



Rowan County Zoning Board of Adjustment

J. Newton Cohen, Sr. Rowan County Administration Building

130 W. Innes Street, Salisbury, N.C. 28144-4341

J. Newton Cohen, Sr. Meeting Room

**Thursday, March 18, 2021
5:30 p.m.**

I. Call meeting to Order

Chairman Reid

II. Invocation and Pledge of Allegiance

Chairman Reid

III. Determination of a Quorum

Chairman Reid

Current ZBA Membership: Mike Harrill; Keith Knight; David Miller; Sean Reid;
Norman Ribelin **Alternate Members:** Cathy Griffin; Vacant Position.

IV. Approval of Minutes from October 9, 2017

Chairman Reid

V. Election of Officers

Ed Muire, Planning Director

Ed Muire will preside over nominations until such time as a Chairman is elected. Per the Rules of Procedure, the election of a Chairman and Vice-Chairman is necessary at the first meeting of the year.

VI. Adoption of Agenda

Chairman

VII. ZBA 01-21 Hearing

Ed Muire

Applicant: Tony Basinger

Location: 135 Wesminster Ct, Salisbury NC

VIII. Other Business

IX. Adjournment



Rowan County Zoning Board of Adjustment

130W. Innes Street n Salisbury, NC 28144-4341

STAFF REPORT

ZBA 01-21

Request

Tony Basinger, owner of TAB Construction (applicant) has submitted a variance request on behalf of Zena Evans, Trustee of CPW Private Banking Express Trust (owner), for an approximate fifteen (15) foot reduction to the required fifty (50) foot front yard setback on Rowan County Tax Parcel 406B-141 located at 135 Wesminster Drive, Salisbury, NC.

Background

A zoning permit was issued to TAB Construction on January 15, 2021 for construction of a single-family home and a building permit and builder's electrical service issued to Brittany Long (general contractor) on January 19, 2021.

Based on inspection records, the initial footing inspection of 1.20.21 failed due to presence of clay throughout the lot and the soil would require evaluation by a third party as to its suitability for foundation placement. Apparently, the home location was moved 'forward' on the lot to suitable soil* resulting in an encroachment into the front setback.

*At the time of this report, a soil evaluation / engineering report had not been presented to Staff for review or inclusion in the packet.

Property Characteristics

Tax Parcel 406B-141 is a .52 acre lot located on Wesminster Court within the Stafford Estates Subdivision off Old Concord Rd. The parcel has 150' of frontage along Wesminster Ct and is also 150' deep. The Stafford Estates Subdivision is zoned Residential Suburban (RS) which restricts uses to single family homes with setbacks measured at 50' front; 10' side yard; and 20' rear. In contrast, the subdivision's restrictive covenants have a setback of 40' front; 10' side; and 25' rear. The property is also served by municipal water and sewer service provided by Salisbury-Rowan Utilities. Wesminster Ct and other roads within

the subdivision were constructed to NCDOT subdivision road standards but have not been assumed by DOT for maintenance.

Conditions in the Vicinity

- Seven (7) lots have frontage on Wesminster Ct and there are four (4) existing homes.
- In 2010, a home built by TAB Construction located at 145 Wesminster Ct obtained a front yard setback variance of 13.35 feet from the Rowan County ZBA

Variance Standards

Refer to the ZBA 01-21 application submitted by the applicant and his responses to the criteria for consideration of the setback variance request.



Rowan County Department of
Planning & Development
402 N. Main Street Ste 204
Salisbury, NC 28144
Phone (704) 216-8588
Fax (704) 638-3130
www.rowancountync.gov

Case # ZBA-01.21
Date Filed 2.8.21
Received By MEM
Amount Paid _____
Office Use Only

VARIANCE APPLICATION

OWNERSHIP INFORMATION:

Please fill out
Name: Zena Evans, Trustee for CPW Private Banking Express Trust
Signature: Zw Evans
Phone: 704 937 8924 Email: zwcvans3@gmail.com
Address: 401 Hawthorne Ln., Ste 110-247

APPLICANT / AGENT INFORMATION:

Name: TAB
Signature: [Signature]
Phone: 704 202 6475 Email: tab2320@bellsouth.net
Address: 2320 Providence Ch. Rd
Sal. NC 28146

PROPERTY DETAILS:

Variance Requested on Property Located at: 135 wesminster Court Sal NE
Tax Parcel: 406B141 Zoning District: _____

TO THE ROWAN COUNTY ZONING BOARD OF ADJUSTMENT:

I Tony Basinger, hereby petition the Board of Adjustment for a
VARIANCE from the provisions of the Rowan County _____ Ordinance because,
under the interpretation given to me by the Administrator*, I am prohibited from using the parcel
of land described above in a manner shown by the Plot Plan attached to this form. I request a
variance from the following provisions of the ordinance (cite Section & Code req.):

Front set back is 34.97' On map it is 40'
The lot wouldn't let us go back any further
due to bad soil.

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE:

The Board of Adjustment may grant a variance if it concludes that strict enforcement of this ordinance would result in unnecessary hardships for the applicant. The Zoning Board of Adjustment, in granting, shall ensure that the spirit of this ordinance is maintained, public welfare and safety ensured, and substantial justice done. In the following spaces, indicate the **facts** and **argument** you plan to render, in order to convince the Board, to properly determine that their conclusions or findings of fact are applicable.

- 1) Unnecessary hardship would result from the strict application of the ordinance. (It shall not be necessary to demonstrate that, in the absence of a variance, no reasonable use can be made of the property);

Bad soil on property a creek on Rear property line.

- 2) The hardship results from conditions that are peculiar to the property such as location, size, or topography. (Hardships resulting from personal circumstances and / or conditions common to the neighborhood or general public may not be the basis for granting a variance);

Hardship due to soil (pictures)

- 3) The hardship is not the result of the property owner or applicant's own actions. (The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self created hardship);

- 4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved;

Yes

- 5) The variance will not result in a land use otherwise not permitted in the applicable zoning district nor authorize the extension of a nonconforming situation in violation of article VI, or other applicable provisions of this chapter;

Had to get Andy Eller (engineer)
to look @ Footings to approve

- 6) If applicable, the setback reduction is no more than fifty (50) percent of that required and the resulting setback is no less than five (5) feet from any property line or right-of-way.

I certify that all the information presented by me in this application is accurate to the best of my knowledge information and belief.

Sam Purnell
Signature

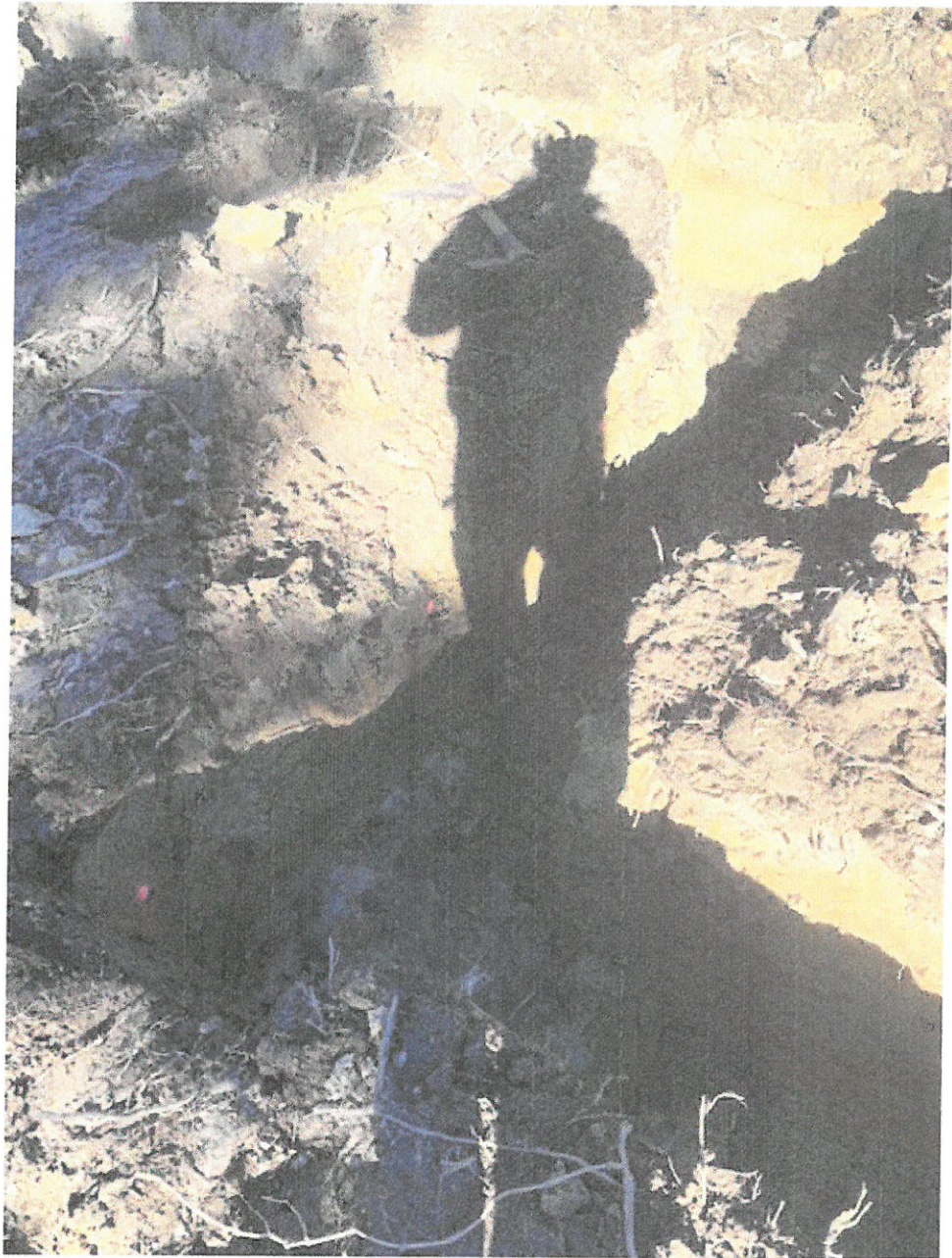
2/5/21
Date

* Includes administrators and enforcement officers with the Department of Planning and Development.

OFFICIAL USE ONLY

1. Signature of Coordinator: _____ 2. ZBA Hearing: ____/____/____
3. Notifications Mailed: ____/____/____ 4. Property Posted: ____/____/____ 5. ZBA Action: Approved _____
Denied _____ 6. Date Applicant Notified: ____/____/____ 7. Date CMO Notified: ____/____/____
-
-



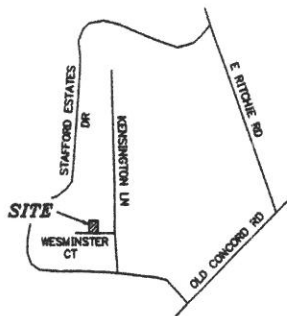




Surveyor Certificate

"I certify that this map was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book 1353, Page 954); that the boundaries not surveyed are indicated as drawn from information in Book of Maps 9995 Page 2370; that the ratio of precision or positional accuracy is 1:10,000+; and that this map meets the requirements of The Standards of Practice for Land Surveying in North Carolina (21 NCAC 56.1600)" This 2nd day of February, 2021.

Richard L. Shulenburg, P.L.S.



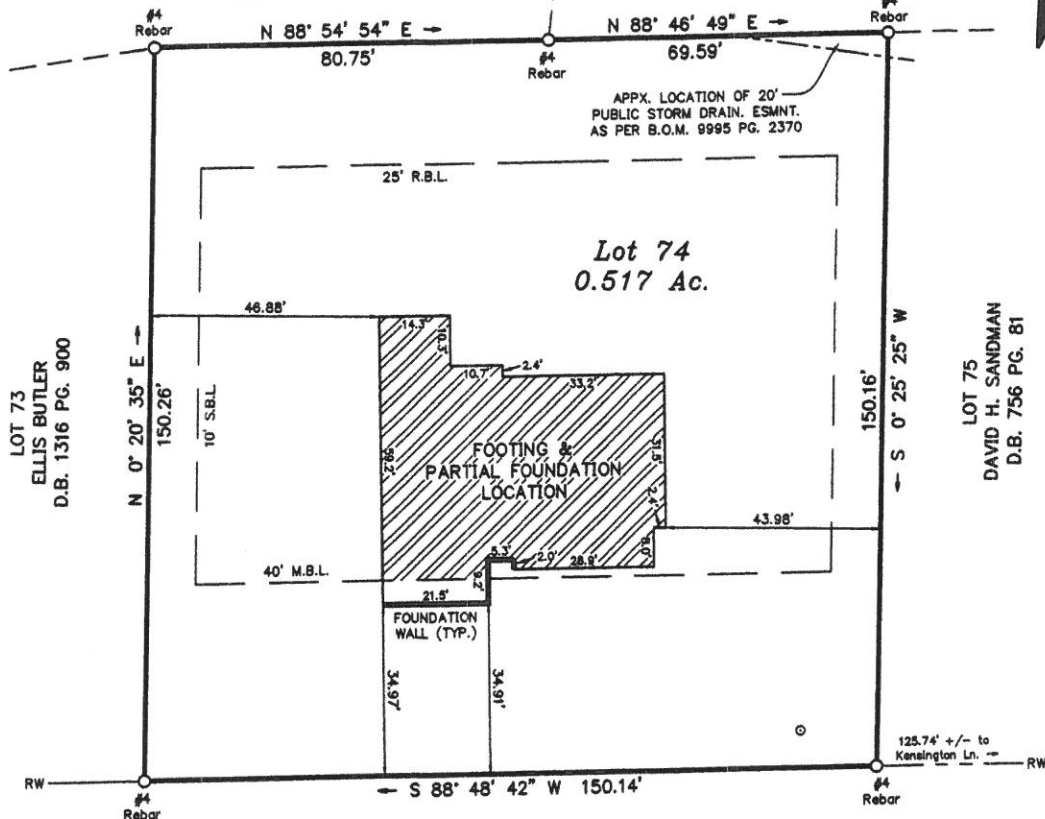
VICINITY MAP *** NOT TO SCALE

LOT 58
ROGER D. DICKSON, II
D.B. 800 PG. 492

LOT 76
DAVID H. SANDMAN
D.B. 789 PG. 256

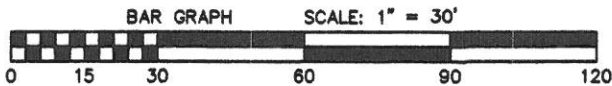
*** STAFFORD ESTATES, PH. II ***
BOOK OF MAPS 9995 PAGE 3001

*** STAFFORD ESTATES, PH. III ***
BOOK OF MAPS 9995 PAGE 3001



Wesminster Court 20' Paved 50' RW

RW



PROPERTY SURVEY FOR:

CPW Private Banking Express Trust

135 WESMINSTER COURT
LOT 74 OF STAFFORD ESTATES, PH. I

LITAKER TOWNSHIP, ROWAN COUNTY, NORTH CAROLINA

REFERENCES: Parcel ID 406B 141.
Deed Book 1353 Page 954.
Book of Maps 9995 Page 2370.

SCALE: 1" = 30' DATE: 8-17-2020
REV.: 2-2-2021

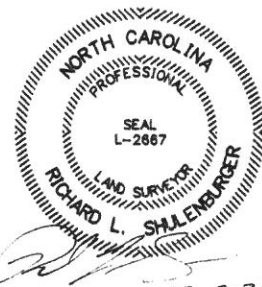
NOTE: THIS PROPERTY LIES IN DESIGNATED FLOOD ZONE "X"
(AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL
CHANCE FLOOD PLAIN) (SEE FIRM 3710565800J).

NOTE: THIS MAP IS NOT PREPARED FOR RECORDATION.

SURVEY AND MAP BY SHULENBURGER SURVEYING COMPANY, P.A. (FIRM # C-1858)
614 N. MAIN ST., SUITE A, SALISBURY, N.C. PHONE: 704-637-9623

LEGEND

- Existing Stone
- Sewer Connection
- Ex. Iron (as described)
- New Iron (#5 rebar)
- △ Point (not set)
- ⊕ Nail
- ⊕ Centerline
- RW Right-of-Way





Rowan County Planning Board

J. Newton Cohen, Sr. Rowan County Administration Building
130 W. Innes Street, Salisbury, N.C. 28144-4341
J. Newton Cohen, Sr. Meeting Room

Minutes of the Meeting Zoning Board of Adjustment October 9, 2017 6:15 PM

Board members present:

Jack Fisher; Vice-Chairman
Keith Knight
David Miller
Jim Ogg
Norman Ribelin

Board Members Absent:

Jeremy Carter; Chairman

Staff Present:

Ed Muire, Planning Director
Shane Stewart, Assistant Planning Director
Lloyd Pace, Ordinance Enforcement Officer
Aaron Poplin, Planning Technician

Other attendees of note:

Jay Dees, Rowan County Attorney
Dave Pokela, Attorney representing staff
Randy Reamer, Appellant's Attorney
David Eller, Appellant

1. Call meeting to order

Jack Fisher called the meeting to order at 6:15 PM.

2. Invocation and Pledge of Allegiance

Keith Knight offered the invocation and led the Pledge of Allegiance.

3. Determination of a quorum

A quorum was established with five members present.

4. Adoption of agenda

A motion to approve the agenda was made by David Miller. Keith Knight seconded the motion; and the motion passed unanimously.

5. Adoption of the minutes from the September 14th, 2017 meeting

Keith Knight made a motion to approve the minutes from September 14th, 2017. Norman Ribelin seconded the motion and the motion passed unanimously.

6. Hearing Process Summary

Jay Dees informs all parties on how the appeal will be conducted. He stated that this is a quasi-judicial hearing which means that the general rules of court will apply. This is an appeal of an administrative decision made by the Zoning Administrator, Ed Muire. Everyone providing testimony must be sworn in by the clerk, Aaron Poplin. All exhibits presented must be submitted to the clerk and it will be added to the permanent record. This board can only accept factual based evidence. Anyone testifying can be cross-examined, and they must state their name and address. Mr. Dees asked if anyone in attendance believes that one of the board members has a conflict of interest. *No one in attendance claimed that a board member has a conflict of interest.* Mr. Dees asked the Board if they have any conflicts of interest. *No member of the Board stated a conflict of interest.*

Jay Dees provided the procedure for the hearing. The hearing will start with appellant presenting his case; he may call up witnesses to give sworn testimony and offer exhibits to support his case. The board will be allowed to question the witnesses or appellant at any time. At the conclusion of any testimony the Zoning Administrator or his Attorney may cross examine the witness. Then the Zoning Administrator will present his case; he may call up witnesses to give sworn testimony and offer exhibits to support his case. The Board will be allowed to question the witnesses or Zoning Administrator at any time. At the conclusion of any testimony the Appellant or his Attorney may cross examine the witness. After both parties have made their case any member of the audience wishing to give testimony will be given three minutes. The Board will be allowed to bring up the Appellant, the Zoning Administrator, or any witness for further cross examination. Both parties will then be given a chance for rebuttal and closing arguments. At the conclusion of the closing arguments and after all testimony and exhibits have been presented the hearing will be closed and the Board will deliberate.

Jay Dees provided the procedure for the deliberation. No further testimony will be allowed. The Board will make findings of fact and conclusion of law based on the evidence and testimony presented. The Board will take actions either affirming the Zoning Administrator's decision in full or in part; reversing the Zoning Administrator's decision and approving the Appellants appeal; or continuing the hearing to a later date. Only a simple majority is required to approve or deny an appeal. A decision will be made later in the meeting if the meeting needs to continue to another night. Appeals of this decision are made to superior court in accordance to NC GS 160A-393 and copies of the findings of fact may be received from the clerk.

7. ZBA-02-17

a. Introduction of the Case

Jack Fisher, Vice-Chairman, introduced the case as ZBA-02-17 an appeal of a zoning administrator's decision made by William David Eller that the use of his property at the 1500-1600 blocks of Deer Creek Dr. is a race track. The Rowan County Tax Parcels associated with this property are Tax map 620 047 and 620 048.

Aaron Poplin swore in all people who will give testimony during the meeting.

Dave Pokela: Asked for the record to be clear on the procedures of this meeting in that as evidence is offered objections must be made to them at that time.

Jay Dees: Confirms that objections must be made when the evidence is offered.

Both attorneys introduce themselves and who they represent. Dave Pokela is representing Ed Muire in his official capacity as the Rowan County Zoning Administrator. Randy Reamer is representing David Eller as the Appellant. The attorneys then agree that the Appellant will give their case first and that both sides will only be allowed to present evidence during their respective cases. Vice-Chairman Fisher agrees to the order of the case.

b. Staff Report

Ed Muire provided the staff report.

Back Ground: The property in question is Rowan County Tax Parcels 620 047 and 620 048 owed by William David Eller and Traci Poole Eller. The use of the property warranted the issuing of a warning citation on February 1st 2017 for the reasons of the property is being used as a race track. The first citation for violation of the Rowan County Zoning Ordinance was issued on February 22nd 2017. The Ellers paid the twenty five (25) dollar fine on February 22nd 2017 and filed for appeal on March 2nd 2017. Case ZBA-02-17 the Ellers filed an appeal that their property was being used as a race track. The Ellers contention was quoted, "The zoning code does not define a racetrack. The actual use of the property is for ATV vehicles on a course. There is no race activity, no public attendance, and no other factors described in the zoning ordinance about race tracks that brings the use of RA land for the driving of an ATV into the scope of the ordinance. The vehicles used specifically do not meet the definition of a Go-Cart nor the operation of a Motor Speedway /Drag Strip."

Property Characteristics: Tax Parcel 620 047 is a 4.579 acre tract including right of way and Tax Parcel 620 048 is a 5.356 acre tract including right of way accessed via Deer Creek Drive, which is a private road, accessed off of the 400 block of Beagle Club Rd SR 2133. Deer Creek Drive is a thirty foot (30') easement established in a plat recorded in book of maps 9995 page 2991. Both tracts and the surrounding area are located in the RA zoning district. The Rowan County Zoning Ordinance in chapter 21-32a as such, "This district is developed to provide for a minimum level of land use regulations appropriate for outlying areas of the county. These outlying areas typically consist of rural single-family housing, larger tracts of land used for agriculture or in fields and forest land, with some nonresidential uses intermingled. Multifamily uses are discouraged in this district. This district would provide for

protection from the most intensive land uses while containing provisions for a variety of less intensive land uses. It is the intent of this district to rely upon development standards to protect residences from potential adverse impacts of allowed nonresidential uses. The most intensive land uses would not be allowed in this district.” As noted in section 21-113 of the Rowan County Zoning Ordinance the Race Tract use is a conditional use in the Commercial Business Industrial (CBI) and Industrial (IND) zoning districts. In addition to requiring the appropriate zoning district, consideration of a race tract would require both general requirements from chapter 21-59 and specific requirements from chapter 21-60p9 are satisfied in a Quasi-Judicial hearing conducted by the Board of County Commissioners. In this particular case no rezoning has been filed to rezone this property to CBI or IND.

c. Appellant Case

Randy Reamer began the Appellant’s case.

Mr. Reamer: Stated that the appellant built a track on his private property in a RA zone for the use of his son and his friends to practice riding Honda ATV/ 4-Wheelers. There are many places in the county where people practice riding ATV and Motocross riding. Mr. Eller has built a safe place for his son to ride. The neighbors have over reacted and they have complained about the use without finding out what is going on, and they have called law enforcement to find that the appellant has not violated any criminal law. The Zoning Administrator has been pressed to make a decision on if this use is allowed. The Zoning Administrator made a decision that this is a race track operation and race track operation is not permitted in the RA district. Racing operations and racing are not defined in the Zoning Ordinance. To the extent that they are defined they are defined as Go-Cart track, Motor Speedways, and Dragstrips in which this is nothing like any of these. You can build a Racetrack just about anywhere but you cannot operate one in the RA district. We contend that this use is not a racetrack, operated as a racetrack, or ever intended to be a racetrack. We acknowledge that this is a track, it is a practice course. The appellant’s son races in suctioned events and practices riding on a course located near the subject property. This course will not be use every day, it is seasonal and is purely for private use. Racing activities are not defined in the ordinance. It is up to the Zoning Board of Adjustment to determine what the facts are.

Dave Pokela: Asked to be allowed to give a brief opening statement.

Vice-Chairman Fisher: Allowed it.

Dave Pokela: Stated that he is the attorney representing the Mr. Muire in his official capacity, representing staff, and representing the county in response to Mr. Eller’s appeal. The appellant has been the owner of a race team, Phoenix Racing, and has recently improve the teams facilities including the Race Shop, Practice facility, acquiring haulers to appear as professional as possible, and that this track is for his team members and not just his son to practice. This track is professionally built by two entities Dirt Monkey LLC and MX Track Builders. You can tell that a significant amount of investment has been put into this track. I will tell you, “If it walks like a duck and quacks like a duck it is a duck.” Our evidence will be that this is a race track. You will apply the table of uses and you will find racetrack operations this is a racetrack as our evidence will show.

Randy Reamer called Ed Muire, Rowan County Planning Director 402 N Main St. Salisbury, NC 28144, to the stand.

Randy Reamer: Stated that in his notes this all started around January 17th. He asked if Mr. Muire recalled when everything started.

Ed Muire: Stated that he did not recall when the events at Deer Creek started.

Randy Reamer: Asked how Mr. Muire first became aware of the situation regarding the property on Deer Creek.

Ed Muire: Stated that his recollection is that the County ordinance enforcement officer, Lloyd Pace, responded to a couple of adjoining property owner calls, and that he believed Lloyd went out on January 23rd.

Randy Reamer: Asked if Lloyd Pace works for Mr. Muire. After confirmation from Mr. Muire, Mr. Reamer asked if Mr. Muire reviewed the case when Lloyd first went out to the site.

Ed Muire: Stated that he did review the case at that time.

Randy Reamer: Asked what Lloyd reported.

Ed Muire: Stated that Lloyd's first concern was from the grading activity on the site and Lloyd asked if there was any type of erosion control plan that was submitted to the county. Lloyd said that it appeared to be a racetrack.

Randy Reamer: Asked if Mr. Muire issued the warning citation based on the report from Lloyd Pace.

Ed Muire: Stated that he did issue the citation based on Lloyds report.

Randy Reamer: Asked if Mr. Muire had visited the site prior to issuing the warning citation prior to visiting the site.

Ed Muire: confirmed that he issued the citation prior to visiting the site.

Randy Reamer: Asked what happened after the citation was issued.

Ed Muire: Stated that he received a letter from Mr. Eller lawyer, Cecil Whitley.

Randy Reamer: Asked if the Rowan County Planning Department received an email from the Sheriffs Department.

Dave Pokela: Objected stating relevance to the case.

After general discussion, the board overruled the objection.

Randy Reamer: Asked if the email from the Sheriffs department stated that there were no violations.

Ed Muire: Stated that the Rowan County Planning Board is not looking at it.

Dave Pokela: Objected the letter due to the characterization of the letter.

After general discussion, the board overruled the objection.

Randy Reamer: Stated that on February 21st Mr. Muire sent out staff to visit the site. Mr. Reamer then asked what Mr. Muire did as a result of the site visit.

Ed Muire: Stated that he issued the first citation for race track operation. The citation had a twenty five dollar fine and it is appealable.

Randy Reamer: Asked if race track or racing operations are defined in the ordinance.

Ed Muire: Stated that race track is not defined in the definitions section of the ordinance and that in section 21-4 of the Rowan County Zoning Ordinance it states that any word not defined here at common dictionary definition will apply.

Randy Reamer: Asked if Mr. Muire made his decision that the subject property is a race track based off of the common dictionary definition.

Ed Muire: Answered that it was also because of the appearance.

Randy Reamer: Asked if racetracks are permitted in other zoning districts in the county.

Ed Muire: Stated that racetracks are conditional uses in the CBI and Industrial zoning districts.

Randy Reamer: Stated that Ed Muire provided the conditional use requirement for racetrack operations in the CBI and Industrial zoning districts in the packed. Mr. Reamer stated that those conditions would not apply here.

Ed Muire: Stated that they do apply because this is a racetrack. They do not apply to this hearing but those standards apply to this particular use.

Randy Reamer: Asked if this hearing is about a man's right to use his private property in the RA district.

Ed Muire: Stated that this is an appeal to his decision as the Zoning Administrator.

Randy Reamer: Asked if Mr. Muire agrees that the RA district was developed to provide a minimum level of land use regulation in outlying areas of the county.

Ed Muire: Stated that the ordinance also says that the most intensive uses are not allowed. Racetracks are conditional uses in the CBI and Industrial districts which are not residential or rural districts.

Randy Reamer: Asked if a property owner in an RA district can ride a; motor cross bike; ATV; or other similar vehicles at any time day or night, on their own property, without violating the zoning ordinance.

Ed Muire: Stated that they would look at it on a case by case basis. He can't speak about other hypotheticals.

Randy Reamer: Asked what makes this a race track other than it looking like a racetrack.

Ed Muire: Stated there have been improvements made to the site that makes a track surface with continuity.

Randy Reamer: Asked if there is anything in the zoning ordinance that prevents the building of a racetrack.

Ed Muire: Stated in the appropriate zoning district and with a conditional use permit a race track can be made.

Randy Reamer: Stated in the appellants materials there are two examples of racetracks in the county. Mr. Reamer asked if Millbridge speedway is a race track and Mr. Muire agreed. Mr. Reamer stated that Millbridge speedway has stands, a website, advertisements, and charge admission. Mr. Reamer asked if there are any of these facilities at the Eller site.

Ed Muire: Replied not yet.

Randy Reamer: Asked if Mr. Muire had asked Mr. Eller about the plans for his site.

Ed Muire: Stated that he had not asked Mr. Eller about the plans for the site.

Randy Reamer: Described the facilities of the Quarter-midget track located at 1130 Speedway BLVD as having a fence, stands, restrooms, etc. Mr. Reamer asked if they hold competitions at that track.

Ed Muire: Stated that he believes they do hold competitions at the track.

Randy Reamer: Asked if there was any evidence that other racing facilities were going to be placed at the Eller site, or if it appeared that a competition was going to take place at the Eller site.

Ed Muire: Stated other than a letter from Cecil Whitley, stating that a appropriate fencing would be added, he has not heard of any plans to add more facilities to the site.

Randy Reamer: Asked if any planning staff reached out to Mr. Eller to see what his intentions were.

Ed Muire: Stated that he had not received any contact from Mr. Eller nor did staff try to contact Mr. Eller, aside from the letter from Cecil Whitley.

Vice-Chairman Fisher initiated a 15 minute recess at 7:19. The meeting resumed at 7:32.

Dave Pokela: Asked if Tim Wyrick has any role within the Planning Department.

Ed Muire: Stated that Tim Wyrick does not have any role in the Planning Department and that his letter would not be pertaining to violations of the Zoning Ordinance.

Randy Reamer called David Eller, Appellant(650 Kingstree Rd. Salisbury, NC 28146) to the stand.

Randy Reamer: Asked Mr. Eller who lives in his house.

David Eller: Stated that his wife and two kids live in his house.

Randy Reamer: Asked how long Mr. Eller has lived in Rowan County.

David Eller: Stated that he has lived his whole life in Rowan County and he runs Makson INC and employs around 157 people in Rowan County. He has lived in his house at 650 Kingstree for 9 years.

Randy Reamer: Asked Mr. Eller if people ride ATVs in his neighborhood.

David Eller: Stated that they have a tail loop that goes around the four ten acre tracts that the neighborhood rides ATVs on.

Randy Reamer: Asked Mr. Eller if there was a place next to his house that had been developed to ride ATVs.

David Eller: Stated that they made a place to ride ATVs on their property in 2009. His son has been racing ATVs for ten years.

Randy Reamer: Asked Mr. Eller if they were still using the trail next to his house in 2014.

David Eller: Stated that his son was still using the trail next to his home and sometimes the neighbors would use it as well.

Randy Reamer: Asked Mr. Eller to describe the drone photo of the track at his house. Mr. Reamer also asked if the track became obsolete.

David Eller: Described the photo as a drone photo from Sunday October 8th. Mr. Eller stated that he spoke with the neighbor John Cox and they decided that someone should develop the subject property because it was negatively impacting the neighborhood. Mr. Eller continued that he knew someone who could develop the property, Rodney Mickelson, and that they could make Mr. Mickelson a residence and a place for their kids to ride to ride. Mr. Mickelson would have to wait until the end of the year to build the residence because his

home in Minnesota will not close until the winter. Mr. Eller stated that they removed the trailers that were on the site.

Randy Reamer: Asked Mr. Eller to describe the drone picture of the subject property.

David Eller: Stated that the picture is of the track and the home for Mr. Mickelson that is currently under construction and a pond.

Randy Reamer: Asked Mr. Eller if the track was meant to go with the house and surrounding area.

David Eller: Stated that the track was to go with the house, and that Mr. Mickelson had a track next to his house in Minnesota as well. Both of Mr. Mickelson's sons ride as well.

Randy Reamer: Asked Mr. Eller about the parcel next to the subject parcel.

Dave Pokela: Objected to strike the answer from the record due to the answer being speculative.

The board sustains the objection.

Randy Reamer: Asked Mr. Eller to describe his sons riding of ATVs.

David Eller: Stated that his son's racing season is 10-11 races and they start in March and run until the first weekend in August. They race about every two weeks because of travel time, and it is a national touring series. The series is sanctioned by the AMA, (American Motorcyclist Association) and his son has been competing in it for 10 years. His son rides in the A Class series which is four classes below pro. His son is still an armature but the series is not a money making venture. Mr. Eller stated that he is one of the sponsors for his son's team.

Vice-Chairman Fisher: Asked for Mr. Reamer to talk about the case at hand.

Randy Reamer: Asked Mr. Eller why he built the track.

David Eller: Stated that he built the track for his son to ride on. They only ride around this area in January and February just before the season starts. Once the season starts they would normally follow the circuit and ride on tracks in those areas. Mr. Eller stated that his son has ridden on the subject tract four times for about 15 minutes at a time. The only people to ride on the track are Greyson Eller, Noah Mickelson, Haden Mickelson, and Joel Hedrick. If they did not ride on this track the next closest tracks are in Columbia South Carolina and South Boston Virginia. Mr. Eller stated that they never planned to hold public events at the track.

Randy Reamer: Asked Mr. Eller if the track he made was suitable to race.

David Eller: Stated that the track is not wide enough to hold a race and the lap times would be too short. There have never been any plans for others to pay money to ride on the track.

Randy Reamer: Gave examples of three race tracks that Mr. Eller's son races on.

David Eller: Described; the first track as Unadilla, a track in upstate New York; the second track as Muddy Creek Raceway, a track in Blountville Tennessee; and the third track as Redmud, a track in Buchanan Michigan.

Randy Reamer: Asked if the pictures of the tracks be offered up for exhibit, and asked Mr. Eller if his track is like any of these.

David Eller: Stated that what he built is not near the caliber of track as the given examples.

Randy Reamer: Asked Mr. Eller to describe how the track was built.

David Eller: Stated that he wanted the track to be safe so he brought in people from out of state who build tracks to make the track, and he had Patrick Miller clear the land. Marty built the track only using materials found on the site. Mr. Eller stated that he asked Marty to include certain things on the track such as specific types of jumps, and Marty created the wish list items and connected them all together.

Randy Reamer: Asked Mr. Eller if his track is anything like the tracks he showed Mr. Muire or if there were any plans to make them like those tracks.

David Eller: Stated that his track is not like the ones Mr. Reamer showed Mr. Muire and that he had no plans to make his track similar to those tracks.

Randy Reamer: Asked Mr. Eller if there are any practice tracks similar to his in the county.

David Eller: Stated that he has seen other practice tracks out in the county that are similar to his in the county. He described four tracks out in the county as serving a similar use to his track.

Dave Pokela: Objects to the fourth track for being speculative of the use.

The Board overrules the objection

Randy Reamer: Asked Mr. Eller to explain why he is appealing the decision.

David Eller: Stated that he had no intent to break the law and just thought he was just making a place for his son to ride. He reached out to Mr. Muire, and he received a 25 dollar fine when his son was getting pictures taken at the track. Mr. Eller continued that he decided he needed to figure out what was going on after being issued the fine. He wants to know what he needs to do to be able to ride on the property. None of the neighbors have reached out to him.

Dave Pokela: Asked Mr. Eller if he knew any of the owners of the practice tracks in the county, and if any of them have pro racing teams.

David Eller: Stated that he knew one of the owners, Billy Daniels, and he does not own a race team.

Dave Pokela: Asked Mr. Eller if Dirt Monkey LLC was brought in to build any of the practice tracks reference.

David Eller: Stated that it would appear that Dirt Monkey LLC did not make any of the mentioned practice tracks.

Dave Pokela: Asked Mr. Eller if the track in exhibit thirty five was in the town of Faith's Zoning Jurisdiction.

David Eller: Stated that he knows that the track is not inside the town limits, but he is unsure if the track is within Faith's Extraterritorial Jurisdiction (ETJ).

Dave Pokela: Asked Mr. Eller if exhibit 36 was governed by the Rowan County Zoning Ordinance.

David Eller: Stated that he was unsure of the Zoning Jurisdiction.

Dave Pokela: Asked Mr. Eller what his wish list items were for the track.

David Eller: Stated that he wanted; Step-on Step-offs; Whoop De Doo; A breaker wall; and a big jump.

Dave Pokela: Asked Mr. Eller if you would find these items on race courses.

David Eller: Stated that you would find most of those items on a race course, except for the breaker wall.

Dave Pokela: Asked Mr. Eller if the people who road on the track were members of team Phoenix racing.

David Eller: Stated that the people who road on the track are both his sons friends and teammates, and that they are the only ones who would ever ride on the track.

Dave Pokela: Asked Mr. Eller how far away the other tracks are from the Phoenix racing shop.

David Eller: Stated that they are about two and a half hours away each.

Dave Pokela: Asked Mr. Eller if this track is more convenient for team Phoenix racing because their shop is only a few miles down the road.

David Eller: Stated that it will be even more convenient once Rod moves next door because both of their sons will live next to the track.

Dave Pokela: Asked Mr. Eller if the citation is the only reason they have only road on the track four times. Mr. Eller confirms the reason. Mr. Pokela asked Mr. Eller if they practice at fifteen minute intervals.

David Eller: Stated that they race at fifteen minute intervals to condition themselves for the races but they don't use their race equipment at the subject property.

Dave Pokela: Asked if they use team equipment to practice on the subject property.

David Eller: Stated that he does not own all of the ATVs that are use on site.

Dave Pokela: Asked Mr. Eller to look at county exhibit 2 (an aerial photograph of the site) and answer if it is an accurate representation of the site. After Mr. Eller confirms it is an accurate depiction of the site, Mr. Pokela asked for exhibit 2 to be accepted as evidence.

Randy Reamer: Stated that he thought that both sides' exhibits were all going to be accepted as evidence.

The Board accepted all exhibits from both parties as evidence.

Dave Pokela: Asked Mr. Eller if Dirt Monkey LLC was brought on to build the track on appellant exhibit 6.

David Eller: Stated that Dirt Monkey LLC did not make the track from exhibit 6.

Vice-Chairman Fisher initiates a 5 minute break at 8:25 and resumed at 8:33.

Dave Pokela: Asked Mr. Eller what his relationship is with Maxxis/ Elka/ Liquid Wrench/ Honda team, which Greyson Eller drives for, is.

David Eller: Stated that he is one of the sponsors for Maxxis/ Elka/ Liquid Wrench/ Honda.

Dave Pokela: Asked Mr. Eller if Phoenix racing is his marking for the team.

David Eller: Stated that Phoenix racing is his marketing arm for the team.

Dave Pokela: Asked Mr. Eller if Greyson Eller, Joel Hetrick, and the two Mickelson boys race for team Phoenix racing.

David Eller: Stated that they race for Maxxis/ Elka/ Liquid Wrench/ Honda and that Phoenix racing is an LLC that was set up to protect Makson.

Dave Pokela: Asked Mr. Eller if Phoenix racing had a race shop off of Speedway BLVD.

David Eller: Stated that he bought a building off of Speedway BLVD. to put his car collection in, and that there was spare room to move some of the racing equipment over to the building.

Dave Pokela: Asked Mr. Eller if the creation of the race shop and other investments in the race team were made to improve team Phoenix's visibility.

David Eller: Stated that the new hauler was cheaper to run and that these improvements also were to help his kids stay near home for winter training.

Dave Pokela: Asked Mr. Eller if the facilities at Speedway BLVD are the ones he mentioned in his interview with ATVRiders.com.

David Eller: Stated that those were the facilities he was talking about in the interview.

Dave Pokela: Asked Mr. Eller if Joel Hetrick is a professional racer for his team.

David Eller: Stated that the team Maxxis/ Elka/ Liquid Wrench/ Honda is more of a group effort between the sponsors.

Dave Pokela: Asked Mr. Eller if he was trying to get into ArenaCross.

David Eller: Stated that they are starting to sponsor an ArenaCross bike by buying the fender space.

Dave Pokela: Asked Mr. Eller if the track on his property is actually two tracks.

David Eller: Stated that the property has an ArenaCross practice track as well, and he reiterates that he does not have an ArenaCross team he is starting to sponsor an ArenaCross team.

Dave Pokela: Asked Mr. Eller how much he spent on the track.

Randy Reamer: Objected due to relevance.

The board overruled the objection.

David Eller: Stated he did not know the exact number but it was around \$8,400 between MX track builders and Dirt Monkey LLC.

Dave Pokela: Listed features of the track at Loretta Lynn's and David Eller confirmed that the track had them. Mr. Pokela asked Mr. Eller about the individuals who built the track.

David Eller: Stated that he paid Marty for the work, but he did not know who built which track or if it was a collaborative effort.

Dave Pokela: Showed the MX track builder's website had a video of the subject track as an example of their work. Mr. Pokela asked Mr. Eller when he first talked to Marty.

David Eller: Stated it was before December but he couldn't schedule Marty until Patrick had cleared the land. He confirmed that Patrick's equipment was used in construction of the track.

Dave Pokela: Asked Mr. Eller if the pond they made was to keep the dust down.

David Eller: Stated that the pond was just because Mr. Mickelson wanted a pond, but they would use the pond to keep the dust down if they could ride.

Dave Pokela: Asked Mr. Eller when the work started on the track.

David Eller: Stated that they flew in on a Sunday so they probably started work that Monday, but he was unsure.

Dave Pokela: Asked Mr. Eller if the Maxxis/ Elka/ Liquid Wrench/ Honda facebook page shared the quad radio video interview of Hayden Mickelson.

David Eller: Stated that the facebook page did share the video.

The Quad Radio Interview video (County exhibit 51) is shown.

Randy Reamer: Objected to the video due to it not being sworn testimony.

Dave Pokela: Stated that the video counts as a statement according to the hearsay rules.

The Board overruled the objection and accepted County exhibit 51 to evidence.

Dave Pokela: Asked Mr. Eller what Patrick Miller did.

David Eller: Stated that Mr. Miller cleared the site by removing trees and stumps.

Dave Pokela: Asked Mr. Eller if he corrected Mr. Miller when he called the subject property a race track.

David Eller: Stated that he did not correct Mr. Miller.

Randy Reamer: Asked Mr. Eller if he stands by his testimony that the track is just for his son and his friends to practice driving ATVs and that there will be no races held on the track.

David Eller: Stated that he stands by his testimony that the track is just for his son and his friends to practice driving ATVs and that there will be no races held on the track.

Vice-Chairman Fisher: Asked Mr. Eller how many people would use the track and how long their racing season is.

David Eller: Stated that no more than four people have been on the track and the racing season runs March through August.

David Miller: Asked Mr. Muire what would be required by Zoning to have a racetrack.

Ed Muire: Stated that it would need to be in the CBI or IND district and we would have to evaluate the conditional use criteria for the site.

Randy Reamer: Called Patrick Miller (825 Beagle Club Rd. Salisbury, NC 28146) to the stand. Mr. Reamer asked Mr. Miller what he did to help build the subject track.

Patrick Miller: Stated that he removed the stumps and underbrush from the site and that he placed the dirt in the locations requested so that they could be shaped into the track features. All of the dirt came from the site. It took about five days to build the track after they cleared the site.

Randy Reamer: Asked Mr. Miller if he saw riding on the track.

Patrick Miller: Stated that he saw a few people riding on the track, but they did not appear to be racing.

Dave Pokela: Asked Mr. Miller if he called the track a racetrack.

Patrick Miller: Stated that he did call the track a racetrack in his text message to Mr. Eller.

Randy Reamer: Called Joe Morris (600 W Henderson St. Salisbury, NC 28144) to the stand.

Joe Morris: Stated that he is a property owner in Rowan County and that he is a retired Planning Director for the city of Salisbury. He was in essence the chief zoning administrator at the time. He was AICP during his time with the city of Salisbury. It is not uncommon for planners to have disagreements.

Randy Reamer: Asked the Board to accept Joe Morris's testimony as expert testimony.

Dave Pokela: Objected under rule 701 in the expert witness rules in the rules of evidence. Mr. Pokela stated that an expert witness is only necessary on an issue the trier of fact needs an opinion on. This Board is in just as good of a position as the expert witness to make a decision on this particular issue. Expert opinion is not appropriate in this case.

The Board sustains the objection and does not allow Joe Morris to testify as an expert witness.

Randy Reamer: Asked if Joe Morris can still testify as a lay witness.

Dave Pokela: Stated that the Board should consider GS 160a-393, "in a quasi-judicial hearing lay opinions are inadmissible".

The Board decided that Joe Morris can testify as a lay witness.

Randy Reamer: Asked Mr. Morris if he found any evidence that this was racetrack activity based on the ordinance.

Dave Pokela: Objected the question because it was asking for an opinion testimony.

The Board sustained the objection and does not allow the question.

Randy Reamer: Stated that he would like to have a record of what would have been Joe Morris's testimony.

Dave Pokela: Stated that they could have Joe Morris give testimony after the Board has left the room.

After discussion between Dave Pokela, Randy Reamer, and Jay Dees, it was determined that Joe Morris would be recalled for record testimony after the Board has left the room.

Randy Reamer: Called Rod Mickelson (113 Anthony St. Rockwell, NC 28138) to the stand. Mr. Reamer asked Mr. Mickelson if he is planning to buy the property.

Rod Mickelson: Stated that it has always been the plan that he buy the property, and that his sons both ride ATVs.

Randy Reamer: Asked Mr. Mickelson asked what his vision is for the property in the future.

Rod Mickelson: Stated that he had a track at his house back in Minnesota. Mr. Mickelson continued that his sons are on a race team, but in the ATV would its just a set of stickers there is no money to be made.

Randy Reamer: Asked Mr. Mickelson if he intends to do anything more with the track once he owns it.

Rod Mickelson: Stated that he would never hold events at the track. He reached out to the neighbors to compromise, but they would not allow the track under any circumstances.

Dave Pokela: Asked Mr. Mickelson if dust and noise is an issue.

Rod Mickelson: Stated that dust can be an issue if you don't treat it properly. He has never brought something to measure noise to a track, and he does not know what the ordinance is for noise.

Dave Pokela: Asked Mr. Mickelson if he shared the photos from quad radio showing off the Phoenix racing headquarters and practice track.

Rod Mickelson: Stated that he did share those photos, but this is a practice track because it has no starting gate.

The video of the interview with Joel Hetrick (County exhibit 52) is played and accepted as evidence.

Dave Pokela: Asked Mr. Mickelson if Joel Hetrick is a pro racer, and if he reached out to the neighbors.

Rod Mickelson: Stated that Joel Hetrick is a pro racer and that he did reach out to the neighbors.

Randy Reamer: Asked Mr. Mickelson who Joel Hetrick is.

Rod Mickelson: Stated that Joel races his own equipment and he parks his equipment under their tent.

Randy Reamer: Asked Mr. Mickelson what his plans are for the site.

Rod Mickelson: Stated that he has no plans set in stone, and that he is not going to have people paying money to ride the track. He does not know how often they will use the track.

Dave Pokela: Asked Mr. Mickelson if Joel Hetrick races for Mr. Eller.

Rod Mickelson: Stated that Joel races for Mr. Eller but his equipment is worked on by his own mechanics in Pennsylvania.

Randy Reamer: Called John Cox (555 Kings Tree Dr. Salisbury, NC 28146) and asked him what his observations are.

John Cox: Stated that he was not in a position to buy the land and Mr. Eller told him that he would buy it and put a track on it. He was glad to see the land cleaned up.

Randy Reamer: Asked Mr. Cox what he thought of the activity out there.

John Cox: Stated that he has had no complaints about the noise from the track, and everyone around there has ATVs.

Randy Reamer: Asked Mr. Cox if he has seen racing activity on the site.

John Cox: Stated that he has not seen any racing on the site just kids riding four wheelers.

Randy Reamer: Stated that concludes the evidence for the appellant.

Vice-Chairman Fisher: Asked Mr. Miller how long he has been clearing property and why he didn't ask if Mr. Eller had a permit.

Patrick Miller: Stated he has been clearing land since 1984, and that he clears land in the county on a regular basis and it has never been an issue.

The Board decided to recess until 4:30 PM on Tuesday October 10th.

d. Zoning Administrator Case

Dave Pokela: Called Rod Mickelson back to the stand.

The video of Joel Hetrick's interview with Quad Radio (County exhibit 52) is played

Dave Pokela: Asked Mr. Mickelson if they were testing the ATVs on the site as mentioned in the video.

Rod Mickelson: Stated that he was unsure if they tested at the subject site of if they were testing in Virginia in relation to the video.

Dave Pokela: Asked Mr. Mickelson who all road with Joel Hetrick at the subject track.

Rod Mickelson: Stated that it was probably both his sons and Greyson Eller.

Dave Pokela: Called David Eller back to the stand.

The video of David Eller's interview with Quad Radio (County Exhibit 53) was played and added to evidence.

Dave Pokela: Asked Mr. Eller about his ArenaCross Team.

David Eller: Stated that he is one of the sponsors of the ArenaCross team, but it is someone else's program that he will be a part of.

Dave Pokela: Asked Mr. Eller what the big news for 2020 will be with the ArenaCross team.

David Eller: Stated that there is a new driver who is competing in Australia that they are going to add to the team.

Randy Reamer: Asked Mr. Eller if this was a money making venture.

David Eller: Stated that this is not a money making venture.

Dave Pokela: Called Carolyn Christian (1680 Deer Creek Dr. Salisbury, NC 28146) to the Stand.

Carolyn Christian shows where her property is in relation to the subject property. Carolyn Christian's video of the subject site with riders driving on the track (County exhibit 54) and the video was accepted as evidence. Carolyn Christian's second video, video of riders driving on the subject site, (County exhibit 55) was played and the video was accepted into evidence.

Carolyn Christian: went over the photos in County Exhibit 15 and explained that they were photos of the subject site. Mrs. Christian stated that she sent the subject photos to Lloyd Pace. The photos were taken a few days prior to her February 8th email to Lloyd Pace.

Carolyn Christian played her third video, a video of riders driving on the subject property with a decibel reader in the foreground, (County exhibit 56) the video was accepted into evidence. Carolyn Christian played her fourth video, a video of riders driving on the subject property with a decibel reader in the foreground, (County exhibit 57) the video was accepted into evidence.

Randy Reamer: Asked Mrs. Christian if she had talked to Mr. Eller or Mr. Mickelson.

Carolyn Christian: Stated she did not see a need to talk to Mr. Eller and she did talk to Mr. Mickelson. When she spoke with Mr. Mickelson asked her if they could come up with a

compromise, and she told him that she does not speak for all the home owners. Mrs. Christian stated that she would be okay with riders every once in a while, but Mr. Mickelson said worst case scenario is five days a week three times a day for twenty minutes at a time. Mrs. Christian stated that the riding averaged an hour and forty-five minutes a day.

Randy Reamer: Asked Mrs. Christian what type of riding that was going on at the site.

Carolyn Christian: Stated that it was very loud, and that she talked to Mr. Mickelson and he gave her a lower number, on the amount of times they will ride on the track, than before.

Randy Reamer: Asked Mrs. Christian if she knows of any violation to the county noise ordinance.

Carolyn Christian: Stated that she does not know if the ordinance had been violated. She read the definition of noise.

Keith Knight: Asked Mrs. Christian if anyone talked to her during the construction of the track.

Carolyn Christian: Stated that no one talked to her during the track construction. She assumed that they were building houses at first.

Keith Knight: Asked Mrs. Christian if she heard about their race team.

Carolyn Christian: Stated that she did not hear anything about a race team, but she looked up the names of the riders and found out that they race Pro-Am.

David Miller: Asked Mrs. Christian if this property is in the Deer Creek neighborhood.

Carolyn Christian: Stated that the property is in the neighborhood.

Randy Reamer: Objected to the Deer Creek subdivision covenants being relevant.

The Board overruled the objection.

Dave Pokela: Called Ed Muire back to the stand. Mr. Pokela asked Mr. Muire to reintroduce himself.

Ed Muire: Introduced himself as the Planning Director fro Rowan County, which he has been working at since 1993 and been Director since 2006. Mr. Muire stated that he has a bachelor of science in Community and Regional Planning from Appalachian State University. He is AICP since 2001.

Dave Pokela: Asked Mr. Muire what his job responsibilities are as the Planning Director.

Ed Muire: Stated that he supervises all functions of the Planning Department and provides interpretations of the Zoning and Subdivision Ordinances. The Zoning Ordinance was first adopted in 1998 and he has been the De Facto Zoning Administrator since 2004.

Dave Pokela: Asked Mr. Muire what the purpose and intent is of the Rural Agricultural district.

Ed Muire: Quoted the Zoning Ordinance, "This district is developed to provide for a minimum level of land use regulations appropriate for outlying areas of the county. These outlying areas typically consist of rural single-family housing, larger tracts of land used for agriculture or in fields and forest land, with some nonresidential uses intermingled. Multifamily uses are discouraged in this district. This district would provide for protection from the most intensive land uses while containing provisions for a variety of less intensive land uses. It is the intent of this district to rely upon development standards to protect residences from potential adverse impacts of allowed nonresidential uses. The most intensive land uses would not be allowed in this district." Mr. Muire stated the Zoning Ordinance has Race Tracks as a Conditional use in the CBI and IND districts and not permitted in the RA district.

Dave Pokela: Asked Mr. Muire to explain the conditional use process.

Randy Reamer: Objected due to relevance.

The Board overruled the objection.

Ed Muire: Stated that a conditional use, after certain criteria are met, will have hearing before the Board of Commissioners prior to the issuing of a zoning permit.

Dave Pokela: Asked Mr. Muire what he interpreted the site to be in regards to the Zoning Ordinance.

Ed Muire: Stated that he determined the site to be a racetrack and that a racetrack is not permitted in the RA district.

Dave Pokela: Asked Mr. Muire how he interpreted the inclusion of speedways, go-kart tracks, and dragstrips under the listing of racetrack operations in the table of uses.

Ed Muire: Stated the SIC code 7948 includes several uses, but the ordinance only focuses on the racetrack use and operations. He interpreted; "Including speedways, go-kart tracks and dragstrips." as a term of inclusion meaning that the Ordinance wanted to make sure those uses were included with racetrack operations.

Dave Pokela: Asked Mr. Muire what his interpretation of racetrack operations is.

Ed Muire: Stated racetrack operations would include practicing and training to race. SIC 7948 is racing, including track operations.

Dave Pokela: Asked Mr. Muire if he is familiar with the Eller property and when he was first aware of what was going on at the subject property.

Ed Muire: Stated that he was familiar with the site and was first made aware of the site on January 23rd via an email sent from Lloyd Pace. Lloyd Pace is generally responsible for

investigating zoning violations for the County. Mr. Muire stated that prior to sending the warning he went over the case with Lloyd.

Dave Pokela: Asked Mr. Muire if he was sent a video via email from Becky Bost.

Ed Muire: Stated that he did receive an email from Becky Bost containing a video of riders on the site.

The video from the email is played.

Dave Pokela: Asked Mr. Muire if he reviewed photos from a January 31st email.

Ed Muire: Stated that he reviewed the photos from the January 31st email and a February 9th email. He also reviewed videos sent to him via email on February 9th, 10th, and 14th.

Dave Pokela: Asked Mr. Muire what happened after the warning citation was issued on February 1st.

Ed Muire: Stated that there was no compliance to the issued warning citation so he issued the first citation. The warning citation stated to cease operation of the race track, and that the Ordinance gives seven days to comply or make steps towards remedying the situation. Mr. Muire stated that he received emails stating that the operation did not cease and he sent out staff on the 21st to witness the driving.

Dave Pokela: Asked Mr. Muire if the letter from Mr. Whitley had a distinction of public and private use of the property in regards to it being a racetrack.

Ed Muire: Stated that he had a phone conversation with Mr. Whitley and he stated in the first citation that the letter from Mr. Whitley did not correct the issue nor was it an appeal. Mr. Muire stated that in the first citation letter he made a statement that there is no difference between public or private when it comes to a race track use.

Dave Pokela: Asked Mr. Muire to explain why he made the determination that the subject property is a racetrack.

Ed Muire: Stated that he based his decision based on pictorial evidence, conversations with Lloyd Pace, and a site visit. In his opinion if it looks and functions as a racetrack it is a racetrack.

Dave Pokela: Asked Mr. Muire if racetrack or racetrack operations were defined in the Ordinance.

Ed Muire: Stated that they are not defined in the Ordinance, but the Ordinance states that the common dictionary definition applies when the Ordinance does not define a term. The Oxford English dictionary defines a subset of track as "a course prepared or laid out for racing or the like". Mr. Muire stated that practicing is like racing because you race like you train. Practice generates the same noise, dust, and is simulating a race on a racetrack.

Dave Pokela: Asked Mr. Muire if he has seen the track in person.

Ed Muire: Stated that the track is well designed and professionally built, and could be used for practicing, training, or racing.

Dave Pokela: Asked Mr. Muire what factors contribute to the intensity of a use.

Ed Muire: Stated that noise, odor, dust, could be environmental impacts, or traffic would be the most intensive. The subject site is among the more intensive uses due to the noise and dust.

Dave Pokela: Asked Mr. Muire if a racetrack fits the purpose and intent of the RA district.

Ed Muire: Stated in his opinion a racetrack does not meet the intent of the RA district.

Dave Pokela: Asked Mr. Muire if the ZBA determines that this is not a racetrack, is there a provision to determine if this use is allowed in the RA district.

Ed Muire: Stated that the table of uses has a similar use provision, "when a single use is not listed, the administrator may apply the standards set forth in this chapter for similar uses." There is not a similar use in the table.

The Board called for a 10 minute recess at 6:19 and resumed at 6:29.

Randy Reamer: Asked Mr. Muire if he reached out to Mr. Eller.

Ed Muire: Stated that the only contact he had with Mr. Eller were the warning citations.

Randy Reamer: Asked Mr. Muire what would have been satisfactory progress in correcting the violation.

Ed Muire: Stated Mr. Eller could have removed the improvements on the property to correct the violation. Mr. Muire stated that he would have to look at the Zoning Ordinance for guidance on other ways or remedying the violation.

Randy Reamer: Asked Mr. Muire if he could make a land owner remove his property.

Ed Muire: Stated that a court would have the authority to make him remove the improvements.

Randy Reamer: Asked Mr. Muire if a normal person could say this was not a racetrack.

Ed Muire: Stated that it was his call to determine if this was a racetrack, and he made his determination based off of evidence from the site visit and other factors.

Randy Reamer: Asked Mr. Muire if the public is to turn to a dictionary for a definition.

Ed Muire: Stated that it would be up to the Zoning Administrator to decide if the dictionary was necessary.

Randy Reamer: Asked if Mr. Muire if he needed the dictionary to determine if it was a racetrack.

Ed Muire: Stated that he did not need a dictionary to determine the site is a racetrack.

Randy Reamer: Asked Mr. Muire if any of the sites listed in appellant evidence 34-38 are a racetrack.

Ed Muire: Stated that he could not make a decision on those sites because they do not fall under Rowan County Zoning jurisdiction. Any other site he would need to evaluate on a case by case basis.

The county rests.

e. Public Comment

Jay Dees: States that they will just let everyone speak. Everyone who was sworn in yesterday is still sworn in. Everyone needs to state their name or address and they will have three minutes to speak. Testimony needs to be factual.

Pete Christian (680 Deer Creek Dr. Salisbury, NC 28146): Stated that the people riding on the track are riding as hard as they possibly can. The four wheelers that drive the trail are much quieter.

Randy Reamer: Objected to testimony regarding property value as lay testimony.

The Board sustained the objection.

Robin Hood (1675 Deer Creek Dr. Salisbury, NC 28146): Stated that he asked one of the workers who were building the track what was going out there, and they told him it was going to be a house, pond, and track. He was shocked at how large the track was.

Terresa Denton (1520 Deer Creek Dr. Salisbury, NC 28146): Stated that the noise from the ATVs was too loud for her grandson, and that she had never spoken to Mr. Mickelson or Mr. Eller.

Craig Giordano (260 Castle Keep Rd. Salisbury, NC 28146): Stated that the ATVs were very loud. He took videos of the ATVs riding on the track.

Kevin Holshouser (220 Marion St. Rockwell, NC 28138): Stated that he wants the County to enforce their ruling, of this case, on similar properties in the county.

Dave Pokela: Objected to the testimony due to relevance.

The Board overruled the objection.

Jerry Dean (690 Beagle Club Rd. Salisbury, NC 28146.): Stated that the ATVs are loud and he went to the Zoning Department before building his house.

John Cox (555 Kings Tree Rd. Salisbury, NC 28146): Stated that the ATV was not as loud as the dog in the video. Mr. Cox stated that he does not have a problem with what Mr. Eller is doing.

Carolyn Christian (1680 Deer Creek Dr. Salisbury, NC 28146): Stated that if anyone could do what they wanted with their property there would be no need for Zoning. Mrs. Christian stated that this hearing will create president, and that zoning laws are for the protection of all.

Dian Cox (555 Kings Tree Rd. Salisbury, NC 28146): Stated that she has heard louder noises than the ATVs, and that Mr. Eller asked her what time would work best for them to practice.

Terri Hood (1675 Deer Creek Dr. Salisbury, NC 28146): Stated that there is water run off affecting her driveway from the site.

David Cline 125(Kings Way Dr. Salisbury, NC 28146.): Gave testimony that was objected by Dave Pokela.

Dave Pokela: Objected to David Cline's testimony.

The Board sustained the objection and had David Cline's testimony struck from the record.

f. Closing Arguments

Dave Pokela started the closing argument for the County. Mr. Pokela stated that he had proposed findings to help the Board. He started with this site looks like a race track sounds like a race track it is a race track. Race tracks are subject to land use regulations. The question is how do you interpret the Zoning Ordinance, and part of that is to consider the intent of the Zoning Ordinance. The SIC code says racing but the County Commissioners changed it to race track to emphasize the land use. There was testimony that talked about the intensity of the use and how it is a higher intensity use. The RA district does not allow higher intensity uses. The Supreme Court uses the Oxford English dictionary for things not defined, so it would be acceptable to use with undefined terms in the Zoning Ordinance. Race track is not defined in the dictionary but it falls under track as race. The dictionary has defines track as race as, "A course prepared or laid out for racing or the like." It is more than just racing it is things that are like racing. There are many admissions that this track is for practicing which would fall under that definition. This track is for testing and practice both put it under the definition of a track. The table of uses states, "Race track operations including Dragstrips, Speedways, and Go-kart tracks." The use of the term including has been defined as a term of enlargement by the North Carolina Supreme Court. Including just gives examples of things that may fall under race track. Mr. Pokela listed three more court cases in which private use of race track were still found to constitute a race track. This is a race track and fits the definition of a race track in the table of uses therefore it is not authorized. If the Board does not find this as a race track the ordinance states that the most

similar use's standards will be applied. There are no other uses in the table of uses that are more similar, to this use, than racetrack.

Dave Pokela: Went over the findings of fact that he prepared for the Board.

Randy Reamer started the closing argument for the appellant. The Board is a check valve for when a citizen disagrees with an administrator. What a race track is is what is in the administrators mind. One could not go to the ordinance and determine what a race track is. This Ordinance does not tell us what race track or race track operation is. Race track is prohibited in the RA zone, but we do not know what that is. The Ordinance does not tell us what race track operations are. Mr. Eller thinks he built a practice facility for his kids, but Mr. Muire disagrees. We feel that this site is not a race track. Race tracks are highly intense use. Race tracks have competition, stands, places for vendors. This site does not have any of the amenities of the race tracks that have been given as examples. This site is a nice track for his kids to ride and practice. This is not a race track in Mr. Eller's view. They can not race on this track because it is too short and narrow. This is a practice area for limited use by Mr. Eller's family and friends. The County Zoning Ordinance does not tell us what a track is. If the County shuts this site down will the county go after other similar sites? What can be done to this site to bring it into compliance? The Zoning department never told Mr. Eller how he could correct the violation. It is not against the Ordinance to ride ATVs on the property. The Ordinance is all in Mr. Muire's head. The common man should be able to read the Ordinance and know what he can and can not do. Mr. Eller built a safe practice area for his kid, but we can not read the Ordinance to determine if this is a race track. There is nothing illegal going on at the site. There is no evidence of a lack of permitting for the site. RA zoning district is developed for a minimum level of land use regulation. What is the difference between Mr. Eller's track and the other tracks in the county? Race track operations are prohibited, but not defined by the Ordinance.

Randy Reamer: Went over the findings of face that he prepared for the Board.

g. Deliberation

Jim Ogg: Stated that it looks like a track it must be a track.

David Miller: Commended Mr. Eller for his intent to help his son. Mr. Miller stated that there is clear evidence.

Norman Ribelin: Stated that it looks like the facts are clear.

Keith Knight: Stated that this is a tough job and that he is for property rights. Mr. Knight asked what the limit is in regards to private use. If it looks like a track then it is a track.

h. Findings of Fact

The Board started adopting findings of fact using the findings provided by the County.

1. The Board of Commissioners expressed their intent in the Zoning Ordinance by providing an explicit intent and purpose for the RA district and by using the term of enlargement, “including”, in reference to “Racetrack operations’ in the table of Uses.

Based upon at least the following evidence in the Record:

Zoning Ordinance, Sec. 21-32(a) and 21-113

Motion was made by David Miller and seconded by Norman Ribelin.

The Motion passed 5-0.

2. The Board of Commissioners expressed their intent in the Zoning Ordinance that the RA District provides for protection from the most intensive land uses.

Based upon at least the following evidence in the Record:

Zoning Ordinance, Sec. 21-32(a)

Motion was made by David Miller and seconded by Jim Ogg.

The Motion passed 5-0.

3. The Board of Commissioners expressed their intent in the Zoning Ordinance that “racetrack: as it is used in the Table of Uses applies broadly to “operations” and is not limited to speedways, go-kart tracks and dragstrips.

Based upon at least the following evidence in the Record:

Zoning Ordinance, 21-113 (use of the words “operations” and the term of expansion, “including”).

Motion was made by David Miller and seconded by Norman Ribelin

The Motion passed 5-0.

4. The dictionary definition of “racetrack’ is a course prepared or laid out for racing, or the like.

Based upon at least the following evidence in the Record:

The Oxford English Dictionary (2d ed.) definition for “track” which expressly encompasses “racetrack” (County Exhibit no. 10)

Motion was made by David Miller and seconded by Jim Ogg.

The Motion passed 5-0.

5. The dictionary definition of ‘racetrack’ is not limited to just racing because the dictionary definition does not stop at the term racing; rather, the definition of “racetrack” also includes activities that are not racing but are “like” racing.

Based upon at least the following evidence in the Record:

The Oxford English Dictionary (2d ed.) definition for “track” which expressly encompasses “racetrack” (County Exhibit no. 10)

*Motion was made by David Miller and seconded by Jim Ogg.
The Motion passed 5-0.*

6. Petitioner's property, based upon the track constructed on the property, could be used for racing practice by race team members as well as race testing by Mr. Eller's team.

Based upon at least the following evidence in the Record:

Testimony from witnesses David Eller, Rod Mickelson and Ed Muire and County Exhibits nos 2, 36, 51 and 52.

*Motion was made by David Miller and seconded by Keith Knight.
The Motion passed 5-0.*

7. The track on the subject property has been and is intended to be used at least for race practicing and race testing by a professional race team as well as its racers who practice on race team ATVs marked with team sponsors and race numbers.

Based upon at least the following evidence in the Record:

Testimony from witnesses David Eller and Rod Mickelson and Appellant Exhibit page number 23 and County Exhibit nos. 2, 36, 51, and 52.

*Motion was made by David Miller and seconded by Keith Knight.
The Motion passed 5-0.*

8. Racing on a course is like practicing racing on a course or testing race vehicles on a course.

Based upon at least the following evidence in the Record:

Testimony from witnesses Ed Muire, Rod Mickelson, and David Eller and County Exhibit no. 10.

*Motion was made by Keith Knight and seconded my David Miller.
The Motion passed 5-0*

9. Petitioner's use of the property, based upon the track constructed on the property, could be used for racing by race team members.

Based upon at least the following evidence in the Record:

Testimony from witness Ed Muire and other witnesses.

*Motion was made by Keith Knight and seconded by Norman Ribelin.
The Motion passed 5-0*

10. Petitioner's use of the property is intended to include racing simulation during practice by race team members as part of the team's race preparation

Based upon at least the following evidence in the Record:

Testimony from witnesses David Eller, Rod Mickelson (simulation in 15 to 20 minute practice segments, turning laps at pace) and Ed Muire.

Motion was made by Keith Knight and seconded by Jim Ogg.

The Motion Passed 5-0.

11. The course located on Petitioner's property, with its professionally constructed "whoops" and "step on/step off" and "big jump" and other graded jumps and berms, is substantially similar to motocross and ATV racetracks upon which Mr. Eller's race teams race.

Based upon at least the following evidence in the Record:

Testimony from witnesses David Eller and Rod Mickelson and County Exhibit nos. 2, 24 and 25.

Motion was made by Keith Knight and seconded by David Miller.

The Motion passed 5-0.

12. The course located on Petitioner's property, with its professionally constructed "whoops" and "step on/step off" and "Big Jump" and other graded jumps and berms, simply appears to be a "racetrack".

Based upon at least the following evidence in the Record:

Testimony from witnesses David Eller and Rod Mickelson and County Exhibit nos. 2, 24 and 25.

Motion was made by Keith Knight and seconded by David Miller.

The Motion passed 5-0.

13. Based upon at least noise, dust aesthetics, the activities to be conducted on the property and the amount of land used, Petitioner's use and proposed use of the property is among the class of the most intensive land uses.

Based upon at least the following evidence in the Record:

Testimony from witness Ed Muire and County Exhibit no. 2 and other videos relating to noise and dust.

Motion was made by Keith Knight and seconded by David Miller.

The Motion passed 5-0.

14. Based upon the foregoing findings, Petitioner's use of his property constitutes a "Racetrack" and "Racetrack operation" under the Zoning Ordinance.

Motion was made by Keith Knight and seconded by David Miller.

The Motion passed 5-0.

15. There was no error by Rowan County and Ed Muire, in his official capacity as the Planning Director of Rowan County Planning & Development Department with respect to the February 1, 2017 Warning Citation and the February 22, 2017 First Citation, that the determinations in said letters be affirmed, and that the Petitioner's appeal be denied.

*Motion was made by David Miller and seconded by Jim Ogg.
The Motion passed 5-0.*

8. Adjournment.

With no further business to discuss a motion to adjourn was made by Keith Knight and seconded by Jim Ogg. The Motion Passed 5-0.

Aaron Poplin, Clerk

Minutes approved: _____