



**FINAL MINUTES
TOWN OF CAMP VERDE
BOARD OF ADJUSTMENT & APPEALS
473 S. MAIN STREET, SUITE 106, CAMP VERDE, AZ 86322
TUESDAY AUGUST 22, 2023, at 3:00 p.m.
Regular Session**

1. **Call to Order** Chairman BJ Davis called the meeting to order at 3 P.M.
2. **Roll Call:** Chairman B J Davis, Vice Chairman Buck Buchanan, Tanner McDonald, Jeremy Brady and Rodney Corbin
3. **Pledge of Allegiance** Vice Chairman Buchanan led the Pledge of Allegiance.
4. **Consent Agenda** - All those items listed below may be enacted upon by one motion and approved as Consent Agenda Items. Any item may be removed from the Consent Agenda and considered as a separate item if a member of the Board so requests.
 - a. **Approval of Minutes:** May 09, 2023, Regular Session
 - b. **Set Next Meeting, Date and Time:** *As Needed*

On a **motion** from Board Member McDonald, seconded by Vice Chairman Buchanan, the Commission **moved** to approve the consent agenda as presented.

Roll Call Vote:

Rodney Corbin: Aye

Jeremy Brady: Aye

Chairman Davis: Aye

Vice Chairman Buchanan: Aye

Tanner McDonald: Aye

Motion Carried 5-0.

6. **Call to the Public for items not on the Agenda**
Residents are encouraged to comment about any matter not included on the agenda. State law prevents the Board from taking any action on items not on the agenda, except to set them for Consideration at a future date.

No Pubic Comments.

7. **Public Hearing:** Discussion, consideration, and possible decision regarding an interpretation by the Town's Zoning Administrator (Community Development Director) whether, or not, an off-highway motocross track is a permitted use, conditionally permitted, and/or accessory use within the R1 Zoning District within the Town of Camp Verde. Staff Resource: John Knight, Director and BJ Ratlief, Planner

Staff Presentation:

Town Planner BJ Ratlief presented as the staff representative. Using a PowerPoint presentation, Ms. Ratlief introduce this hearing as an appeal regarding the Interpretation 2023-02; interpretation on motocross with an R1 Zoning District and gave background information on the case. She shared the issue started when a citizen made a noise complaint in early January 2023 from a motocross bike being ridden in Mr. Jason Jenkins' and his neighbor's backyard on Rustler Trail. This citizen ended up going to to Planning and Zoning to ask whether a motocross track was even a permitted use within an R1 zone (residential single family).

While the zoning ordinance is not clear, after an interpretation was issued on March 9 2023, it was determined by Community Development Director John Knight that motocross was not a permitted or conditional use in an R1 Zone, nor does it qualify as an accessory use.

After this interpretation was issued, an application for an appeal of this interpretation was received on April 21, 2023, from Mr. Jason Jenkins, which is why this issue has been brought before the board. The board will decide if Mr. Knight was correct with his interpretation, or if he erred. Does his interpretation accurately reflect the town's zoning ordinance?

Three issues have been raised regarding procedures:

1. The applicant feels that his due process rights have been violated.
2. A citizen has brought forward that they feel the application process has been violated.
3. An attorney for the applicant sent a letter alleging that there is further violation of the applicant's due process rights in putting off the hearing.

Issue #1. Due process for this matter is as follows: Town of Camp Verde receives complaint, the complaint is investigated, then interpretation is issued. Application for appeal of the interpretation is received, then a public hearing is scheduled with BOA.

For this matter, the Interpretation was issued on March 9th then the 45 days to appeal started giving the applicant until April 23rd, 2023 to appeal. Mr. Jenkins asked if he could turn in the application and pay fees as he didn't have all his materials together. Attorney and Director agreed that this met the spirit and intent of the appeal process and ordinance.

Mr. Jenkins' appeal application was received on April 21st 2023, he brought in additional materials to his appeal on May 12th 2023.

The hearing was originally set for July 11th, 2023. However, on Tuesday June 27th, 2023 it was recognized by staff that a procedural error occurred, and they had missed the deadline for notifying the public via a notice within the newspaper and to neighbors within 300' of the applicant's property.

The date was then proposed to July 18th, 2023, which would not work for the applicant and his support group. The applicant was told to please look at when worked best for him and get back to staff and they would work with him. It was then decided by the applicant and staff to meet for a public hearing on August 22nd, 2023.

In the time being, Staff continued to investigate whether motocross could be a permitted use in an R1 Zone. The code/ordinance is silent regarding motocross tracks or motocross use in any of the zoning ordinances. It isn't mentioned anywhere as conditional or permitted use.

After they further investigated, the final decision came from a close look at Section 203- specifically the last sentence. This states "All incorporate area" and "any use or structure not specifically permitted by (or analogous to) district provisions shall be deemed prohibited and unlawful as a principle or accessory use or structure for the district."

In Ms. Ratlief's opinion, it sounds like it's well defined, but maybe with a little bit of wiggle room. After looking up what "or analogous to" means- "similar or comparable to something

else either in general or in some specific detail" is there anything else in our ordinance that we can use or consider and there is one.

"Outdoor recreation or assembly facilities"

This ordinance is defined as- an area designed for active recreation, whether publicly or privately owned, including but not limited to parks, baseball diamonds, soccer and football fields, golf courses, tennis courts, swimming pools, equestrian facilities, archery and shooting ranges."

This does not call out motocross specifically but is like the other uses called out and is an active recreation and on privately owned property.

Staff continued to look and found further information that would solidify that outdoor recreational facilities are not allowed in an R1 zoning. It would however be okay as a conditionally permitted use in an RS, C1, C2, C3, OS, and AG. It also is a permitted use within M2 and PAD zones.

To have a conditional use permit, however, many steps would have to be taken.

You would have to go through the process that includes the application process, a neighborhood meeting, post your property then you would have a public hearing in front of P & Z board and then possibly go to Council for approval.

This ordinance ("Outdoor recreation or assembly facilities") would not work for the motocross because it cannot be a conditional use in an R1

Looking at R1 district the purpose: Is intended for single family residential living, site built, modular or manufactured housing.

K. other accessory uses commonly associated with primary permitted use.

What is an accessory use? Accessory use is defined as A use of land or of a building or portion thereof customarily incidental and subordinate to and located on the same lot with the principal use.

Typical and customarily accepted accessory uses are: Storage, fences, out buildings associated with keeping pets & livestock, gazebos, carports, and garages, etc.

Ms. Ratlief explained vehicles and the uses that are allowed by ordinances.

Additionally, it was concluded that the motocross track is no longer on the same lot but has been expanded to over 2-3 lots or parcels, therefore, disqualifies the use as "accessory".

It was decided by staff that the current planning and zoning ordinance regarding the construction and use of an off-highway motocross track in a residential district determines a motocross track is not a permitted use by right nor conditionally permitted use within an R1, nor in fact within any of the Camp Verde Zoning Districts, including all other residential districts, commercial and industrial zone.

The Board and Staff spent time discussing Ms. Ratlief's presentation to better understand Staff's findings.

Chairman Davis introduced the Board's attorney, Doug Jorden, who is here to advise the board as they decide.

Applicant Presentation:

Mr. Jenkins' representative was his attorney, Josh Butner.

Mr. Butner's stance was that each argument that staff gave as to why Mr. Jenkins' motocross track was not permitted are false.

His reasons to 1-3 were:

1. Motorcycle use in a backyard is not incidental use in an R1 zone

-The interpretation runs contrary to case law.

2. The track use is not typical use and the track is not on the same lot.

-This interpretation fails to note Arizona Case Law that supports a wide variety of uses as accessory AND two neighbors who each have the same hobby doing the same activity in both of their own backyards have the same rights to use their land in the same way.

3. Prohibited by State Law

-This is a misapplication of the law, and a key section of the state statute was not applied.

Mr. Butner shared that this entire inquiry was prompted by an unsubstantiated complaint, a complaint that then defined the inquiry and conflated issues and has now been presented as the town's position for which the board must either agree or disagree.

Mr. Butner brought up due process and vested rights to support his and Mr. Jenkins' claims. He stated that during this process Mr. Jenkins' right to ride his motocross was halted, and he was not given those rights until he appealed the process.

He would argue that a hearing should have taken place before they took away Mr. Jenkins' right to ride.

He feels the issue got inflated when the complaint went to "professional riding", when in all reality, it is smaller bikes being used by children or the parents of the children to help them learn motocross. When officers arrived after the initial noise complaint, the officers did not seem to find the music (which was the initial complaint) to be unnecessarily loud. Mr. Butner feels that the issue at hand should be about grading without a permit, which is a separate issue than the one they're dealing with. He also feels that calling the track a motocross racetrack would be ridiculous. It's not a motocross racetrack, it's riding ones' motorcycle in their own backyard.

Regarding the track stretching across several parcels, Mr. Butner showed a google image in which he pointed out that the track hardly extends across two properties, but rather that Mr. Jenkins has tracks in his backyards, and the Martinez family does as well.

Mr. Butner then goes on to mention the Arizona State Law ARS 28-1174 and that it does not apply based on ARS 28-1172 stating "This article applies to all lands in the state except private land and Indian land."

Mr. Butner then points out Statutory construction and comments on case law.

"Zoning ordinances, being in derogation of common law property rights, will be strictly construed and any ambiguity or uncertainty decided in favor of property owner."

"When the language of a statute is clear and unambiguous, a court should not look beyond the language, but rather simply apply it without using other means of construction..."

Mr. Butner then refers to different court cases.

City of Sheridan V. Keen

Town of Paradise Valley V. Linberg

Redington Ranch Associate V. Redman

State V. Owens

In re Laberge Moto-Cross Track

In conclusion, Mr. Butner feels that pursuit of a hobby is clearly and customarily for use of recreational activities and the neighborly dispute is properly characterized by noise. He used a video to further make this point. He would like them to think about how there's a possible board meeting coming up on accessory uses and urges them to possibly make some changes to those.

Chairman Davis asked Mr. Butner several questions about his presentation. He wanted clarification on due process, the time Mr. Jenkins was told he was not allowed to ride his dirt bike, and how often the bikes are ridden on the track. Mr. Butner and Mr. Jenkins took the time to answer the questions.

Mr. Jenkins stated he had to stop riding for approximately 45 days.

Mr. Butner answered the question that a maximum of 6 people have ridden at one time and that was a year ago then stated that 2 to 4 people use the track, Mr. Jenkins then answered the question stating that most the time it is 1 person, himself using the track 20 to 30 minutes after work and that sometimes his daughter rides with him; however, 80% of the time it is just him solo. Cole and his daughter will ride the track maybe 1 or 2 a week max. Chairman Davis asked what time the track is used Mr. Jenkins stated that Cole uses the track around brunch to lunch time, Cole trains in the morning so noon to 1:00pm but it has been hot so there has been weeks or months with out anyone on the track. Cole does not train on property. Mr. Jenkins rides a Honda 110. He started riding his big bike back in 2000 then mountain bike in 2004 then his first pit bike in 2008. Mr. Jenkins may ride a bigger bike to test it once he has rebuilt it.

Chairman Davis wanted to remind everyone that the issue at hand is not whether motocross is good or bad. It's whether Mr. Knight has interpreted the ordinance correctly. He shared that the state statue does not apply, as this is private land. He feels frustrated that the videos sent in by concerned citizens portrayed much louder noise than that of the videos Mr. Butner played.

Chairman Davis asks Mr. Butner if the town should have ignored the complaint. Mr. Butner answered that he believes that is where there should have been a hearing before his client's rights were taken away.

Chairman Davis then asked if the Town followed their process once they received a clarification of their decision? Mr. Butner answered "Yes."

He wanted Town Attorney Trish Stuhan to read the Town Attorney's due process. Before reading this, Ms. Stuhan clarified that she wholeheartedly believes due process was not violated at any time.

Chairman Davis opened the public hearing at 4:28.

Jason Jenkins gave a testimony of his experience riding dirt bikes on his property. He spoke in support of getting to continue to do this.

Chairman Davis clarified that the grading issue has no bearing on the decision being worked on today. He clarified that the grading issues is what caused the stop work order. BJ Ratlief confirmed that.

Jennifer Martinez spoke in support of Mr. Jenkins. She too would like to continue riding dirt bikes in her yard. Her experience with the Community Development Director John Knight and his department has been very negative. She feels she has been wrongly harassed by her neighbors.

Cole Martinez spoke in support of Mr. Jenkins. He too would like to continue riding dirt bikes in his yard. He feels they are doing it appropriately. He does not want these rights to be taken away from the children or freedoms to be taken away from private property.

Jordy Weaver spoke in support of Mr. Jenkins. She is disappointed that there are so many neighborly issues. Ms. Weaver feels that freedoms are recurringly being taken away from property owners due to interpretations of the code.

Crystal Cooper spoke in support of Mr. Jenkins. She has deep roots in Camp Verde and has seen many of the motocross riding tracks taken away from the Town, so therefore, they have been forced to ride in their own yards. She urges the Commission to decide to keep Camp Verde the rural community she knows and loves.

Desoray Melouth spoke in support of Mr. Jenkins. She lives two houses away from him and has never had any issues with his riding. Her animals have never been spooked by the riding. She feels that this is a neighborly dispute and wants that to be taken into consideration when decisions are being made.

Amber Ford spoke in support of Mr. Jenkins. She too has had complaints made against her and her children riding on her 2 acres. She wants the Town to stand behind family and community. She hopes the Town develops better codes so families can utilize their property.

Cheryl Cooly spoke against Mr. Jenkins and the noise that comes from the dirt bikes. She moved here to retire and prefers to do so in the quiet. Has a fear that this will become a business. She is tired of hearing it. She does not feel that ordinances are being enforced.

Butch Tetreault spoke against Mr. Jenkins. He feels Mr. Jenkins is wrongly portraying who rides on the course and what it's like. He finds it to be a much bigger nuisance than is being let on. He suggested that the Town build a motocross facility.

Celine Van der Merne spoke in support of Mr. Jenkins. She feels that people moved up here to have the freedoms that they wouldn't have in an HOA community.

Mary Phelps spoke in support of Mr. Jenkins. She feels that the ordinances are based as HOA ordinances and need to be reviewed. She stated that the Rodeo Arena is in a zoned residential area and at the arena they do similar activities out there as they do in Mr. Jenkin's backyard.

Steven Backus spoke in support of Mr. Jenkins. He believes John Knight's interpretation is embarrassing. He feels the children should be able to ride.

Rita Fambrough spoke against Mr. Jenkins. She doesn't feel that this started as a harassment suite. She is not against children riding motocross on their property. She is against all the stuff that comes with it. In their retirement years, she and her husband would like to enjoy that without all the nuisances. She disagreed with the Martinez family and their stance.

Dee Jenkins spoke in support of Mr. Jenkins. She is the original owner of the property and shared that there had not been any complaints on the property when she owned it. She said that Community Development did not notify Mr. Jenkins of the complaint, to give him an opportunity to resolve it. She feels the department did not follow correct procedures. She feels that a decision had been made before Mr. Jenkins was even able

to receive the grading permit he was working to get. Additionally, Mrs. Jenkins attended a meeting in which she found out that not only would this decision stand for motocross tracks, but many similar recreational facilities as well on taxpayers' properties. Mrs. Jenkins further stated that during a meeting with Mr. Jenkins, Vice Mayor Moore, John Knight and Staff, it was stated that this decision would stand for all motocross tracks, golf courses, basketball, pickle ball courts, dog obstacle courses, etc. Mrs. Jenkins stated at the end that she was here as a private citizen and not as the Mayor.

Pete Roulette spoke in support of Mr. Jenkins. He, too, lives on Rustler Tr. Mr. Roulette shared that Rustler Trail in and of itself is a loud street, due to its proximity to the casino and the I17.

Rayna Vanover spoke in support of Mr. Jenkins. Living across the street from Mr. Jenkins and the Martinez's, she hears no noise, sees no dust, and has had no issues. She feels people should be able to do whatever they want on their property.

Marie Moore spoke in support of Mr. Jenkins. She feels that they should uphold historic western rural character. She feels that the subject here today affects anyone who wants to rightfully use their property that they pay taxes on. She feels the interpretation by the Community Development Department is wrong, and that there are faults in the process and would like the board to uphold the Town's desires to preserve friendliness, historic western rural character. She feels there have been faults in this process.

Sean Ojeda, who lives in Rimrock, spoke in support of Mr. Jenkins. He too rides motocross and finds it important to be able to ride on your own property to practice as needed. He would like the future to be kept as a consideration.

Cheri Wischmeyer spoke against Mr. Jenkins. She feels the topic has become muddy, and less about the ordinance at hand and more about who agrees or disagrees that motocross should be ridden in a residential area.

Ronald Bennett spoke against Mr. Jenkins and the building of a motocross track on his property. He agrees with Mr. Knight.

Vincent Mann spoke in support of Mr. Jenkins. With his extensive criminal history, he is trying to raise his children differently and with proper extracurricular activities.

Tavin Killingstad spoke in support of Mr. Jenkins. He grew up riding dirt bikes and doesn't see how any good could possibly come out of this ordinance.

Joe Butner spoke in support of Mr. Jenkins. As a lawyer, feels that the law needs to be specific about what is prohibited.

Danielle Church spoke in support of Mr. Jenkins. She believes that the Town should have the freedom to use their own properties. She would like codes amended for families to raise their children on their property as they see fit. She feels John Knight has made many lives difficult.

Ty Langord spoke in support of Mr. Jenkins. Living on Rustler Trail, he too feels that the noise and dust is kept to a minimum.

Applicant Response:

Mr. Jenkins shared that he feels the responses were very passionate. He made it clear that they are not disrupting wildlife.

Additionally, Mr. Jenkins shared that he feels all the bikes are within the noise ordinances.

Chairman Davis closed the public hearing at 5:48 p.m.

Applicant Comments:

Mr. Jenkins shared that he does not ride his big bike on a regular basis.

Mr. Butner shared that he feels many of the complaints are due to noise, which would put this as a nuisance claim, rather than what it's been made to be.

Break: 5:50

Resume: 6:00

Mr. Knight shared that this is not a personal issue. He stands with the fact that the Community Development Department makes their decisions on interpretations that they review with their Town Attorney and City Manager. He believes it all boils down to whether motocross is a conditionally permitted use or an accessory use. With motocross not being in the Town code, it was his job to decide, and now it's the board's job to decide if he made the right decision. He believes it comes down to whether this use is incidental and subordinate to the principal use. He believes that if the code were clear, they wouldn't be here. They want and intend to update the code.

Mr. Butner shared, in rebuttal, that the board has the onerous obligation to decide whether the interpretation is correct or not. They are not asking for the code to be changed today. Mr. Butner shared that in another jurisdiction, a similar case to this one had a decision made that a motocross track bigger than this one was considered an accessory use. And, where the code is silent, the decision should go in favor of the property owner.

Commission Discussion:

After Commission discussion, it was decided that there were no due process infringements.

Chairman Davis shared that he feels it's an accessory use in residential neighborhoods. He feels Community Development needs to define what an accessory use is, to eliminate these types of issues in the future. Additionally, the board feels that there are noise ordinances in place that will control motocross use on one's personal property to keep it to a respectful level.

Chairman Davis also shared that he feels this case could have been resolved early on over a cup of coffee if both parties would have just appropriately communicated to one another.

Mr. Butner shared some follow-up thoughts before the Commission made their motion. He feels the minimum constitutional requirement was followed. He wanted to note that there's a substantive part of due process, it's not just procedural. The point was that the appellant and his neighbor weren't aware that there was a process underway to take away their rights to ride motorcycles at the time. There was a lot of confusion on when they could ride them.

On a **motion** by Board Member Brady, seconded by Board Member Buchanan, the board decided that all three of the alleged procedural errors, after discussion, are not in effect in this matter.

Roll Call Vote:

Rodney Corbin: Aye

Jeremy Brady: Aye

Chairman Davis: Aye
Vice Chairman Buchanan: Aye
Tanner McDonald: Aye
Motion Carried 5-0.

On a **motion** by Chairman Davis, seconded Board Member McDonald, on the issue of Mr. Knight's interpretation of the ordinance for R1 zone district concerning motocross use, the board finds that motocross track use is not listed as a permitted or conditional permitted use in any zoning district, including R1, however, motocross use can be considered an accessory use in R1. And the board finds that outdoor recreation and assembly uses are not allowed in R1 zoning districts.

Roll Call Vote:

Rodney Corbin: Aye
Jeremy Brady: Aye
Chairman Davis: Aye
Vice Chairman Buchanan: Aye
Tanner McDonald: Aye
Motion Carried 5-0.

Chairman Davis urged Mr. Jenkins and his neighbors, both in support and not in support of motocross use, to work together to be reasonable with each other, knowing that nuisance laws are still in effect.

He also hopes that Community Development will work to define it better in the future.

Mr. Knight said that they will amend the decision to say it's not a conditionally permitted use in the R1, but it is an allowed accessory use in the R1.

8. **Board Informational Reports:** Individual members of the Board may provide brief summaries of current events and activities. These summaries are strictly for the purpose of informing the public of such events and activities. The Board will have no discussion, consideration or take any action on any such item, except that an individual Board member may request an item be placed on a future agenda.

No Reports.

9. **Staff Comments**

Ms. Ratlief shared that Chairman Davis is moving to Oregon and they wanted to present him with a plaque. She spoke highly of him and his work for the Town in Planning and Zoning.

Mr. Davis thanked the Town and hopes he leaves a good legacy.

Mayor Jenkins also thanked Mr. Davis for his work.

10. **Adjournment** Chairman Davis adjourned the meeting at 6:33.

Please note: Staff makes every attempt to provide a complete agenda packet for public review. However, it is not always possible to include all information in the packet. You are encouraged to check with Staff prior to a meeting for copies of supporting documentation that may have been unavailable at the time agenda packets were prepared.


Chairman Stephen Magoon
Planner II, Cory Mulciare

CERTIFICATION

I hereby certify that the foregoing minutes are a true and accurate accounting of the actions of the Board of Adjustment and Appeals of the Town of Camp Verde, Arizona during the Special Session held on the 22nd day of August 2023. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 22nd day of August 2023.


Mary Frewin, Recording Secretary