

**C. REZONING APPLICATION  
SOUTHAMPTON COUNTY BOARD OF SUPERVISORS**OPENING STATEMENT

This public hearing is held pursuant to § 15.2-2204, Code of Virginia, 1950, as amended to receive public comment on a request by the Southampton County Board of Supervisors, agent, requesting a change in zoning classification from M-1, Limited Industrial District, to A-1, Agricultural District for approximately 55 acres of a 238 acre parcel. The property is located at 10266 New Road, Ivor, VA and is known as a portion of Tax Parcel 24-43. The property is on New Road approximately 1.5 miles west of the intersection of New Road (Rte. 622) and Tucker Swamp Road (Rte. 635). The property is located in the Berlin-Ivor Voting District and the Berlin-Ivor Magisterial District.

The notice of this public hearing was published in the Tidewater News on May 8 and May 15, 2011 and all adjacent property owners were notified in writing by first class mail as required by law. Following its public hearing on May 12, 2011, the Southampton County Planning Commission voted to recommend approval of the request.

After conclusion of this public hearing, the Board of Supervisors will consider the comments offered this evening and may act upon the matter or defer action until such time as it deems appropriate.

Mrs. Beth Lewis, our Director of Community Development and Secretary to the Planning Commission will provide introductory remarks after which all interested parties are invited to come forward and express their views.

**MOTION REQUIRED:**

If the Board is so inclined, a motion is required to accept the Planning Commission recommendation and approve the request.

**REZ 2011:03**

Southampton County Board of Supervisors, Anthony Scodes (owner)

Zoning Map amendment pursuant to court order

**IDENTIFICATION AND LOCATION INFORMATION**

Current Zoning: M-1, Limited Industrial District

Requested Zoning: A-1, Agricultural District

Acreage: 55 acres of a 238 acre parcel

Tax Map No.: Portion of 24-43

Location of Property: Behind 10266 New Road (Rt. 622)

Magisterial District: Berlin-Ivor

Voting District: Berlin-Ivor

Comprehensive Plan: Agricultural/Forest/Open Space/Rural Residential

Adjacent Plan designations: North: Ag/Forestry/OS/RR  
South: Ag/Forestry/OS/RR  
East: Ag/Forestry/OS/RR  
West: Ag/Forestry/OS/RR

Adjacent Zoning: North: A-1, Agricultural  
South: A-1  
East: A-1  
West: A-1

**LAND USE ANALYSIS**Overview

The property owner requested and received a zoning map amendment from A-1, Agricultural to CM-1, Conditional Limited Industrial, approved on July 28, 2008. At that time, the Board of Supervisors sent the request back to the Planning Commission to determine the conditions that would be attached to the Conditional Use Permit. The Planning Commission declined to put conditions in place. On October 27, 2008, the Board of Supervisors denied the Conditional Use Permit, leaving the property with an M-1, Limited Industrial zoning classification. Minutes for the Planning Commission and Board of Supervisor meetings are attached.

Subsequently, a suit was filed seeking to void the zoning amendment (attached). The Circuit Court of Southampton County found that "the action taken by the Board of Supervisors to approve the rezoning request of Anthony Scodes to rezone fifty-five acres of land from A-1 agricultural to conditional industrial limited (C-M-1) for the purpose of a motorcycle dirt track/recreational facility was clearly a case of spot zoning that was unreasonable, incompatible

and inconsistent with the Comprehensive Plan and Future Land Use Map, and in violation of Sec. 18-545(a) of the Zoning Ordinance of Southampton County as an unplanned isolated spot zoning, which benefited only the landowner and not the community; and the Court further finds the issue of the rezoning is not fairly debatable.”

This current request, authorized by the Board of Supervisors on April 25, 2011, is in conjunction with the court order dated March 24, 2011 requiring that Southampton County amend the zoning map to reclassify the zoning of the property from M-1, Limited Industrial to A-1, Agricultural.

#### Site Topography and Characteristics

The site is open and level and is surrounded extensively by trees. Aerial photographs from 2009 indicate the existence of a race track in the center of the property.

#### Transportation:

The site is located off New Road approximately 1.5 miles west of the intersection with Tucker Swamp Road. This is a narrow, rural secondary road with limited traffic.

#### Environmental

This site is not located in a flood hazard zone and there are no known wetlands that may affect the application.

#### Utilities

The site is served by private water and septic. Electric service has been established on the property, primarily for the existing residence.

#### Community Comments

Three citizens spoke at the Planning Commission public hearing, two in favor of the application and one against.

### **CONCLUSION**

#### Strengths of application:

- This action is in accord with a court order and returns the property to the zoning classification in place prior to 2007.

#### Weaknesses of application:

- None noted.

### **SUPPORT INFORMATION AND ATTACHMENTS**

- 1) Staff Analysis
- 2) Court Order
- 3) Application
- 4) Minutes from hearings June 12, 2008, July 28, 2008, August 14, 2008, October 27, 2008
- 5) Notification of adjacent land owners
- 6) Site map

Ad in Tidewater News 5/8, 5/15/2011  
Sign posted 5/3//2011  
Letters mailed 5/13/2011

### **PLANNING COMMISSION ACTION**

At their regular meeting on May 12, 2011, the Planning Commission held a public hearing. Two citizens spoke in favor of the application, while one spoke against. The Planning Commission made a motion to recommend approval of the application and the motion passed with a 6-1 vote. Minutes will follow when available.

**10. CONSIDERATION OF COURT ORDER**

Attached for your reference please find a copy of the Court Order related to Diane Wynn Kropewnicki, et al v. Southampton County Board of Supervisors which was entered on March 24, 2011.

The Court has remanded for your reconsideration the rezoning decision of July 28, 2008 to conditionally rezone 55 acres of Mr. Anthony Scodes' property from A-1 Agricultural to Conditional Industrial Limited (C-M-1).

As you recall, notwithstanding approval of the rezoning, the Board subsequently denied issuance of the associated conditional use permit in October 2008, effectively prohibiting the use of Mr. Scodes property as a motorcycle and all-terrain vehicle race track and course.

Attached for your consideration, please find a copy of a resolution attached which initiates the process to rezone the subject 55 acres back to A-1 agricultural.

**MOTION REQUIRED:** A motion is required to adopt the attached resolution.

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF  
SOUTHAMPTON COUNTY, VIRGINIA INITIATING A CHANGE IN ZONING**

WHEREAS, in regular session on July 28, 2008, the Board of Supervisors of Southampton County approved a change in the zoning classification of approximately 55 acres of a 238-acre parent parcel, identified as Tax Map Parcel Number 24-43, from A-1, Agricultural to C-M1, Conditional Limited Industrial; and

WHEREAS, said approval was subject to a signed, written, voluntary proffer by the applicants and property owners, Anthony and Victoria Scodes, expressly and exclusively limiting use of the subject 55 acres for a race track or course as permitted in Section 18-282 (a) (49) of the Southampton County Code; and

WHEREAS, Section 18-282 (a) (49) of the Southampton County Code further provides that use of any property in an Industrial District, Limited M-1 as a race track or course is subject to issuance of a conditional use permit by the Board of Supervisors; and

WHEREAS, in regular session on October 27, 2008, the Board of Supervisors of Southampton County, upon recommendation of the Planning Commission citing inconsistency of the proposed use with the Comprehensive Plan of Southampton County, denied issuance of a conditional use permit for a race track or course on the subject 55 acres; and

WHEREAS, on February 15, 2011, the Circuit Court of Southampton County, Virginia found that the the change in zoning approved by the Board of Supervisors on July 28, 2008 was unreasonable, incompatible and inconsistent with the Comprehensive Plan, and clearly a case of spot zoning, and by Order dated March 24, 2011 remanded the matter back to the Board for reconsideration; and

WHEREAS, Section 18-541 of the Southampton County Code and § 15.2-2286 (7) of the Code of Virginia, provide that the Board of Supervisors may, by resolution, initiate a change in zoning, provided that such resolution specifically states the public purpose therefor.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Southampton County, Virginia finds that restoration of the zoning classification of the subject 55 acres to A-1 Agricultural follows good zoning practice and is consistent with the Comprehensive Plan of Southampton County; and

BE IT FURTHER RESOLVED that the Board of Supervisors authorizes and directs the County Administrator to initiate on its behalf, at no cost to the property owners, a change in zoning of the subject 55 acres, being a portion of Tax Map Parcel 24-43, from C-M1, Conditional Limited Industrial to A-1, Agricultural, effectively seeking to reverse the zoning change approved on July 28, 2008.

RAILEY AND RAILEY, P.C.  
ATTORNEYS AND COUNSELLORS AT LAW

RECEIVED MAR 29 2011

RICHARD E. RAILEY, JR.  
R. EDWARD RAILEY, III  
RICHARD E. RAILEY 1922-2004

Reply to: 22237 Main Street  
P.O. Box 40  
Courtland, VA 23837  
(757) 653-2351  
Fax: (757) 653-0930

RECEIVED MAR 29 2011

March 28, 2011

10451 General Mahone Highway  
P.O. Box 98  
Wakefield, VA 23888  
(757) 899-2145  
Fax: (757) 899-2146

E-mail: [edward@raileyandrailey.com](mailto:edward@raileyandrailey.com)

Mr. Michael W. Johnson, Administrator  
Southampton County  
Post Office Box 400  
Courtland, VA 23837

Re: Diane Wynn Kropewnicki, et al, plaintiffs, v. Southampton  
County Board of Supervisors, Virginia, defendant

Dear Mike:

Please find enclosed herewith the Court's Order in the Kropewnicki matter, which was entered by the Court on March 24, 2011. Your cooperation will be appreciated.

With kind personal regards, I am

Very sincerely,



Richard E. Railey, Jr.

abr

Enclosure

VIRGINIA :

IN THE CIRCUIT COURT OF SOUTHAMPTON COUNTY

DIANE WYNN KROPEWNICKI, *et al*

Plaintiffs,

v.

Case No. CL08-381

SOUTHAMPTON COUNTY  
BOARD OF SUPERVISORS, VIRGINIA

Defendant.

**ORDER**

On February 15, 2011 came the plaintiffs in person and by counsel and came the defendant by counsel and trial of the issues presented in the amended complaint and answer were tried, evidence taken *ore tenus* and exhibits filed therewith; and

IN CONSIDERATION WHEREOF, the Court finds that the action taken by the Board of Supervisors to approve the rezoning request of Anthony Scodes to rezone fifty-five acres of land from A-1 agricultural to conditional industrial limited (C-M-1) for the purpose of a motorcycle dirt track/recreational facility was clearly a case of spot zoning that was unreasonable, incompatible and inconsistent with the Comprehensive Plan and Future Land Use Map, and in violation of §18-545(a) of the Zoning Ordinance of Southampton County as an unplanned isolated

spot zoning, which benefited only the landowner and not the community; and the Court further finds the issue of the rezoning is not fairly debatable.

IN CONSIDERATION WHEREOF, the Court remands this rezoning issue to the Board of Supervisors for their reconsideration and action consistent with the decision of the Court expressed herein.

Entered this 24 day of MARCH 2011.

William C. Cuddeback, Jr.  
Judge DESIGNATE

Seen:

Andrew Cool  
Counsel for plaintiffs

Seen, objected to, and responded to:  
[Signature]  
Counsel for defendant

I certify that the document to which this authentication is affixed is a true copy of a record in Southampton Circuit Court. That I have custody of the record and that I am custodian of that record.

Richard Francis, Clerk  
Kathleen B. Curran DC  
Southampton Circuit Court



Southampton County  
Post Office Box 400  
Courtland, Virginia 23837  
757-653-3015

**APPLICATION FOR:**

**REZONING**

**COMPREHENSIVE PLAN AMENDMENT**

**CONDITIONAL USE PERMIT**

**CONTACT INFORMATION**

Applicant or Representative Name: Southampton County Board of Supervisors

Address: P.O. Box 400

City, State, Zip: Courtland, VA 23837

Phone: Day 757.653.3008 Evening \_\_\_\_\_ Mobile \_\_\_\_\_

Owner Name: Anthony and Victoria Scodes

Address: 10266 New Road

City, State, Zip: Ivor, VA 23866

Phone: Day \_\_\_\_\_ Evening \_\_\_\_\_ Mobile \_\_\_\_\_

**PROPERTY INFORMATION**

Address or Location: Behind 10266 New Road, Ivor, VA

Tax Parcel Number: 24-43

Total Acreage of Parcel: 238.17 MOL

Amount of above acreage to be considered: 55

Current Use of property: motorcycle/ATV race track

Rezoning request from M-1, Industrial to A-1, Agricultural

Comprehensive Plan request from \_\_\_\_\_ to \_\_\_\_\_

Conditional Use request: Section \_\_\_\_\_ of the Southampton County Code

Give a brief description of the application request (attach additional sheets if necessary):

Zoning map amendment pursuant to court order entered 3/24/2011.

Required Items to be submitted with application:

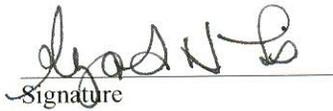
- Application Form
- Application Fee of \$ \_\_\_\_\_
- Cover Letter
- Site Plan / Exhibit
- Proffer Statement (if applicable)
- Other (To be determined by agent)

*Court order, Board Resolution*

**Note:** If applicant is anyone other than the fee simple owner, written authorization of the fee simple owner designating the applicant as the authorized agent for all matters concerning this application shall be filed with the agent. A Special Limited Power of Attorney form is available upon request.

The undersigned  Owner  Applicant authorizes the entry of Southampton County personnel onto the property in order to perform their duties with regard to this request.

4/5/2011  
Date

  
Signature

\_\_\_\_\_  
Signature

**OFFICE USE ONLY**

---

Received By: \_\_\_\_\_

Date: \_\_\_\_\_

Post Sign By: \_\_\_\_\_

PC Agenda Date: \_\_\_\_\_

BOS Agenda Date: \_\_\_\_\_

**PROFFERS FOR CONDITIONAL REZONING**

Original

Amended



At a regular meeting of the Southampton County Planning Commission held in the Board Room of the Southampton County Office Center at 26022 Administration Center Drive, Courtland, Virginia on June 12, 2008 at 7:30 PM

COMMISSIONERS PRESENT

Dr. Alan W. Edwards, Chairman  
Ira H. "Pete" Barham, Vice-Chairman  
Douglas A. Chesson  
Michael G. Drake  
Freeman J. Harrell  
Dallas O. Jones

COMMISSIONERS ABSENT

J. Michael Mann  
Oliver J. Parker  
Keith Tennessee

OTHERS PRESENT

James A. "Jay" Randolph, Assistant County Administrator (Secretary)  
Robert L. Barnett, Director of Community Development  
Richard E. Railey, Jr., County Attorney  
Susan H. Wright, Administrative Secretary

Chairman Edwards called the meeting to order. (*Note: Commissioner Drake was not yet present.*)

Chairman Edwards sought approval of the minutes of the May 8, 2008 meeting.

**Vice-Chairman Barham moved, seconded by Commissioner Chesson, to approve the minutes as presented. All were in favor.**

Chairman Edwards welcomed everyone and informed that they would make a recommendation on each item discussed to the Board of Supervisors who had the final legal say.

Chairman Edwards announced that the first public hearing was to consider the following:

REZ/CUP 2008:03 Application filed by Anthony Scodes, owner, requesting a change in zoning classification from A-1, Agricultural to M1, Limited Industrial and requesting a conditional use permit pursuant to Section 18-282 (49) of the Southampton County Code for approximately 55 acres of a 238 acre parcel. The purpose of the application is to allow for a motorcycle and all terrain vehicle race track and course. The subject property is located at 10266 New Road (Route 622), Ivor, Virginia approximately 1.5 miles west of the intersection with Tucker Swamp Road (Route 635). The property is a portion of Tax Parcel 24-43 and is located in the Berlin-Ivor Magisterial District and Berlin-Ivor Voting District.

Chairman Edwards opened the public hearing.

(Note: Mr. Anthony Scodes was often referred to as Tony or Mr. T, and the riding facility/track located on Mr. Scodes' property was often referred to as Mr. T's Hunt Club.)

Mr. Dan Billups of 10359 New Road spoke on behalf of the applicant. He stated that Mr. T's was a riding facility for families – there was no racing. There was also a small riding track just for kids. There were picnics tables and grills – a family atmosphere. Mr. Billups submitted the following proffer letter:

June 10, 2008

To Whom It May Concern:

We, Anthony and Victoria Scodes, the owners of 10266 New Road, Ivor, Virginia, proffer to use the requested rezoned property for the purpose of Sec. 18-282, A-49 (race track or course, any type with a conditional use permit) should the rezoned property be approved. We do **not** wish for the said property to be used for any other M-1 criteria (Sec. 18-282, A-1 thru A-48 and A-50 thru 65.

Name: ANTHONY Scodes  
Signature: [Handwritten Signature]

Date: June 12-08

Name: Victoria Scodes  
Signature: [Handwritten Signature]

Date: 06/12/08

Mr. Billups asked all those in the audience who were in favor of the application to stand, then asked for all of those in opposition to stand. He noted that it was pretty even.

Mr. Billups then submitted a petition with roughly 200 signatures of persons who did not object to the application. (Note: The petition stated, "We, the undersigned, **DO NOT OBJECT** to the establishment and/or presence of Mr. T's Family Hunting and Recreational Facility, in the county of Southampton, Virginia. We the undersigned understand that there will be no sanctioned motocross racing at this facility, and it will only be used for recreational riding by adults as well as children under the supervision of an adult. We the undersigned do understand that there will be some noise generated by the use of motorcycles and atv's, but not to exceed the current county ordinances or laws. By signing below, we **do not object** to Mr. T's Family Hunting and Recreational Facility.")

(Note: Commissioner Drake arrived at this time.)

Mr. David Snyder of Vicksville Road, Sedley, spoke on behalf of the applicant. He submitted the following list of conditions that participants of the facility must abide by:

**Rules and Regulations for Mr. T's Hunt Club**

1. Hours of operation are Saturday and Sunday 9AM to 5 PM. No riding before 9 AM and after 5 PM.
2. Anyone under the age of 18 must be accompanied by an adult at all times.
3. No alcohol, drugs, or any illegal activity. Anyone caught or suspected of illegal activity will be asked to leave the property and will not be allowed to return.
4. No motorcycle or ATV allowed without factory exhaust. If at any time a motorcycle or ATV is determined to be too loud, they will be asked to leave the property. This is at the owner's discretion.
5. Proper protective equipment must be worn at all times.
6. All speed limits must be abided by at all times.
7. A maximum of 50 motorcycles or/and ATVs are allowed on the property at any one time on any given day.
8. Riding is allowed only in designated areas. Anyone caught outside of the designated areas will be asked to leave the property immediately.
9. Anyone riding in a reckless or dangerous manner will be asked to leave the property immediately.
10. Guests must be considerate and courteous at all times. No profanity or actions insinuating profanity or rudeness will be allowed. Guests are to conduct themselves in a manner in which is conducive to a family atmosphere. Anyone not conducting themselves as such will be asked to leave the property immediately. This is at the owner's discretion.
11. All litter is to be placed in the proper trash bins. All items that are recyclable will be placed in designated containers and will be recycled by the owner.
12. Charcoal grills are provided for the guests. No grill is to be left unattended at any time. All grills are to be exhausted before leaving the property.
13. No open fires allowed at any time.
14. No destruction of property. Anyone caught destroying or defacing property will be asked to leave the property and will be held financially responsible for the item (s).
15. Fishing is allowed at the pond during the hours of operation. Anyone under the age of 12 must be accompanied by an adult. No swimming in the pond.
16. The recreational area will be open to the public during the week for field trips. I.e. boy scouts, school field trips, etc.
17. All participants are to sign a waiver stating they are aware of the rules and regulations as stated.

Mr. Snyder clarified for Commissioner Chesson that a lot of the signatures on the petition were those of residents of New Road, Seacock Chapel Road, Doles Road, and Tucker Swamp Road. He noted that about 90% of residents of Doles Road and 80% of New road were in favor of the application. One reason given by many residents for being in favor of it was they were tired of people trespassing on their property riding motorcycles and ATVs. Children especially rode 4-wheelers all over everywhere with no helmets. People needed somewhere to ride.

Mr. Ricky Roberts of 10778 New Road spoke. He advised that he was against the track. Mr. Scodes built the track without permits, and now he wanted permission. He moved out in the country to have peace – not to listen to motorcycles run up and down a track. His wife was against it too.

Vice-Chairman Barham asked Mr. Roberts if he had any objection other than noise? Mr. Roberts replied that he was also concerned about increased traffic, but noise was the main thing. When the leaves were off of the trees in the fall and winter, the noise carried. He lived ½ mile from the track. Some of the people here tonight in favor of the track lived in Southampton County, but a lot of them did not. When people using the track were done riding, they went home. But he and his neighbors had to live with it.

Mr. Jeff Dodson of 26236 Rochelle Street, Courtland, spoke. He advised that he and his family, including his 6-year old daughter and 9-year old son, had been to Mr. Scodes' facility. It was a great place to take your children to ride. They raced competitively up and down the east coast. This was a great place for them to go on off weekends to have a good time. He could let his daughter ride her 4-wheeler on the kids track. Mr. Scodes and others out there looked after the kids. If his daughter fell, someone was there to take care of her. It was a great atmosphere for the people. They were a community and looked after each other. They were all friends on and off the track. There were picnics tables and grills out there, and they all got together and had a good time on the weekends. There was no alcohol permitted. If anyone disrespected anyone out there or the land, or if anyone did anything on an ATV that was deemed unsafe, Mr. Scodes would run them off – he had personally witnessed that. That was the reason he liked going out there. For this to be in the County, it was great. The next closest place for them to go was Lake Gaston, but he did not feel that track was safe for his kids.

Mr. Bob Orr of 10730 New Road spoke. He advised that he was against the application because Mr. Scodes was told once before that he could not build the track, but he built it anyway and was operating without a business license. If they allowed Mr. Scodes to allow people to ride there just for pleasure, what was going to stop him from having races, and who was going to enforce it?

Vice-Chairman Barham asked Mr. Orr if noise was his main objection? Mr. Orr replied that he was concerned about the noise, but also Mr. Scodes was not a man of his word. He had already broken the law by doing things he was told not to do, and he was going to continue to do it, in his opinion. And who was going to stop him?

Mr. Andrew Vick of 10287 New Road spoke. He advised that his land was directly across from the entrance to Mr. Scodes' track. Traffic was not an issue. As trucks came and went with their trailers, there was no congestion in the road. He saw more 18-wheelers and farm equipment going down the road. Were they going to tell farmers that they could not farm their land? This was a fun and family environment. He had been back there after riders had been there. Mr. Scodes had trash cans out there and carried trash away. Trash was not thrown out of vehicles leaving the property. Mr. Scodes had the property clearly marked with directions in which people needed to go with their trailers. He had taken safety into account. There were people riding around marshalling to make sure people did not get out of hand. This was not a wild "X Game" insane kind of environment. There were families out there on their time off. This was a good thing and they should let Mr. Scodes operate it.

Mr. Ricky Roberts spoke again. He stated that there was another park, Slade's Park, located in Surry in which people could ride.

Ms. Valerie Ricks of 39695 Seacock Chapel Road spoke. This property was literally in her back yard. She was not in favor of having this as a pleasurable event for people inside and outside of the County. She and her neighbors were aware of the noise, as they had encountered that. Many of them worked, and even if they did not work, the weekends were a time of pleasure to be able to relax in your own environment. With this track, that was not possible. She was not in favor of it due to the noise and traffic.

Ms. Ricks clarified for Commissioner Drake that she had been enduring the noise for a couple of years.

Mr. James Ricks of 39695 Seacock Chapel Road spoke. He advised that he did not build his home on Route 460 because of the traffic, and he did not want all the traffic associated with the track. He stated that Mr. Scodes approached him and offered to pay him money in exchange for his support. He questioned the integrity of Mr. Scodes. He stated that on occasion, he saw people riding motorcycles without helmets going down the path beside his home at night headed towards the rear of Mr. Scodes' property. He did not want the enjoyment of his home ruined.

Mr. Jeff Rochette of 32312 Seacock Chapel Road spoke. He advised that he supported Mr. Scodes and his facility. He was against it when it first came up in 2003 because he was misinformed about what Mr. Scodes wanted to do. He visited Mr. T's Hunt Club in 2006 and became friends with Mr. Scodes. He stated that riding occurred on the property and not racing – there was no start and finish line for racing.

Mr. Tony Carthan spoke. He advised that he had been participating in off-road riding for 3 years. His friends all trespassed on property in order to ride because there were so few facilities in which to ride. He had been to the track in Surry, and that track was not run as well as Mr. Scodes'. Mr. Scodes' facility was very nice and was a family atmosphere. He stated that Mr. Scodes would not let anyone start motorcycles prior to 9:00 AM.

Ms. Kelly Billups of 10359 New Road spoke. She advised that she and her family lived at the home right at the exit of Mr. Scodes' property. They were probably the closest neighbors. Noise was not an issue for them. The motorcycles were not started prior to 9:00 AM and they were cut off at 5:00 PM. She pointed out that entering the track from the back of the property was not possible because the gates were locked. She stated that Mr. Scodes limited the number of bikes on the track, required riders to wear protective equipment, and required that the motorcycles have factory exhausts. If the motorcycles were too loud, he would make them leave. There was a time when she did hear a loud motorcycle. She contacted Mr. Scodes, and in just a few minutes, she did not hear it anymore. She shared an aerial view of the property and surrounding areas and pointed out that Seacock Chapel Road, where many neighbors who were complaining resided, was quite a distance away from the track. She advised that Mr. Scodes also had cows, horses, and goats on the property and welcomed school field trips.

Chairman Edwards asked Ms. Billups if she and her family rode there? She replied that they watched, but her 3-year old may want to ride in the future.

Commissioner Jones stated that Mr. Scodes had 9 violations cited against him.

Mr. Sammy McMillion of Smithfield spoke. He advised that he was about to build a home right near Mr. Scodes' property and would be closer to the track than anyone else. Mr. Andrew Vick and Ms. Kelly Billups, who spoke in favor of the track, lived on New Road and may not endure the noise that they did. He acknowledged that Mr. Scodes was good about starting at 9:00 AM and ending at 5:00 PM, but the noise was a problem.

Ms. Florence Reynolds of Tucker Swamp Road spoke. She advised that she wanted to share an observation. Berlin-Ivor had a nudist colony, a pig farm, a highway was going to be coming through everyone's back yard, and now there was the potential for an OLF. Put yourself in their shoes. She stated that Mr. Scodes did not follow the law before. She asked, was the track a business or a community affair? She wondered how many people here tonight speaking in favor of the track had been paid off?

Mr. Charlie Clark spoke. He stated that he had known Tony since 1976, and had never known him to lie to him about anything. This track would give his grandson a place to ride.

Mr. Gordon Calhoun of 36203 Seacock Chapel Road spoke. He advised that he lived about a mile south of Mr. Scodes' property. He and his wife owned a horse operation. This area was supposed to be an agricultural area. He was not in favor of the track.

Ms. Linda Colonna of 35469 Seacock Chapel Road spoke. She asked, was this a business already? She had heard the activity and the noise. She moved out here for the peace and quiet. If he could run a business without the proper licenses, what was stopping other people?

Mr. Jay Randolph, Secretary, clarified that this property had been the subject of zoning enforcement and a subsequent court order for operating a race track without the property permits. The applicant was seeking to remedy this situation.

Ms. June Jones of Smithfield spoke. She stated that they chose to go to Mr. T's for the environment. They were in support of it and were not paid off. This was not a race track – they putted around the track. She asked all those in favor of it to stand.

Ms. Mary Harris of Seacock Chapel Road spoke. She advised that she had lived there for 56 years. They did not need any more noise. Her mother was 99 and noise was not good for old people.

Mr. Donny McMillan spoke. He stated that if they thought motorcycles made noise, they hadn't heard noise. He worked at Oceana – now that was noise. He was in favor of the track. He had never seen an actual race take place there. Tony was very strict about who could ride there. Motorcycles riding at 15 mph were not going to make a lot of noise. The decibel level was 27, which was a safe level.

Ms. Florence Reynolds spoke from the audience. She stated that people kept saying that this was not a race track, but the public hearing notice stated that he was applying for a race track. Several people in the audience commented that it stated that due to the wording in the Code.

Mr. David Peck spoke. He advised that Tony wanted to have races there to begin with, but then he changed it and wanted it to be family-oriented. His children went there. There was no alcohol and it was a family environment. The Planning Commission needed to look at what was best for the entire County, and not just nit-pick a neighbor here and there. Mr. Scodes was big on safety and this facility gave people a place to ride. He stated that he had a neighbor who liked to hunt and sometimes he did so very early right outside his bedroom window. But he was not going to complain about it. You had to give and take.

Mrs. Sharon McMillion of Smithfield spoke. She advised that they were building a house on property right near the track. There was an open field and it was noisy. They could hear the motorcycles over the tractor and lawnmower. Maybe the people on New Road did not hear the noise because of the trees. This track did not fit the mold for the area. Traffic was also a concern but noise was the biggest factor.

Mr. Duane Presson of New Road spoke. He advised that he lived adjacent to Mr. T's. There may have been illegal activity in the past, but Mr. T was attempting to do the right thing now. He (Mr. Presson) leased his property to a dirt riders group for 3 years and nobody complained. The County was spending money to study recreational facilities in the County. This was a wonderful recreational facility. He stated that helicopters flying overhead were louder than the motorcycles. He did not think allowing this track to operate would hurt anything.

Mr. Bill Casey of Chesapeake spoke. He passed around some pictures that were taken while people were actually riding and enjoying the track. Other than Slade's Park in Surry, which was not safe for children, there was nowhere to ride. Mr. T had a very nice and safe kid's section. He stated that the noise was not continuous. People would ride 30 minutes and then stop. And he had never seen more than 30 people there at one time.

Secretary Randolph asked Mr. Casey what date the pictures were taken? Mr. Casey replied June 10, 2007.

Mr. David Barnes spoke. He advised that he lived a short walk through the woods from the track. There was some noise, but he had neighbors who liked to target shoot that made more noise than the motorcycles.

Mr. Phil Bain spoke. He stated that there was no real evidence of the noise being a problem. The merchants in the area benefited from the track. The Ivor Mart benefited from about 20 additional customers whenever Mr. T's was open. His daughter rode there. He had seen Planning Commissioner Doug Chesson riding there with his 2 sons. He had also seen the brother of Board of Supervisors' member Ronnie West there. He knew that Ronnie West did not have anything to do with what his brother did, but he just wanted to give them an idea of the variety of people that attended and enjoyed the track. He shared Tax Map 24 and advised that he did not see how some of these people were adjoining property owners. Some

landowners in the audience insisted that they were adjoining property owners. Mr. Bain stated, very well, but the map was from the County's GIS (Geographic Information System).

Mr. Billy Colonna 35469 of Seacock Chapel Road spoke. He stated that he sometimes heard noise coming from the property. He asked, could Mr. Scodes utilize all of the uses permitted in the M-1 District? Chairman Edwards replied yes – this was not a conditional rezoning.

Mrs. Diane Kropewnicki of 35437 Seacock Chapel Road spoke. She presented the Commissioners with a large packet containing a vast amount of information related to the track. She stated that she had lived there since 2001. She shared pictures of her home and pictures of the proximity of the track from her home. The track was 1000 feet from her home and there was no buffer of trees. The packet contained evidence that Mr. Scodes was charging \$15/person to use the track, and then raised that amount to \$20/person after an additional track was put in. There was evidence of new tabletops and jumps, which was not consistent with what people were saying about just putting around the track. There was evidence that as many as 150 people had been at the track at one time. She could hear as few as 3 motorcycles at the track – image what 150 sounded like. They could not enjoy their pool or deck because of the noise. She had to suspend numerous horse club meetings because of the effect the noise had on her horses. The packet contained evidence of online posts on the internet in which people were talking about and/or promoting the track. There was a post on June 6, 2008 saying, "We will be at the race on June 7 and 8." There was another post on June 11, 2008 saying, "The Tidewater Dirt Riders needed to come out to the Planning Commission meeting and support Mr. Scodes' application". She and her family should have the right to enjoy their quality of life. She advised that she did some research for Attorney Barry Steinberg to help the County fight against the OLF. There were many health effects of noise ranging from hearing loss to high blood pressure. She stated that Mr. Scodes' track would serve the needs of some, but would do serious harm to the residents.

Ms. Donna Harris spoke. She stated that she did not live in Southampton County, but was a 4-H leader alongside Mrs. Kropewnicki, and was here to support her. The noise did bother the horses. When the police finally shut Mr. Scodes' track down, they finally got to ride the horses. She was at the Kropewnicki farm every weekend and there had been races going on.

An unidentified woman spoke. She stated that her dog used to be petrified of the motorcycles. But she trained him and now he was ok with being around motorcycles. Maybe some people should likewise train their horses. She advised that there were days in which she visited the track and just did not feel like riding. So she would sit at the picnic tables with friends and cook while the others were riding. And guess what – she talked and people could hear her talk – she did not have to yell. She was having to yell here in this room, so she was assuming that everyone in this Board room had probably lost 10% of their hearing tonight, because there was noise going on in here than it was at the track.

Mr. Anthony Scodes, owner/applicant, spoke. He stated that he wanted to try and clear everybody's mind up about him lying and cheating and all that stuff. From day 1 when he applied for this permit, his lawyer told him that the Board room was packed with people shouting and against this. They needed to have a 15-day cooling period. His lawyer told him

that he had talked to City Council. So he took the advice of his lawyer and came back in 15 days to see everybody, but nobody was here. He asked what was going on, and was told that he withdrew his application. He told them that he did not withdraw it – he was told to come back in 15 days. So that was the first mistake. The second mistake was that everyone thought that he did this illegal. He went to the state place in Richmond and got an environmental license to disturb the land, to do the ditches and the pond. He had everybody in the world out there trying to tell him what to do. The EPA came out there and tried to fine him, and he showed them his permits. He went to the zoning people and got permits every 6 months to disturb the land and build jumps to have fun. He went down there and said look, they were not going to let him do this. Could he turn it into a hunt club? Why could a hunt club ride 4-wheelers but they could not? He was told that they just couldn't. He said well that was not right because 4-wheelers were 4-wheelers and dirt bikes were dirt bikes. Hunt clubs could do it, so why couldn't they? Nobody could tell him, so he called the state. The state people came and sat down with him. He asked the state person to explain to him why he could not ride 4-wheelers on his property with all his friends and their friends and charge a little bit? The state person said that he could – there was no law against it.

Mr. Scodes continued that all of these people were saying he did all this stuff illegal, but he didn't. He went by every law and got every permit to build this track. And yes he built it. He had land disturbing permits and every kind of permit you could think of and he didn't lie. He had a state permit and went down there to try and renew it, and the County pulled his state permit. He asked why because he did not do anything wrong – the County never came out there and wrote him up for anything. The County said they were just pulling it. He asked why? What did he do wrong? The County said they were pulling it because things had changed. So he called the Virginia State Police and told them that he had a state license for environmental wetlands and everything, and asked how the County could pull the permit. The State Police said that they couldn't pull it, and asked if they gave him a reason why they pulled it. He said no – they pulled it because he must have done something wrong. Mr. Scodes stated that he was trying to please everybody in this County. He had people from the airport come over and take decibel readings. He did not understand how people could say their ears were vibrating from the noise. He went to all 4 corners of the property 4 times and had paperwork signed with the decibel readings, but he couldn't find it. It was reading less than 10 decibels. Everyone was allowed 81 decibels. He had people sit at the corners of the property all day long and take decibel readings. He even told the city commissioner that he would give all the adjoining property owners a decibel reader. If it read over 30 decibels, he would close the place down, because it was not going to read over that. You could hear the bikes, but it was not like everyone thought. The bikes would come around the corner, and it might shoot up to 30 decibels, then it would dissipate. Everyone was exaggerating everything.

Mr. Scodes continued that he was trying to give kids a place to ride and trying to do something nice for once in his life. He was blessed with this piece of property. He was told when he came to this County, that they would work with him – they wanted something for kids. He was retired and did not have anything to do. He had granddaughters and they had friends and everyone wanted to come and ride, and he wanted to provide a place for people to ride. He stated that he ran into all these obstacles because he could not read and write. And he expected

all of these officials that he dealt with to fill out the papers and do everything right, but they did not – they tricked him. When they said they had a court order, they took him in the back of the building and read him his rights. The paper was right there. He asked, what am I signing? They told him he was signing saying that he would decrease operating until he got a permit. He didn't know he needed all these special permits. It took him 2 years to get the permits he had – he had to go to school and learn all this stuff. When he finally got the permits, he thought he was doing everything legal. The zoning people did not come to his property every 6 months and look at everything he was doing. All of these people didn't show up and say he was doing something illegal. He worked for 2 years on the place. He built ponds, put bathrooms in, etc. He tried to show the County that this could be done and could be a good thing. If he did anything wrong, it was because officials kind of tricked him by saying go ahead and buy this property Tony, and everything is going to work out. We want young people to come to this town. He stated that it looked like they wanted young people to leave the town. It was not right for people to accuse him of something until they heard the whole story. He tried to please everybody and pleaded guilty because of one thing – he wanted to get to the bottom of this and straighten everything out. And he wanted to show people that he was not here trying to threaten the County. He was trying to do something decent. Everyone had their own agenda, and he had his agenda. His agenda was to help these kids before they got into drugs and did crazy things. Somebody had to stand up and do it. If you kept building homes in the county, sooner or later you would need a great big pond and something for people to do. You could not keep building houses and not have anything for anyone to do. He built it and did everything honestly. He wanted to show the County that it could be done and it could be a safe thing. He invited anyone to come over there at any time and hold the decibel readers. If it read over 30 decibels, he would close the place down, because it was not going to read over that no matter what corner of the property you went to. He stated that he was sorry, but he was upset.

Mr. Duane Preston spoke from the audience. He stated that for the record, he was not offered a dime to give his side of the story. Others in the audience concurred.

Chairman Edwards closed the public hearing.

Chairman Edwards stated that this was spot zoning, the conditions offered by the applicant did not include “no racing”, there had been problems with the law, and he could do any of the uses listed in M-1. As a result, he could not support it.

Commissioner Jones stated that Mr. Scodes disregarded the Planning Commission and Board of Supervisors and built the track without permission, and he could not vote for it.

Commissioner Drake advised that he endorsed the Comprehensive Plan as it was written, and this application was not in accordance with that Plan, and he also concurred with Chairman Edwards and Commissioner Jones.

Commissioner Chesson asked Mr. Richard Railey, County Attorney, for clarification regarding the uses in M-1. Did the proffer letter submitted this evening by the applicant (proffering to restrict the uses in M-1 to only the race track) have an effect on this application? Attorney

Railey replied that this application was advertised as a straight rezoning to the people of Southampton County.

Commissioner Chesson stated that in his opinion, if it were advertised that the applicant only wanted to do use 1 use in M-1, and then he came here and wanted to open it up to all the uses in M-1, it would obviously not be the proper thing to do. But since it was advertised that the applicant was applying for a straight rezoning, which would include all the uses, and now he was restricting it to only 1 use, that would not have any effect? Attorney Railey replied that it would be a worse situation if it was advertised as one use and then opened up to more, but still the people who read the advertisement were entitled to know what was going on.

Attorney Railey asked, why was it not advertised as a conditional rezoning? Commissioner Chesson replied, because of the advice he received from administration, to his understanding. Commissioner Chesson asked Mr. Robert Barnett, Director of Community Development, if that was correct? Mr. Barnett replied that he did not receive that advice from his part of the administration.

Commissioner Chesson stated that in the conversations he had with the applicant, it was obvious that it was never his intention to use the property for anything other than riding motorcycles. And in his conversations with the applicant, the applicant indicated that he never represented in any conversations with administration that he intended to open it up to any other uses, but yet the application was filed that way. Attorney Railey stated, and he signed it that way.

Vice-Chairman Barham advised that he had been to Mr. Scodes' facility and observed the kids having a good time, and everything seemed to be operating good. He also went to the home of the lady with the horses at the back of the property (Mrs. Kropewnicki). He thought that she probably had the most noise from the track because of the topography of the land. But of course that day there were prevailing winds from the southwest, and most of the time the wind would be blowing away. He advised that he went to the motorcycle track off of Route 35 towards Disputanta. He talked to people around that track and they said the noise did not bother them. He called the rescue squad and police department in Sussex Courthouse and they said they had not had any calls to the track. He thought that the main thing here was noise. Noise bothered some people, and it did not bother others. If it bothered you, it was terrible. If it did not bother you, it was good. There were a lot of kids that would get a lot of enjoyment out of the track if Mr. Scodes was allowed to have it. There was not a facility like this in Southampton County. He knew that a lot of kids rode 4-wheelers up and down dirt roads, logging paths, etc. with no supervision, and a lot of times with no knowledge of the routes they were riding. He realized that some people had a problem with the noise. But some people were going to be against something just because they were against it, or for it because they were for it.

Commissioner Harrell stated that he agreed with Vice-Chairman Barham. He thought there was probably a need for the track. There was a farm behind his house and the people who owned it let their kids and grandkids ride up and down it all the time with dirt bikes and 4-wheelers, although it did not bother him.

Chairman Edwards asked if he was ok with all the uses in M-1? Commissioner Harrell replied that he was fine with what the applicant wanted to do.

Vice-Chairman Barham advised that he thought they could require as a condition of the conditional use permit that the applicant only utilize the one use.

Commissioner Chesson stated that regarding conditions, the applicant submitted a list of conditions, but he thought there were several things mentioned tonight that perhaps should be added as conditions in an attempt to make it more neighborly, such as restricting the noise to a 30 decibel limit, not allowing the applicant to cut the timber so as to help with noise, no sanctioned motocross racing, and limiting the conditional use permit to 5 years.

Commissioner Chesson advised that he rode motorcycles and he had been to the track twice. From his experience, it was good recreation for family and kids. He clarified that putting took place along the outskirts. Riding took place on the track – you had to get up enough speed to make the jumps.

**Commissioner Jones moved, seconded by Chairman Edwards, to recommend denial of the application. Chairman Edwards, and Commissioners Drake and Jones voted in favor of the motion. Vice-Chairman Barham and Commissioners Chesson and Harrell voted in opposition to the motion. The vote was 3-3.**

Secretary Randolph clarified that since the vote was tied at 3-3, the motion did not carry. Someone could make a motion to approve it. However, if that resulted in a tie, they would be at a deadlock and the application would move forward to the Board of Supervisors with the default recommendation for denial.

Secretary Randolph clarified that the zoning part was not conditioned by the applicant. However, the applicant did submit a voluntary proffer letter this evening to remove all the other uses. So it could go forward to the Board of Supervisors as a conditional rezoning. But what was advertised for the public hearing tonight was non-conditional zoning, so that's what they had to vote on tonight. However, as it moved forward to the Board of Supervisors, should the Commission wish to add that proffer letter to the record, that was certainly in order and it could be advertised for the Board of Supervisors public hearing as a conditional rezoning.

Secretary Randolph also clarified that there were 2 parts to this application – the first was the zoning, which stayed with the land, and the second was the conditional use permit. A conditional use permit was required when certain uses could not be well adjusted to the environment in particular areas. Those uses had unusual characteristics that were different from those of the immediate surroundings and required the exercise of planning judgment. When looking at conditional use permits, you should look at traffic congestion, water quality, noise, light, dust, odor, fumes, and vibration, and look at the hours of operation, screening, or other matters that may mitigate or offset potential negative impacts. With all that being said, the Planning Commission could not put conditions on the conditional use permit to negate any of the actual zoning uses. They could only impose certain conditions to help offset some of the adverse effects of noise, dust, etc. They could not use the conditional use permit to negate what

would otherwise be allowed in that zoning. However, with that proffer letter being submitted, as it moved to the Board of Supervisors, he did not think that would be an issue.

Secretary Randolph advised that they would need to make a motion to recommend approval of the rezoning and/or the conditional use permit with specific conditions and have that go to a vote. Should that end in a 3-3 tie or deadlock, then by default, it would move to the Board of Supervisors with a recommendation for denial. If they did not make a motion to recommend approval, it would not move out of this body. It would be back on their agenda next month under unfinished business.

Commissioner Chesson asked if it would come back next month to this body as a conditional rezoning? Secretary Randolph advised that the only way it could come back to this body as a conditional rezoning would be to hold another public hearing and publish the advertisement to read as a conditional rezoning. Then they would go through this same thing again next month.

**Chairman Edwards moved, seconded by Vice-Chairman Barham, to table the application. Chairman Edwards and Commissioner Drake voted in favor of the motion. Vice-Chairman Barham and Commissioners Chesson, Jones, and Harrell voted in opposition to the motion. The vote was 2-4, thus the motion failed.**

Commissioner Chesson stated that he was going to make a motion to recommend approval of the application. He wanted the minutes to reflect the spirit of the motion. He was not in favor of allowing the applicant to utilize all the uses in M-1, and although that's what they had to vote on, the applicant had submitted a proffer letter restricting the uses, which would go forward to the Board.

**Commissioner Chesson moved, seconded by Commissioner Harrell, to recommend approval of the application. Vice-Chairman Barham and Commissioners Chesson and Harrell voted in favor of the motion. Chairman Edwards and Commissioners Drake and Jones voted in opposition to the motion. The vote was tied at 3-3, thus by default, a recommendation for denial would go forward to the Board of Supervisors.**

Moving to unfinished business, Chairman Edwards announced that the following application was tabled last month and needed to be considered:

CUP 2008:02 Application filed by Jean A. & Johnnie N. Burchett, owners, requesting a conditional use permit for a borrow pit pursuant to Section 18-313 (43) of the Southampton County Code in order to extract sand from approximately 7.43 acres of a 75 acre parcel. The property is zoned M-2, General Industrial, and is located on the north side of Meherrin Road (Rt. 35) at the intersection with Indian Town Road (Rt. 651). The property is further identified as a portion of Tax Parcel 59-45 and is located in the Capron Magisterial District and Capron Voting District.

Secretary Randolph advised that included in the agenda was correspondence from the applicant addressing the questions that were raised last month. The applicant had submitted a site plan showing the existing pond and commercial entrance, and had submitted a letter from the flood plain engineer. Secretary Randolph noted that the base flood elevation was approximately 9 ft.

Mr. Johnnie Burchett, applicant, advised that the property was zoned Industrial, and as a result, he did not want any extreme conditions. He noted that Severn Peanut Company operated 7 days a week and the garbage sites in the County were open on Sundays.

The Commission discussed and recommended the following conditions:

- Sand extraction limited to the 7.43 acres as applied for
- Hours of operation 7:00 AM – 6:00 PM
- Days of operation Monday – Saturday
- Conditional use permit to expire 10 years from the date of approval by the Board of Supervisors
- Conditional use permit from Southampton County was contingent upon compliance with all regulations associated with the Virginia Department of Mines, Minerals and Energy permit
- Entrance and exit (access road) must meet state requirements

**Vice-Chairman Barham moved, seconded by Commissioner Drake, to recommend approval of the conditional use permit, subject to the stated conditions. All were in favor.**

Moving forward, Secretary Randolph advised that the Hampton Roads Planning District Commission (HRPDC) had completed the Parks and Recreation Study authorized by the County. Ms. Claire Jones and Mr. Eric Wahlberg of HRPDC were here tonight to present a report of their findings via PowerPoint. Secretary Randolph noted that this was a preliminary courtesy presentation for the Planning Commission – the Parks and Recreation Task Force had not yet seen the report. The Task Force would be presented with the report next month and given the opportunity to make modifications and recommendations, particularly community-specific recommendations. The report would then come back to the Planning Commission at a later date for a public hearing, as the report would ultimately be made a supplement of the Comprehensive Plan.

Ms. Claire Jones and Mr. Eric Wahlberg of HRPDC presented a PowerPoint presentation entitled, “Southampton County: 2008 Parks and Recreation Plan.” Among other things, existing recreational facilities, both public and private, as well as potential recreational facilities, both public and private, were studied and evaluated. A phone survey was also conducted inquiring of Southampton County residents’ views and interest in regards to parks and recreation in the County. Some key highlights of the survey are as follows:

- 72% of respondents say their community needs more youth activities, and over 50% felt more adult activities are needed
- 75% of respondents would support creation of a Parks and Recreation fund for Southampton County
  - 68% of respondents say funding for this initiative should come from user fees
  - 48% of respondents say funding for this initiative should come from taxes or a combination of taxes and user fees

HRPDC offered the following 5 recommendations:

- 1) Establish a Southampton County Parks and Recreation Fund based on a combination of user fees and a tax levy. This approach would allow both the short-term support of needed programs through the user fees and establishment of a long-term capital fund to finance the development of public parks and recreational amenities.
- 2) Hire a Parks and Recreation Program Director to coordinate the process of developing and managing a parks and recreation program for Southampton County;
- 3) Develop a public recreation program that emphasizes youth sports and outdoor activities. 72% of the survey respondents indicated that the County needs more youth activities. In the short term, these programs could be supported primarily through user fees and utilize existing facilities.
- 4) Develop a public recreation program that emphasizes adult team sports and other priority activities as indicated in the survey. In the short term, these programs could also be supported primarily through user fees and utilize existing facilities.
- 5) Develop a Capital Improvements Program budget element to support the establishment of new parks and recreational facilities.

HRPDC recommended the following schedule:

Year One: Establish the Parks and Recreation Fund.

Year Two: Hire a Parks and Recreation Program Director and begin the process of developing a set of public recreation programs.

Year Three: Develop a Capital Improvement Program budget element for development and maintenance of parks and recreational facilities.

Years Four through Twenty: Develop new parks and recreational facilities and associated programs.

The Commission thanked Ms. Jones and Mr. Wahlberg for their presentation.

Moving forward, Secretary Randolph advised that at their places was copy of the draft Stormwater Management Ordinance. This was put together through a grant from the Virginia Department of Environmental Quality (DEQ). It was a draft – not the final copy. He distributed supplements to the Subdivision Ordinance. He asked them to replace the older material in their Subdivision Ordinance with these supplements. He noted that they working to ensure that the elements and definitions of the Subdivision Ordinance matched that of the Stormwater Ordinance. A workshop would be scheduled for a later date.

Regarding Board of Zoning Appeals (BZA) matters, Mr. Robert Barnett advised that the BZA would not meet in the month of June.

Moving to the public comment period, Chairman Edwards recognized Mr. Glenn Updike. Mr. Updike thanked Chairman Edwards for being at the last Board of Supervisors meeting. He stated that the County was continuing to take money out of the Reserve Fund. They were also

putting a tax burden on our children and grandchildren. Our tax rate was almost double that of Greenville County. Why? There were more people making \$25,000/year than \$100,000/year. They needed to look at the economics of their actions and decisions.

There being no further business, the meeting was adjourned at 10:15 PM.

---

Dr. Alan W. Edwards, Chairman

---

James A. Randolph, Secretary



July 28, 2008 Board of Supervisors meeting minutes

Mr. Johnson announced that the third and final public hearing was to consider the following:

REZ/CUP 2008:03 Application filed by Anthony Scodes, owner, requesting a change in zoning classification from A-1, Agricultural to C-M1, Conditional Limited Industrial and requesting a conditional use permit pursuant to Section 18-282 (49) of the Southampton County Code for approximately 55 acres of a 238 acre parcel. The purpose of the application is to allow for a motorcycle and all terrain vehicle race track and course. The subject property was located at 10266 New Road (Route 622), Ivor, Virginia, approximately 1.5 miles west of the intersection with Tucker Swamp Road (Route 635). The property is a portion of Tax Parcel 24-43 and is located in the Berlin-Ivor Magisterial District and Berlin-Ivor Voting District.

Mr. Jay Randolph, Assistant County Administrator and Secretary to the Planning Commission, reported that the Planning Commission held a public hearing on this application at its June 12, 2008 meeting, and was unable to reach consensus on any recommendation. Accordingly, by default, the application was being forwarded with a recommendation for denial.

Supervisor Brown asked if the racing facility utilized all 200 acres? Mr. Randolph replied no – it utilized 55 acres.

Supervisor West asked how close was the nearest residence from where activity on the subject property would be taking place? Mr. Randolph replied that he was not an expert, but he would guess anywhere from ¼ mile – ½ mile.

Chairman Jones asked that the speakers try and keep their comments under 3 minutes, as there were a lot of people that would like to be heard.

Chairman Jones opened the public hearing.

*(Note: Mr. Anthony Scodes was often referred to as Tony or Mr. T, and the riding facility/track located on Mr. Scodes' property was often referred to as Mr. T's Hunt Club.)*

Mr. Dan Billups of 10359 New Road addressed the Board. He stated that he appreciated the Board listening to them again as they tried to fight for something they believed in. He thanked the Board members who came out and met with him. He carried them around the property and showed them what Mr. Scodes wanted to take place. Some people here tonight were going to say that they lived 1000 feet from the track. The Board members that visited the track now knew that was not true. Some people here tonight were going to say that there was no barrier between the track and their homes. The Board members that visited the track now knew that was not true. There was some concern at the Planning Commission meeting that the road was too narrow. However, the highway department indicated that the road was 18 ft. wide. Basically it was the widest road on that end of the County – most others were 16 ft. wide. The facility that Mr. T was trying to offer to people was not going to cost the County anything. It was going to provide somewhere for people who liked to ride ATVs and motorcycles to go and take their family and have a good time. If Mr. T needed a business license, just tell him. He would do his best to comply with whatever he needed to do. He asked that whether they voted for or against it, to please vote according to the facts being presented. He asked them to give him a chance. Mr. Billups clarified for the Board that he lived right across the road from the property.

Ms. Rebecca Matson of New Road spoke. She advised that she was Tony's neighbor. She was raising her 16-year old grandson. For years there was no place to go other than church for activities. Tony offered a lot of people around there a place to go to be together as families. Children needed a place like this to go to so they would stay out of trouble. Why not give someone the right to make other people happy.

Mr. Warren Smithhart spoke. He stated that he had known Tony as a successful business person and an incredible, gifted artist. He was a great person that you could trust with your wallet. He moved out here to retire and do something that he thought would be easy. He had been with Tony through this whole thing. He was hurt by what was happening with this project that should have been very simple. But more than anything else, what he wanted to do was something very good. He (Mr. Smithhart) had spent the night out there before in the field – it

was a beautiful field of nature. He had taken his kids there. He found Ivor because of this man. Tony did incredible metal and wood work. He was not an intellectual and did not understand the legal aspects of things. If a mistake was made, it was a simple and honest mistake. It was not this man trying to take advantage or manipulate anything. He had never known anybody to care more about the land. If he was going to do something out there, it was going to be working with the land and with the people around it – he did not mean any harm to anyone. And as far as what he had heard about the horses somewhere close by becoming ill from this (the noise from the track), go to Oceana. He knew what the decibels were at Tony's place because he had stood right beside those motorcycles, and he lived by Oceana. The horses by Oceana thrived and were doing fine, and the decibels there were twice what you were listening to at Tony's place. When you were at Tony's home which was ¼ mile away, you did not even know there was a race track back there. The facility was not what was being portrayed by some others. He was a gentleman and a kind-hearted person. This had been painful for him. It was not reasonable for people to come up here and say things about him that did not know him. Mr. Smithheart explained for Supervisor West that he had been right there on Tony's property many times and it was not loud – 81 decibels was allowed and Tony would not want that in his yard. What's right was right. Everything he had heard in opposition to the track was just not reasonable.

Mr. Ash Cutchin of 29018 Darden Point Road spoke. He advised that he had a farm in Isle of Wight County on the railroad track. It was true that if the young people were not riding at Mr. T's facility, they would be committing crimes. Children rode all the way from Carrsville down the railroad track to his farm, which was near the Franklin airport, and trespassed on his farm and did figure 8's in the fields, and he never could catch them. Recreation was a big concern for this County, and it had come up several times tonight.

Mr. Gordon Calhoun of 36203 Seacock Chapel Road spoke. He advised that he owned a horse farm. Plain and simple, the northern part of the County was an agricultural and farming community – a quiet farming community. It was not industrial or commercial – that was the southern part of the County, and what the southern part of the County was for. During the day he worked for the Navy as a historian, and in the evening he ran an agri-business. He ran a horse breeding business which he believed would be negatively impacted by this project.

Ms. Lisa Everette of Powhatan spoke. She stated that she was the organizer of an ATV club. She organized the club so that people wouldn't trespass on other people's property in order to ride. At Mr. T's, they rode during the day – not at night. She had witnessed Mr. T tell someone to plug their exhaust or leave.

Mr. Ricky Roberts of New Road spoke. He advised that he had nothing against Mr. Scodes, but this track was in the wrong place. The Lord said love thy neighbor.

Mr. Harvey Hubbard of Sedley spoke. He stated that he had been riding since he was 9 years old. Mr. Scodes was providing a safe place to ride.

Ms. Mary Harris of 87132 Seacock Chapel Road spoke. She stated that she had lived there for 56 years. There was peace and quiet when she moved there, and she hoped they could continue to keep the peace and quiet. The motorcycles did disturb them. They did not need the noise.

Mrs. Teresa Preston of 10457 New Road spoke. She advised that she was one of Tony's neighbors – she lived directly across the street and beside Dan Billups. She thought that recreational opportunities were needed in this County. A few months ago, she got called on a survey that was being done in the County's name asking if she thought the County needed more recreational opportunities, and she said yes. They asked if she would be willing to pay taxes to fund recreational opportunities, and she said no. She believed in the free enterprise system. What you had before you tonight was a business. It was not a traditional manufacturing business. It was taking a recreational thing that was done on farms – on the farm in which she lived, they went out and checked the crops on ATVs and used the ATVs for other farm purposes. The noise from ATVs or motorcycles were no louder than a chain saw, farm tractor, or combine when running. She didn't think there should be any problems in listening to the noise, as long as you knew that people were getting enjoyment from it. Mrs. Preston stated that she went online today and checked to see how far these people had to ride if they wanted to ride legally. They could go to Slade's Park in Surry County, which took income out of our County and put it over there. They could go to Pittsylvania County, to Maryland, or to Pennsylvania. Or you could travel up to where the George Washington and Thomas Jefferson National Forests were located and motorbike on those roads. But they were all a good distance

away. Due to the economy, families were trying to find things to do close to home with minimal out of pocket cost. She stated that people could ride at Slade's Park, or other riding facilities in Pittsylvania County or Maryland, but families were trying to find things to do close to home. The demographics of Tony's property was good. It was located right off of Route 460. In the future, there was a road slated to go between Tony's house and the Kropenicki farm and some of the other farms back there. So it was going to be more noise, more dust and more dirt sometime down the road. Things were going to change. And our kids needed a place to play and exercise. The people who road motorcycles ATVs were active people. Those people could become the active people in our occupations, such as firefighters, policemen, and people who worked on the rescue squads. She looked at those people as adrenaline junkies. Mrs. Preston advised that she really felt that they should give this a chance. It was a business. It was not asking for a tax increase or anything from the County. The County may actually get some tax revenue from this business. When the Dirt Riders road at her farm for 3 ½ years, they supported the upkeep of New Road. They adopted it and picked up garbage 4 times a year on New Road. She got a cease and desist order from the County saying that she couldn't do that any more. She had leased it to the Dirt Riders as a club, much like a hunt club. It was not open to the public and there were no gate fees – it was members only. Garbage was now piling up on the road, and kids had nowhere to ride, so they went back trespassing and riding illegally. Tony's facility was not going to eliminate all of that, but it was a start. It was a place to go to have a family-oriented event, and that's what memories were made of. You may not remember what you watched on TV last week, but you may remember that hunting or riding trip – something that you actively participated in. She asked the Board to give Tony a chance.

Supervisor West asked was it correct that she received a cease and desist order from the County?

Mrs. Preston replied yes, about 3 ½ years ago. Supervisor West asked what did she do? She replied that she did just that. She added that she had actually ceased and desisted prior to that because they were cutting timber and it was not safe for people to ride through cutover timber. Supervisor West asked, so you obeyed the law? Mrs. Preston replied that she could not find any law in the County ordinances that actually pervaded, and when she was asked to be quoted the ordinance, it was not provided. She did not pursue it because it was not worth the legal fight at the time. She just wanted to cut some timber and get it replanted, so she just let it drop. But she was not the only one. Mr. Felts who had a farm in Ivor in which he let people ride also received a cease and desist order. These were free activities that were being utilized by clubs that rented the land and paid a small amount. She reported it on her taxes and would tell them that she received a grand total of \$3,000 from that club to rent her land – that was not a lot of money. They limited the number of members to 125. They had it 7 days a week and did not have any complaints from the neighbors. For the life of her, she could not understand why they could hear the motorcycles so loudly and why Supervisor West could hear them, when she was closer to Supervisor West, the way the bird flies, than Tony was – but she never had any complaints. She could hear the train when it rode by when there was low cloud cover, so maybe that may accompany the acoustics that Supervisor West may hear on occasion, but it was not all the time. She advised that according to the media, there were people abandoning their cars and hopping on motorcycles to go to work. If they had never rode one, they may want to come out to Tony's and try out the track in a safe place and learn how to ride the thing. One other thing that she noticed was the safety consciousness of the group that was on her farm. It was always safety first – helmets, knee pads, elbow pads, etc. They had family fun days and had grandma and grandpa, great-grandma and grandpa, and little kids that had just been hatched out there.

Mr. Tom Freda spoke. He advised that he had lived in Southampton County for 3 years and had been riding since he was 12 years old. He understood the concerns of people who lived in the area, as far as noise. The vehicles when they were stocked did not make a lot of noise. He had been to a lot of riding facilities including some in West Virginia and North Carolina. Mr. T had a very clean and safe establishment. He (Mr. Freda) was a firefighter and EMT and the first thing on his mind was safety. The place out in Surry did not make sure that everyone had helmets, goggles, etc. like Mr. T did. If it was raining, Mr. T would say that it was not safe to ride and would not let you ride. When people visited Mr. T's, they patronized local mini marts, gas stations, etc. He was representing 8 families from Virginia Beach that could not be here. What if people were against horses and didn't want people riding horses because of the odor. The horse riders would come out and fight too. He hoped the would vote in favor of Mr. T's.

Supervisor West asked if the rescue squad was ever on call? Mr. Freda advised that he worked for Lifestar in Courtland. It was like anything else. When you went hunting, the gun was no better than the person carrying the

gun. The ATV was no better than the person driving it. As long as the person driving the ATV correctly, and the parents were watching their children, the bike was safe.

Mr. Kelly Hera spoke. He stated that Mr. T's place was a very safe place to go riding and it got parents and kids off the couches and doing something active.

Ms. Florence Reynolds of Tucker Swamp Road spoke. She advised that she was not against recreational activities, but was concerned about the location. The Comprehensive Plan did not call for an industrial zone there. She wondered if the other riding facilities people had mentioned were located in residential areas. The audience stated yes. She stated that you could not even cut out an acre of land to put a house on, but the Board was considering an industrial zone in this area. They say that they did not race, but it was called a race track. Mr. Scodes had said that he was not going to race, but he did not listen to what he was told before. Every time they got anything over in Ivor, it was always something negative. The people from Virginia Beach came and used the track and then went back home. The neighbors were left with it.

Mr. David Snyder of Sedley spoke. He advised that his parents moved to Ivor in 1983. When they moved there, there were motorcycle tracks on Doles Road and New Road. Bob Felts had races in the woods a couple of times a year. There had been motorcycle activity in that area for a long time. He stated that when Tony got shut down before Thanksgiving, he and Dan Billups had to read the court order to him because he could not read and write. Mr. Snyder had a decibel reader in his hand and showed it to the Board. He shared what the decibel readings for a motorcycle, air conditioner, and rototiller. Tony was asking for a conditional use permit in which the Board could set conditions. Decibel readings dropped the further you got away from the noise. He did not understand how people could hear the noise from such a distance. He advised that he had been riding and racing motorcycles for a long time. He could take his 6-year old son to Tony's and know that he was safe. People came out that did not ride and watched. Supervisor West's family came out and watched. He asked the Board to let Tony do this. Bring a decibel reader and measure the noise. It was not that loud. A police officer had been called to the property by a neighbor complaining about the noise, and the police officer had to search for 30 minutes for the property because you could not hear the noise. Give Tony a chance. Give the County a chance to have recreation.

Mrs. Roberts spoke. She stated that the noise was extremely loud and in the wrong place. She purchased her property in 1999 due to the tranquility. It was tranquil until Mr. Scodes came to town. He was a habitual lawbreaker. He built it illegally and had been running it illegally. He had refused to obey the law and could not be trusted to obey the law now.

Supervisor Faison asked where she lived? She replied about ½ mile from the track.

Ms. Peggy Kellar of General Mahone Blvd. spoke. She advised that she had children and they rode safely at Mr. T's. These kids needed a place to go and ride. She did not believe that children should be seen and not heard. She did not want her children out on the streets. There were a lot of children whose family did not care what they did. Mr. T's gave children a safe place to go for recreation.

Mr. David Kelly spoke. He stated that he used to ride at Mr. T's all the time, and it was a lot of fun. One time he fell, and David Snyder's 6-year old son stopped and helped him. Mr. T's was not a racetrack. It was really safe. And he could have a normal conversation there with his mom and dad without having to yell to hear.

Ms. Linda Colonna of Seacock Chapel Road spoke. She stated that she had lived there 4 years. Prior to moving there, they did a lot of research on the property and never saw anything about a racetrack being proposed right near the property. She bought the property for the peace and quiet. With this racetrack, her property would plummet in value. She did not want to hear the noise from the motorcycles all the time. She did not buy her property for that. She was not told anything about the racetrack when she was looking at buying her property. With the racetrack, you were not talking about one sporadic thing, like hearing an airplane fly by once in a while. With this, the noise would be constant. She did not want to live here if this were approved.

Mrs. Dianne Kropewnicki of 35437 Seacock Chapel Road spoke. She presented the Board with a large packet containing a vast amount of information related to the track. She stated that she believed that the dust and noise from this track constituted a nuisance, and that the rezoning of this land for an intensive industrial application

qualified as spot zoning, which was illegal in Virginia. The first page of the packet were noise levels for their reference. She understood that Barry Steinberg had shared with them that she had provided him with volumes of research on the effects of noise to assist in the fight against the OLF. Despite being denied his application in October 2003 by this Board and being under a court order, which was attachment A in the packet, not to operate or do any further construction to the track, Mr. Scodes ignored the Board and the court and was operating a commercial track called Mr. T's Hunt Club. She called their attention to attachment B in the packet showing the fee as being \$20 for a day of riding. Attachment C was from the Tidewater Dirt Riders website on August 21, 2007 in which the posting stated that "they would be going to Mr. T's on Saturday, as Mr. T had added an extra ½ mile to the track." Attachment D was a posted from Dave Vann stating that "the new part of the track was open on August 11, 2007 complete with three 8-ft. tabletops, one 4-ft. tabletop, and one jump. Attachment E was a posting from Labor Day weekend, September 4, 2007. Again, mentioning new additions to the track and ending, "I went with a couple of guys on Sunday, and there must have been a 150 people out there. It was nuts. But we had a darn good time." Now consider that all this activity was taking place while Mr. Scodes was under a court order not to operate that tract and not to do any more construction. What would he do if this track were approved? Did they really think he would abide by the terms of any conditional use permit? Mrs. Kropewnicki continued that Mr. Scodes knew that the neighbors were complaining about the noise. Attachment F was an incident report in which a deputy went over to Mr. Scodes' on May 13, 2007 and told him that his neighbors were complaining. Note that it stated that the illegal track was under investigation. Yet in September he allowed about 150 people to ride on that track. It sounded like there were dirt bikes running on her property. The noise could be heard in every room in her home. Attachment F-2 was a posting from November 4, 2007, which was the day she went to see Supervisor West, and you could hear the bikes at his property over 2 miles away. In that posting, Dave Vann stated, "It was a big crowd. The police were called about the noise. It must not have been too loud – they stopped at the entrance, listened, and rode on. One day the police would tell that lady to not call them anymore." The dust most days looked liked a fog hanging over her property. She could not use her back pastures when that track was operating, and she had a business license for her horse farm. The noise and dust from this track were horrible and affected her ability to use her property and conduct her legal business. Her home was about 1,000 ft. from this track. She shared an aerial photograph showing Seacock Chapel Road, her home, and the track. So if Mr. Billups said there was no one within 1,000 ft. of that track, he was mistaken. And that was just the major portion of the track. There was a new part of the track that was added after that photo was taken. She passed pictures around that showed a trail that ran between the two tracks, so it was even closer to her house. She could hear it when there were just 3 bikes on the track. Attachment G was a deputy's report from April 2008 after Mr. Scodes had been found guilty of violating the court order. She called when she heard the noise of the bikes and the deputy found the gates open and 3 riders on the track, which Mr. Scodes claimed that he did not know they were there. The deputy advised Mr. Scodes to keep the gates secure. When the County raided the track on November 18, 2007, Mr. Scodes was told to shut down and he refused. On the morning of December 2, she had a friend at her house. They heard a few bikes start up, but it wasn't too loud so she didn't complain. She and her friend went inside to have lunch. All the doors and windows were closed and they had the stereo on. Apparently, more riders started up their bikes at the track, because they started hearing the noise of the bikes over the music. It was irritating and annoying. She called the Sheriff's Office. Previously, they had not wanted to go over and ticket Mr. Scodes for noise violations because they were concerned that it may hamper their investigation. Mrs. Kropewnicki continued that she could not go outside and work in her yard or around her farm for any length of time because it gave her a splitting headache. They could not enjoy their property and home. The sound penetrated everywhere. Her husband was disabled – he had reflux disease. He had been operated on to try and relieve some of the pain and give him a better quality of life. Because of this disease, he was already at a higher risk for heart attack. She monitored her husband's blood pressure on a regular basis, and it elevated significantly when they could hear the noise from that track. The Journal Working Group for noise abatement concluded that with noise levels above 70 decibels, the risk of heart attack for those people increased by an additional 20%. And 70 decibels was the lowest level at which conversation was drowned out, which was most days when that track was running. Yet one of Mr. Scodes' supporters had the nerve to send her husband and son a letter threatening him with arrest if they hunted on his land with their hunt club, unless they stood up at this meeting and supported this track. Those letters were attachments I-1 and I-2. And I-3 was a letter sent to her threatening her because she had dared to oppose this track. She had turned the letters over to the Commonwealth's Attorney for possible criminal investigation. The Virginia Courts had been very clear on what constituted on a nuisance. In the case of Brad vs. Ives, the Court said, "The term nuisance embraces everything that endangers life or health or obstructs the reasonable and comfortable use of property. An activity could actually be lawful and still constitute a nuisance." From the decision in Face vs. Cherry, "When the business itself becomes obnoxious to neighboring dwellings and rendered their

enjoyment uncomfortable, whether by smoke, noise, offensive odors, gases, or otherwise, the carrying on of such business was a nuisance. In a 1990 Virginia Beach case, the Court ruled that loud music coming from a restaurant was a public nuisance, as it was bothersome to not just a few property owners, but potentially to the public at large. And the sound of this motorcycle track carried a long way. Supervisor West could hear it at his house, which was about 2 miles away. She cited several court cases where practice motorcycle tracks similar to this one were found to be a nuisance. Mrs. Kropewnicki continued that people who did not think that the noise from the track was too bad were being affected by the noise from this track whether they knew it or not. Dr. Luther Terry, former U.S. Surgeon General wrote that "Some long term effects of noise were cardiovascular constriction, elevated blood pressure, increased heart rate, more labored breathing, measurable changes in skin resistance and skeletal muscle tension, ...etc." A new study just published in February of this year linked low noise levels at 35 decibels, which was about the sound of a person softly snoring, to increased blood pressure rates. The study was conducted while people were sleeping and some of the noise exposures were so low that they did not awaken, but their blood pressure rose anyway. A researcher concluded in the *American Psychologist* that, "While people may not be consciously bothered by noise, their bodies reacted physiologically by increases in blood pressure, stress hormones, and visits to the doctor." "People adapted to air pollution, but did not tend to adapt to noise. Problems such as high blood pressure actually increased over time. Mrs. Kropewnicki continued that Mr. Scodes wanted the Board to rezone his property to M-1, Industrial so that he could run his motorcycle track legally. She called their attention to attachment J. They should be familiar with the next 3 pages because they were from the 2007 Southampton County Comprehensive Plan. Rezoning this land to M-1, Industrial conflicted with the rural residential and agricultural uses planned for the surrounding community. Map 8-2A showed the future land use map for the Ivor Planning Area. The area of New Road was projected to be single family residential and agricultural rural residential – not industrial. In a case against the King George Board of Supervisors, the Virginia Court said, "Spot zoning was the up-zoning allowing more intensive uses of a land to a classification that was different than that of the surrounding land." The Supreme Court of Virginia had been very clear on illegal spot zoning. In a case against the Board of Supervisors of Charles City County, it said that, "Illegal spot zoning occurred when the purpose of a zoning text or zoning map amendment was solely to serve the private interest of one or more landowners, rather than to further the County's welfare as part of an overall zoning plan." This rezoning application, if approved, would constitute illegal spot zoning of the worst kind. It would benefit one landowner in the area by allowing him an intensive commercial application to the detriment of many other landowners in the community. There were other places for these people to ride. The Tidewater Dirt Riders leased 2 pieces of land for their members to ride on. There were also tracks in Surry, Disputanta, Petersburg, Gloucester, and Elizabeth City, just to name a few. She and her neighbors only had 1 home. She asked them to stay the course with the Comprehensive Plan, deny this application, and maintain the peace and quiet they had come to enjoy again these past few months.

Mrs. Sherri McMillion of Smithfield spoke. She advised that they were in the process of building a home approximately 400 feet from Mr. Scodes' property. She had 3 concerns: 1) noise, 2) devalue of her property, 3) it was illegal to spot zone in Virginia. She liked to sit outside and read and she could not because of the noise. She consulted with an engineer who told her that in a quiet, rural environment, you would not want indoor noise to be over 40 decibels. This track was a nuisance to the surrounding property owners. Rezoning this property would only be in the interest of one landowner.

Mr. Phil Bain of 35079 New Road spoke. He stated that he did not know there were so many attorneys in the room. He was in favor of the track. He handed out 3 letters from area businesses in favor of the track who obviously recognized the need for recreation in the County. Those businesses were R.M. Felts Packing Co., Ivor General Store, and T.L. Bain. L.P. This was a nocost recreational park for the County. He advised that his daughter and her friend went to Mr. T's track. Planning Commissioner Doug Chesson went there. Supervisor West's brother had also been to the track. He passed out signatures of the adjoining landowners who were in favor of the track. He personally had been sitting on the picnic table at the track with his girlfriend and puppy, and they could have a normal conversation and the puppy was calm. He stated that he could not hear the track at his house. The track was totally surrounded by trees. In talking about rezoning to an industrial zone, they would not be rezoning for a nuclear plant or other broad-based industrial use. If they were not going to allow this track, were they going where people could and could not farm? Drying trailers were loud and made noise. As far as the dust, Mr. Scodes had an extensive sprinkler system. He noted that he remembered motorcycles being used in that area for 38 years.

Mr. Andrew Vick of New Road spoke. He advised that his driveway was across from Tony's driveway. He sat on his first porch with no hearing protection. This was something for our youth. Tony was not asking for any money.

Ms. Valerie Ricks of 36395 Seacock Chapel Road, Zuni, spoke. She stated that she had resided there for 31 years. She agreed that we needed recreational facilities, but did not want a racetrack in her back yard.

r. Anthony Scodes, owner/applicant, addressed the Board. He was the one who caused all the commotion here. But he really wanted them to look at a lot of things that everybody seemed to have come down on him about him violating the law and everything. When he went down to get permits, he did sign something which he didn't understand was so serious because it was in a back room. Nobody told him to hold his hand up or swear under oath, and all that, so it did not seem very serious to him. He did get permits. He and wife got licenses from the state of Virginia to do all the land disturbance, build everything, dig ditches, etc. They needed to understand where he was coming from. He did not know all the rules. Each time he went down and talked to everybody at City Hall, he asked them could he do this? They said no. He said well it was a hunt club and they rode 4-wheelers. He thought he could have a private hunt club and do it. When nobody came out and arrested you and you did it for 2 years, it seemed like you were doing things right. Then he went down there and kept wanting to build his track and do all this stuff. Each time he went to the City and he approached anybody at City Hall and told them what he was doing, not one person came down to his farm for 6 years now and said Tony, you cannot do this. Your permit said that can't do this. You're making a race track. He never made a race track. When he applied from day 1, they said he couldn't do it. He asked, well why can hunt clubs ride? They said hunt clubs could ride. So he called the state up. The state came down there and walked around his property. They would not believe the people that came down. They told him that they did not see any problems. They thought he was doing something right. So everybody gave him the notion that he was doing everything. Mr. Scodes continued that he was lucky to end up with this piece of property and he just wanted to do one thing. He was too old to do anything else. He wanted to do one thing for the kids. To give something back, like everybody here was going to give something to church or something. He wanted to do something for these kids who rode 4-wheelers and dirt bikes. When you saw what they enjoyed with their family – life goes too fast. He's spent 6 years in the blink of an eye and here we are. Those kids had been coming out for 2 years. He asked if he could make this private, and they said he couldn't. He told them that well there were other private facilities. He asked if he could have a private hunt club and ride bikes? They said no. Others did not have to go through this stuff. And they just told him all this recently. Nobody ever told him in 6 years that he was doing something wrong. So they looked at him like he was some kind of criminal and that he did all this stuff illegal. If he did something illegal, he would have thought that everybody in the world would have been out there the first month he was doing it and locked him up. When he went down to the judge and he got him for the nuisance of the property, he told him he could get within 200 feet of any dwelling and have all the noise he wanted back there and the County could not say anything. The judge, who now wanted to lock him up, saying he could do all this stuff. So he really did not understand where everybody was coming from. One said that you could have all the noise they wanted back there, one said he could have a hunt club and ride 4-wheelers. When you open up a hunt club magazine, there was a 4-wheeler and shotgun and somebody riding through the woods. What was he doing wrong? He just wanted to give something to some of these kids. He bought property near Route 460 in Isle of Wight County and wanted to do the same thing, and that was in the middle of nowhere. Isle of Wight told him real nice that they did not want him in their neighborhood. At least they told him. So he packed out of the property. When people came to this County, people told him come to our County. We want you to keep your money here. Well he spent it. He told the Board if they did not want this, to vote it. But they were the ones who were going to lose out, because he gave everything he could inside him to give back.

Mr. Burton Presson of Seacock Chapel Road spoke. He stated that he could hear the noise and it was offensive. How could consideration be given to legalizing this track now? There were other places these people could go and ride their bikes.

Ms. Donna Harris spoke. She advised that she lived in Smithfield, but she was a 4-H leader alongside Dianne Kropewnicki and had spent the last year at the Kropewnicki farm. They were not able to ride the horses because of the noise. Last year when this track was operating, the horses had colic. Now they didn't since the track wasn't operating. Do not be taken in that Mr. Scodes doesn't know the law.

Mr. David Edwards of Sedley spoke. He stated that he was not for or against the track. But he wanted to know what would happen to the property down the road? Could it only be used for a racetrack?

Ms. Diane Harris spoke. She advised that in 2003, the Board voted it down. Now the Board was considering saying it was ok. Then why did we even have laws? She was against it and it was noisy.

Chairman Jones closed the public hearing.

Supervisor West stated that this was a lose-lose for everyone in this room. Everyone was not going to leave here happy. Mr. Scodes had told him that he did not need him, which was disrespectful. Ms. Diane Harris just summed it up best. At the Planning Commission meeting, a respectable gentleman indicated that he had been offered money to support the track, and he believed that gentleman. It came down to disrespecting the County. And if we permitted this tonight, we were telling the OLF we did not care about the noise.

Vice-Chairman Young advised that he viewed it differently. He thought that Mr. Scodes may have been misled. He received a lot of personal calls and 14 visits, of which only 2 people were not in favor of it.

Attorney Railey and Mr. Jay Randolph clarified for Supervisor Faison that the property could only be used for a racetrack, per the proffer letter submitted by the applicant proffering to only utilize the use which permitted a racetrack.

Supervisor Brown stated that this was not a racetrack – it was a riding facility.

Mr. Randolph clarified that the definition in the code was that of a racetrack.

Attorney Railey clarified that this application was a 2-step process: 1) conditional rezoning, and 2) conditional use permit.

Supervisor Felts stated that she received a lot of calls and a lot of visits. She went out the track and there were picnic tables, grills, pond, and a sprinkler system. She thought that Mr. Scodes was trying to rectify a situation with the help of friends for the kids' sake. She noted that her boys raced motorcycles when they were young and got a lot of enjoyment out of it.

Supervisor Wyche stated that he could not support this.

Supervisor Brown stated that he was in favor of recreation in this County. But he had some concerns. Perhaps they could require a dirt buffer to try and reduce some of the noise.

Supervisor West advised that this was not a "Driving Miss Daisy" course. We did not have enough rescue volunteers in the County as it was.

Attorney Railey pointed out that the first time Mr. Scodes applied for this, he was represented by competent legal counsel. When Mr. Scodes went to court, he was represented by legal counsel.

Supervisor Faison stated that he just could not vote against this. If this were something we could make work, it could be very positive for the County.

**Supervisor West moved, seconded by Supervisor Wyche to deny the rezoning request. Chairman Jones and Supervisors West and Wyche voted in favor of the motion. Vice-Chairman Young and Supervisors Brown, Faison, and Felts voted in opposition to the motion. The vote was 3-4, thus the motion failed.**

**Supervisor Brown moved, seconded by Supervisor Felts, to approve the rezoning request. Vice-Chairman Young and Supervisors Brown, Faison, Felts voted in favor of the motion. Chairman Jones and Supervisors West and Wyche voted in opposition to the motion. The vote was 4-3 in favor of the motion, thus the motion passed.**

Supervisor Brown made a motion to send the CUP portion of the application to the Planning Commission and have them come up with a list of recommended conditions including looking at the possibility of bringing in dirt buffers, and to also have them look at this as not a racetrack, but a riding facility. Supervisor Felts seconded the motion. Vice-Chairman Young and Supervisors Brown, Faison, and Felts voted in favor of the motion. Chairman Jones and Supervisors West and Wyche voted in opposition to the motion. The vote was 4-3 in favor of the motion, thus the motion passed.



At a regular meeting of the Southampton County Planning Commission held in the Board Room of the Southampton County Office Center at 26022 Administration Center Drive, Courtland, Virginia on August 14, 2008 at 7:30 PM

COMMISSIONERS PRESENT

Dr. Alan W. Edwards, Chairman  
Ira H. "Pete" Barham, Vice-Chairman  
Douglas A. Chesson  
Michael G. Drake  
Freeman J. Harrell  
Dallas O. Jones  
J. Michael Mann  
Oliver J. Parker  
Keith Tennessee

COMMISSIONERS ABSENT

None.

OTHERS PRESENT

James A. "Jay" Randolph, Assistant County Administrator (Secretary)  
Robert L. Barnett, Director of Community Development  
Richard E. Railey, Jr., County Attorney

Chairman Edwards called the meeting to order. The chairman noted to the secretary that a quorum was present with all commissioner's in attendance.

Chairman Edwards sought approval of the minutes of the July 10, 2008 meeting.

**Vice-Chairman Barham moved, seconded by Commissioner Chesson, to approve the minutes as presented. All were in favor.**

Chairman Edwards welcomed everyone and informed that based on advice from legal council that the opportunity for citizens to address the Commission about previous public hearing items would not be permitted.

Chairman Edwards asked the secretary to brief the Commissioner's on the referral of the Scodes application by the Board of Supervisors.

Secretary Randolph read Section 18-512 of the Southampton County Code which relates to the standards and regulations associated with conditional use permits (CUP). Secretary Randolph also informed the Commission of the vote by the Board of Supervisors to approve the conditional zoning request of Mr. Scodes and that the matter before them tonight was suggested conditions related to the conditional use permit portion of the application.

Chairman Edwards noted that the previous action of the Planning Commission in July ended in a tie vote of 3-3, which by default was a recommendation to deny the application. He asked the question to other Commissioner's if they wanted to support the CUP.

Commissioner Barham noted that he thought they were discussing a motorcycle/atv course and not a race track.

Commissioner Chesson remarked that he thought a possible condition for the CUP could be that sanctioned racing not be permitted. He indicated that this type of recreation wouldn't cost the taxpayers anything.

Commissioner Jones indicated that the applicant was advised not to construct and operate the race track, but that he did it anyway. The county shouldn't allow people to break the law and then reward that type of behavior.

Commissioner Barham remarked that he believed the applicant had obtained all the necessary permits to move dirt and construct the track and that the applicant wasn't fully aware of all of the additional permits that might be necessary.

Attorney Railey then informed the Commission that Mr. Scodes had been to court over the matter and signed a consent order acknowledging that he had done wrong. Additionally, Attorney Railey noted that Mr. Scodes signed a second court order further acknowledging his wrongdoing.

Commissioner Barham asked for clarification, was the applicant violating zoning laws in building the track or was it for using the track for racing?

Chairman Edwards noted that this application was inconsistent with the Comprehensive Plan and that he could not vote for something that he wouldn't want in his back yard and could not vote to put it in someone else's backyard.

Commissioner Harrell mentioned that the auto race track in Capron faced a lot of complaints from citizens during its application, but it was approved.

Commissioner Mann noted that the auto race track in Capron was built by a group but this motorcycle track was being done by an individual. He noted that the enforcement of potential conditions of the CUP would be difficult and that if conditions were placed on the application, they must be followed in order to be effective. He did agree that recreational opportunities that didn't cost the taxpayers anything were generally good.

Commissioner Drake asked who would enforce the conditions of the CUP?

Secretary Randolph noted that they would be enforced by the Community Development Department, specifically the zoning administrator.

Commissioner Barham noted that CUP is enforced in the same manner as other permits such as commercial dog kennels.

**Chairman Edwards again noted that he would have a difficult time supporting the CUP. He then made a motion to recommend that the CUP be denied. Commissioner Jones seconded the motion.**

Chairman Edwards asked for further discussion on the motion.

Commissioner Chesson noted that the Commission was sent this referral on the CUP for Mr. Scodes by the Board of Supervisors and that he believed that this meeting was meant to discuss the actual conditions of the CUP.

Attorney Railey clarified that if no conditions could be put in place that would be consistent with the Comprehensive Plan, then the recommendation to deny the CUP would be in order.

Commissioner Drake asked if the CUP were issued after someone violated the zoning law, would it set precedence for others to follow? He wondered if something like this could happen in the Newsoms area.

Commissioner Tennessee suggested that if the Commission were to endorse the CUP it could indicate the Comprehensive Plan was not important. He remarked that the Comprehensive Plan provides guidance and that to go against it would minimize its credibility. He mentioned that he serves as the Planning Commission representative on the Recreation Task Force (which is developing a recreation plan) and that the recent survey of citizens didn't indicate motorcycle race tracks as a high priority. He indicated that he could not support the CUP.

Commissioner Parker asked what would happen if the Planning Commission denied the CUP at this point after originally being in tie vote at a previous meeting?

Commissioner Mann suggested that the recommendation of a CUP would set a bad precedent and could lead to reduced credibility of the zoning ordinances. He suggested that this may lead to an attitude in the county of people thinking that they can do anything they want.

Chairman Edwards asked if there was any further discussion?

Commissioner Chesson suggested that a list of conditions be formulated, as per the Board of Supervisors referral. He said they should put together some conditions, even if the full Commission votes to deny the CUP. At least they would be attempting to follow the directive given by the Board.

**A vote on the motion was then taken by raising hands. The vote was five (5) members in support of the motion to deny the CUP and four (4) members opposing. Commissioners**

**Edwards, Mann, Tennessee, Jones and Drake supported the motion and Commissioners Barham, Chesson, Parker and Harrell opposed the motion. Thus the motion was approved to recommend to the Board of Supervisors that the conditional use permit for the Scodes application be denied.**

Regarding Board of Zoning Appeals (BZA) matters, Mr. Robert Barnett advised that the BZA would not meet in the month of August.

With regards to late arriving matters, Secretary Randolph mentioned that there has been renewed interest in having the Planning Commissioner's become certified within a reasonable amount of time of being appointed to the Commission, perhaps 24 months. Additionally, course or seminars could be arranged for the benefit of existing Commissioners and others (BZA members, etc.) to assist them in learning about new topics such as smart growth principles. Arrangements could be made to have a guest speaker come and present relevant topics to the Commission and others. The Planning Commission agreed that this could be beneficial, however, no action was taken with reference to amending the bylaws to require certification.

Moving to the public comment period, Chairman Edwards recognized Mr. Glenn Updike. He stated that the County should reduce its dependence on consultants and surveys because often times the information they presented was not accurate. He wondered how much it would cost to have sewage at the school. Nobody looked at the option of a private system. A survey said that people were willing to pay for recreation, however, he thought that may no be entirely true. He thanked Chairman Edwards for allowing him to comment.

There being no further business, the meeting was adjourned at 8:15 PM.

---

Dr. Alan W. Edwards, Chairman

---

James A. Randolph, Secretary



October 27, 2008 Board of Supervisors meeting minutes

Moving to old business, Mr. Johnson announced that as they knew, following a public hearing on July 28, the Board voted 4-3 to conditionally rezone 55 acres of Mr. Anthony Scodes' property exclusively for ATV riding/racing. However, at that time, the Board deferred action on the required conditional use permit, referring it back to the Planning Commission for additional review, discussion and list of recommended conditions. At its August 14 meeting, the Planning Commission voted 5-4 to forward a recommendation back to the Board to deny the conditional use permit, citing inconsistency with the County's *Comprehensive Plan*. At the Board's August 25 meeting, on a 6-1 vote, the Board tabled the matter for 2 months and directed staff to research conditions/regulations imposed by other Virginia localities on comparable facilities. Subsequent to that meeting, a complaint was filed in Southampton Circuit Court on behalf of Diane Wynne Kropewnicki, et als, alleging that the action of the Board in granting the change of zoning was unlawful, and further seeking to enjoin the Board from issuing a conditional use permit to Mr. Scodes for the aforementioned purpose.

Mr. Johnson continued that at the Board's September 22 meeting, on a vote of 4-2, the Board directed its legal counsel to refrain from filing an immediate answer to the complaint and seek to reach amicable settlement with the plaintiffs. In accordance with that direction, Mr. Richard E. Railey, Jr., County Attorney, discussed the matter with the plaintiff's counsel, who agreed to defer prosecution of the suit pending an approved motion by the Board to deny the conditional use permit and initiation of an application to rezone the 55 acres in question back to A-1, Agricultural. A copy of Mr. Railey's letter to the plaintiff's counsel was included in the agenda. In accordance with the Board's motion of August 25, the application for a conditional use permit had been placed back on the agenda this morning for disposition. He noted that also included in the agenda was a copy of correspondence to Mr. Scodes (dated October 9), advising him that the matter was on today's agenda and informing him of related developments since August 25.

Supervisor Brown asked Mr. Johnson if there had been any response from Mr. Scodes? Mr. Johnson replied no.

**Supervisor West made a motion to deny the conditional use permit and initiate a rezoning of the subject 55 acres back to Agricultural, A-1.**

Supervisor Brown stated that it was not prudent for this Board to initiate the rezoning of someone's property without input from the applicant. Chairman Jones pointed out that the property was currently zoned M-1 and it was of no use to Mr. Scodes.

Attorney Railey clarified for the Board that he was confident the plaintiff's counsel would be satisfied with the Board denying the conditional use permit and would not be as concerned with whether or not the Board voted this evening to initiate an application to rezone the 55 acres in question back to A-1, Agricultural.

Supervisor West rescinded his original motion.

**Supervisor West then made a subsequent motion to just deny the conditional use permit. Supervisor Wyche seconded the motion. Chairman Jones and Supervisors Faison, West, and Wyche voted in favor of the motion. Supervisors Brown and Felts voted in opposition to the motion. The vote was 4-2 in favor of the motion, thus the motion passed.**



Property owner

Anthony and Victoria Scodes  
10266 New Road  
Ivor, VA 23866  
TP 24-43, 15-33

Abutting owners

Nancy Pulley trust and Nancy Pulley  
P.O. Box 200  
Ivor, VA 23866  
TP 24-45 and 49

Matthew and Robert Holt  
4308 Ainslie Court  
Suffolk, VA 23434  
TP 24-47

MRP Enterprises LLC  
7307 George Washington Memorial Highway  
Yorktown, VA 23693  
TP 15-32

Samuel and Sherri McMillion  
105 Buckingham Way  
Smithfield, VA 23430  
TP 24-40

Mary Alice Oaks Life Estate  
10118 New Road  
Ivor, VA 23866  
TP 24-42

Cathy and William Kirk  
35441 Seacock Chapel Road  
Zuni, VA 23898  
TP 24-7-3

Willoughby and Linda Colonna  
35469 Seacock Chapel Road  
Zuni, VA 23898  
TP 24-7-4

Courtesy mailing REZ 2011:03

Diane and Ronald Kropewnicki  
35437 Seacock Chapel Road  
Zuni, VA 23898  
TP 24-7-2

Not abutting property, not abutting Scodes' homesite

Andrew and Catherine Vick  
10287 New Road  
Ivor, VA 23866  
TP 15-34F, 34F-1  
Abutting Scodes' homesite

Stacey and James Billups  
10313 New Road  
Ivor, VA 23866  
TP 15-34E  
Abutting Scodes' homesite

Kelley and Daniel Billups  
10359 New Road P.O. Box 85  
Ivor, VA 23866  
TP 15-34D  
Abutting Scodes' homesite

Robert and Ellen Holt Life Estate  
4308 Ainslie Court South  
Suffolk, VA 23434  
TP 15-5-7  
Abutting Scodes' homesite

# RZA 2011:03

