



BOARD OF SUPERVISORS  
AGENDA LETTER

**Agenda Number:**

**Clerk of the Board of Supervisors**  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

**Department Name:** Planning and Development  
**Department No.:** 053  
**For Agenda Of:** August 30, 2016  
**Placement:** Set hearing on August 30, 2016 for September 13, 2016  
**Estimated Time:** 1 hour 40 mins on September 13, 2016  
**Continued Item:** No  
**If Yes, date from:**  
**Vote Required:** Majority

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**TO:** Board of Supervisors

**FROM:** Department Glenn Russell, Ph.D., Director, Planning & Development  
Director(s) (805) 568-2085  
Contact Info: Jeff Wilson, Deputy Director, Development Review Division  
(805) 568-2518

**SUBJECT: Vander Meulen Appeal of Planning Commission's Modification of a Director's Determination  
Fourth Supervisorial District**

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**County Counsel Concurrence**

As to form: Yes

**Auditor-Controller Concurrence**

As to form: N/A

**Other Concurrence:** N/A

**Recommended Actions:**

On August 30, 2016, set a hearing for September 13, 2016 to consider the appeal (Case No. 16APL-00000-00018) filed by Richard Adam, attorney for the appellants, John and Michelle Vander Meulen, of the Planning Commission's June 29, 2016 denial of appeal Case No. 16APL-00000-00003 and *de novo* modification of the January 12, 2016 Director's Determination.

On September 13, 2016, staff recommends that your Board take the following actions:

- a) Deny the appeal, Case No.16APL-00000-00018.
- b) Make the findings (Attachment-1) for affirmation of the Planning Commission's decision to modify the Director's Determination.

- c) Determine that denial of the appeal and affirmation of the Planning Commission's decision to modify the Director's Determination is exempt from the provisions of CEQA pursuant to State CEQA Guidelines Section 15378, as specified in Attachment-2.
- d) Affirm *de novo* the Director's Determination dated January 12, 2016 (Attachment-6), as modified in the Planning Commission action letter, dated July 1, 2016 (Attachment-4).

The project site is identified as Assessor Parcel Number 105-010-033, located at 4655 Song Lane, in the Orcutt area, Fourth Supervisorial District. Refer back to staff if the Board takes an action other than the recommended action.

### **Summary Text:**

#### **A. Background**

In January 2015, and again in August 2015, Planning and Development (P&D) received complaints regarding unpermitted recreational operation of motor bikes on a residential property, the use of an unpermitted motor bike race track, the hosting of racing events including the congregation of participants and spectators, and the nuisance of noise, dust, and odor due to on-site activities. P&D received both photos and videos of the activities (a sample video is currently available online at <https://vimeo.com/124671428><sup>1</sup> and a CD/DVD with the video has been provided to the members of the Board of Supervisors as Attachment-9 to this Board Letter) as well as a petition against the activities, signed by 29 adjacent property owners (Attachment-H to the June 8, 2016 Planning Commission staff report [Attachment-5]). The petition cites objections to the "noise, dirt and dust" produced by events on-site and to impacts from "unmuffled motor bikes with portable gas cans," and states that the activities are not conducive to "residential peace and solitude." A site visit by a P&D Building Inspector in April of 2015 verified the presence of the track (Attachment-9, email from Brad Crandall, Supervising Building Inspector). A Notice of Violation (NOV) dated March 23, 2015 (Attachment-E to the June 8, 2016 Planning Commission staff report [Attachment-5]) was mailed to the property owner, followed by a Notice of Determination (NOD) dated August 19, 2015 (Attachment-F to the June 8, 2016 Planning Commission staff report [Attachment-5]) assessing a fine of \$100 after the unpermitted activities were not abated. A "Determination of Unpermitted Use" letter was issued by the P&D Director on January 12, 2016 (Attachment-6). The letter outlines applicable ordinance provisions, states that the use of motorized vehicles for recreational purposes on residential lots is not permitted as an accessory use within the residential zone designations of the Santa Barbara County Land Use and Development Code, and identifies that sports and outdoor recreation facilities (such as the on-site track used for motor bike riding/racing) require a Conditional Use Permit (CUP) in the E-1 zone. Although the Director's Determination was brought about by activities on this particular property, it applies County-wide. The Director's Determination was appealed to the Planning Commission by the property owner on January 21, 2016. On June 29, 2016, the Planning Commission denied the appeal and affirmed the Director's Determination, with one modification. Specifically, the Planning Commission added language to specify that the recreational operation of motorized vehicles is not an allowed accessory use in residential zones

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<sup>1</sup> As of the date of this staff report, the video remains available online. However, the video content may be removed at any time by its owner. A copy of the video is on file with P&D and available upon request.

where the use would “*adversely affect other properties in the vicinity*” (please see the Planning Commission action letter, included as Attachment-4 and Director’s Determination included as Attachment-6). On July 7, 2016 the appellant filed a timely appeal of the Planning Commission’s decision.

## **B. Appellant Appeal Issues and Staff Responses**

The appellant filed a timely appeal of the Planning Commission’s *de novo* modification of the Director’s Determination and denial of appeal Case No. 16APL-00000-00003. The appeal application (Attachment-3) contains a letter summarizing the issues raised in the appeal to your Board. These issues and staff’s responses are summarized below.

(The property owner appealed the Planning Commission’s modification of the Director’s Determination and the letter of appeal from his attorney abbreviates the Director’s Determination as “NOD.” The Notice of Determination of fine, dated August 19, 2015, which the County refers to as an “NOD,” is not under appeal and when “NOD” is used below, it refers to the Director’s Determination as modified by the Planning Commission.)

**Appellant Appeal Issue #1: The director’s decision is not an “interpretation,” and instead, is specifically defined in the LUDC as an “Amendment” which requires adherence to the public process. The Planning Commission alteration of the NOD does not change this fact.**

### **Issue 1. Staff Response:**

Land Use and Development Code (LUDC) Section 35.12.020 (Authority) establishes that, “*The Director has the authority to interpret any provision of this Development Code. Whenever the Director determines that the meaning or applicability of any Development Code requirement is subject to interpretation, the Director may issue an official interpretation.*” The interpretation in question has to do with whether or not recreational use of motorized vehicles on residential properties, where the recreational use has resulted in adverse effects on the surrounding property, qualifies as an allowable accessory use. Tables 2-7 through 2-9 (Allowed Land Uses and Permit Requirements for Residential Zones) under Section 35.23.30 of the LUDC do not list the recreational operation of motor vehicles as an allowed use in residential zone districts. In addition, LUDC Section 35.23.030.E. specifies that allowed uses, “*may include accessory structures and uses that are customarily incidental to the primary use . . .*” Therefore, to be allowed in a residential zone without a permit, this particular use must be accessory to the residential use of the parcel. An “Accessory Use” is defined as “*A use that is customarily incidental, appropriate and subordinate to the use of the principal structure, or to the principal land use of the site and that does not alter the principal use of the lot or **adversely affect other properties in the vicinity.***”

As described in detail in the Planning Commission staff report (Attachment-5), and in the letters (Attachment-7) and extensive testimony provided by neighboring property owners at the June 29, 2016 Planning Commission hearing, the level of recreational use of motorized vehicles on the subject property has adversely affected other properties in the vicinity by noise, dust, odor, and other adverse impacts. Therefore, pursuant to the existing language of the LUDC, as interpreted by the Director’s Determination and the Planning Commission’s modification, the level of use that has occurred on-site does not qualify as an accessory use and is thus not allowed in this Residential Zone, nor Residential

Zones elsewhere in the County. The Director appropriately exercised the authority granted to him by the Board-adopted LUDC in issuing the Director's Determination and the Planning Commission acted within its discretion when it reached the decision to modify the Director's Determination on appeal.

Furthermore, the Director's Determination does not qualify as an Amendment as described in the LUDC. LUDC Section 35.104.010.B indicates that the purpose and intent of an Amendment is to allow for "*Amending the text of this Development Code as the County may deem reasonable, necessary, or desirable,*" however, no change to the text of the LUDC has been made. LUDC Section 35.104.020.B describes amendments to the Development Code as follows "*An amendment to this Development Code may modify or add a new standard, requirement, allowed use, or procedure applicable to land use or development that is located outside the Montecito Community Plan area and the Coastal Zone.*" As described above, the Director's Determination is based upon the existing LUDC "use tables" and the existing definition of an accessory use. Therefore, the Director's Determination did not "*modify or add a new standard, requirement, allowed use, or procedure.*" Instead, the Director's Determination interpreted existing provisions of the LUDC, which the Director specifically has the authority to do.

**Appellant Appeal Issue #2: There is no "Sports and Outdoor Recreation Facility" on the Property, and the Director and Staff have both continuously and impermissibly refused to identify any locations and appurtenances on the Property that constitute such a "Facility" so as to allow Appellants to alter the same to avoid such a designation.**

**Issue 2. Staff Response:**

A "Sports and Outdoor Recreation Facility" is defined in the LUDC as follows: "*Public and private facilities for various outdoor sports and other types of recreation, where the facilities are oriented more toward participants than spectators.*" Examples identified in the LUDC include: athletic/sport fields (e.g., baseball, football, polo, softball, soccer), tennis, and other sport courts (e.g. handball, squash). Notably, examples in the definition include facilities that do not necessarily contain any structures.

Aerial photos of the site<sup>2</sup> (please see Attachment-G of the June 8, 2016 Planning Commission staff report [Attachment-5]) show a clearly defined speedway race track and site walls that have been developed on-site. The on-site track has been used for motorbike (specifically speedway bike) racing and appears to have been designed and constructed for specifically that purpose and is oriented more towards participants than spectators (see video at <https://vimeo.com/124671428>, at <https://vimeo.com/82247627> and at <https://vimeo.com/74497547>, or in the Attachment-10 CD/DVD provided to Board members). The combination of the use of the track for racing purposes, and the clearly defined boundaries of the approximately 250 foot by 150 foot track, make it clear that it is a sports and outdoor recreation facility as defined within the LUDC.

The LUDC sports and outdoor recreation facilities may be permitted within most residential zone districts (including the E-1 zone) with the approval of a Conditional Use Permit (CUP). Abatement of the unpermitted sports and outdoor recreation facility would include either cessation of the motor bike race, riding, and practice activities that have occurred on-site, as well as removal of the track itself, or formal permitting of the facility as a sports and outdoor recreation facility through the permit process outlined in LUDC Section 35.82.060. The CUP requirement for the sports and outdoor recreation

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<sup>2</sup> 2016 Google Imagery and 2015 County PhotoMapper images

facility located on the subject property was previously outlined in the Director's Determination (see paragraph 5 of Attachment-6). In addition, the Planning Commission staff report (Attachment-5) identifies that the track is a sports and outdoor recreation facility requiring a CUP due to the physical characteristics and use of the track.

**Appellant Appeal Issue #3: The NOD is overbroad and the Planning Commission alteration of the NOD does not change this fact.**

**Issue 3. Staff Response:**

The Director's Determination, as modified by the Planning Commission, indicates that the operation of recreational motor vehicles that adversely affects other properties in the vicinity is not a permitted use (either principal or accessory) on the subject property or within the residential zone designations enumerated in Chapter 35.23 (Residential Zones) of the Santa Barbara County Land Use and Development Code. As discussed under Appeal Issue #1, above, the existing "use tables" of the LUDC do not list the recreational operation of motor vehicles as an allowed use in residential zone districts and the existing language of the LUDC defines allowable accessory uses as uses that do not "*adversely affect other properties in the vicinity.*" The level of use of the on-site track has resulted in numerous neighbor complaints due to noise, dust, odor and other adverse impacts to the surrounding residential neighborhood. These complaints have been substantiated through video, photos, public testimony, and a staff site visit. Therefore, the Director's Determination appropriately applies and interprets the existing provisions of the LUDC, and does not overreach the authority vested in the Director or Planning Commission (as further discussed under Appeal Issue #1, above, and in Appeal Issues #2 and #4 in the Planning Commission staff report (Attachment-5).

**Appellant Appeal Issue #4: Appellants have a vested right to the recreational use of motorized vehicles on their property.**

**Issue 4. Staff Response:**

Appellants do not have a vested right, nor is the appellant's recreational use of motorized vehicles a legal nonconforming use. As discussed in the Planning Commission action letter, Attachment-4, dated July 1, 2016, and this Board Agenda Letter, the operation of recreational motor vehicles that adversely affects other properties in the vicinity is not a permitted use (either principal or accessory) on the subject property or within the residential zone designations enumerated in Chapter 35.23 (Residential Zones) of the LUDC. Prior to the Planning Commission's determination on the subject appeal, the recreational motor bike activities that have occurred on the subject property were not a permitted use. Specifically, tables 2-7 through 2-9 (Allowed Land Uses and Permit Requirements for Residential Zones) under Section 35.23.30 of the LUDC do not list the recreational operation of motor vehicles as an allowed use in residential zone districts. A use not listed in Chapters 35.21 through 35.28 or not shown in the table of allowable land uses and permit requirements for a particular zone is not allowed. (LUDC § 35.20.030.A.2.) Further, LUDC Section 35.23.030.E. allows accessory uses to allowed uses only where the use does not ". . . *adversely affect other properties in the vicinity.*" The level of recreational motor bike activities that have occurred on the subject property were not permissible either before or after the Planning Commission's action. The establishment of a use that is not a permitted use is a violation of the LUDC and without an issued and relied-upon permit, the Appellant cannot obtain a vested right in an unpermitted land use. Nor is Appellants' recreational motor bike use a legal nonconforming use. Legal

nonconforming uses are those that “were lawful before the adoption, amendment, or revision of this Development Code, or previously adopted County ordinances, but which would be prohibited, regulated, or restricted differently under the terms of this Development Code or future amendments.” (LUDC § 35.101.010.A.) As discussed above, the operation of recreational motor vehicles that adversely affects other properties in the vicinity has never been a permitted use (either principal or accessory) on the subject property or within the residential zone designations of the LUDC.

**Appellant Appeal Issue #5: The statute relied upon by the Director in rendering the decision to prohibit recreational use of motorized vehicles on residentially zoned property is vague and ambiguous and the Planning Commission alteration of the NOD language does not change this fact.**

**Issue 5. Staff Response:**

Staff confirmed with the appellant (July 13, 2016 phone conversation with Richard Adam) that the “statute” referenced under Appellant Appeal Issue #5, above, is LUDC Section 35.23.030.E., which specifies that allowed uses, “*may include accessory structures and uses that are customarily incidental to the primary use . . .*” and the definition of “Accessory Use,” which is “*A use that is customarily incidental, appropriate and subordinate to the use of the principal structure, or to the principal land use of the site and that does not alter the principal use of the lot or adversely affect other properties in the vicinity*” (LUDC Section 35.110.020, Glossary). However, only the Director’s Determination is under appeal, not the terms contained within the LUDC. An accessory use, as specifically defined in the existing language of the LUDC, does not include a use that *adversely affects other properties in the vicinity*. The Planning Commission’s modification of the Director’s Determination incorporates the same wording of the LUDC, stating, “*the operation of recreational motor vehicles **that adversely affects other properties in the vicinity** is not a permitted use (either principal or accessory) . . . within the residential zone designations enumerated in chapter 35.23 (Residential Zones) of the Santa Barbara County Land Use and Development Code.*” Zoning ordinances cannot specifically define all accessory uses that are customarily incidental to all primary uses. Restricting allowed accessory uses to those that are customarily incidental to the primary use and that do not adversely affect other properties in the vicinity precludes uses that are detrimental to the general welfare. The LUDC delegates broad discretionary authority to administrative bodies to apply the language and standards of the LUDC. As discussed in Appeal Issue #1, the LUDC gives the Director the authority to interpret any provision of the Development Code. That decision is appealable to the Planning Commission, and the Planning Commission’s action is appealable to the Board of Supervisors, with each body considering the issue *de novo*.

**Fiscal and Facilities Impacts:**

Budgeted: Yes

Narrative: An appeal fee of \$659.92 was paid by the appellant. Work to process the appeal is funded in the Planning and Development Permitting Budget Program, as shown on page D-289 of the adopted 2016-2018 FY budget. Total costs for processing the appeal are approximately \$5,769.90 (30 hours).

**Special Instructions:**

The Clerk of the Board shall fulfill all noticing requirements. The notice shall appear in the Santa Maria Times (labels attached). A minute order of the hearing shall be forwarded to the Planning and Development Department, Hearing Support, Attention: David Villalobos. A second minute order of the hearing shall be forwarded to the Planning and Development Department, Development Review, Attention: Nicole Lieu.

**Attachments:**

1. Board of Supervisors Findings
2. CEQA Exemption
3. Appeal Application to the Board of Supervisors
4. Planning Commission Action Letter, dated July 1, 2016
5. Planning Commission Staff Report, dated June 8, 2016
6. Director's Determination, dated January 12, 2016
7. Public Comment Letters from the June 29, 2016 Planning Commission hearing
8. July 15, 2016 Letter from Richard Adam and July 22, 2016 Response Letter from P&D
9. Email from Supervising Building Inspector Brad Crandall, dated August 10, 2016
10. CD/DVD Containing Video of Racing/Practice Activities and Track

**Authored by:**

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