

March 6, 2008

PRESENT: S. F. Shreckhise, Chairman
 J. W. Callison, Jr., Vice Chairman
 G. A. Coyner, II
 D. A. Brown
 C. E. Swortzel
 J. R. Wilkinson, Zoning Administrator & Secretary
 S. K. Shiflett, Zoning Technician I

ABSENT: None

VIRGINIA: At the Called Meeting of the Augusta County Board of Zoning Appeals held on Thursday, March 6, 2008, at 8:45 A.M., in the County Government Center, Verona, Virginia.

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VIEWINGS

The members of the Board of Zoning Appeals assembled at the Government Center and went as a group to view the following:

- **Wilma C. Walker-Shuey - Special Use Permit**
- **Chap Goodwin, agent for Mark D. Bowles - Special Use Permit**
- **Chap Goodwin, agent for Old Dominion Investors, LLC – Variance**
- **David W. or Ellen B. Fitzgerald - Special Use Permit**
- **Lida W. Higginson - Special Use Permit**

At each location, the Board observed the site and the premises to be utilized. The Board also viewed the development and the character of the surrounding area.

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Chairman

Secretary

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PRESENT: S. F. Shreckhise, Chairman
J. W. Callison, Jr., Vice Chairman
G. A. Coyner, II
D. A. Brown
C. E. Swortzel
J. R. Wilkinson, Zoning Administrator & Secretary
S. K. Shiflett, Zoning Technician I
B.B. Cardellicchio-Weber, Administrative Secretary

Absent: None

VIRGINIA: At the Regular Meeting of the Augusta County Board of Zoning Appeals held on Thursday, March 6, 2008, at 1:30 P.M., in the County Government Center, Verona, Virginia....

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MINUTES

Mr. Coyner moved that the minutes from the February 7, 2008 meeting be approved.

Vice Chairman Callison seconded the motion, which carried unanimously.

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Chairman Shreckhise stated the procedure for the meeting will be that Mr. Wilkinson will read each request. Afterwards the applicant will come forward to present information regarding the request, and then anyone wishing to speak in favor of the request may do so, and then anyone wishing to speak in opposition to the request may do so, and then the applicant will have the opportunity for rebuttal. Each person speaking is asked to state their name and address for the record. He stated that the Board will hear nine (9) public hearings as well as one item of old business which is the Expo motor cross track which is the last item on the agenda today. He stated that the Board has already had the public hearing on the motor cross request but because of the number of opposition to the request and a lot of people in favor of the request, the Board has decided to reopen the

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public hearing. He stated that there will be a strict limitation on the amount of time that you are permitted to speak in favor or in opposition to the motor cross. He stated that the Board will be very precise with the time limit. He stated that if the Board gets to the motor cross request before 2:45 p.m. they will have a recess. He stated that if anyone is here today strictly for the motor cross they can go in the hall until that time and they will not miss anything. He stated that since the Board is limiting the amount of time, this would give anyone an opportunity to condense their thoughts or confer with a colleague any thoughts that you might not have time to address because the Board will be limiting each speaker to two (2) minutes for new information.

Mr. Swortzel stated that the Board has heard three and half hours of public hearing already. He stated that they do not want to hear information that was presented at the December meeting. He stated that they have already received all of the letters that were written so the Board does not need to hear the letters because we have read them. He stated that they are looking for new information and not a continuation of issues discussed in December.

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JESSIE WILMER, AGENT FOR NTELOS - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Jessie Wilmer, agent for Ntelos, for a Special Use Permit to expand the existing compound area in order to co-locate on the existing tower on property owned by Crown Communications, Inc. located on the east side of Jerusalem Chapel Road (Route 720), approximately .5 of a mile southwest of the intersection of Jerusalem Chapel Road (Route 720) and Hankey Mountain Highway (Route 250) in the Pastures District.

Ms. Jessie Wilmer stated that she is representing Ntelos. She stated that they are co-locating on this existing tower. She stated that they need to expand the compound for their base station equipment. She stated that Ntelos is working on expanding the PCS wireless coverage on Route 42 South from Churchville to Craigsville this year and then from Bridgewater down to Churchville next year. She stated that she will be back before the Board in the future.

Chairman Shreckhise asked if there was anyone wishing to speak in favor, or in opposition to the request?

There being none, Chairman Shreckhise declared the public hearing closed.

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Mr. Wilkinson stated that they have received the data from our consultant, Atlantic Technologies, and this co-location complies with the Augusta County Zoning Ordinance. He stated that the consultant recommends approval of the request.

Mr. Swortzel moved that the request be approved with the following condition:

Pre-Conditions:

None

Operating Condition:

1. Applicant obtain building permit and provide a copy to Community Development.

Ms. Brown seconded the motion, which carried unanimously.

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DAVID W. OR ELLEN B. FITZGERALD - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by David W. or Ellen B. Fitzgerald, for a Special Use Permit to construct two wind energy systems on property they own, located on the south side of Wayne Avenue (Route 639), approximately .4 of a mile east of the intersection of Wayne Avenue (Route 639) and Draft Avenue (Route 608) in the South River District.

Mr. David Fitzgerald stated that he has been farming for thirty (30) years. He stated that South River crosses his land. He stated that they are looking at the economics of irrigation. He stated that the new drip style irrigations allow them to put plastic on the ground and to supply the water for that. He stated that they are requesting to be able to put a well in to get the water from underground and also use wind energy to offset the cost of electricity for running the pumps. He stated that he does not have all of the details of information. He stated that they need an approved tower site, how they are going to get electricity there, and they need to do the study for the well. He stated that they are in the preliminary stages of getting this going but the first and most important thing is the tower site. He stated that they are looking to also put a smaller wind turbine on the old windmill at the house to generate electricity for the house.

Mr. Coyner asked if the structure near the house would be replaced in order to put the tower up?

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Mr. Fitzgerald stated that they would be able to use that structure and put a mast type pole up through that. He stated that they would have to go higher than what that is because the turbine blades would strike that style that is there now but they are actually able to use that tower.

Mr. Coyner stated that the applicant had two or three sketches of different kinds of blades. He asked how would the applicant determine which one would be used?

Mr. Fitzgerald stated that the most popular kind is one that sits on top of the tower that spins 360 degrees. He stated that because of the location majority of the wind flows in one direction. He stated that in part of their studies they will determine whether they need three (3) or four (4) smaller turbines mounted on a taller tower or whether they can have a coffee can style turbine which spins in a round motion. He stated that the technology is changing. He stated that the first part is to know if they have an approved tower site.

Vice Chairman Callison asked if the applicant was leaning more toward one site than the others?

Mr. Fitzgerald stated that they were looking at studying several different sites but the one that they have on the plat appears to be the better one. He stated that it is down and further away from the road. He stated that the tower and turbine will be hidden because it is within the mountain area.

Mr. Wilkinson asked if that would be behind the house?

Mr. Fitzgerald stated yes, between the house and the river.

Ms. Brown asked if the can style turbine is stronger than the three blade turbine?

Mr. Fitzgerald stated that it is more economical because you are not putting something on top of the tower. He stated that the technology still needs to be studied. He stated that the stronger the wind blows the more energy he can offset. He stated that he would like to have something that takes a higher wind volume. He stated that some automatically shut off when there is too much wind.

Ms. Brown asked if he will be storing the extra energy to use?

Mr. Fitzgerald stated that the power companies have a net energy program. He stated that if he is using a lot of energy but there is no wind, the meter runs in their direction. He stated that if the wind produces more energy than what he is using, the meter runs in his direction. He stated that at the end of the year they should balance each other

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out. He is not interested in selling energy to the power company but he wants to use it to pump the water in order for him to run his irrigation systems.

Mr. Coyner stated that one proposal for the tower would be one hundred ninety (190') feet. He asked if that is what he needs or is it not determined yet?

Mr. Fitzgerald stated they have not determined that yet because the best wind is the highest wind. He stated that economics tell you that you cannot go three hundred (300') feet. He stated that economics and technology will make the tower shorter and shorter. He stated that they are recommending to him that he have a tower that is one hundred ninety-five (195') feet which is under the aviation requirements. He stated that if it is economically better to build one smaller than he would not have to come back before the Board.

Chairman Shreckhise stated that he understands that the applicant would like to have an indication before he proceeds further with the studies. He stated that the applicant may be better off if this request gets tabled so that the applicant can get more exact information than the Board limiting a specific height and location. He stated that if the studies are done and this does not suit then the applicant would need to reapply in order to get the permit.

Mr. Fitzgerald stated that the study part of it will take more than ninety (90) days. He stated that the economic part needs to be played in. He stated that his request would be for one hundred ninety-five (195') feet and if it comes back to have one taller then he could reapply. He stated that it would be good to know what the basic steps are so he can develop the road as he is getting everything else ready.

Mr. Wilkinson stated that the applicant is leaning toward Option A with the one (1) large turbine.

Mr. Fitzgerald stated that Option A is what has been working the best in the past. He stated that Option A is the most popular way to do this. He stated that Options B and C are options that he would rather work with because they can be more economical.

Mr. Swortzel stated that Option A would be down behind the barn.

Mr. Fitzgerald stated that Option A would need a maximum height of one hundred ninety-five (195') feet.

Mr. Swortzel stated that the barn will obstruct most of the view of the turbine.

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Mr. Fitzgerald stated that the site between the house and the river will make the tower be hidden behind the mountains.

Mr. Swortzel asked how close would the applicant plan on putting the tower from the barn?

Mr. Fitzgerald stated three hundred (300') feet from the barn.

Ms. Brown asked if the existing tower will be moved away from the house?

Mr. Fitzgerald stated that he is looking at leaving the existing turbine right by the house. He stated that the wind coming around from the building may distort the power of the wind so that it might actually not be the site that they would need to use in the future but at that time he would need to come back before the Board.

Ms. Brown asked if the blades are faced where the wind blows into?

Mr. Fitzgerald stated that the new technology is where the blades are actually turned to the back of the turbine. He stated that they pick the direction for the best economic use.

Mr. Coyner asked what the span is for the propeller on the one hundred ninety-five (195') foot turbine?

Mr. Fitzgerald stated that the diameter would probably be sixty (60') feet. He stated that the top of the blades would have to be below the one hundred ninety-five (195') feet.

Chairman Shreckhise asked if there was anyone wishing to speak in favor, or in opposition to the request?

Mr. Scott Winfield, 97 Twin Springs Lane, Stuarts Draft, stated that everyone is in favor of preserving open space and agriculture. He stated that this is another tool in the toolbox for the farmer that is trying to make a living. He stated this is a way for a farmer to offset some cost and maybe in the end it prevents him from selling a lot. He stated that someone that is zoned Exclusive Agriculture should be able to put a wind turbine up without a Special Use Permit.

Chairman Shreckhise asked if there was anyone else wishing to speak in favor, or in opposition to the request?

There being none, Chairman Shreckhise declared the public hearing closed.

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Mr. Swortzel stated that he is not opposed to the request but the Board should know the exact position of the towers and the exact height of the towers.

Mr. Coyner stated that the Board is in support of the request but they need to know more information. He asked how long would the applicant need to find out more information?

Mr. Fitzgerald stated that the economics of the study get expensive. He stated that they need to know that they have a tower site. He stated that with the irrigation plans he would need to go ahead within the next thirty (30) days and put them underground. He stated that it would be good to know that the tower site is available even if the Board would like to have special restrictions.

Chairman Shreckhise stated that if the Board grants the tower site and height and if the studies show another tower site is needed or a higher tower, then the applicant would need to reapply in order to do something other than what the Board approved. He stated that the Board needs to have a specific location for the tower.

Mr. Fitzgerald stated that the main tower would be at that location. He stated that the smaller tower at the house could be in another location there is too much wind disturbance from the building.

Chairman Shreckhise stated that if they grant the permit it would be for a specific location and the permit would not be good if the turbine needs to be moved.

Mr. Fitzgerald stated that if that site does not work, he would rather reapply for a different location after it is determined that the location is not acceptable.

Mr. Coyner stated that the applicant sounds like he wants to get the permit moving. He stated that the applicant will reapply if the smaller turbine needs to be moved. He stated that the mountains will hide the turbine.

Mr. Wilkinson stated that the Board may consider a setback from the house equal to the height of the tower. He stated that he may want to move the turbine seventy-five (75') feet away from the house just in case it would collapse.

Mr. Swortzel stated that if the applicant needs to move the smaller turbine it should be a minimum of at least seventy-five (75') feet away from the house. He moved that the request be approved with the following conditions:

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Pre-Conditions:

1. The applicant will submit the \$25,000 removal bond described in (2) below.
2. The applicant will submit a site plan meeting the requirements of Section 25-673 “Site Plan Contents” of the Augusta County Zoning Ordinance to be approved by all appropriate departments and/or agencies.
3. The applicant will provide a copy of the FAA approval.

Operating Conditions:

1. The height of the tower shall not exceed 199’.
2. The applicant will notify the Augusta County Community Development Department within thirty (30) days of the date the tower is no longer used for wind energy or telecommunications purposes. The tower shall be disassembled and completely removed from the site within ninety (90) days of such notification. Pursuant to Section 15.2-2309, paragraph 6 of the Code of Virginia: “The applicant shall provide bond with appropriate surety in the amount of \$25,000 to insure compliance with this stipulation. The applicant will ensure the bond shall remain in effect until at least six (6) months following notice to the Augusta County Community Development Department that wind energy or wireless telecommunications have been discontinued.
3. The applicant will comply with all FCC regulations.
4. Tower will be a matte non-buffed or non-reflective type finish.
5. If smaller turbine needs to be moved from the current location, it should be a minimum of at least seventy-five (75’) feet away from the house.

Mr. Coyner seconded the motion, which carried unanimously.

Chairman Shreckhise stated that if there are any changes to the site location then the applicant would need to reapply.

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HARRY L., SR. AND LINDA B. DOVEL - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Harry L., Sr. and Linda B. Dovel, for a Special Use Permit to construct a building for personal and passive recreational use on property they own, located on the north side of Coal Road (Route 42), approximately .3 of a mile north of the intersection of Coal Road (Route 42) and Cold Springs Road (Route 608) in the Riverheads District.

Mr. Harry Dovel stated that the structure that they would like to build is for their personal use.

Chairman Shreckhise stated that the closest neighbor is not even within sight of this structure.

Mr. Dovel stated that they have one (1) neighbor that is across the yard. He stated that they have signatures from neighbors in favor of them having the building.

Mr. Coyner stated that this is for his personal automobiles.

Mr. Dovel stated yes. He stated that he does not leave anything outside.

Mr. Coyner asked if this would be a pole building?

Mr. Dovel stated that this would be a regular garage with storage on the top with eight (8) bays.

Chairman Shreckhise asked if there was anyone wishing to speak in favor, or in opposition to the request?

Mr. George Rhodes from Mount Crawford stated that he is the builder. He stated that in order to build two (2) buildings it would require sixty (60') more feet of wall and will cost them more money. He stated that they are not located near any of their neighbors.

Chairman Shreckhise asked if there was anyone else wishing to speak in favor, or in opposition to the request?

There being none, Chairman Shreckhise declared the public hearing closed.

Vice Chairman Callison moved that the request be approved with the following conditions:

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Pre-Condition:

1. Applicant obtain building permit and provide a copy to Community Development.

Operating Conditions:

1. Garage be limited to 30' x 100'.
2. Garage be for personal use, no business use of the building.

Mr. Swortzel seconded the motion, which carried unanimously.

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WILMA C. WALKER-SHUEY - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Wilma C. Walker-Shuey, for a Special Use Permit to have a personal kennel on property owned by Leslie J. or Wilma C. Walker, located on the north side of Laurel Hill Road (Route 612), just east of the intersection of Laurel Hill Road (Route 612) and Westgate Road (Route 1925) in the Middle River District.

Ms. Wilma Shuey stated that she did not know that she needed a Special Use Permit in order to have five (5) dogs. She stated that she has two (2) boxers on the outside within an 11 x 50 chain link fence that is six (6') feet high. She stated that the only reason that she has them is to watch her property. She stated that she has three (3) small dogs in the house and they have a four (4') foot chain link fence in order to go out. She stated that she has two (2) smaller dogs that are both about seven (7) years old. She stated that she also has a small dog that is eighteen (18) years old.

Mr. Swortzel asked if the applicant planned on replacing the eighteen (18) year old when it passes?

Ms. Shuey stated that she is not planning on replacing them when they pass on. She stated that they are all neutered and spayed. She stated that they are all pets.

Ms. Brown asked if the wooden fence is hers?

Ms. Shuey stated that is her privacy fence between her and the neighbor.

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Chairman Shreckhise asked if there was anyone wishing to speak in favor, or in opposition to the request?

Ms. Louise Fultz, 206 Rolla Mill Road, Verona, stated that Ms. Shuey's dogs are well cared for and they are well behaved. She stated that she has ample space for them to roam and play. She stated that the doghouses are kept clean. She stated that her dogs are good dogs.

Chairman Shreckhise asked if there was anyone else wishing to speak in favor, or in opposition to the request?

There being none, Chairman Shreckhise declared the public hearing closed. He stated that this is for a kennel permit but the only reason she is here is because she has one more dog that what is allowed without the permit and after the dog passes then she would be within the limits and would not need the Special Use Permit.

Mr. Swortzel stated that he does not see extending the fence for a dog that is eighteen (18) years old. He stated that the older dog is kept inside. He moved that the request be approved with the following conditions:

Pre-Conditions:

None

Operating Conditions:

1. Be limited to five (5) dogs until such time as the older dog passes, after that the dog will not be replaced. The Special Use Permit will then expire.
2. Applicant will notify Community Development when the older dog passes.
3. Dogs be confined within the 6'x 8' doghouse from 9:00 p.m. until 7:00 a.m.

Vice Chairman Callison seconded the motion, which carried unanimously.

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LIDA W. HIGGINSON - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Lida W. Higginson, for a Special Use Permit to have a personal kennel on property she owns, located on the

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north side of Boy Scout Lane (Route 806), just west of the intersection of Boy Scout Lane (Route 806) and Trimbles Mill Road (Route 707) in the Pastures District.

Ms. Lida Higginson stated that she is requesting the Special Use Permit in order to be legal with the number of dogs that she has because she has six (6) dogs. She stated that this is not a commercial operation. She stated that three (3) of her dogs are strays and rescues. She stated that she sometimes picks up strays and rescues dogs. She stated she will not have any more than eight (8) dogs at one time.

Mr. Coyner asked if she would ever expand her operation?

Ms. Higginson stated that she would like to go the other direction. She stated that she will not ever expand her operation.

Mr. Coyner asked if she would ever become a breeder?

Ms. Higginson stated no.

Mr. Wilkinson stated that this is a horse farm operation.

Ms. Higginson stated yes.

Chairman Shreckhise asked if there was anyone wishing to speak in favor, or in opposition to the request?

Ms. Victoria Godfrey, 304 Cattleman Road, Swoope, stated that she is her neighbor. She stated that she lives about two (2) miles from her. She stated that Ms. Higginson has a soft spot for animals and takes good care of them. She stated that her horses are well cared for and her dogs are not so much outside dogs because they sleep on the sofa. She stated that her dogs are always under control and they do not wander off of the property.

Chairman Shreckhise asked if there was anyone else wishing to speak in favor, or in opposition to the request?

There being none, Chairman Shreckhise declared the public hearing closed.

Ms. Brown stated that the Board visited the site today. She stated that the farm is neat and orderly. She moved that the request be approved with the following conditions:

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Pre-Conditions:

None

Operating Conditions:

1. Maximum of ten (10) adult dogs kept at this site at any time.
2. All dogs be confined within the designated area on the site plan or within the home unless under direct control of the applicant.
3. Site be kept neat and orderly.

Mr. Swortzel seconded the motion, which carried unanimously.

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STANLEY M. OR DEBORAH J. HORST - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Stanley M. or Deborah J. Horst, for a Special Use Permit to construct additional rental cabins on property owned by John M. and Charlotte Hodge, located in the western quadrant of the intersection of Creekwood Lane and Reeds Gap Road (Route 664) in the South River District.

Mr. Stanley Horst stated that he would like to add three (3) more rental cabins similar to what they already do. He stated that he currently has nine (9) rental cabins which he has owned since 1995. He stated that the rental cabins have been in the family since 1981. He stated that they have not had any problems with the neighbors, businesses, or the guests. He stated that they try to maintain a good relationship with their neighbors and it includes keeping the facility neat and orderly. He stated that in 2006 they realized that they needed a Special Use Permit in order to operate the rental cabins. He stated that they took it upon themselves at that time to bring this within the requirements.

Ms. Brown asked if the cabins are open year round?

Mr. Horst stated yes.

Chairman Shreckhise asked if there was anyone wishing to speak in favor, or in opposition to the request?

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There being none, Chairman Shreckhise declared the public hearing closed.

Mr. Coyner stated that the business has operated for years and they have yet to have a complaint. He moved that the request be approved with the following conditions:

Pre-Conditions:

- 1. Applicant obtain building permit and provide a copy to Community Development.
- 2. Obtain Health Department approval and provide a copy to Community Development.

Operating Conditions:

- 1. Site be kept neat and orderly.
- 2. Any new outdoor lights require site plan submittal and must meet ordinance requirements.

Mr. Swortzel seconded the motion, which carried unanimously.

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EDWARD SHEETS - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Edward Sheets, for a Special Use Permit to have a plumbing business on property owned by Doris S. Wright, located in the southeast quadrant of the intersection of Lee Highway (Route 11) and Whitehill Road (Route 654) in the Riverheads District.

Mr. Edward Sheets stated that he lives three hundred (300) yards from the site in question. He would like to have an office at the site as well as storage for a plumbing business.

Mr. Wilkinson asked if there would be vehicles stored outside?

Mr. Sheets stated that there would be a few licensed company vehicles. He stated that he will have two (2) to four (4) employees. He stated that there will be no onsite employees. He stated that the employees will drop off their vehicle and pickup the company vehicle in order to go to the jobsite.

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Chairman Shreckhise asked if there would be outside storage?

Mr. Sheets stated that there will not be any outside storage just vehicles for the employees.

Mr. Wilkinson asked if the applicant will have a dump truck?

Mr. Sheets stated yes and it will be licensed. He stated that all of the storage will be inside the building. He stated that the back lower end will be used as storage and the building will be used as an office.

Chairman Shreckhise asked if there was anyone wishing to speak in favor, or in opposition to the request?

There being none, Chairman Shreckhise declared the public hearing closed.

Mr. Wilkinson read the letter that was received from Rosemarie West to the Board (copy of letter is in the Special Use Permit file).

Vice Chairman Callison stated that there has been a business at this site for quite some time and there have been various uses of property for many years. He asked the applicant if four (4) licensed vehicles and one (1) licensed trailer would be sufficient?

Mr. Sheets stated yes.

Vice Chairman Callison moved that the request be approved with the following conditions:

Pre-Conditions:

1. Obtain Health Department approval and provide a copy to Community Development.
2. Obtain letter of approval from Building Inspection Department and provide a copy to Community Development.

Operating Conditions:

1. Be limited to four (4) licensed company vehicles and one (1) licensed trailer outside.

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- 2. All equipment, machinery, and materials for the business be kept inside the pole barn.
- 3. No junk or inoperable vehicles, equipment, or parts of vehicles or equipment be kept outside.
- 4. Site be kept neat and orderly.
- 5. Be limited to two (2) employees.
- 6. The only sign to be permitted for this business is one (1) on premise business sign not to exceed twelve (12) square feet.
- 7. Any new outdoor lights require site plan submittal and must meet ordinance requirements.

Mr. Coyner seconded the motion, which carried unanimously.

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CHAP GOODWIN, AGENT FOR MARK D. BOWLES - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Chap Goodwin, agent for Mark D. Bowles, for a Special Use Permit to use an existing dwelling, bank barn, and machine shed for a specialty construction business on property owned by Kevin H. or Vonda L. Lacey, located on the west side of Springhill Road (Route 613), approximately .6 of a mile north of the intersection of Springhill Road (Route 613) and Hidden Hollow Lane in the North River District.

Mr. Chap Goodwin stated that he is representing Mark and Beth Bowles who are the owners of Mountain Valley Tower Service who are the contract buyers of the property from Kevin and Vonda Lacey. He stated that currently Mark Bowles' business is based in the City of Staunton. He stated that they erect and make repairs to cell towers. He stated that they install cell towers generally in other states including Maryland, Pennsylvania, and North Carolina. He stated that the business office will be doing the billing and they keep track of invoices. He stated that this is not a business where the public would come to the site. He stated that employees do not come to the site. He stated that when they go out of town they are gone for three (3) to four (4) weeks. He stated that the cell towers are delivered to the sites. He stated that the equipment is rented for the business. He stated that the company itself will have one (1) secretary that comes to the site daily. He stated that the Bowles live on Springhill Road about a mile away and they intend to build a new home on the site. He stated that they have

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received an approved entrance to serve the building and it will also serve the house site on the top. He stated that the original plan had been to use the entrance by the existing dwelling and that has been changed which will avoid any problems with site distance. He stated that they will have a restroom and a septic permit has been issued. He stated that there will be handicapped accessible entrances and handicapped parking spaces. He stated that the site plan shows parking for the employees and it shows an eight (8') foot high fence around the perimeter. He stated that they will also have landscaping trees in front of the fence which will make the property invisible from the road or from the other neighbors. He stated that the house on the right hand side is presently rented and possibly at a later date they may use that as an office for the business. He stated that the plan is to construct within one of the bays of the machine shed an office which will be the primary office on the property. He stated that they do have the Highway and Health Department permits. He stated that the site will be kept neat and orderly. He stated that there will be no junk or inoperable vehicles. He stated that the equipment will be in the machine shed and in the barn. He stated that the parts, antennas, and brackets are all taken out to the jobsites when they are making repairs. He stated that the company vehicles will be kept in the machine shed or between the buildings in the screened area. He stated that they will have twelve (12) employees plus one (1) secretary. He stated that they are in agreement with the sign limitations. He stated that there will be no extra outdoor lights at the site.

Mr. Coyner asked if the applicants are purchasing the property?

Mr. Goodwin stated yes. He stated that the applicant intends to build on the property. He stated that Mrs. Bowles has already bought the horses to put on this farm that she and her husband intend to building on and live on.

Mr. Coyner stated that they have had better success with Special Use Permits when the applicant lives on the property. He asked what the timeframe would be on building the dwelling?

Mr. Goodwin stated that as soon as they can get the dwelling built. He stated that the closing on the land is tomorrow. He stated that the house could be built within a year.

Mr. Coyner asked if the Board makes this request contingent upon being a resident within two (2) years would that be acceptable?

Mr. Goodwin stated yes.

Chairman Shreckhise asked if there was anyone wishing to speak in favor, or in opposition to the request?

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Mr. Gary Davenport, 220 Cypress Lane, Mount Sidney, stated that he has known Mr. Bowles for many years. He stated that his business is run in a professional manner. He stated that he drives by this property several times a week and right across the road there are some poultry houses. He stated that with the proper screening it will not be a detriment at all to the area.

Chairman Shreckhise asked if there was anyone else wishing to speak in favor, or in opposition to the request?

Mr. Eric Cobb stated that he is a representative for Ingleside Resort and Crescent Mortgage. He stated that he has known Mr. Bowles for twenty (20) years. He stated that he has always been professional.

Chairman Shreckhise asked if there was anyone else wishing to speak in favor, or in opposition to the request?

Mr. Thomas Spencer stated that he is a lawyer from Lexington. He stated that he would like to speak on behalf of Dr. Hudson. He stated that he would like to remind everyone what zoning laws are for and Special Use Permit procedures. He stated that they have a strong component of our life invested in private ownership, however, there are limitations on that. He stated that these efforts are to try to control the land use in a way that they can be good stewards of the land. He stated that in 1995 this land was zoned agricultural. He stated that two directions adjacent to this land have been permanently committed to agricultural use. He stated that this Board should protect the interest in the community as well as private ownership rights of real estate. He stated that part of that is an old abandoned portion of Route 613. He stated that the proposal does not provide any screening from their side. He stated that the entrance does not have enough site distance and then you come down into the valley where the commercial entrance will be located but if you go up the driveway up to the Hudson you look down into the back of the machine shed and barn. He stated that if you are going east on Springhill Road as you top the hill, you will look down onto the commercial entrance and the fence. He stated that they understand that they are nice people and hope they make good neighbors, however, Special use Permits are employed only if there is a community need or if the present zoning works a hardship on the land owner for them to have to comply with the zoning ordinances. He stated that to convert this into a business location would be a convenience for Mr. Bowles to conduct his business at home and presumably cheaper than if he bought business property for the storage of his vehicles. He stated that personal convenience is not a good reason for a Special Use Permit. He stated that the staff report does not favor the use of this as a business property. He stated that he sees no community need. He stated that there is property zoned business only five (5) miles away. He stated wouldn't we all want to work at home. He stated that the applicant proposes to put up a fence. He stated that he also

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proposes that they will do both, however, the site plan does not show the pine trees on it. He stated that it only shows the fence. He stated that it does not show any screening on the back side or the right hand side. He stated that to build a commercial entrance into a business property does not make this compatible with agricultural uses. He stated that they are converting a farm into a business. He stated that they will have trucks, cable storage, an office, and twelve (12) employees. He stated that if they want to operate an office within a home it would be permitted under the zoning. He stated that they can rent a business piece of property to store the vehicles. He stated that they will not have any more additional lights. He stated that the fact that the highway department gave the entrance does not mean that this is an adequate use for the land. He stated that this would not be a proper function of a community need. He stated that they would ask that they not approve this permit.

Mr. Coyner stated that the machine shed opens towards the east which means coming from the doctor's house you look at the rear of the wall of the building. He asked what more would you want to screen?

Mr. Spencer stated that they would go up to the east side of the property.

Mr. Swortzel stated that the shed will have a solid back facing the neighbor's property on the hill.

Mr. Spencer stated that according to the drawing there will be parking spaces on the site as well as twelve (12) employees. He stated that they are changing the use of the land. He stated that when the Hudsons go up to the property they will be looking right down onto the activity of the business. He stated that the Bowles may intend to screen the site because their building site for their home will be right up the hill where they will be looking down at it. He stated that they may look on this more favorably than a neighbor might. He stated that the Board needs to look to see if this is a compatible use with the land and not affect the neighbors.

Dr. Mark Hudson, 3102 Springhill Road, stated that as the Board looks at the drawing there is a driveway that curls off to the right and from that point up he would be viewing the property to his left. He stated that coming down the hill it would be viewed on the right. He stated that there is a large parking lot that is out in front as well as a large driveway. He stated that the shed is facing the opposite direction of all the vehicles that will be present. He stated that this would be viewed as a construction storage site instead of a farm. He stated that would be viewed from his property coming and going each day. He stated that there is a proposed gate on the site plan but proposed does not mean that there will be a gate at the site. He stated that they are talking about future offices at some point. He stated that there is nothing that says that they will not use the other access to get to the house.

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Mr. Swortzel stated that the driveway that you go in is shared with the big home now. He asked if that is his driveway or is there a right of way?

Dr. Hudson stated yes. He stated that it is an abandoned road beyond which a certain point is a deeded driveway, his alone.

Mr. Swortzel stated that the paved area does not belong to that piece of property.

Dr. Hudson stated that it is an abandoned Route 613. He stated that his biggest point is that the land is zoned agriculture. He stated that five (5) miles away there is business zoned property which they can park their trucks. He stated that this is at the convenience for Mr. Bowles. He stated that if his property values go down Mr. Bowles will not compensate him. He stated that he encourages the Board to keep the site agriculture.

Chairman Shreckhise asked if there was anyone else wishing to speak in favor, or in opposition to the request?

Mr. Kevin Lacey stated that he is the property owner of the property. He stated that when he bought this piece of property five (5) years ago, he made commitments to the property owners that he will not subdivide the property. He stated that recently he approached zoning and they mentioned that he could subdivide the property. He stated that he owns where the telephone pole is. He stated that this is an abandoned road but he owns it up to the telephone pole. He stated that he has a survey that was done. He stated that he talked about splitting up but his credibility and integrity mean a lot to him so he will not split the property. He stated that the farm is agriculture. He stated that a farm is a business. He stated that he has not been able to maintain his house and this site. He stated that the house has been deteriorating where the renters are. He stated that there are no intentions of taking the property out of agricultural use but there will just be a Special Use Permit to use the equipment sheds.

Chairman Shreckhise asked if there was anyone else wishing to speak in favor, or in opposition to the request?

Mr. Kevin Ratliff, PO Box 169, Verona, stated that he is in opposition to the request. He stated that he owns property to the left of that entrance and he just finished building his home about a year ago and as he planned to build his home his intention was to build a house that kept the integrity of the surrounding area. He stated that there are large farms within the area. He stated that he built a house hoping it stayed in line with that. He stated that his intention was to match the area. He stated that as he read the Comprehensive Plan it talks about preserving the agricultural area and he is not sure

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how this permit would do that. He stated that this is not a small business. He stated that there are seven (7) trucks, backhoe, dump truck, skid steer loader, and mini excavator. He stated that this business does not sound minor to him. He passed the Board some pictures of his property. He stated that he felt that he had found an area that was one of the most beautiful areas of Augusta County. He would ask that the Board oppose this request. He stated that as he looks in the standards it states for Section 25-74H business and enlargements would be appropriate in agricultural areas and not more properly placed in General Business zoned areas. He stated that it seems like to him a horse farm is an agricultural entity and this does not seem to fit along that line. He stated that this business would not be appropriate in this area. He stated that they have large farms in this area. He stated that staff has concerns that a business this size would not be compatible with the rural character of the area. He stated that he hopes the Board considers the staff recommendations and vote to deny this Special Use Permit. He stated that the entranceway comes along the back side of the fence that the Board saw. He stated that is very close to his property. He stated that there could be quite a bit of traffic on that road.

Chairman Shreckhise asked if there was anyone else wishing to speak in favor, or in opposition to the request?

Mrs. Diane Hudson, 3102 Springhill Road, stated that she is Mark Hudson's wife. She stated that she agrees with what the opposition has said. She stated that the community is agriculture. She stated that the horse farm would still be in keeping with the agricultural nature of the site. She stated that this is in an Agricultural Conservation Area. She stated that business with outdoor storage is more appropriate in business districts. She stated that there will be the trucks, mini excavator, skid steer, and backhoe at the site. She stated that she is concerned about the noise on the site. She stated that they have proposed a new driveway. She stated that she would like to know what kind of vehicles would be going up to the old entrance where the house is now. She stated that with the joint driveways there will be a burden on the surface of the driveway. She stated that the construction business is not compatible with the rural nature of the area. She stated that there will be stress on the well and septic with twelve (12) employees and one (1) secretary. She stated that this would have an affect on the property values in the area. She requested that they stay in the City of Staunton.

Chairman Shreckhise asked if there was anyone else wishing to speak in favor, or in opposition to the request?

There being none, Chairman Shreckhise asked if Mr. Goodwin would like to speak in rebuttal?

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Mr. Goodwin stated that he would like to assure the neighbors that the Bowles will be good neighbors. He stated that they will be building a significant residence on the top of the hill. He stated that they will have a horse farm. He stated that the new entrance that has been designed will be the same whether it will be used for the business or the residents only. He stated that the other driveway which is used by the single family existing residence now as well as the Hudsons which is the old abandoned Route 613. He stated that it was abandoned and half of it went to each side of the road. He stated that if a third dwelling were to use that road it would not fit so they chose to do the new entrance. He stated that it is entirely on their property. He stated that the view that anyone sees would be the same view that they are going to see right now. He stated that it will be fenced on one side and during the day there will be some vehicles there. He stated that there will not be any outside storage. He stated that the view is blocked from Dr. Hudson's house from the existing dwelling that is there. He stated that the only outside storage would be the vehicles when they are there during the daytime.

Mr. Swortzel asked if the twelve (12) employees will meet at the site or on the job?

Mr. Goodwin stated that they will meet at the site occasionally but they will not meet there everyday. He stated that the bulk of the time they will be at the jobsites. He stated that some employees will rarely park their own vehicles at the site. He stated that the fence and the trees will screen the building and the barn and the house. He stated that they will see a farm building with a fence around it. He stated that if there is a farm operating at the site there will be equipment outside. He stated that the Bowles will have the same view as everyone else and they will want to keep it attractive. He stated that there is not an obligation to show a community need with a Special Use Permit. He stated that this is a use that is compatible with the area and will not be a detriment to the neighbors or the property values. He stated that the house that they are going to build and the horses will enhance the values of the area.

Chairman Shreckhise declared the public hearing closed. He stated that all of the equipment used for this business would be the same as if there was going to be a farming operation at the site.

Mr. Coyner stated that with this type of business the items would need to be inside the building.

Chairman Shreckhise stated that with this type of business there will be no outside storage. He stated that the only storage would be vehicles. He stated that this would be a little more in keeping with the farm nature than this gentleman having to divide up his land and have houses there because they cannot afford to run the farm.

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Mr. Coyner stated that the driveway for the new house will also serve the company vehicles. He stated that there are other situations in the County that have bank barns that have cable construction type facilities operating. He stated that they do want to preserve agriculture and the agricultural scene. He stated that the activity in this barn would be more favorable than a poultry house. He stated that this activity is going to be confined in the barn and shed which can be easily blocked with the fence and the pine trees to be planted and maintained. He moved that the request be approved with the following conditions:

Pre-Conditions:

1. Submit site plan meeting the requirements of Section 25-673 "Site Plan Contents" of the Augusta County Zoning Ordinance to be approved by all appropriate departments and/or agencies.
2. Obtain VDOT entrance permit and provide a copy to Community Development.
3. Obtain letter of approval from Building Inspection Department and provide a copy to Community Development.
4. The entire storage area between the bank barn and the machine shed be screened by an eight (8') foot high opaque vinyl privacy fence and a double row of six (6') foot high staggered pines trees planted ten (10') foot on center which must be maintained.

Operating Conditions:

1. Site be kept neat and orderly.
2. No junk or inoperable vehicles, equipment, or parts of vehicles or equipment be kept outside.
3. All company vehicles, equipment, machinery, and materials for the business be kept inside the bank barn, machine shed, or in the screened area between the two (2) buildings.
4. Be limited to twelve (12) employees and one (1) secretary.
5. The only sign to be permitted for this business is one (1) on premise business sign not to exceed twelve (12) square feet.

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- 6. Any new outdoor lights require site plan submittal and must meet ordinance requirements.
- 7. Applicant must reside on the premises within two (2) years.

Mr. Swortzel seconded the motion, which carried unanimously.

* * * * *

CHAP GOODWIN, AGENT FOR OLD DOMINION INVESTORS, LLC - VARIANCE

This being the date and time advertised to consider a request by Chap Goodwin, agent for Old Dominion Investors, LLC, for a Variance from the yard and setback requirement regarding construction of a new dwelling on property they own, located in the northern quadrant of the intersection of Heatwole Drive and Alba Circle in the Wayne District.

Mr. Chap Goodwin stated that he is here on behalf of Old Dominion Investors which is an investment entity that was put together by Brian Kirby, Chappy Chaplin, and Lance Cash and their wives. He stated that they decided that they wanted to build some houses. He stated that they hired George Owen, who is a licensed Virginia Contractor, to build the house. He stated that as you can see the house is situated on the front part of the lot where it fronts on Heatwole Drive. He stated that Heatwole and Alba Circle come together at a corner. He stated that the ordinance provides that you now have two (2) front yards as opposed to one (1) front yard and two (2) side yards. He stated that requires thirty-five (35') feet from both as opposed to a thirty-five (35') foot setback and a twenty (20') foot setback on Alba Circle. He stated that the lot is peculiarly shaped because it is longer on Alba Circle than it would be on Heatwole. He stated that the reason that they chose to build on Heatwole is because there is a significant drop in elevation from Heatwole parallel to Alba Circle going backwards. He stated that it is probably forty (40') feet from the top of the road to the lot at the far end. He stated that you have an elevation fall at the back of the lot towards Alba and that is something in the range of twenty-five (25') feet. He stated that it would be difficult to build the house fronting on Alba Circle. He stated that they have done a very attractive job of sloping it and spreading it out and taking a good portion of the fall within the construction of the house itself by facing it on Heatwole. He stated that there was also an error in the way that the house was set so it is a little bit closer at the back to Alba than it was in the front. He stated that it could have been and should have been constructed more parallel to the lot line and that would have given them a consistent twenty (20') feet across instead of a 16.5' and 22.5' the other way. He stated that another factor about the lot that is unusual is a sixty (60') foot thoroughfare right of way for Alba Circle. He stated that normally for a little road that has a cul de sac there would not be a sixty (60') foot right of way. He stated that leaves fifteen (15') feet between the curb and the

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house which gives it the appearance of being the thirty-five (35') feet away from the road. He stated that if you look at the house driving down Alba, it does not look out of line. He stated that if you look at the other houses in the neighborhood they were built on corner lots and they were built previous to the change of the ordinance. He stated that the thirty-five (35') front yard and side yard setback was enacted about ten (10) years ago. He stated that previous to that there was a twenty (20') foot side yard and thirty-five (35') foot front setback. He stated that it became thirty-five (35') and thirty-five (35') in October of 2005. He stated that the building permit was issued in March of 2007 and the builder obviously did not know that this has occurred. He stated that the builder made an error. He stated that the site plan was filed with the County showing a twenty (20') foot side yard setback and the building permit was issued. He stated that all of the inspections were done on the house. He stated that inspectors were at the house thirty-five (35) or forty (40) different times. He stated that the final inspection was made on December 4, 2007 and the occupancy permit was issued on December 5, 2007. He stated that it was not until a survey was done before the property was sold that the error came to light. He stated that was reported to the County and the sale fell through as a result of that because the buyers could not wait. He stated that he recognizes that financial hardship is not a basis for granting a Variance but he is going to point out that in addition to the topographical issue for this lot which does qualify for a hardship, the significant fall of the lot to the front and side is a significant hardship on all of these people. He stated that this house is worth \$400,000 and they are going to lose most of the value if a third is taken off the house and the cost will impact all three of the couples and the builder. He stated that he would ask the Board to consider giving them a Variance to allow the house to stay there because it is not an apparent violation. He stated that this is consistent with the other houses in the neighborhood. He stated that he feels there is not anyone in the neighborhood that has any objection to this. He stated that there is no utility construction in the area that would be within that setback and it is not likely that the road would ever be expanded. He stated that the contactor and the three owners are here.

Chairman Shreckhise asked if there was anyone wishing to speak in favor, or in opposition to the request?

Mr. Greg Kaplan, 28 Alba Circle, Waynesboro, stated that his home faces the right hand side of the property. He stated that obviously there was a mistake that should not have been made. He stated that his greatest concern is that there are several homes within Augusta County for one reason or another that are vacant. He stated that he also is a realtor and he knows what that can do to the value of other homes around. He stated that he has shown homes in the Teaverton neighborhood and the first thing that is said is what is going on with the vacant house on Westminister. He stated that he does not know what all of the options are but this could turn out to be a vacant home. He stated that if they cut off the side of it there will be a financial hardship on them but it

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will make the price and the attractiveness of it undesirable and there is a good chance that it will sit vacant. He stated that it would be a punishment not passing this Variance to the neighbors because they would suffer financial loss in the future. He stated that he asked the Board to consider this if this was their neighborhood and you were the one who would potentially live across from a vacant home and what it might do to the value of your home. He stated that this house is on a cul de sac and the utilities are run on the back of the lots. He stated that there is a significant amount of room even with the setback not being met. He stated that he could not see what work would be done that would require more room than what is there now. He stated that he would like to stress that the Board consider the folks in the neighborhood.

Chairman Shreckhise asked if there was anyone else wishing to speak in favor, or in opposition to the request?

Mr. Tony Motto, 7 Alba Circle, Waynesboro, stated that he is for the Variance for all of the same reasons as Mr. Kaplan. He stated that to do otherwise is not only detrimental to the builders and the owners but the entire community. He requested that the Board grant the Variance. He stated that the home adds to the community.

Chairman Shreckhise asked if there was anyone else wishing to speak in favor, or in opposition to the request?

Ms. Jenny McGuire stated that she is with Remax Advantage. She stated that she is here on behalf of the sellers and she wishes that the Variance be granted. She stated that she did have a contract on the home. She stated that they had several people looking at the home. She stated that this home would have been sold if it were to be a cash buyer and it also would have been sold if the economy was not like it is because most lenders do not require a survey on new construction. She stated that this was just an obscure situation. She stated that they had some people that did not have good credit and the lenders were asking for extra proof that the house would meet everything that they needed to have done. She stated that because of that there are probably several houses that have been sold that do not meet the guidelines. She stated that normally a survey is not a requirement on new construction.

Ms. Brown asked why is that?

Ms. McGuire stated that the lenders do not require it. She stated that she has another home under construction and the lender is saying that they do not require a survey but the buyer is going to ask that it be done.

Mr. Coyner stated that the Board has been in this situation many times. He stated that the banks and the lenders are the people who usually catch these violations.

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Ms. McGuire stated that she knows that there are several homes in that neighborhood that do not meet the setback.

Chairman Shreckhise asked if there was anyone else wishing to speak in favor, or in opposition to the request?

Mr. Goodwin stated that the other houses in the neighborhood that are corner lots that look like they do not comply are built before the 2005 timeframe. He stated that they were only required to have a twenty (20') foot setback. He stated that if you look at this house it appears to meet the thirty-five (35') foot setback because of the location of the road within the right of way because there is an extra fifteen (15') feet. He stated that there is a sixty (60') foot right of way and the road is only twenty-two (22') feet or twenty-four (24') feet with the curb and that leaves an extra fifteen (15') feet on either side of the road. He stated that the Board of Supervisors has on several occasions been asked to require a survey with the construction. He stated that it would add \$200-\$400 to the cost of a house but he knows it would make Mr. Wilkinson's job easier and he would recommend it to everyone. He stated that when they built his son's house they were seven (7') feet beyond the side yard setback when they did the final survey. He stated that luckily he owned the lot next door. He stated that he knows it happens to people periodically. He stated that he feels that no one intended to violate the statute. He stated that he would hate to see the neighborhood suffer. He stated that they have a very attractive house which adds to the neighborhood. He stated that if a Variance is granted there would not be an issue for future owners and they could acquire title insurance.

Chairman Shreckhise declared the public hearing closed.

Mr. Coyner asked if the contractor was available to speak to the Board?

Mr. Goodwin stated that the contractor's wife has been very ill for the last two (2) years. He stated that she suffers from Cancer and they have been traveling to Mexico for treatments. He would ask the Board to consider that as far as his focus on this particular situation.

Mr. Coyner stated that he is curious how this happened when you started out with a vacant lot. He stated that the house too big for the lot to start out with. He stated that you ended up 16.5' from the right of way instead of 35'.

Mr. George Owen, 203 Old Cider Mill Lane, Stuarts Draft, stated that when they met with Old Dominion Investors they strung a string around the property lines and they measured off of that. He stated that they messed up and thought it was a side lot but

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instead there are two (2) fronts. He stated that they thought it was the twenty (20') foot setback because the house has a thirty-five (35') foot setback.

Mr. Coyner stated that they did not even meet the twenty (20') feet you came in at 16.5'.

Mr. Owen stated that it was twenty (20') feet off of the property line. He stated that they measured from the edge of the road to the house and went a little extra.

Mr. Swortzel stated that none of the right of ways is the same.

Mr. Coyner asked if Mr. Owen got the building permit?

Mr. Owen stated yes.

Mr. Coyner asked if Mr. Owen was aware of the documentation that was signed when applying for the building permit?

Mr. Owen stated yes.

Mr. Swortzel stated that the house is very attractive. He stated that it does look like it is too big for the lot. He stated that it is closer to the street than the one that is directly across from it. He stated that Mr. Wilkinson has approached the Board of Supervisors on getting a survey done for lots. He stated that they have had several garages that needed to be torn down or taken off. He stated that they have also had a house that needed to be taken down. He stated that this is a sad situation. He stated that they do not have many options with Variances.

Chairman Shreckhise stated that they have run into this problem and it is a definite hardship on the entire County. He stated that they have asked Mr. Wilkinson to go before the Board of Supervisors to get some ordinance changed to require surveys so that they would not have this problem. He asked what the status of that was?

Mr. Wilkinson stated at the request of the Board of Zoning Appeals last summer, he took a proposal to the Board of Supervisors because this Board had just finished hearing Variance requests for three (3) new garages that had to be dismantled and moved back to meet the setback. He stated that they had a business in Verona that had made an addition to their building and they had to take fifteen (15') feet off of that building. He stated that the Board of Zoning Appeals asked him to take a proposal to the Board of Supervisors to ask them to modify the zoning ordinance to make a requirement that if you get a building permit that you must have a survey or stakeout the setbacks for you so that there could be no error. He stated that in June of 2006, the Board of Supervisors decided not to proceed with that ordinance. He stated that they

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felt that to add that cost to every building permit at that time was a burden to everyone who is purchasing the building permit. He stated that they decided at that time not to pursue the ordinance that would require the stakeout.

Chairman Shreckhise stated that on behalf of the Board of Zoning Appeals he asked Mr. Wilkinson to approach the Board of Supervisors again on this matter. He asked Mr. Wilkinson to read the state code concerning the granting of a Variance.

Mr. Wilkinson stated that the Board of Zoning Appeals hears Special Use Permits which is generally to operate some type of business on their property and the state code gives the Board great flexibility along with the ordinance standards on granting those types of permits. He stated that a Variance is a very unique thing and basically is for times when there is no other option for a property owner other than to plead for a Variance by the Board of Zoning Appeals, and granting Variances is strictly regulated by the Code of Virginia. He stated that there is a strict guideline that the Board has to consider on approval of the Variance. He read Section 15.2-2309 of the State Code. He stated that the code basically means that without a Variance there is no use of the property. He stated that the Board would need to be satisfied upon the evidence heard that the granting of the Variance would alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the Variance. He stated that all Variances shall be in spirit and in purpose of the ordinance. He stated that if this is something that occurs often the community should consider rather than granting the Variance, they should consider modifying the ordinance.

Chairman Shreckhise stated that this is basically saying that the Board of Zoning Appeals could not grant a Variance based on a financial hardship. He stated that the only reason they could grant a Variance on this is if the land could not be used. He stated that they are very limited on what this Board can do.

Mr. Coyner stated that not too many years ago this was an open lot and platted.

Chairman Shreckhise stated that there was mention of some laws being changed as far as side and front widths. He asked if this house would be in compliance three (3) or four (4) years ago?

Mr. Wilkinson stated that Mr. Goodwin referred to the ordinance that was changed in 1995 by the Board of Supervisors and at that time they allowed the side yard on a corner lot situation to be twenty (20') feet. He stated that in 1995 that changed to thirty-five (35') feet. He stated that this particular house according to the survey would not have met that requirement either. He stated that they are showing a 16.5' setback and it was a minimum of twenty (20') feet.

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Mr. Swortzel asked if there was a square foot minimum that they had to meet with the deed restrictions?

Mr. Goodwin stated that this house meets the square footage requirements. He stated that he would suggest that they probably could have met the setbacks by making the house taller or deeper. He stated that Mr. Wilkinson did not mention that there was a grandfather clause that allowed that twenty (20') foot setback to stay in place until 2005.

Mr. Swortzel stated that it did not help this situation.

Mr. Goodwin stated that they still missed it by three and half (3.5') feet. He stated that the house got turned in order for it to be in line with the other houses on the street. He stated that it was a little bit closer to the back half than the front house. He stated that all of that is complicated by the fact that there is a sixty (60') foot right of way with a twenty (20') foot road.

Mr. Swortzel asked if the house could have been smaller or without the garage?

Mr. Goodwin stated that the house could have been smaller or deeper and the garage could have been omitted. He stated that the only other item that does come up is the possibility of acquiring part of the right of way back from the Highway Department. He stated that if the Board of Zoning Appeals is not inclined to granting the Variance he would ask that they consider tabling the request to allow them to explore that option. He stated that this is not a short process and they are faced with the house sitting empty.

Ms. Brown asked if they bought the right of way would that bring the house into compliance?

Mr. Goodwin stated that if VDOT were willing to reduce the right of way they would reduce it by ten (10') feet or so that would still leave them needing fourteen (14') feet. He stated that this would still require some Variance.

Mr. Coyner stated that Mr. Goodwin also just stated that were VDOT to buy the right of way they still would not be in compliance. He stated that they would not be accomplishing anything. He stated that there is a representative from VDOT today. He asked if he would come forward to speak before the Board?

Mr. Tim Fitzgerald stated that he is the Assistant Regency Administrator in the Verona VDOT office.

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Mr. Coyner asked if a request like this came before the VDOT office would it be approved?

Mr. Fitzgerald stated yes it has been requested before. He stated that this one is a little different in that the right of way was already given to the department which causes a new set of issues that they cannot just give property back. He stated that they have to go and sell property back. He stated that in the past this has been done during the planning stages and they were able to move right of way lines fairly easily. He stated that they have gone back and sold a ten (10') foot strip in order to accommodate those needs.

Mr. Swortzel asked if they would sell back a twenty (20') foot strip?

Mr. Fitzgerald stated that if they were to build this subdivision today they would ask for a minimum of forty (40') foot right of way on that street not sixty (60') feet. He stated that it is because of the cul de sac and the traffic on the street and no future expansion that the minimum right of way could be forty (40') feet. He stated that the sixty (60') foot right of way was brought about because the City of Waynesboro. He stated that in the City of Waynesboro they like to have a sixty (60') foot right of way and you go through the City to get to this site. He stated that they never turn down sixty (60') foot but they would approve forty (40') foot.

Mr. Swortzel asked if that needs to be ten (10') feet from each side?

Mr. Fitzgerald stated that it does not have to be off of each side but they like for the road to be centered in the right of way.

Mr. Swortzel stated that it will not solve his problem if you do not.

Mr. Fitzgerald stated that there is nothing out there that states the right of way cannot be offset and the road not be in the center. He stated that ideally they want the road in the center.

Mr. Swortzel asked how long would it take for VDOT to get this resolved?

Mr. Fitzgerald stated probably sixty (60) to ninety (90) days to get something resolved. He stated that they are willing to work with the builder if this is an option.

Mr. Swortzel stated that he would rather see the Board table the request and give VDOT an opportunity to work this issue out.

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Vice Chairman Callison stated that it looks like there is a possibility of working something out on the right of way. He stated that if VDOT can get it done in ninety (90) days that would be a home run for this deal and then the applicant would not have to take part of the house down. He stated that he went to the Board of Supervisors meeting and we explained the instances that this Board has had on this very same issue and no action has been taken on it. He stated he would strongly consider tabling this matter to see if VDOT can take care of this issue.

Chairman Shreckhise stated that he would like to indicate to Mr. Goodwin that this request would either be tabled or possibly denied.

Mr. Coyner stated that it looks like this might be a viable option. He asked if ninety (90) days is long enough?

Mr. Goodwin stated that nothing negative to the VDOT office but ninety (90) days seems like a short time for him but if they indicate that they can get everything done in ninety (90) days he would like to table the request and if they need more time he can get in touch with the Board and request that. He stated that there is a hardship with this particular lot because of the fall in both directions.

Mr. Coyner stated that this lot was there before the first brick was laid.

Mr. Swortzel stated that if the house was turned the other way, the setbacks would have been met.

Mr. Coyner moved that the request be tabled for ninety (90) days.

Mr. Swortzel seconded the motion, which carried unanimously.

* * * * *

OLD BUSINESS

Chairman Shreckhise stated that he would like to remind everyone about the two (2) minute time limit. He stated that Sandy Shiflett will be timing each speaker and she will raise her hand when you have thirty (30) seconds left. He stated that if your time runs out Mrs. Shiflett will ring the bell and at that point you should sit down. He stated that he would like to acknowledge all of the letters written both pro and con. He stated that they also have the articles that have been written to the newspapers and they are familiar with them and they welcome any new and pertinent information, but they do not want a lot of repetition on this request. He stated that they would like to keep the comments as short as possible.

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Mr. Coyner moved that the motor cross request be brought forward.

Mr. Swortzel seconded the motion, which carried unanimously.

TERRY W. ARGENBRIGHT - SPECIAL USE PERMIT

A request by Terry W. Argenbright, for a Special Use Permit to have a motor cross track, BMX track, skate park, and soap box derby track, with overnight recreational vehicle parking on property owned by Augusta Agricultural Industrial Expo, Inc., located on the east side of Jericho Road (Route 637), approximately .8 of a mile east of the intersection of Jericho Road (Route 637) and Ramsey Road (Route 635) in the Beverley Manor District. **TABLED AT THE DECEMBER 6, 2007 MEETING**

Chairman Shreckhise requested that the applicant come forward. He stated that the applicant would not be limited to the two (2) minute timeframe because they would need to explain what they have done since the last meeting.

Mr. Terry Argenbright stated that he appreciated the time and the patience of the Board with this project. He stated that he would like to speak briefly, Doug Argenbright, Bill Cason, and Tom Sikes will speak on their side as well. He stated that one week ago he told the Board of Zoning Appeals that there were supporting members and to please recognize that the majority of them cannot take off of work. He stated that after the testing that was held on February 23, 2008 he had a lot of support. He stated that he has 1,852 members and individuals that have signed the petition in favor and in full support of his project. He submitted those signatures to the Board. He stated that in speaking for the individuals who signed they feel that these are legitimate sports and they are the fastest growing sports today. He stated that there has been some misrepresentation on who they are and what they do. He stated that most of these sports are recognized in the X Games in the Olympics and they would also like to recognize that there are a multitude of facilities in this area that any basketball player, soccer player, and baseball player has the ability to go locally within one to five minutes and practice their sport. He stated that with these sports they do not have a place to play and practice. He stated that motor cross is a dangerous sport. He stated that they are requiring the most safety out of any track. He stated that they are requiring them to wear more safety gear than what any other track requires. He stated that the fact of the matter is that they do not have a place to go other than about three (3) hours away. He stated that the DEA and the National Health Institute have all recognized these sports for a fact, and he has submitted that to the Board of Zoning Appeals for everyone to see, they are recognized as the leading sports to help kids physically and mentally stay out of gangs and stay off of drugs.

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Mr. Doug Argenbright stated that he also wants to thank the Board for their diligence and the time and efforts that they put forth in dealing with the Valley Xtreme Sports Park. He stated that there appears to be three (3) primary issues of concern. He stated that one is the traffic. He stated that Expo has the infrastructure in place to handle the daily business activities as well as the periodic events that will be held there. He stated that last month he was present on Saturday for the Western Show Event at Expo. He stated that there were 5,000 people in attendance and over 3,000 cars. He stated that there were no motor traffic issues on Expo property or off Expo property. He stated that Expo was designed and built for recreational and event use. He stated that the second issue is dust. He stated that they will install an automated sprinkler system as defined on the plans.

Mr. Swortzel stated that if he recalls correctly, the applicant will have mulch mixed with the dirt as well as the sprinkler system.

Mr. Argenbright stated that is correct. He stated that the sprinkler system will be a zoned sprinkler system which means he can water part of the track or the entire track.

Mr. Coyner stated that last time the applicant mentioned that they were going to water from a pond. He asked if they were going to have a more reliable source than just a pond?

Mr. Argenbright stated that they may do a sediment pond instead of doing a retention pond but they are also going to hookup to County water. He stated that the last issue is noise. He stated that on February 23, 2008, they had an exhibition race on the proposed location at Expo per the Board's request. He stated that they were pleased that the majority of the Board could be in attendance. He stated that in regards to noise it was the worst case scenario for them. He stated that the noise carried lower and further because of the low ceiling due to fog which was confirmed by those of you in attendance. He stated that there was no foliage on the trees which acts as a natural sound buffer. He stated that the sound wall which will be located behind the starting gate was not built. He stated that the staggered row of evergreen trees located along the back left corner of the property was not planted. He stated that the sponsor walls have not been erected and the office had not been delivered. He stated that the final track design will be a minimum of two hundred (200') feet from Jericho Road versus approximately fifty (50') feet on race day. He stated that for them it was the worse case scenario and even the worse case scenario the demonstration proved positive. He stated that from the different locations that you tested from there were no nuisance factors in regards to this. He stated that the sound levels were less than 55 decibels and the average speaking voice is 65-68 decibels so they feel that the exhibition race proved positive in regards to noise. He stated that he can talk about some of the other items that he mentioned regarding the sound wall and the trees if the Board would like.

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Chairman Shreckhise stated that the applicant will have an opportunity for rebuttal in a little bit to address any issues brought forth by the opposition and then more information can be provided regarding those items.

Mr. Argenbright stated that this is a business location and they are a business that will provide a positive impact on the community and surrounding businesses. He stated that with them being fully operational Fishersville and Augusta County could see an excess of \$4 million annually into the economy. He stated that because this is a business location, a wide variety of other businesses could be constructed such as a saw mill, trucking terminal, batching plants for concrete, cement, and asphalt. He stated that all of these businesses could operate 24/7 with lights and no maximum on noise because of the protection given by federal law. He stated that the impact of their business would be less than any of the allowable businesses. He stated that the neighbors are more protected with a business such as theirs because of the guidelines that they have to follow. He stated that they have to operate with a Special Use Permit and maintain those standards which all of the other Fishersville businesses do not. He stated that the Planning Commission is recommending that the Board approve the request as it is compatible with the surrounding uses and in an ideal location for such a use. He stated that they respectfully request that the Board grant this project because of the zoning, location, and the tremendous need for this type of business as verified by the many letters and signatures that the Board has before them. He stated that in the spirit of cooperation everything that the Board has asked them to do they have done, and he hopes that speaks volumes in them conducting this business.

Mr. Bill Cason, 45 Stoneridge Drive, Waynesboro, stated that he is the owner of Cason Appraisal and Consulting Services. He stated that the Argenbrights have asked him to look if this request would affect value of the homes. He stated that he did research over the last twenty-five (25) years in Augusta County and no business, industrial, or commercial property has ever brought a negative impact to any neighborhood or values of houses. He stated that he is one of the developers at Village Green on the Lake which surrounds Waynesboro Airport. He stated that they have sold over 77 houses in that subdivision at \$400,000-\$600,000 and they are all sold out. He stated that there are three (3) lots to build on. He stated that they are looking at developing ninety-two (92) more lots which would be located two (2) to three (3) miles from Expo and we have no problems with that. He stated that a motor cross with the noise being as low as it is, there will be no negative impact.

Chairman Shreckhise asked if there was anyone wishing to speak in favor to the request?

Mr. Glenn Coffey, 17 Saint Ives Drive, Fishersville, stated that when the proposal came up for the test he neither decided to be for or against this. He stated he went to the test and observed the sound and participation and he saw families having fun, he saw kids

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from eight (8) to forty-eight (48) participating. He stated that he thinks this will be an asset for this area. He stated that he sees revenue that they have not touched on before. He stated that this will benefit the area businesses, restaurants, motels, and gasoline stations. He stated that he is all for this request.

Chairman Shreckhise asked if there was anyone else wishing to speak in favor to the request?

Mr. Kurt Michael, 45 Emerald Heights Drive, Fishersville, stated that he is in favor of this proposal. He stated that he has been President of the Emerald Hills Homeowners Association for over five (5) years now and one of the biggest complaints that they have in the spring is kids riding their motor bikes in the retention pond areas or up and down the street. He stated that the reason is when he speaks with the parents is that there is no place to ride their bikes. He stated that kids need a place to properly ride their bikes in a safe environment. He stated that the land is zoned for business. He would ask the Board to consider this request.

Chairman Shreckhise asked if there was anyone else wishing to speak in favor to the request?

There being none, Chairman Shreckhise asked if there was anyone wishing to speak in opposition to the request?

Mr. Duane Anderson, 1312 Tinkling Spring Road, stated that he is within site and earshot of Expo and the proposed track. He stated that he has been there twenty-eight (28) years. He stated that he is strongly opposed to the motor cross track because it will be a nuisance. He stated that he has the right to enjoy his property without nuisance. He stated he submitted a letter to the Board. He stated that there was a similar case in Ohio of a motor cross. He stated that in Ohio they closed the motor cross down because of the noise. He stated that he already tolerates the noise from Expo, occasional tractor pull, and he has been willing to do that because it is occasional. He stated that five (5) days a week will be a nuisance. He stated that the information submitted outlined how the property owners did a lawsuit and as he looks into this room and he sees all of the buttons, they could easily do a lawsuit and it would have nothing to do with zoning but his right as a property owner and the nuisance law. He stated that he strongly opposes this request.

Chairman Shreckhise asked if there was anyone else wishing to speak in opposition to the request?

Mr. Joe Yeager, PO Box 266, Fishersville, stated that he is a resident of 212 Barrenridge Road. He stated that he owns a business in Augusta County and owns commercial

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property near the interstate. He stated that he happened to be in his home the day of the testing which is two (2) miles north of Expo and he heard it in his house over the television. He stated that as a business owner he does not see this as the best interest because of the way the development is going in Fishersville. He stated that he opposes this request. He stated that this would not be in the best interest of Augusta County. He stated that it is not any more than an asset at Expo than at some more remote area. He stated that he would not want this type of use behind the government center either.

Chairman Shreckhise asked if there was anyone else wishing to speak in opposition to the request?

Mr. Russell Schmidt, 1468 Lee Jackson Highway, Staunton, stated that he tried to do something similar to this request. He stated that he was there on the practice day with his meter and he had sound recordings of 88 and 89 decibels and before they chased him away, his decibel readings were 98 and 99 as the bikes went passed him. He stated that was about seventy-five (75') to eighty (80') feet away from the track. He stated that the bikes are supposed to be 96 with the meter right at the bike. He stated that he wanted the Board to know the recordings that he got on his meter.

Chairman Shreckhise asked if there was anyone else wishing to speak in opposition to the request?

Mr. Bob Thompson, 599 Jericho Road, Fishersville, stated that at a recent meeting conducted by the County to outline their vision for Fishersville, the following observations were made. He stated that these suggestions were direct effort of our County's professional planners with input from the residents of Fishersville. He stated that for the next twenty (20) years Fishersville has been designated as a growth area. He stated that 80% of the population growth will occur in Fishersville, Verona, and Stuarts Draft. He stated that the Fishersville area in 2028 will be a diverse and healthy community marked by a vibrant historic community. He stated that Fishersville will have well understood urban boundaries and the new growth that has occurred in the Fishersville area will not be a burden on the community but instead help Fishersville emerge as a very livable community. He stated that one of the goals is to foster new development that is compatible with Fishersville's historic and scenic character, limit impact developments of the surrounding area, build on the health service sector, attract new business that enhances both the economy and community character, and encourage quality agriculture and landscaping. He stated that he does not consider stripping ten (10) acres of topsoil as landscaping. He stated that the plan encourages businesses to support elderly and retiree populations. He stated that the plan prohibits development in sensitive areas and encourage environmentally sensitive development.

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Mr. Roger Zirkle, 199 Jericho Road, Fishersville, stated that he would like to give his time to Mr. Thompson to finish what he was working on.

Chairman Shreckhise stated that they do not want a continuation of this. He stated that he will allow it but the Board will not continue to allow people to come up here and devote their time to someone else. He stated that in this particular instance since Mr. Thompson lives next to Expo, he will allow it for two (2) more minutes.

Mr. Thompson stated that a park is the focal part of the community, neighbors meeting neighbors, walking your dog, or relaxing under a tree. He stated that it is part of a community. He stated that Gypsy Hill, Ridgeview, Natural Chimneys, and Stuarts Draft parks are all free, let's call Xtreme Sports Park what it is, a racetrack. He stated that this is a business that is run year round from 10:00 a.m. to sundown. He stated that it is a business run for profit. He stated that if you do not pay you do not play. He stated that it is a business that runs year round not an occasional event which Expo was intended for. He stated that he is referring to a January 1970 report in the Staunton *News Leader* that states Expo is a non-profit charitable organization as their tax number would indicate. He stated that if it looks like a racetrack, has dust like a racetrack, has traffic like a racetrack, sounds like a racetrack than it is probably a racetrack. He stated that one thing is for sure that it is not a park. He stated that this is a racetrack not an event. He asked everyone opposed to the racetrack to please stand up. He stated that the taxpayers and the community doesn't want it and it is not compatible with the vision of Fishersville for the next twenty (20) years. He stated there is not a racetrack mentioned in this report and this is a report which the County employees did.

Chairman Shreckhise asked if there was anyone else wishing to speak in opposition to the request?

Ms. Tracey Neff, 77 Lakeshore Lane, Fishersville, stated that in a letter Mr. Argenbright wrote to the *Waynesboro News Virginian* dated yesterday he says that the USDEA and the National Institutes of Health have recognized motor cross as a leading sport for physical and mental health and the DEA stated the race against drugs recognizes motor cross as the best way to help kids and their families. She stated that the proponents of the track have been claiming this along. She stated that when she went to the website she could find nothing about motor cross. She stated that there was a study that was done by the National Sport Health Institute in the 1980s but it was a non-government body and it is no longer in existence. She stated that this study was paid for by Cycle Magazine. She stated that they studied cardiovascular health and they are not claiming that it was the leading sport for physical and mental health. She stated that when she went to the DEA website she could find an article that was about drugs in Dallas in 2003. She stated that there was nothing in the DEA website claiming that motor cross was the

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best way to keep kids off of drugs. She stated that the Board should take this into account with the promises that Mr. Argenbright claims that he will be doing with this track.

Chairman Shreckhise asked if there was anyone else wishing to speak in opposition to the request?

Ms. Jeanie Jones, 129 Hickory Hill Road, Fishersville, stated that the Argenbrights have claimed that erecting the stucco walls and planting trees will control the noise. She stated that they consulted the President of the Noise Consultancy and he has testified as an expert witness during several motor cross court cases. She stated that his response was that their claims that the walls and trees would be affective would be incorrect. She stated that the appraiser that said that this will not do anything to the value of their property is incorrect. She stated that none of these places he had talked about had a motor cross track. She stated that you are telling me that this will not hurt the value of her property.

Chairman Shreckhise asked if there was anyone else wishing to speak in opposition to the request?

Ms. Norma Botkin, 23 Locust Hill Lane, Fishersville, stated that the day of the testing she did not know about it. She went to her mailbox and heard the noise and did not realize what it was. She stated that there was a distribution business in the Fishersville area and the property was devalued and her tax assessment actually went down. She stated that the Board should consider the revenue that could be lost in real estate taxes.

Chairman Shreckhise asked if there was anyone else wishing to speak in opposition to the request?

Mr. Brett Hayes, 1889 Sangers Lane, Staunton, stated that he lives down the street from Joe Yeager. He stated that he did not have an opinion until the test was done. He stated that he could hear the bikes in his house. He stated that it was a constant noise. He stated that he has known Doug Argenbright for quite some time. He asked Doug to post a bond until the project is done. He stated that Doug stated that they would not do that. He stated that he trusts Doug personally but there is a question as to whether they have enough money to do all of the things that need to be done. He stated that once they do the track they could not possibly stop because of the investment into the track. He stated that the Board should reconsider this request, make sure they have the money, and the surety that it will be done the right way.

Chairman Shreckhise asked if there was anyone else wishing to speak in opposition to the request?

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Ms. Lynn Uzzell, 73 Patchwork Lane, Fishersville, stated that she has been doing weeks of study on motor cross and from her research she could tell that the noise coming from the track was not as loud as a racetrack actually is. She stated that she also went to the track and watched the race for a little bit and from the midpoint she could not believe how separated the riders were and they looked like they were going so slow. She stated that she consulted an expert who worked at the Birch Creek track and she asked him if this was what she should expect to see from a motor cross race and he said absolutely not. She stated that she asked him for some insight and he told her you can design a track in such a way that the riders are forced to go a lot slower. She stated that at Birch Creek the most noise is generated where all of the riders are bunched together and go down a straightway at full throttle. She showed the Board pictures of the racetrack at Birch Creek. She stated that the track at Expo has narrow lanes and there is hardly any distance at all before the riders go into a turn.

Chairman Shreckhise asked if there was anyone else wishing to speak in opposition to the request?

Mr. Michael Knick, 430 Jericho Road, Fishersville, stated that he would like to talk about the test that was done on February 23, 2008. He stated that he could hear the bikes in his house and he could feel the vibrations on his chest. He stated that there are three (3) factors of sound. He stated that it does depend on what types of bikes they have on the track. He stated that one big bike makes as much sound as a how many of those small bikes. He stated that speed increases sound. He stated that he feels the track will be worse. He stated that for him the worse case scenario going on that property is a motor cross track. He stated that he would rather see a sawmill at the site. He stated that this will be in operation five (5) days a week ten (10) hours a day.

Chairman Shreckhise asked if there was anyone else wishing to speak in opposition to the request?

Mr. Sam Skeens, 137 Patchwork Lane, Fishersville, stated that he is less than half a mile from the Expo site. He stated that will be appraised after the motor cross track is built. He stated that in the Montana case regarding the motor cross, the track reduced the value of the houses by 20%. He stated that there are millions of dollars of homes near Expo. He asked for everyone within a mile of Expo to stand. He stated that these are the people who will be affected by the track. He stated that he can hear it from where he lives. He stated that the other issue he has is traffic. He stated that every time Expo has an event, there is more traffic on Jericho Road. He stated that he is very opposed to this request.

Chairman Shreckhise asked if there was anyone else wishing to speak in opposition to the request?

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Mr. Scott Williams, PO Box 5586, Charlottesville, stated that his company owns the remainder of the Village on Goose Creek which will be 188 townhouses. He stated that the property is across from the interstate. He stated that he was at their site the day of the testing and he certainly heard the noise. He stated that he feels the noise levels will be objectionable and for that reason he cannot support this request. He stated that he would urge the Board to consider other more appropriate places. He stated that a vote against this request is not a vote against this use.

Chairman Shreckhise asked if there was anyone else wishing to speak in opposition to the request?

Mr. Julian Rittenhouse, 38 Goose Meadow Court, Fishersville, stated that he is the President of the Village on Goose Creek Association representing 62 families who live directly across from Expo. He stated that in 2002 the Board of Zoning Appeals had a similar request in Churchville and at that time the Board considered the impact it would have on that neighborhood to those individuals in Churchville and denied the Special Use Permit. He stated that the citizens of Fishersville in the impact area ask that the Board give them the same consideration in granting this or in denying them as the Board did in Churchville because we are no less or more important than they are. He appreciated the Board's diligence on this request.

Chairman Shreckhise asked if there was anyone else wishing to speak in opposition to the request?

Mr. Paul Harper, 221 Tinkling Spring Road, Fishersville, asked how loud must noise be before it is offensive, what type of a noise is irritating, how long can you be exposed to noise before it becomes agitating, is there a standard to measure these questions by, or is it a common sense guess. He stated that there is an industry standard for measuring the noise levels and decibels for hearing but that has nothing to do with the questions he has asked. He stated that the wall will be installed to absorb sound. He stated that the terrain at this location is not level so it will not catch the sound at the higher level. He stated that there are many other issues to be considered other than noise on this project. He asked the Board to put themselves in the citizens' position and if they would want a motor cross track at the Expo site and spend the rest of their life living under those conditions.

Chairman Shreckhise asked if there was anyone else wishing to speak in opposition to the request?

Mr. Henry Moffett, 24 Clover Green Court, Fishersville, stated that this location is directly across Interstate 64 from Expo. He stated that in Mr. Argenbright's letter that was printed

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on January 15, 2008, in the *News Leader* he wrote that “all of the homeowner’s that took time to get the facts were no longer opposed” and he was referring to the Village on Goose Creek. He stated that he took time to listen to the facts and he is opposed to the motor cross track. He stated that approximately fifty-five (55) residents signed the petition opposing this motor cross track. He stated that on the test run on February 23, 2008, the decibel level 300 yards from that track was 90 and that is the level at which OSHA requires hearing protection. He stated that he went home during the race and the noise was louder from the racetrack than it was from Interstate 64. He stated that he does not understand people saying a little more noise won’t make a difference.

Chairman Shreckhise asked if there was anyone else wishing to speak in opposition to the request?

Ms. Vira Leach, 37 Woodlawn Drive, Staunton, stated that she is a half a mile from the racetrack. She stated that sound can be soothing or irritating. She stated that sound can be used to torture people. She stated that dripping water can torture people. She stated that she does not want to listen to the bikes ten (10) hours a day because she thinks it would be a form of torture.

Chairman Shreckhise asked if there was anyone else wishing to speak in opposition to the request?

Mr. Jerry Jackson, 389 Jericho Road, Fishersville, stated that he is in opposition to the motor cross track. He stated that he agrees with Mr. Argenbright that there needs to be entertainment for young people but at the same time he does not want it in his backyard. He stated that he also compared the noise from the test inside his home and he would hope that the folks on the Board would not want it in their backyard either.

Chairman Shreckhise asked if there was anyone else wishing to speak in opposition to the request?

Mr. Clinton Shilling, 808 Wren Street, Staunton, stated his wife’s home place adjoins Expo. He stated that they tried to develop community relationships when Expo was being formed. He stated that they have listened to the tractor pulls but this constant noise is too much for them to contend with. He stated that it was a good idea in the paper to put the racetrack away from the residential area. He stated that they can work out some deals with the property on land near the landfill.

Chairman Shreckhise asked if there was anyone else wishing to speak in opposition to the request?

Mr. Wayne Hensley stated that he would like to speak in favor.

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Chairman Shreckhise stated that they heard from citizens that wanted to speak in favor before but as long as the time limit is abided by, he sees no reason that they cannot hear from anyone who wishes to speak in favor, or in opposition to the motor cross request.

Mr. Hensley stated that he owns Wayne Cycle shop. He has been in business for thirty-eight (38) years and he operates really close to a church. He stated that they work together. He stated that he ran a motor cross track for four (4) years from 1974 to 1978. He stated that he does not think he has ever received a complaint. He stated that he feels the Board has their own decibel readings. He stated that this track will be a good thing for the community.

Chairman Shreckhise asked if there was anyone else wishing to speak in favor, or in opposition to the request?

Mr. Brad Sears, 941 Entry School Road, Fishersville, stated that he is speaking in favor to the request. He has a mother and father in-law who live on Goose Creek. He stated that his mother-in-law was home the day of the testing and did not hear any noise.

Chairman Shreckhise asked if there was anyone else wishing to speak in favor, or in opposition to the request?

Mr. Chris Campbell, 55 Westgate Road, Verona, stated that he is from Blue Ridge Power Sports and the Argenbrights left him in charge of organizing the race on the 23rd of February. He stated that he does not see the test as discredited at all. He stated that the test was as valid as it could be. He stated that he felt that this was the worse case scenario. He stated that he has two (2) of his pro-riders here today. He stated that they race at Birch Creek. He asked the riders if they felt that Birch Creek was faster than the track at Expo. They stated no. Mr. Campbell stated that the riders ran as fast as they could.

Chairman Shreckhise asked if there was anyone else wishing to speak in favor, or in opposition to the request?

Mr. Michael Guthrie, 68 Hillside Drive, Verona, stated that the cases in Montana and Ohio do not have anything to do with Virginia. He stated that Montana is flat. He stated that sound probably travels a lot better being that it is near the plains and around here there are hills. He stated that he has a great grandmother that passed away a couple of weeks ago who was in the nursing home and she did not hear the bikes.

Chairman Shreckhise asked if there was anyone else wishing to speak in favor, or in opposition to the request?

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Mr. Larry Uzzell stated that Montana is not flat.

Chairman Shreckhise asked if there was anyone else wishing to speak in favor, or in opposition to the request?

There being none, Chairman Shreckhise asked if Mr. Argenbright would like to address some of the items that were brought up by the opposition.

Mr. Argenbright stated that Mr. Tom Sikes had wanted to address a few points to the Board.

Mr. Tom Sikes, 55 Princeton Lane, Fishersville, stated that he would like to make some closing remarks on behalf of the motor cross track. He stated that he was on the Board of Supervisors during the incident that Ms. Botkin brought up. He stated that they were using a railcar at 2:00 a.m. and that entire incident is entirely different from this situation. He stated that there was a purse offered at the track and there was definitely competition on the track the day of the race. He stated that the opposition to the Churchville request was on new property and it was not on an existing recreational spot. He stated that this is an ideal opportunity for Augusta County as it is private dollars. He stated that this will provide recreation for young children for our area and all over the state. He stated that anything we can do to provide recreational activities for our young children we need to jump all over. He stated that this project would be good business, they will spend dollars on food and hotels which will bring in tax dollars for the County. He stated that the test proved that there were no existence of nuisance noise. He stated that it could be heard but this was not a nuisance. He stated that the ultimate goal for the protection of the community lies within the Board's hands and that is keeping Expo healthy. He stated that if Expo goes out of business and if they close down the property is already zoned business and there are no restrictions for noise on that property as a business. He stated that any type of business could come in. He stated that the business if it is not run properly, this Board can withdraw their permit so it is still under the Board's control. He stated that if the property is sold under a business classification there is no protection for the people of Fishersville. He stated that having a controlled environment where the Board monitors the permit is the best option that the community can have.

Mr. Moffett declared a point of order.

Chairman Shreckhise stated that Mr. Sikes is representing the Argenbrights for their rebuttal, therefore, he has the right to speak more than two (2) minutes. He declared the public hearing closed.

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Mr. Swortzel stated that this Board has heard five (5) hours of good discussion on this request. He stated that Expo is a business zoned property and there is approximately 380 acres at the site. He stated that Expo has been there for thirty (30) years and right now they have about thirty (30) events a year. He stated that there are two (2) trucking companies along Expo Road as well as several other businesses. He stated that Fishersville is a nice looking community, however, that stretch of Interstate 64/Route 608 is not a pretty site but that is where these people bought their property. He stated that if you come in Mule Academy there are businesses which include sawmills, trucking company, and many others. He stated that the citizens know that this was here and the new development has arrived after Expo was put there.

Chairman Shreckhise stated that because of this noise and some of the other issues, this motor cross is not a permitted use without a Special Use Permit. He stated that he is leaning the other direction because he sees the people's property getting devalued and some people having to put up with noise that they find to be irritating. He stated that he is for the motor cross but he feels this is not a good location for it.

Mr. Coyner stated that he agrees with Chairman Shreckhise. He stated that these young people should have a place to be able to do that but to sit this right in the middle of a development community would not be appropriate. He stated that it has always been difficult for him to vote for something which is clearly against what the support of the local people.

Mr. Swortzel stated that he feels that they have a business location there. He stated that the business location was there when the property was developed.

Mr. Coyner stated that the business location was there but a racetrack was not there when they came.

Mr. Swortzel stated that this is the permit that they are dealing with. He stated that the Board has heard talk about this going somewhere else. He stated that this is a good place for it. He stated that the noise levels with the interstate and the trucks that are in and out of there would not be an issue. He stated that they are not going to run the motor cross all day long. He stated that they will have twenty (20) major events per year.

Chairman Shreckhise stated that he is not sure about the major events but there will be a lot of practice days. He stated that in order to limit this to where it would not be a nuisance to the neighbors they would be limiting it so that it would not be profitable for the applicant to run the track. He stated that he drove around the entire area during the test and a lot of people did not have a legitimate gripe about this, but for some people the noise is really bad.

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Mr. Coyner stated that noise is just one factor.

Chairman Shreckhise stated that he feels the noise is the determining factor. He stated that there is land that is adjacent that is zoned agriculture but that acreage could be sold off. He stated that land could terribly be devalued if this racetrack was put in. He stated that the development going on nearby is a big investment. He stated that a cement plant could go in there which might be more of a problem than this racetrack. He stated that this Board does not have control over a cement plant.

Mr. Coyner stated to put effective control he feels that they would not be able to operate. He stated that there have been permits where they permitted the permit for a one (1) year timeframe and if they are not in compliance the site would be shut down. He stated that he feels that these people are not willing to do that and spend the money. He stated that the Board does not know what is going to be at the site until it is there.

Chairman Shreckhise stated that there will be too much noise pollution and it will devalue the property in the area.

Mr. Coyner stated that this is not the right place for a track.

Vice Chairman Callison stated that Mr. Coyner, Mr. Swortzel, and Chairman Shreckhise said it all.

Ms. Brown stated that as she was traveling to the Goose Creek neighborhood on Saturday, February 23, 2008, she saw a lot of businesses on Route 608. She stated that the Wilson Trucking Company is a large company with big trucks that go in and out and they make noise and put out a lot of fumes. She stated that there are two (2) industrial parks with many businesses and some of them have trucks that make noise and put off exhaust as they travel in and out. She stated that behind the hospital there is Blue Ridge Lumber, a very big company and they make a lot of noise. She stated that there is the train that shakes and rattles and blows the whistle while putting fumes in the air as it goes by. She stated that the hospital has an incinerator with a large chimney that has smoke going towards the neighborhood. She stated that the hospital stays open 24 hours and it serves Augusta County, Staunton, and Waynesboro. She stated that you will hear the sirens all of the time as well as Pegasus flying in and out. She stated that across from the hospital there are a number of businesses with vehicles in and out daily. She stated that there is a funeral home with a crematory. She stated that as they stood in the Goose Creek neighborhood she hears and sees Interstate 64 and there are 35,000 cars and trucks a day that go by this neighborhood. She stated that there is also the noise and toxic fumes from them. She stated that a very large billboard sits beside the neighborhood with tall grass all around it. She stated that as they listen for more races to start, a neighbor comes out of the Goose Creek Townhouses to talk, and he says that he

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has been listening all morning. She stated that he does not hear anything inside his house but them talking. She stated that they were right by his house. She stated that he said when he was on his deck the race was faint and did not bother him. She stated that as the race started a decibel meter was read while they were there it was 50 decibels and our voice is 70 decibels. She stated that the applicant was on television giving an interview and he was standing right by the track as the race was going on. She stated that he did not have to raise his voice to be heard. She stated that she was also surprised to see so many families with the race and it seemed to her that this would be a family affair. She stated that to her the location fits right in.

Chairman Shreckhise stated that he understands exactly where Ms. Brown is coming from. He stated that the pollution and other noise in the area is completely out of this Board's control. He stated that this is something within the Board's control. He stated that noise from a chainsaw or motorcycle is really irritating to some people whereas the traffic on the interstate might not bother them.

Mr. Coyner stated that this Board has talked with other people around and they have had various decibel readings.

Mr. Swortzel stated that he would like to read the information that Mr. Wilkinson prepared for the Board as per their request at the December meeting. He read the following:

Actiontown USA

Dillwyn, VA – Buckingham County

The Zoning Administrator reports that the track is in a rural location with several houses near the track. Traffic generated by the track goes by many homes. They do not receive many complaints regarding noise or traffic. The single biggest concern is the burden on the one volunteer rescue squad that has personnel onsite during races. No open practice other than on race weekends.

Birch Creek Motosports

Near Danville – Pittsylvania County

The Zoning Administrator reports that the track is located in a rural area and was established prior to the adoption of their Zoning Ordinance. There are no churches or hospitals near the track. They do not receive complaints about the track. Overnight camping is available. Open practice is permitted.

Lake Sugar Tree Motosports

Axton, VA – Henry County

The Zoning Administrator reports that track is about 30 years old and is located in a rural area. The practice track is open for practice from 10:00 a.m. until dusk. The race track is open for practice on scheduled dates from 5:00 p.m. until 10:00 p.m. Overnight

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camping is available. The homes near the track belong to people who use or are associated with the track. They do not receive complaints about the track.

Powerline Motocross Playground
Willis, VA – Floyd County

The County Administrator and administrative staff report that the track is over 20 years old and there are homes directly across the street from the track. The track is open weather permitting year round. Staff can recall only one complaint in 20 years, however, this track also holds daytime and night races up to midnight and they feel residents would prefer racing stop at nightfall.

Chairman Shreckhise stated that all of those are not situations that are real similar to what this Board is dealing with here. He stated that there will be more people affected from this track. He stated that there is vocal opposition from people that have listened to this.

Mr. Swartzel asked if the staff report has the new conditions that have been changed?

Mr. Wilkinson stated no. He stated they do not include the ones that were recently proposed this week with the additional sound walls and pine tree buffer along Jericho Road.

Mr. Swartzel asked Mr. Wilkinson to read the new additions?

Mr. Wilkinson stated that on the site plan originally the track was shown about one hundred (100') feet from Jericho Road and the site plan the applicants have submitted this week proposes to pull the track back to a minimum of two hundred (200') feet or an optional two hundred fifty (250') feet. He stated that originally they were proposing a sound wall behind the start area where the majority of the sound will be heard and also one on Jericho Road, the new proposal shows two (2) more additional sound walls at the top of the hills and they are also proposing a double row of pine trees along Jericho Road to act as an additional sound buffer. He stated that these items would be in addition to the original plan.

Mr. Swartzel asked what would the timeframe of operation for the skate board, BMX, and the soap box derby be?

Mr. Terry Argenbright stated that they are asking to operate five (5) days a week. He stated that Expo itself is closed on Monday and they are looking at being closed as well. He stated that they would like to be closed an additional day in order to do maintenance on the property. He stated that it is a large piece of property so they are doing two (2) days a week with nothing but maintenance. He stated that they have

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asked for sixteen (16) non-sanctioned race events a year and three (3) AMA sanctioned races a year. He stated that the AMA requirements state to race on Sunday so they asked for those three (3) Sundays for the AMA only. He stated that there was a statement that was made as far as limiting the use of the motor cross. He stated that they have no problems and they have looked back into the plan and they have looked at other pieces of property and other rural area locations and because of the conservation and protection of agriculture, VDOT won't give the right of way and the Health Department will not give approval. He stated that there is no way that the County will allow agriculture to go to business. He stated that the best site is at Expo because they are already approved for three (3) race events a year which has no time requirements. He stated that they already stated that they will not put up lights, they will not race at night, and they agreed to practice half a day on Friday and race on Saturday other than the AMA races. He stated that as far as limiting the day riding he has talked with a lot of the riders. He stated that he has been to Birch Creek with his son. He stated that during the week you are looking at a handful of riders only because most people work. He stated that they will come out on Saturdays and Sundays to ride. He stated that they have no problem limiting the motor cross during the week. He stated that 90% of the operation is for recreational use anyway. He stated that it is where the family can come out to do recreational riding. He stated that there will be only open practice days a day before the race event and they are looking at having one (1) additional practice day only. He stated that the racers will have one (1) day a month to come out to practice for a race. He stated that there would be a maximum of nineteen (19) times a year for those types of people. He stated that during recreational riding and during open practice there will be staff members monitoring the site which includes him. He stated that they will only allow ten (10) to twelve (12) people on the track at a time ever. He stated that if there are other people waiting then you pull someone off the track. He stated that there will never be two hundred (200) bikes running on the track at the same time. He stated that even at races there will never be more than twenty (20) racers on the track at a time. He stated that during the race event they had twenty-five (25) pros on the track. He stated that they did push the track to the far boundaries of the property. He stated that he promised the Board that he would give them the absolute worst case scenario. He stated that they could have put plywood walls in and they could have put campers up where the building would be. He said no to that because he did not want anything to come back to them stating that the riders did not run hard enough and the race was falsified. He stated that they pulled the track together in two (2) weeks. He stated that the race demonstration was going to be put on by Blue Ridge Power Sports which they have already started on a track behind their facility and it was mentioned to them that if they never had the event or did something to replicate a race at Expo, the neighbors would never know the true impact. He stated that they are being a good neighbor. He stated that they invested almost \$20,000 to pull the demonstration off. He stated that it would have cost them \$1,000 at Blue Ridge Motor Sports. He stated that they spent \$20,000 in order to be a good neighbor. He

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stated that he has done a lot of research on the Comprehensive Plan and with Special Use Permits and this site is a good fit. He stated that this is probably the only place it will fit. He stated that Expo already holds races and he will note from the time that they have done the races at the fair, not one of the neighbors at any of the fairs have ever complained about the dust, noise, traffic, nothing about the motor cross events. He stated that the complaints have always been about the monster truck or tractor pulls. He stated that there has never been one complaint about motor cross. He stated that they had a history for years where the average attendance is 360 racers and there has never been one complaint. He stated that there is a proven track record. He stated that their track will be approximately 800' to 900' further away than the track that they currently use. He stated that the track that they use is a straight shot into the townhouses. He stated that he knows that they accept this once a year but he begs to differ on that because the police records, the Planning Commission, and Expo every single year have complaints and threatening lawsuits from these neighbors complaining about the monster trucks and tractor pulls. He stated that there is a history of complaints. He stated that if something bothers you there is a right to complain. He stated that they have a proven record of not tolerating it. He stated that there is a proven history at every fair, not just Expo, that there has never been one neighbor or business that has ever complained about a motor cross race. He stated that he has called out several times to the neighbors. He stated that they had a one (1) hour meeting with Mr. Thompson and Mr. Rittenhouse at the *News Leader*. He stated that both of them commended him on what they were doing and recognized them as business professional people. He stated that they both said they have nothing against motor cross or what he was doing and they felt that this was the wrong location. He stated that he feels that they have proved that it is the right location and probably the only location. He stated that if anyone of these neighbors have land or would like to find me another site, but he has tried. He stated that it took him six (6) months to finally get with Expo because he exhausted the other resources that he knew about.

Mr. Swortzel moved that the request be approved with the following conditions:

Pre-Conditions:

1. A six (6') foot high chain link fence be installed along the perimeter of the track as shown on the site plan and must be maintained at all times.
2. A one hundred (100') foot wide and eight (8') foot high solid fence be installed behind the starting line to buffer noise.
3. A minimum one hundred (100') foot long and eight (8') foot high solid fence and a double row of six (6') foot high staggered pines trees planted ten (10') foot on center along Jericho Road opposite the track to provide a sound buffer.

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4. Two (2) additional eight (8') feet high sound walls be constructed at the top of the hill as shown on the BZA site sketch.

Operating Conditions:

1. Hours of operation be 10:00 a.m. to 8:00 p.m. Wednesday thru Saturday and 1:00 p.m. to 6:00 p.m. on Sunday.
2. During Sunday race events, the park may open at 8:00 a.m. but no motorcycles may be started until after 12:00 p.m.
3. Be limited to sixteen (16) Saturday motor cross race events per year.
4. Be limited to three (3) Sunday motor cross race events per year.
5. Overnight RV parking be permitted in conjunction with race events.
6. No more than twenty (20) riders on the track at one time during the race events and no more than ten (10) riders on the track at one time during recreational riding.
7. The track be located a minimum of two hundred (200') feet from Jericho Road.

Ms. Brown seconded the motion, which carried with a 3-2 vote with Mr. Coyner and Chairman Shreckhise opposing the motion.

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STAFF REPORT

07-27	Byler's Storage Buildings
07-28	Glick, Mark E. or Jill S.
07-29	Surratt, Michael L. or Eloisa M.
07-30	Taylor, Mark E.
07-31	White, Linda W. Trustee
07-32	Hilliard, Misty D. and Christopher M.
07-33	Snelgrove, Kevin C. or Patricia L.
07-34	Johnson, Cynthia A. or Robert E.
07-35	Eavers, Raymond G. and Cherry S.
07-36	Built By B & K, Inc.

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- 07-37 Blaine, Dana L. – **Cancelled**
- 07-38 Good Faith, LLC
- 07-39 Sours Properties, LLC

Mr. Wilkinson stated that SUP#07-27, SUP#07-28, and SUP#07-29 are all in compliance. He stated that SUP#07-30 has not marked the parking spaces yet but the applicant will have that done. He stated that SUP#07-31 is in compliance. He stated that staff has sent Ms. Hilliard, SUP#07-32, a letter regarding the completion of the pre-conditions on the permit. He stated that SUP#07-33 is in compliance. He stated that Ms. Johnson, SUP#07-34, has not completed the 40' x 40' kennel, therefore, staff has sent the applicant a letter asking if they need an Extension of Time. He stated that SUP#07-35 is in compliance. He stated that SUP#07-36 has not completed their pre-conditions, therefore, staff has sent them a letter. He stated that SUP#07-38 is in compliance. He stated that SUP#07-39 has two (2) years to complete some of the items on the permit. He stated that site is in compliance.

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There being no further business to come before the Board, the meeting was adjourned.

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Chairman

Secretary