards. Ms. Berry said those 2 items were in the application, so that's why she denied the application; if they weren't, she would have issued the permit. The Board discussed the difference between amusement park, skateboard park and dirt bike park and where these would fall. The Board discussed the noise. Chairman Phelps asked if the new proposed zoning would have any bearing on this. Ms. Berry said no, it's actually worse. The Board discussed the difficulty in finding a place for people to ride dirt bikes and skateboards. Ms. Berry said if an amusement park were less than 200 acres in open use, there's no regulations.

Attorney Zambon said the main question before the Board from her perspective is whether or not a motorcycle qualifies as a mechanical ride or amusement device. The Board discussed whether this was an amusement park or could it be called something else. The Board discussed if they could make a definition and the precedent it would set and ramifications it would have. Ms. Berry explained that she went to the State definition because the State regulates amusement parks and she thought that's the only choice she had. The Board discussed what they felt an amusement park was and where these

other sports should be categorized. Attorney Zambon said they could argue this is a good use for this area and this is the time to give input for this use for the new Land Development Code at one of the input meetings. Mr. Engel asked where the State placed the dirt bikes and skateboards. Attorney Zambon said she didn't check that. Ms. Berry asked if the board could turn it back to the Planning Board for a definition. Attorney Zambon an option was to continue this to the next meeting and in between take it to the Planning Board or Board of Commissioners. She would check with the County Attorney. She feels these Boards will not want to deal with it because the new Land Development Code does define these things. Ms. Berry said they have a motor sports facility, a minor park and major park, with relatively large setbacks, etc. and Mr. Bennett's would not meet any of them. It's the right zoning, just not the right size. Attorney Zambon said that she feels the Planning Board would possibly use the definition in the new Land Development Code. Ms. Berry discussed what the new Code would allow – skateboards, BMX, basically no motorized bikes. Ms. Berry said she denied the application for the skateboard ramps and dirt bikes. The Board discussed this property as suitable for the park surrounded by and interstate, railroad tracks and an industrial park. Ms. Berry pointed out he didn't have the setbacks needed now and had asked for a variance with his original application. The new code will be stricter. But these uses will be allowed somewhere in the County under the new code.

Attorney Zambon said the Board could continue the hearing if the Board wants her or Ms. Berry to do any further research on the definitions. She said if the Board determined that motorcycles were a mechanical device or amusement ride and that Mr. Bennett is an amusement park, then Mr. Bennett would be subject to State laws regulating amusement parks, which have a different set of requirements regulated. And that would be why the State definition would or would not be relevant. The board questioned if they found that way, then he wouldn't be allowed the motorcycles under the State definition. The Board discussed whether or not he would then be an amusement park. Ms. Berry said under our code he would have to meet all local, State and Federal laws, which he would not be able to do with dirt bikes in an amusement park, which is why she denied it. Chairman Phelps said the Board could be empathetic and understanding but they still have to follow the laws.

Chairman Phelps asked if there was a motion or recommendation of what to do at this point. Mr. Engel said the Board could only say whether they agree or disagree with Ms. Berry's decision. Attorney Zambon agreed. Mr. Engel made a motion to uphold the Zoning Administrator's decision to deny the permit for an amusement park based on the information supplied. Chairman Phelps seconded. He asked for any discussion.

Mr. Griffin	-	Abstain
Mr. Engel	-	Yes
Mr. Phelps	-	Yes
Mrs. Pouch	-	Abstain
Ms. Holbert	-	Yes

The Board discussed the vote. Ms. Berry read the By-Laws which state a member not voting is considered an affirmative vote. The Board discussed the vote. Most Board members felt that Ms. Berry did her job and they had to uphold her decision despite the fact that they felt this was a good use for the property but not being called an amusement park. Mr. Griffin made a motion to end the closed hearing. Mr. Engel seconded and all voted in favor.

Chairman Phelps explained that the Board has upheld the Zoning Administrator's decision. The Board discussed with Mr. Bennett that he should try another way to do this.

COMMITTEE AND STAFF REPORTS: None

OLD BUSINESS: None

NEW BUSINESS: Ms. Berry introduced a new alternate Board member Jim Crafton.

There being no further business, Chairman Phelps adjourned the meeting at 7:55 PM. The next meeting is Wednesday, April 25, 2007, at 4 PM.

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Jim Phelps, Acting Chairman

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Joyce Karpowski, Secretary