

BOARD OF ZONING APPEALS MINUTES

SPECIAL MEETING

PUBLIC HEARING

September 1, 2004

The Board of Zoning Appeals held a special meeting for one advertised public hearings in the Council Room of the Vienna Town Hall, 127 Center Street, South, Vienna, Virginia, on September 1, 2004 beginning at 8:00 PM with Marshall Potter presiding as Chairperson. The following members were present: Robert W. Dowler, Gregory Haight, Don Chumley, Frank Lillis, Charles Brewer, and Peter Vander Nat. Also attending and representing the staff were Gregory M. Hembree, Director of Planning and Zoning, and Jennifer M. Murphy, Board Clerk.

ITEM NO. 1:

Request for approval of a conditional use permit for continued temporary leaf storage and associated mulch operations on Town-owned property at 442 Beulah Road, NE, in the RS-12.5, Single-Family Detached Residential zone. Filed by the Town of Vienna, owner.

Mr. Greg Hembree, staff member and Director of the Department of Planning & Zoning, stated that he would like to make three quick points before the Town's testimony. Mr. Hembree stated that their discussions refer to an 8 acre subject tract, which is the remainder of a 16.707 acre parcel, virtually known as lot 6 of the Ayr Hill tract, and acquired by the Town on August 15, 1934, along with a larger group of properties from Katrina Hine Echols. He stated that the 8 acres, no longer a part of the properties, because the Town acquired it, by fee, and was not deeded to the Town. The remaining portion of that property is now occupied by homes that run up and down either side of it, Broadleaf Drive, NE, being an example. The comprehensive plan, as it is currently designated in the Town and as discussed in the staff report, a series of four comprehensive plans. The 2000 Comprehensive Plan designates the subject property as governmental with a corresponding shade of blue as shown on the previously stated parcel location map, which is a map that was designated in the 2000 Comprehensive Plan, adopted on January 8, 2001. The future land use map is designated as FLU-1 and the subject property is zoned RS-12.5 and has been since May 29, 1959.

Mr. John Schoeberlein, Town Manager for the Town of Vienna, was sworn in to speak. Mr. Schoeberlein stated that the Town of Vienna, through the Town Council, has applied for a conditional use permit subject to any reasonable conditions imposed by Board of Zoning Appeals to conduct the Town's temporary leaf storage and mulching operation on Town owned property, 442 Beulah Road, NE. He stated that he is aware that the Board has received a great deal of information, both from the Town and surrounding residence near the subject property. He stated that Mr. Hembree, Director of Planning and Zoning, both tonight and through his written staff report, has given a history of the parcel and its use the annual leaf collection and mulching program.

Mr. Schoeberlein stated that it is his intention to provide testimony for the Board that demonstrates that the Town's request meets the criteria as set forth in Chapter 18, Sections 209 – 216, of the Town Code for approval of a conditional use permit to wit; one the use will not adversely affect the health or safety of the persons residing or working in the surrounding neighborhood; two, the use will not be detrimental to the public welfare or injurious to the property or improvements in the neighborhood; and three, the use will be in accord of the purposes of the master plan of the Town of Vienna.

With respect to criteria number three, noting that the subject property, as Mr. Hembree previously indicated, is designated as governmental on the master plan and the current and proposed use for this property is for governmental purposes. The collecting of leaves throughout the Town of Vienna and the transformation of said leaves into mulch for use by residents along with assisting them for meeting the state mandated requirements for recycling of the waste street.

With respect to criteria number two; they feel that they meet this test as the use is not detrimental to the public welfare as it provides a definite benefit to all property owners in Town. Through the collection of leaves generated on their properties and the ability of the same property owners to receive beneficial mulch which improves the environment in and of itself. To his knowledge the only point that has been raised that the operation, as is currently constituted, is possibly injurious to property in the neighborhood, is a complaint about storm water runoff. The Board has received a copy of a report, prepared by their consulting engineers, Whitman, Requardt and Associates, which addresses the matter. The report states that the area that has been cleared for mulch operations has no impact to drainage on properties along Beulah Road, NE, and Holloway Court, NE. The report goes on to state that the impact to properties downstream on Broadleaf Drive, NE, is negligible due to the sheet flow patterns of the runoff and there is a similar statement regarding the properties on Sherwood Drive, NE.

Mr. Schoeberlein stated that final criteria for the Board to consider is that the use will not adversely effect the health or safety of persons residing or working in the neighborhood. Issues regarding odor from the site are and will be addressed through daily application of lime to the mulch piles. Prior to 1991 the Town composted leaves on the site year round and our current operation using grinding has appreciably lessened any odor problem as the site is now free of leaves by April 1st of each year. Dust is usually not a problem given the normal wet climate experienced in the area during the late fall and winter months. If any dust were generated on the site they would expect that the heavy perimeter of trees and other plant materials would effectively stop it before it reaches neighboring properties. If it does become a problem they could suspend grinding operations during any period of high winds. He noted that leaf dust is also created throughout our community when residents and private contractors use leaf blowers and other methods to clear their properties.

Mr. Schoeberlein stated, lastly to discuss the issue of noise relating to the tub grinder. Last November the Director of Public Works, the Mayor, and a member of the Town Council visited the site during a time when the tub grinder was in operation. The group observed the operations and took sound readings at various locations. The results of the readings indicated that the tub grinder was not creating excessive levels of noise in the immediate area. The readings taken by the group are available for inspection should the Board wish to review them.

Mr. Schoeberlein invited Mr. Kevin Miller of Miller, Beam and Paganelli, Inc., consultants in acoustics, vibration, and audiovisual system, design to come forward to address sound issues relating to the site and the uses taking place thereon and some possible methods that could be employed by the Town to lessen sound levels beyond our property line.

Mr. Kevin Miller of Miller, Beam and Paganelli, Inc., was sworn in to speak. Mr. Miller stated that the tub grinder has a primary noise source, the engine, which is not different from a diesel engine on a truck or on a diesel generator. He stated that there are three primary sources of noise resulting from that, which are the exhaust noise, the engine noise, and the radiator noise or the fan. There is the tub grinder, itself, and the noise it generates, which is separate. The engine noise is reasonably constant when its running and the tub noise varies dependant upon the load that is in it.

Mr. Miller stated that the site is reasonably remote from the residences noting that it is not in someone's back yard. He stated that there is a fair distance, in most cases, several hundred feet to most of the houses. The actual rear-yard property lines may be a little closer than. Sound does drop off with distance. Generally speaking sound drops off approximately six decibels every time the distance is doubled. Meaning that if there is a source with a given level of distance, such as fifty feet, at one hundred feet the sound should be approximately six decibels lower.

Mr. Miller explained that when acousticians discuss noise they use the decibel system. He stated that the decibel system is logarithmic noting that engineers also use the decibel system, which is a universal system. When talking decibels they are about zero decibels as triple lot to dimes per square centimeter, which is the base line. Ten decibels is a portion above that. He explained that a three decibel change up or down is twice or half the energy. A ten decibel change is ten times the energy whether it is up or down. Subjectively, a three decibel change is slightly perceptible to the average person. A ten decibel change, to the average person, is about ten times or 1/10 as loud in order to understand the acoustics that are involved.

Most noise codes fall within the fifty-five to sixty-five decibel range as a base line that should not be exceeded at a residential property line. Most of the standard yard devices that are commonly used on a regular basis are exempt from codes during daytime hours. It does not mean that that there are large levels of noise that might disturb a neighborhood. Transportation noise codes, which take into account aircraft, railway, and highway noise uses a more complex measuring system known as LDN. The LDN, which is more applicable, being that the noise, is intermittent. It does recognize that the night time is more sensitive. He stated that one of the items he had discussed with the Town is to limit the use so as to not seriously impact the community and limit the hours of operation. Noise codes as used by most government agencies refer to night time from the hours of 10 P.M. and 7 A.M. He noted that those times could still be disturbing to many people. He suggested that the times be limited from 9 A.M. until 3 P.M. They would not work on Sundays it being a more sensitive time and most noise codes do not address Sunday's as separate. He stated that it would also be a reasonable thing to do for the neighborhood. He stated that the timeframe of 9 A.M. until 3 P.M. would be considered from Monday through Friday, excluding weekends, would be a reasonable compromise.

Mr. Miller stated that all should be done that can be done in order to reduce the noise impact on the community and therefore recommend that they put up a noise barrier around the site. He stated that there is already a small three foot earth berm and that they could put a nominal eight foot barrier atop the berm and continue on where the berm is not located giving them a noise

barrier that is roughly eleven feet high. Noise barriers can reduce sound anywhere from five and twelve decibels. Having not run any calculations they hope to get as close to a ten decibel reduction from such a barrier, which would make it about half as loud. That would include the tub grinder operating a portion of the day, a portion of the year. He stated by enacting these mitigating measures there should not be any kind of significant or noticeable impact upon the community. He noted that it will still be heard but felt that it would mitigate the noise to a more distant background noise. Barriers reduce noise levels the same way distance does, which is usually considered positive. A barrier will lower the overall noise level of the site and will also lower the high frequencies more quickly than the lows. He stated that with conditions placed upon the use such as limited hours, a noise barrier, and an improved muffler system it should not have a serious impact upon the community.

Chairperson Potter asked if Mr. Schoeberlein wished to reserve some of the allotted testimonial time for rebuttal. Mr. Schoeberlein answered yes, stating that he did have more testimony to present.

Mr. Schoeberlein stated that the Town of Vienna has been using the site for leaf storage since the early 1960's and have been grinding leaves on site since 1991. He stated that the program is a valuable service that they provide to the citizens. If they are unable to grind leaves on the site their expenses will increase by approximately fifty thousand dollars per year out of pocket as they will have to truck the leaves to the Fairfax County transfer station located on West Ox Road and pay twenty dollars per ton in tipping fees. The fifty thousand dollars does not include the additional fuel and wear and tear on town vehicles and the lost time of employees as they drive the leaves to the transfer station. With that they figure the total cost will approach one hundred thousand dollars per year.

He stated that a prohibition on temporary storage of leaves on the site will effectively end the leaf collection program in the Town of Vienna as it now exists as the collection vehicles, once full, would be required to make the trip to the West Ox Road transfer station before continuing their vacuum route. One can reasonably see that the additional time could extend the collection program into the summer potentially postponing other projects due to the man power needed for the leaf program.

The Town of Vienna owns no other property that could accommodate this use and feel that the use, as proposed, is a reasonable one and in the public's interest. A more detailed explanation of the effect on operations if the site cannot be used is found in a memorandum dated June 9, 2004, to the Town Council. A copy of which was furnished to the Board in their packets.

The nearest rear property line of neighboring residents to the location of the tub grinder are two hundred feet to the north, approximately four hundred feet to the east, two hundred seventy-five to the south and two hundred ninety feet to the west.

He stated that, in addition they are not aware of any situation that has been issued by the Department of Environmental Quality or any other regulatory agency stating that the leaf operation is in violation of any state or federal regulation.

The Board of Zoning Appeals has received a copy of the Planning Commission minutes from the August 11, 2004, meeting and a memorandum of recommendation from Chairman George Creed, dated August 27, 2004, but not delivered to the Town Hall until noon of today. He stated that

there appears to be a question as to what the Planning Commission voted on, directing the Board to page 16 of the minutes. The memorandum from the Chairman is unclear as to the items actually voted on and does state that proper procedures were not followed by the Planning Commission when formulating their recommendation. He referred to page 16 of the minutes noting the discussion regarding the motion that was adopted.

In addition, there is evidence to the fact that were this matter before the Planning Commission today, there would be a different result as far as the Board's recommendation is concerned. He stated that, regardless, the Board should only consider the recommendation voted on by the Planning Commission at an official meeting and not a document circulated among the members several days after the meeting and vote have taken place.

Mr. Schoeberlein stated that the Town of Vienna has shown that their proposal is a reasonable use for the subject property and meets the criteria listed in Chapter 18 Sections 209-216 of the Town Code. He reiterated that the property is not a park and is designated as Governmental on the current comprehensive plan of the Town and is also designated as Governmental on the future land use plan section of the document.

The Town of Vienna is requesting that a conditional use permit be issued to the Town to use the property located at 442 Beulah Road, NE, for; one, temporary leaf storage and temporary storage of mulch, two, grinding of leaves into mulch, three, use of the former well house building for interior storage only. They are agreeable to the following conditions; one: temporary storage of leaves and mulch will occur only during the period of October 1st through March 31st of each year. Two, the hours of operation to deposit collected leaves on the site will be limited to 7:30 A.M. to 6:30 P.M. Monday through Friday and 7:30 A.M. to 3:30 P.M. on Saturday. Three, the hours of operation of the tub grinder would be restricted to 9 A.M. to 3 P.M. Monday through Friday, holidays excepted. Four, the site will be cleared of all collected leaves, mulch and leaf collection and mulching equipment by April 1st of each year. Five, public access to the site for mulch pick-up will be limited to the hours of 7:30 A.M. to 3:30 P.M. Monday through Friday, holidays excepted. Six, the Town does desire to reserve the right to change the hours of operation in the event of an emergency or other situations beyond their control. Seven, the Town will construct an additional berm with rock filter on the western portion of the operating area for storm water control. Eight, the daily liming of the mulch piles to control any odors that may occur and rapid response to any valid complaint regarding odors emanating from the operation and migrating beyond the boundary of the site. Nine, they are still willing to install plantings in the rear yard of 407 Holloway Court, NE, to block the view of the Town's sanitary sewer manhole and access path as offered last summer. The plantings were agreed to verbally by the property owner at that time then rejected a few days later. He noted that that offer still stands.

They are of the opinion that their request along with the conditions discussed, represent a reasonable approach towards resolution of the matter. It is the Town's intent and obligation to conduct their leaf collection and mulching operations in a way that benefits all of the residents in the community, while recognizing the need to cause no undue adverse effect on the adjoining residents and their properties. He stated his thanks for the opportunity to present their request and would be glad to answer any questions the Board may have.

Mr. Brewer asked if there is any way to mitigate vibration in addition to items already suggested. Mr. Miller answered that, in his experience, in dealing with similar situations, noting that he was not able to view the site in operation, that the vibration from the distances involved are likely not

vibration. He stated that it is likely induced vibration by acoustic noise meaning that it is low frequency noise. An example being that a sonic boom is not vibration but is noise, an extreme level of noise that causes vibration and can even result in cracked windows. In this instance, his best guess is that it is induced vibration by acoustic noise. If they are able to lower the noise then they should lower any vibration resulting from the site use.

Mr. Brewer asked why it is that the Town is now making the request for a conditional use permit. Mr. Schoeberlein answered that it was the Town Council's desire based upon recommendation from the Town Attorney, that they make the application for a conditional use permit. Mr. Brewer asked why not in 1991 when the mulch operations began. Mr. Schoeberlein answered that at the time they did not feel that it was a requirement. There had not been a recommendation from the Town Attorney to the Town that they required such a permit and therefore was never perused. Mr. Brewer asked when the Town makes plans for use of Town property or any projects; if it is not a part of the normal routine. Mr. Schoeberlein answered that it is, stating that when they went through the plan review process for the Northside property yard they asked for and received a conditional use permit. The Town Council felt that now is the appropriate time to do so.

Mr. Chumley stated that in the materials received there was a lot of discussion regarding the level of noise. He asked if there were any statistics as to what level of noise they are discussing and what the impact will be on the potential changes to the site on the level of noise. Mr. Miller answered that based upon the measurements taken previously, which were in the sixty to seventy plus decibel range. He stated that normal conversation is considered to be approximately sixty to sixty-five decibels. The background level of the room is roughly forty-five decibels. A lawnmower at a range of twenty feet away is approximately in the seventy to eighty decibels range. A leaf blower reads roughly five to ten decibels higher than that. Mr. Chumley asked when standing next to the tub grinder if the sound is comparable to a leaf blower. Mr. Miller answered no, stating that the sound would be more comparable to a diesel truck. He noted that when standing farther away from the structure the sound will drop off quickly with distance.

Mr. Dowler stated that he has been given a lot of information, one of which is a plat survey of the site with a picture of the tub grinder and how many feet it is located from the property lines. He asked if there is information available detailing what exactly the current decibels are at the various distances. Mr. Miller asked from the tub grinder or in general. Mr. Dowler answered from the tub grinder. He stated that he received a specification sheet in the packet that states dBAs at approximate distance. He stated that it reads at an approximate distance of 200 feet, when not chipping it is sixty-two decibels. He asked if that would be a correct assumption. Mr. Miller answered that it is certainly possible. He noted that he had not had the opportunity to personally measure the particular grinder at those distances. He stated that they are certainly plausible levels.

Mr. Schoeberlein stated that those are the readings that were taken when the Director of Public Works, and the Mayor and a member of Town Council visited the site. He stated that they took a reading next to the tub grinder, which measured at ninety to ninety-five decibels. Behind a pile of mulch that came out of the tub grinder the reading dropped down to between sixty-nine and eighty decibels. At the property line on Holloway Court, NE, they registered fifty-seven decibels. He stated that it seems to be measured in the range of fifty-five to sixty-five decibels noting that it was not taken by an independent firm.

Mr. Dowler stated that it had been recommended to install an eight to eleven foot noise barrier. He asked what the Town's position would be on that. Mr. Schoeberlein answered that he had had the opportunity to discuss it with Mr. Miller and felt that it is a reasonable solution to the problem. He stated that he personally would have no objection to it being a condition but would still have to go before the Town Council to obtain the appropriation of funds. Mr. Dowler asked if a barrier would also help with the complaints of dust. Mr. Schoeberlein answered that it might but thought that the principal purpose of the barrier would be for sound.

Mr. Chumley asked if there would be openings in the barrier. Mr. Schoeberlein answered no; stating that it is his understanding that there is to be no openings. He stated that there would be a removable portion of the fence to allow them to get down to the sewer line, but otherwise it would be a completely sealed unit. Mr. Chumley asked if it would seal off the area entirely from the public. Mr. Schoeberlein answered that he would let Mr. Miller speak to that but thought that they would start out with a certain area and then, if necessary, move it further out. They would start in the area that most of the complaints have been registered. He stated that he would have no objection to it and would recommend that the Town Council go with that condition. He stated in addition that there had been discussion of additional plantings. He had discussed it with Mr. Miller who informed him that additional plantings would serve no purpose. The barrier would be the way to go and additional plantings would be a waste of money.

Mr. Miller stated that he would help the Town to design the barrier to be as effective as possible.

Mr. Brewer stated that it is his assumption that the decibel reading charts submitted by NEVCA (Northeast Vienna Citizen's Association) are based upon 100% capacity use of the engine. He stated assuming that is a correct assumption, the machinery, as they have been led to understand by some other materials that they received, is operated at approximately a 70% capacity. He asked if the 70% capacity referred to the actual chipping. Mr. Schoeberlein answered that it is his understanding that the 70% refers to the actual load. He stated that in most instances, the tub grinder does operate in that range. When they used to chip brush, that was something different, and do not do that any more. He stated that Mr. Miller may be able to comment on the drop in decibel readings based upon load. Mr. Miller stated that as an engine runs at a lower load, there is less noise but not significantly less noise. Mr. Brewer asked if a full load is put in the machinery, if it in effect senses it, and revs up. Mr. Schoeberlein answered yes, explaining that the machinery will rev itself up so that it does not jam. Mr. Brewer asked if the fact that the machine does not rev up, totally, does it reduce the noise somewhat. Mr. Schoeberlein answered yes, stating that there is still a certain amount of noise even if it is idling and has nothing in it at the time. As the load increases then so does the decibel limit. He stated that he has also asked Mr. Miller to help work on any additional muffling devices that could be attached to the grinder itself. He stated that the manufacture has not been very helpful in that regard but thought that Mr. Miller's experience would help them to be able to develop some additional muffling device, if it's possible, for the equipment.

Chairperson Potter asked that when running the grinder, if there is any other machinery being run simultaneously. Mr. Schoeberlein answered yes, explaining that the other piece of equipment is essentially a front end loader and that piece of equipment has one operator who scoops up the unprocessed leaves and then runs them over to the tub grinder and then dumps them in the tub grinder for grinding. He stated that they have never taken any sound readings, noting that it is also intermittent noise and will not necessarily be running all the time.

Mr. Brewer asked if it has a back-up beeper. Mr. Schoeberlein answered yes, stating that it is required by law at a decibel level of one hundred. He stated that they do not have any option there and would be fined if they were to disconnect any of those devices.

Chairperson Potter asked Mr. Miller what the effect of noise would be with the addition of additional equipment. Mr. Miller answered that when adding a second source of noise of equal or lesser level, the overall sound only goes up three decibels. He stated that the barrier will wrap around all of that so that it will just as equally reduce noise from the front-end loader along with the tub grinder.

Mr. Brewer asked if the barrier would act as a reflector and bounce it to the other side of the property increasing the level of noise. Mr. Miller answered that without proper barrier design, yes. One of the things they encourage, when building the barrier is a sound absorptive treatment along the back side of the barrier, facing the operation. The sound absorption treatment further enhances the performance of the barrier and reduces any reflective noise coming to the other direction.

Mr. Lillis asked if the barrier would replace the berm and rock filter that were listed as conditions. Mr. Schoeberlein answered that the berm and rock filter referred to was an attempt to provide additional abatement to any runoff in the area. It had nothing to do with sound but rather water retention. Mr. Lillis asked if there are any details available on the barrier. Mr. Schoeberlein answered no, stating that Mr. Miller would develop that based upon any conditions the Board may set. He stated that they have to have the calculations developed specific to the site. The berm referred to would be for the continuation of an existing berm. The continuation would be used for the erection of a barrier so that it is that much higher up in the air.

Mr. Miller stated that barriers can be made out of many things. He stated that after having been to the site a logical place the barrier, to him, was with the already existing natural berm that is approximately two to three feet tall. He thought utilizing both the berm and materials for the barrier would be most effective. They have not worked out which combination its going to be. Mr. Lillis asked if they would need to know exact noise levels in order to design the barrier. Mr. Miller answered that it would be nice to have the data noting that it is not as important as the heights of the equipment, the barrier and where the residents are in relation to it.

Mr. Lillis stated that since they know the size of the equipment and the placement on the Beulah Road site if that would be enough information to design a barrier. Mr. Miller answered that they have already done some preliminary calculations having visited the site and viewed the tub grinder, which is where he determined eleven feet. They are hoping to approach a ten decibel reduction.

Mr. Lillis asked if Mr. Miller could submit his credentials for the record. Mr. Schoeberlein noted that when they were developing the Northside Property Yard it was Mr. Miller who provided the calculations and the study on the use of the tub grinder at the Northside Property Yard. Mr. Miller submitted a copy of his resume for the record. He stated that he has qualified as an expert witness in many areas throughout the country from Florida up to New York specific to the field of acoustics. He stated that he was the acoustical consultant on the MCI Center and the Capital Center. He stated that they also do work for the World Band and most of the government agencies.

Mr. Brewer stated that he did not see a copy of a landscaping plan. Mr. Schoeberlein answered that the proposal for the barrier would replace the landscaping plan because it was found to be not effective at all as opposed to installing a barrier. Mr. Brewer stated that it sounded as though a portion of it would have a wall and a berm. Mr. Schoeberlein answered that anywhere that the wall would go it has been recommended by Mr. Miller that there be a berm. There would not be any plantings on it and would not be following the landscaping plan that had originally been submitted. Mr. Brewer stated that the site where the tub grinder sits is a bit up hill from the berm. He asked if they would adjust the fence height on that side. Mr. Schoeberlein answered that dependant upon what ever the calculations are is what they are willing to do. Mr. Brewer asked if one of the purposes for the second berm was to address some remediation of water runoff towards Broadleaf Drive, NE. Mr. Schoeberlein answered that the berm would still be constructed with a rock filter that is similar to the one on Sherwood Drive, NE. It will retain the water and slowly release it.

Mr. Lillis stated that the Town had had a tub grinder before that was not as powerful as the one that they now have. He asked why the Town purchased the second tub grinder. Mr. Schoeberlein answered that the previous one wore out, secondly, that the engine size was smaller resulting in having to rev at a much higher speed in order to do the same job as the one they currently have. He stated that the previous one had to grind at 100 percent capacity and that the newer one is able to grind at 70 percent capacity. Mr. Lillis asked if the present tub grinder does a better job than the previous one. Mr. Schoeberlein answered that it does about the same noting that it does not have to work as hard to do it. He noted that it grinds only leaves where as the previous one originally ground brush as well. They stopped the grinding of brush roughly about the same time that they moved into the Northside Property Yard. Currently, brush is hauled to Fairfax County. He stated that that the grinding of leaves is considerably quieter than the grinding of brush.

Mr. Haight asked if they had considered lowering the site where the grinder sits. Mr. Miller answered no, stating that it could be a consideration but had not considered it otherwise.

Mr. Chumley asked what the view would be like from the neighbor's backyards. Mr. Miller answered that they would suggest that the wall be finished side facing out. He stated that if it is constructed of wood then they might stain it. Mr. Schoeberlein stated that in a few years the vegetation will have covered over the wall, blending it in with the surrounding area. He stated that they would follow whatever Mr. Miller suggests in trying to make it the least obtrusive. It would be constructed along the edge of the cleared area.

Mr. Brewer stated that it would be a lot of work if the Town were to go that way. He asked for the projected time frame for installation. Mr. Schoeberlein answered that subject to the materials being available he thought that it could be done in two months. He stated that it would also depend upon what hours they can operate on the site.

Chairperson Potter stated that there appears to be no way to measure odor. He asked if the only way of alleviating it is the application of lime. Mr. Schoeberlein answered yes, stating that the application of lime will kill the odor. Chairperson Potter asked how effective liming would be. Mr. Schoeberlein answered that if it is done every day then it should be very effective. He stated that they would propose that upon the completion of each work day any piles get limed. Chairperson Potter asked about the weekends. Mr. Schoeberlein answered that if necessary then also on the weekend.

Chairperson Potter asked Mr. Miller if the noise is dependant upon climatic conditions of the day. Mr. Miller answered that at two to four hundred feet, not significant.

Chairperson Potter asked for more insight regarding the dust issues. Mr. Schoeberlein stated that during the time of year that the Town collects leaves they experience wet climate. He stated that most times the leaves are wet and frozen on the street and have not found an issue with dust. He stated that they cannot use wet suppression, explaining that if water gets down into the tub grinder the machinery is going to freeze up. The only option would be that if they found that there was dust to cease grinding until the situation resolved itself.

Mr. Brewer asked if they could mist the pile into which it is being projected. Mr. Schoeberlein answered that is a possibility. He stated that they would have to bring water to the property but it's not something that could not be done. Mr. Brewer asked for the standard number of grinding hours. Mr. Schoeberlein answered that it is approximately one hundred thirty hours. Mr. Brewer stated that equates to twenty something days from November through March. It is about one-fifth (1/5) of the allotted time. Mr. Schoeberlein stated that they will not operate when there is a heavy snowfall.

Mr. Brewer stated it was testified to in the introductory statements the cost of outsourcing the leaves to Fairfax County. He stated that they could not measure the loss of productivity on other projects. Mr. Schoeberlein answered in agreement. Mr. Brewer asked if they did have to outsource to Fairfax County, if they charge a fee for picking up the leaves in bulk. Mr. Schoeberlein answered no, stating that the larger trucks would haul the unprocessed leaves to West Ox Road. He has been told that they can have all that they want and would not be charged for it. If they cannot store the mulch on the Beulah Road, NE, property then it will have to be brought back in smaller dump trucks to be delivered to the residences. If they can then store it at the Beulah Road, NE, property then they will be able to bring it back in the larger trucks at the same time. They will still need a staging area. Mr. Brewer asked what size trucks deliver. Mr. Schoeberlein answered that it is a one ton truck. Mr. Brewer asked if a vacuum truck is comparable to a two ton truck. Mr. Schoeberlein answered that some are. He stated that vacuum trucks fill up much faster making them less effective. He stated that if they were traveling back and forth from the West Ox Road site then they would not be able to make more than a few trips a day.

Mr. Brewer asked if they have seen the materials with suggestions for different types of leaf collections and what his assessment is. Mr. Schoeberlein answered that they have reviewed them but feel comfortable with the equipment that they have now.

Mr. Chumley asked what the level of complaints that the Town has received since the leaf operation started in 1991. Mr. Schoeberlein answered that there have been more complaints this year than in previous years. He stated that this is also the first year that they used the large tub grinder.

Chairperson Potter asked if a vacuum truck would have to vacuum to unload the leaves. Mr. Schoeberlein explained that if the vacuum truck filled up on the street they would disconnect the vacuum apparatus from the truck and drive the truck up to Beulah Road, NE, then come back and re-hook it up and continue on the route. Chairperson Potter asked if the vacuum is being used at Beulah Road, NE. Mr. Schoeberlein answered no.

Chairperson Potter stated that the site has been referred to as a governmental use. Mr. Schoeberlein answered yes. He stated that it is shown as governmental use on the land use map. Mr. Hembree stated that the property is zoned RS-12.5 and one of the conditional use items is that it is designated within the single-family detached residential zones, is public buildings and uses so that it is proper and germane that this application be before the Board in a conditional use permit format.

Chairperson Potter stated that the applicant has used 25 minutes 4 seconds of their allotted 45 minute testimony. Mr. Schoeberlein stated that they would reserve the remainder for rebuttal.

There being no further questions the applicant was seated.

Mr. Edgar Adamson, 230 Beulah Road, NE, was sworn in to speak. Mr. Adamson stated that he is President of the Northeast Vienna Citizen's Association (NEVCA), the largest citizen's organization in Town with over 125 member families. Besides NEVCA, Friends of Beulah Road Park (FOBRP) is also involved in this matter. He stated that they have many members in common. The organization was created to defray the cost associated with research that they have done including paying over one thousand dollar to the Town to obtain documents pursuant to the Freedom of Information Act. Both groups fully endorse the Town's leaf collection program and do not want to see it end.

Mr. Adamson stated that in 1934, Vienna Citizen, Katrina Hine Echols, willed this parcel of land for public use forever. Whatever she had in mind for her beloved land, he was sure that she never envisioned what has occurred under the Town's stewardship. A sizable amount of that parcel has been destroyed due to the wanton cutting down of trees and the apparent burial of materials all by the land's trusted custodians. Instead of enjoying a natural woodland park as they have for years as it was intended, now for several months of the year, the neighboring citizens complained about the loud noise of an industrial grinder, which is accompanied by back-up beepers from the Town's trucks. Stay-at-home moms with their children and citizens trying to work from home should not have to experience this. They also complained about the vibrations rattling the windows and the smell of rotting leaves and mulch. Many blame the now impervious ground for neighborhood flooding. No one knows the health risks that may exist. This cannot be the owner's intentions.

Mr. Adamson stated that on September 23, 2003, NEVCA passed a resolution asking the Town Council to form a joint government/citizen task force to study this problem and alternatives. The request was never addressed. The mulching operation at this location is not only wrong but illegal. The Town has now come to you asking you to legitimize their unilateral actions. He asked them to listen to the speakers tonight and view the evidence with an open mind as they believe that the Planning Commission did.

There being no questions at this time Mr. Adamson was seated.

Mr. Sean Curtin, owner of 403 Holloway Court, NE, was sworn in to speak. Mr. Curtin stated that on August 11, 2004, after over ten hours of work session, community input, expert testimony, and testimony from the applicant, the Planning Commission voted to recommend that leaf storage only be permitted on the Beulah Road Park Site for one additional leaf season. The Planning Commission voted that leaf grinding should not be permitted. He stated that his

purpose is to demonstrate why the Planning Commission decision is correct and the reasons that they support those decisions.

Mr. Curtin proceeded through a slide presentation for the Board. He stated that in order to meet the requirements it cannot affect adversely, the health or safety of persons, be detrimental to the public welfare or injurious of property or improvements and has to be in accord with the purposes of the master plan. He noted that it is a threshold question only and do not have to issue one. He stated that other questions need to be asked such as if the use is compatible with the use of the land, is it compatible with sound land planning, and does it help to ensure the quiet enjoyment of the land surrounding the property. There is the issue of burden of proof and where it lies. He stated that the burden of proof for proving all of these elements as stated in Section 18-209 of the Town Code rests with the applicant. They, as NEVCA or FOBRP, do not have to prove that these things don't exist and it is the applicant that must prove that they do.

Mr. Curtin stated that since 1991 the Town has been conducting its illegal operation on the park. It is only within the last six months that the Town has decided to seek a conditional use permit. The reason being was that they had to threaten legal action to do so. They had had a determination made by staff member Mr. Hembree and threatened to take it to Fairfax County Circuit Court to have it appealed. The Town realized that it was an illegal use and has now come before the Board in order to help legitimize an illegal use that has been going on for over a decade.

Mr. Curtin proceeded to go through a slide presentation for the Board, which included maps of the area as it relates to the surrounding residential neighborhood. He asked from a land planning perspective how they could consider that it be reasonable for the Town to put such an industrial operation in the middle of an entirely residential zone that is approximately one hundred thirty feet from back yards where children play or one hundred fifty feet from where people sleep. They also ask the Board to consider that the type of use that the applicant is planning to place on the property is far different from the other types of uses that are permitted for a conditional use permit in an RS-12.5 zoning district. He noted that those other uses are listed in the materials submitted by them to the Board. They include uses such as golf courses, parks, churches, et cetera, which is far different than an industrial operation that produces over one hundred decibels at the source. He noted that his house abuts the property and is also zoned RS-12.5. He stated that if he as a private citizen were to appear before the Board asking permission to undertake an operation such as this if the Board would entertain such a request. He stated that the Town has discussed hardships and costs when discussing other ways of doing the mulch delivery program; they have a set of alternatives including cost calculations that show that it may not be as expensive as the Town anticipates or may not have a net increase. The hardship or costs to the Town is not one of the criteria for the issuance of a conditional use permit. It is irrelevant that the Town is applying and is irrelevant that there are costs associated with it. Both are not within the criteria of whether or not a conditional use permit is appropriate.

He stated to further underline how inappropriate the Town's current mulch grinding is, they took the initiative of quarrying local jurisdictions. They found that no other local jurisdiction grinds or stores their leaves in a residential area. They are either trucked off to a composting site/landfill or they are taken to an industrial area. The Town is the only local jurisdiction that tries to undertake such an operation in a residential area. This information underlines how inappropriate the use is and that other jurisdictions have found a way to grind and collect their leaves without putting the entire burden of the program on a few residents.

He stated that the number one issue on the property is the noise. The applicant to date, other than the testimony just heard, has provided only an ambient noise study. No noise study with the grinder in operation that would show what the actual noise numbers are. That ambient noise study, which showed the background noise levels in their neighborhoods, showed that those levels were 47.5 decibels at one of the loudest times of day. They tested it about 5 o'clock P.M. He noted that they heard testimony from the applicant who did their own unscientific study which they did with uncalibrated instruments that showed a reading of sixty and seventy decibels. As their own sound expert testified to, every ten decibels increases it, doubling in perceived sound levels. Based upon the information that the applicant proved they are talking about a noise level of approximately four to eight levels of increased perceived noise levels caused by the grinding operation.

He stated that the Friends of Beulah Road Park, before the applicant hired a noise expert, hired their own expert at its own cost. He stated that they will testify about the typical noise limits in other jurisdictions, the expected sound levels for the grinder based on the manufactures noise specifications noting that they went out and got the information and what scientific protocols would be for determining the actual levels produced by the grinder. The overall result is that fifty-five decibels is generally the accepted limit for nuisance in other jurisdictions. He noted that even at fifty-five decibels for a constant running time of six hours.

He stated that they have a sound study indicating that it is noisy along with a document of over 400 pages of citizen complaints regarding noise, vibration, and odor. That 400 page number comes from staff. They have the applicant's previous study at North side Property Yard, which is where the smaller grinder was previously located. That sound study indicated that it was too loud and should be fully enclosed, which the applicant was unwilling to do. Their response was to move it to Beulah Road Park.

He asked how loud the grinder is, according to the manufacturers data that when run at 60 percent capacity as discussed, it is one hundred and four decibels at ten feet. He stated to give a frame of reference one hundred decibels is approximately as loud as Boeing 707 landing at one nautical mile. A jet flying over the house at one thousand feet or typical factory machinery, keep in mind that six straight hours of a jet flying over your house at one thousand feet is the noise level that is produced at the grinder. He stated that according to their sound expert, the expected noise level by the time it reached their property line it is seventy-two to eighty-two decibels. Eighty decibels is approximately as loud as a diesel truck running at 49 mph at fifty feet away or a running garbage disposal, a milling machine or heavy traffic. He noted that a leaf blower is not annoying running for thirty minutes but is when run for six straight hours.

He stated that noise is not just an annoyance issue; it has an effect on health according to the EPA, a document that was submitted with the materials. It has an effect on sleep, causes cardio vascular changes, gastrointestinal changes and annoyance and stress. All of which are the adverse effects of stress. There is the obvious effect on property values having a loud grinder in your backyard ruining the ability to quietly enjoy your house and yard.

Except for the testimony heard the applicant has not provided any information on vibration or how to reduce vibrations. The applicant expert did testify that there might be some vibration reducing caused by a barrier wall. He noted that it is the first that they have heard the Town discuss it. He stated that the Board currently has over 400 pages of complaints from citizens

regarding noise, vibration, and odor. There is citizen testimony from the Planning Commission meeting that the noise from the grinder rattles their windows and decks. The Town's zoning code for the CMP industrial area provides where it is located in a proximity to a residential district that the standard is no vibration that's discernable without the aide of instruments. If you can hear it, feel it shaking then it would be in violation of Town Code Section 18-1171 were it in that zoning district. There is no reason that the Town should be allowed a lesser standard. Vibration has an effect on the property value and their ability to quietly enjoy their homes.

The applicant has provided no information regarding odor nor have they suggested any new ways to alleviate the problem. What they are suggesting today is exactly what they are already doing. The facts speak for themselves; it does not work well enough. They should not have to put up with odor one, two or three days a year or on weekends. They have to call someone who comes out two, three or four hours later to fix the issue. It may reoccur the next day; it's random. The Town cannot show the Board anything other than what they are doing right now as to how they intend to address the problem. The result is that there will always be an issue.

The Town's own member from the Department of Public Works described the odor in an E-mail to one of their members as "an awful stench." The odor produced by the decaying, rotting leaves is nauseating, has a clear impact upon health and property values. He noted the smell of mulch when it is placed in the yard and asked if they could imagine huge, nine foot tall stacks of it that they have to smell.

The Planning Commission did not include a recommendation that the Town implement best management practices with regard to odor for the additional one year of leaf storage and is the only area that they disagree with what the Planning Commission had recommended. They would like for the Town to investigate other ways of reducing the impact of the odor on them.

With respect to runoff, the applicant provided a drainage study which showed a 33% in runoff towards Broadleaf Drive, NE, drive because of the impervious surface created by the applicant. The Planning Commission agreed and wanted to place a berm at a location designated by the Planning Commission to reduce the impact on the houses along Broadleaf Drive, NE. They would also request that the applicant's engineer confirm the size and location of that berm would be sufficient so that there is a no net increase in drainage towards Broadleaf Drive, NE, due to the additional impervious surface created by the applicant.

With respect to dust control, the Virginia Department of Environmental Equality recommended in a letter to the Town dated December 15, 2003, which was prompted by citizen complaints that the applicant take aggressive and proactive measures for dust control including wet suppression. The applicant's response that wet suppression would create technical difficulties with the grinder and they presented no other options. In other words the applicant has no solution for this problem. What should their answer be that they have to live with the dust? The answer is that the conditional use permit should not be issued. Dust does link back to health problems. Can exacerbate asthma, cause other pulmonary problems. The DEQ, who are the experts on this, felt that it was issue enough to recommend aggressive and proactive measures to control the dust. He thought that was a pretty good sign that dust is a real issue.

Mr. Curtin stated to sum up; they have heard testimony from the applicant that if they were not able to grind the leaves at the Beulah Road Park site that the cost to the Town would increase in the fifty thousand to one hundred thousand dollar range. They have presented a series of

alternatives to the Town, one of which they are doing a demonstration of, taking it that seriously. Their numbers show that it would be implemented to the Town at no cost, providing a truck that has both a grinder and a place to store leaves in one unit. It is a great option. It is not about land use or what is sensible or what's fair to the residents of Sherwood Drive, NE, or Holloway Court, NE, and other surrounding neighborhoods, it's about money. There are ways to solving this problem by spending money. The Town's leaf collection and mulching program benefits every citizen in the Town, every citizen in the Town should help to bear that burden, if there is one. It is not fair for the Town to ask the residents of a few neighborhoods to bear the brunt of the entire, negative impacts, of a grinding and leaf mulching program. They have other presenters with other more focused topics to present and would be happy to answer any questions that they have after their presentations.

There being no questions at this time, Mr. Curtin was seated.

Mr. Gary E. Ehrlich of 2851 Marshall Street was sworn in to speak. Mr. Ehrlich stated that he is an acoustical engineer and works for Wylie Laboratories. He stated that he has a degree in engineering and a professional engineering license in the state of Virginia. He stated that he did not bring a copy of his qualifications but could provide them at a later time if the Board so chooses.

Mr. Ehrlich stated that he would like to discuss acceptable noise levels. He stated that they have heard testimony from the applicant regarding qualitative terms about how to reduce noise and generally describing what this noise sounds like. He stated that it is an engineering issue and a matter of how loud is too loud. If there was an aircraft carrier sitting in the middle of the park it would be too loud but if there was a single cricket it would be too quiet. There is some threshold above which where it would be unacceptable.

Mr. Ehrlich stated that he along with Mr. Miller had not had the opportunity to measure the grinder since it was not in operation when he became involved.

He stated that there are health effects as a result of noise disturbance such as sleep disturbance and speech interference. Those two combined can be grouped together called annoyance. He stated that there is also an issue of hearing loss, noting that this is not an issue for the levels they are discussing.

He stated that the World Health Organization, which is an international body who provides guidance on what the effects of noise on speech would be along with recommendations for acceptable noise levels. Their conclusion was that noise levels of thirty-five decibels have no effect on speech. Forty-five decibels starts to interfere with speech but you can still understand the speech. At sixty-five decibels you have to raise your voice in order to be heard in a normal setting. What they came up with that the noise level should be under forty-five decibels at night and under fifty decibels during the day to avoid moderate annoyance. Decibels at a level of fifty-five are considered to be serious annoyance.

He stated that the next set of criteria is from FICON (Federal Inner Agency Committee on Noise) who says that speech interference effects occur at around sixty decibels. He noted that it is in the same range. He stated that there is also a levels document put out by the EPA, which serves as a basis for a large amount of federal regulations on noise who came up with a number of fifty-five

decibels as a requisite to protect the health and welfare within an adequate margin of safety. He noted that they are seeing similar numbers with these types of organizations.

With respect to local regulations such as Fairfax County, the City of Falls Church, and City of Alexandria there are several different types of local regulations. He noted the Town's noise ordinance, which applies to a stereo being played too loud. He stated that is the most applicable for this because it speaks specifically to intermittent noise sources and purposes other than transportation. Alexandria, Fairfax County and City all have a limit of fifty-five decibels. Other jurisdictions differentiate by day and night. The District of Columbia, Prince William County both has a limit of fifty-five decibels at night and sixty decibels by day. Some jurisdictions have additional requirements such as frequency of sound or whether it makes tones. He stated that this also gives the Board a broad, brushed view of the other jurisdictions. He stated that again fifty-five decibels is the number that a lot of them use. To summarize, an appropriate level should be in the range of fifty-five decibels in order to minimize annoyance.

He stated with respect to the tub grinder, he noted that he had not had the opportunity to measure the level of the tub grinder because it was not in operation. He stated that they had tried to arrange to do so but it was not possible. The most relevant piece of information is the data that was forwarded from the manufacturer, which indicates the decibels in the range of the high seventies to the low eighties. He stated that all of his calculations are based upon one hundred feet. He explained that at the time what he understood the distance to be nearest the property line. He stated that he had heard testimony to one hundred thirty feet from the site to the nearest property line. The difference between one hundred feet and one hundred thirty feet is approximately one and one half to two decibels. Sound does drop off at a rate of six to seven and one half decibels per doubling of distance. The data from the manufacturer and the report put together for the Northside Property Yard by Tri Tech Engineering Company for the Town and the measurements taken by one of the citizens with a handheld meter. He stated that all of them come up with a similar amount in the high seventies. He stated that if they were to adjust for the distance of one hundred thirty feet, the number would be seventy-seven decibels. He noted that if the tub grinder is not operating at a full load then that would also reduce the noise by a couple of decibels. The purpose is to compare the data to something in the threshold, if they accept the threshold, in the area of fifty-five decibels. A noise level of seventy-two to eighty-two decibels is clearly above that.

He stated his agreement with Mr. Miller's recommendations for a noise barrier stating that it would be good from an acoustical standpoint. He stated that acoustically noise barriers are a great solution but felt that it would have to be coupled with an engineering approach to it.

He stated with respect to vibration, he also agreed with Mr. Miller's explanations. He stated that usually it is an acoustic induced vibration. If a window is rattling it is not the vibration going in to the ground that is rattling the window. When discussing distances of one hundred thirty to two hundred feet. It is usually the air born sound that is rattling the window. He stated that a barrier dramatically reduces the air born sound, getting rid of the complaints of the vibration.

He stated that not only should they come up with what they think is an expectable level and then engineer a solution to meet it but that they should also have some sort of measurement protocol that verifies whether they met their target.

Mr. Ehrlich stated with respect to Mr. Miller's comments regarding LDNs he stated that he focused his presentation in terms of what the nuisance ordinances usually are, which is more instantaneous. He stated that a lot of jurisdictions will go out and measure with a device and can find out immediately if a site is in violation. With respect to LDNs, which measures in terms of an annual average per day, is usually just for transportation noise. It is for trying to measure if there is too much aircraft noise in a given location. He stated that when using the LDN metric usually you would use the annual average concept that is for something that is relatively uniformly spread out throughout the year. If reviewing something that comes in a burst of activity one month a year, a more typical way is to look at the average busy day. The military routinely measures this way if they have to look at aircraft operations and will look at the average of the thirty days and not spread out over the year.

There being no question at this time, Mr. Ehrlich was seated.

Mrs. Karen L. Church, owner of 322 Sherwood Drive, NE, was sworn in to speak. Mrs. Church stated that on behalf of the Friends of Beulah Road Park she would like to state for the record that they disagree with some of the information presented in recent weeks by the Town and that they are concerned with the validity of the results of the Town's drainage study, ambient sound study, and land measurements. They are concerned because information upon which some BZA decisions will be made. Some example of their concerns follows.

The Town defines predevelopment as condition of the land as it is now, they disagree. They support that the Planning Commissions definition that predevelopment is the condition of land prior to the construction by the Town of the pump-house on the property.

The results of the Town's drainage study do not include all impervious areas within the property. For example, this study does not include the 20 x 80 foot paved area next to the pump-house. The drainage study does not address the significant land disturbance as shown by topographic maps that has occurred over the years. Specifically the height of the land has been raised by approximately four to seven feet by buried asphalt and concrete. The drainage study does not include the impervious area under which the asphalt and concrete can be found. They have photographic and eye witness evidence to support this claim.

Both the significantly increased height of the land and the large manmade impervious areas has, they believe, changed the predevelopment storm water drainage patterns. The results of the Town's ambient noise study are contradicted by the professional judgment of Mr. Gary Ehrlich, sound expert, whom they hired, which has already been testified to. The declared size of the cleared area is in variance of the measurement taken from by the citizens as will be described in Mr. Ray Collins presentation, which follows.

She stated that they maintain that the cleared area is approximately 2.4 acres and not 1.7 acres as has been stated by the Town. Accurate measurements are critical because they effect what decisions are made. A minority of Town of Vienna tax payers receive mulch delivery. Only 7 percent of Town residents received mulch delivery in 2003 not 20 percent as was stated by the applicant. This 7 percent includes leaf and wood mulch deliveries. During the past eight years fewer than 10 percent of the Town's homes received mulch delivery. Left over mulch is delivered to non-local nurseries at tax payer's expense but at no cost to these profit making non local businesses.

In summary, they request that the conditional use permit be adopted exactly as the Planning Commission recommended in their 5-3 vote with no modifications. They also request that berm construction and placement be performed by qualified engineers and that land and berm maintenance plans be developed to ensure that there are no more predevelopment levels. In rebuttal to testimony, in the ambient sound study the Beulah Road Site noise measurement location show the mulch grinder three hundred twenty feet from the properties on Holloway Court, NE, three hundred sixty feet from Broadleaf Drive, NE, and three hundred twenty-five feet from Sherwood Drive, NE. These measurements misrepresent the typical distance from the grinder to property lines of adjacent homes. The best case scenario is that if the tub grinder were in the center of the property it would be within two hundred fifty feet of some property line. Actual measurements taken by the residents in 2003 from the property line of 405 Holloway Court, NE, to the tub grinder measured at one hundred fifty feet.

Mrs. Church submitted documents for the record. There being no questions at this time Mrs. Church was seated.

Mr. Gerald E. Bishop, owner of 324 Sherwood Drive, NE, was sworn in to speak. Mr. Bishop stated that he will be presenting a brief review of how, through mismanagement and short sightedness, the Town of Vienna has converted a natural woodland park in to a public nuisance. The story of leaf collection begins in 1964 when the Town began collecting leaves and storing them in Town. As best that they can determine, the first leaf depository was at Southside Park but after complaints about the putrid odor and sludge from the mulch pile from at least one citizen, John Thompson, the leaf storage was moved to Northside Park. Again, following more complaints regarding the stench the leaf storage was moved to Beulah Road Park. He, referring to imagery on the slide screen, stated that these images were taken in 1991 showing how the Town dumped the leaves around the trunks of trees, which eventually killed the trees. He stated that the image also shows where the Town began dumping street millings and other debris at Beulah Road Park. Up until this point leaves were simply stored at these sites but in 1991 the Town bought its first leaf grinder.

While leaves were being stored at Beulah Road Park the grinding was taking place at Northside Property Yard. The grinding continued along with the complaints. Mr. Bishop referred to a letter from Mayor Charles Robinson to Robert Kay Hill, a complaining citizen, reassuring him of the following, "one of the principal complaints of Northside has been noise from the tub grinder. Mr. King, head of Public Works, has eliminated that problem." He stated that the letter goes on to say that "they have terminated the use of the property as a long term disposal of broken pavement and other debris and have arraigned for drive-through parking vehicles to eliminate or minimize the operation of back-up alarms on which we have received many complaints." He stated that Mr. King eliminated the grinder noise and the disposal of pavement and other debris at Northside by moving the problems to Beulah Road Park. From the time that leaf storage began the property owners around Beulah Road Park had been putting up with the putrid stench of the rotting leaves. They even put up with the first couple of years of leaf grinding. In 2003 the Town bought a new, more powerful, and much louder industrial grade tub grinder.

The first grinder, which arrived from Northside Property Yard in 1999 was loud enough. He stated that their own sound readings taken from their decks and patios registered more than ninety-seven decibels, a level far in excess of what is normally permitted in a residential neighborhood. The ground shook, the windows vibrated, the noise continued from 7:30 A.M. till late in the afternoon. They wondered what happened to the quiet enjoyment of their property

and what would happen to the value of their property and what did they do to deserve a public nuisance in their back yards. He stated that the noise and smell are far more than a lawn mower and a leaf blower as was implied earlier. He stated that the formal definition of a public nuisance is a diminished quality of life, which they contend must be eliminated.

Mr. Bishop asked why the Town of Vienna is the only jurisdiction in the area that claims that it needs to deal with fallen leaves with an industrial operation in a residential neighborhood. They feel that it is the Board's responsibility to do what the Town is clearly unwilling to do, which is to protect their rights as tax paying citizens of the Town by halting the leaf mulching operations at Beulah Road Park.

There being no questions at this time for Mr. Bishop, he was seated.

Mr. Hembree noted that there is 2 minutes and 35 seconds left for testimony. Mr. Curtin stated that they would like to reserve that time.

Chairperson Potter asked if that is the end of their presentations subject to the reservation. Mr. Curtin answered yes.

Chairperson Potter asked staff how long the applicant had left for testimony. Mr. Hembree answered just under 20 minutes.

Mr. Ehrlich came forward. Mr. Chumley asked if a properly engineered barrier would eliminate or appreciably cut down the level of noise. Mr. Ehrlich answered yes, with one caveat that they do address the height issue as was pointed out. The barrier would have to be tall enough to break the line of site from the grinder to the rear-yards where they are trying to reduce the noise.

Mr. Brewer asked if that would be from the very top of the grinder or from the mid-level of where the engine is. Mr. Ehrlich answered that they would have to make a site visit to determine which the predominant component was.

Mr. Vander Nat stated that based upon testimony heard it seemed as though they would have to bring down the level of noise to an acceptable level reducing the current noise of the grinder by about twenty to twenty-five decibels. He asked if a sound barrier would be effective in reducing it twenty to twenty-five decibels. Mr. Ehrlich answered no, that there is no way to get that much. He stated that sound barriers are typically designed for a five to ten decibels reduction. Theoretically twenty decibels is the maximum that they could hope for. They could possibly put in a noise barrier to reduce it down to ten decibels as was presented before in combination with a better muffler and things of that nature in order to quiet the noise source. Mr. Vander Nat asked if it was not the import of the testimony before that a reduction of at least twenty decibels would make is acceptable from what the current grinding is down to the fifty-five decibels recommended. Mr. Ehrlich answered yes. He noted that he had the wrong distance calculations, and would have to reduce a few decibels off his previous calculations. Mr. Vander Nat asked if it is still twenty decibels. Mr. Ehrlich answered in agreement. Mr. Vander Nat asked as an engineer's project they could not obtain a twenty decibel reduction. Mr. Ehrlich answered not solely with a noise barrier, that they would have to compliment it with a better muffler. He noted that they have already replaced the muffler commenting that it might have had some of that effect so that they would not have to obtain a whole twenty decibel reduction.

Mr. Brewer asked if the measurements were further reduced to a two hundred foot measurement if there would be a six to eight decibel reduction. Mr. Ehrlich answered in agreement. Mr. Brewer stated that it looked to be approximately one hundred eighty to two hundred foot distance from the property lines to the tub grinder location.

Mr. Chumley asked if they were to dig out where the tub grinder is located combined with a sound barrier if that could have an adequate reduction. Mr. Ehrlich answered yes, stating that they could reduce the height of the source and raise the height of the barrier making a one for one exchange. He stated that the barrier would not have to be as tall to get the same benefit. The two combined solutions would top out at eighteen to twenty decibels at most.

Mr. Haight stated that it had been testified to by Mr. Bishop that the new grinder was appreciably louder than the old grinder. He asked if the analysis bear that out. Mr. Ehrlich answered that he had not performed any measurements and therefore could not say. Mr. Haight asked if he reviewed the documentation for both the new and old grinders. Mr. Ehrlich answered that he had not seen any documentation for the old one and had only reviewed the new one.

Mr. Dowler asked if the Town has a noise limitation ordinance. Mr. Ehrlich answered not that he knew of. Mr. Dowler read a section of the Planning Commission minutes where Mr. Ehrlich stated that the Federal regulation uses sixty-five decibels as a benchmark and beyond that it is not normally acceptable in a residential land use. He asked if that is correct. Mr. Ehrlich answered yes. He stated that he had dropped out discussion regarding the LDN in order to keep the presentation short. He stated agreement that sixty-five decibels is for transportation sources explaining that most federal agencies use something in the range of sixty-five decibels when discussing aircraft or railroad. Mr. Dowler asked if Mr. Ehrlich had had the opportunity to look at the grinder specifications. Mr. Ehrlich answered yes. Mr. Dowler asked, if he is understanding the manufacturers specifications, reading them allowed. Mr. Ehrlich yes, stating that he did not have the numbers in front of him.

There being no further questions Mr. Ehrlich was seated.

Mr. Curtin approached the dais. Mr. Vander Nat stated that the Board received information regarding the total number of days of operation. He stated that the calculations came to approximately twenty days in operation over a course of three months. He asked if Mr. Curtin were in agreement. Mr. Curtin answered that as someone who is at work during the day he could not say for sure. Mr. Vander Nat stated that at the calculation of twenty days of grinding spread over the course of three months would equate to approximately seven days of grinding a month. He asked if that were an accurate statement. Mr. Curtin answered that they should ask that question of the residents who are more directly effected every day. Mr. Vander Nat stated that he would be willing to ask that of any one present who is home most days.

Mrs. Betty Collins, owner of 405 Holloway Court, NE, was sworn in to speak. Mr. Vander Nat redirected his question. Mrs. Collins answered that it does not fit her perception, noting that it might be right. She stated that the grinding began in October and they never new when they were going to be woken up by it. They knew that it stopped at 11:30 and was quiet but that it was unnerving because thirty minutes later it would start up again. They never knew which days or how long it was going to be grinding, which was a constant. Had they known that they were going to have to go through all of this then they would have kept records. She stated that they would certainly be keeping records the next time it shows up.

There being no questions at this time Mrs. Collins was seated.

Mr. Dowler stated that the applicant had testified that the operation had started in 1991 and during the adversarial testimony it was referred to as an illegal operation. He stated that he has been very impressed with all of the information received. It was testified that there are 400 hundred pages of complaints and wondered why it had taken ten years to bring it to their attention. He asked if or what has changed over the years. Mr. Curtin answered that it was a couple of things, predominantly the additional noise levels created by the installation of a new tub grinder putting it beyond all levels of "bearability." He stated that they will find that there were complaints during the entire period of time regarding the grinder, the operation, and about what was happening to Beulah Road Park. He thought what had been lacking in the past was organization within the neighborhoods to push the Town to do the right thing.

Mr. Brewer asked what the time period the 400 pages spanned over. Mr. Curtin explained that the figure arose during the Planning Commission work session prior to the first public hearing where the Planning Commission had requested copies of complaints, E-mails, et cetera, that had been received about the situation. He explained that it was Mr. Hembree who had stated that there are over 400 pages and asked the Planning Commission what they wanted him to do about that. They responded that they did not want to see 400 pages. He stated that the reason that it is not in the Board's packet of information is because the Planning Commission did not want it. Mr. Brewer stated that the submittal of information has been a tremendous effort and applauded it. He stated that on page 5 of their submittal is a memorandum from Mayor Jane Seeman, dated November 13, 2003, with a recitation from 1996 through 2003 of the number of houses to which Town mulch was delivered. He stated that it had been testified that 7% of Town residents were recipients of Town mulch. He noted that during the previous two years it was estimated to be in the mid teens. He asked if Mr. Curtin denied that amount. Mr. Curtin answered no, stating that they used the latest numbers because it was the most current. Mr. Brewer read off the numbers stating that it does fluctuate. Mr. Curtin agreed, stating that the numbers are low at one-tenth of the Town's population including both leaf and wood mulch, which is trucked in from an entirely different location.

Mr. Dowler asked for the NEVCS/FOBRP opinion of the Town erecting a barrier to mitigate the sound. Mr. Curtin noted that they are hearing about barriers for the first time this evening. He stated that it was not a part of the applicant's presentation before the Planning Commission. He stated that it is difficult to address the topic without first discussing it with their sound expert. He stated that when the sound study was done for Northside Property Yard it was recommended to fully enclosing the grinder. With respect to a barrier, he has only heard testimony that it would only reduce the noise by approximately ten decibels. Mr. Dowler asked what Mr. Curtin understands the sound level to be at his property. Mr. Curtin answered, according to their expert, to be between seventy-two to eighty-two decibels. Mr. Dowler stated that it never has been officially measured. He stated that is an issue that the Board is struggling with. Mr. Curtin stated that it has never been scientifically measured, noting that the applicant had done a measurement resulting in sixty-seven up seventy decibels. Mr. Dowler stated that the manufacturer is shown it to be at approximately sixty-seven decibels. Mr. Curtin stated that there is a cumulative effect including the noise of the trucks and back-up beepers. He stated that they are focusing on the grinder noting that there are other noise sources that continue when the grinder is off. They heard testimony earlier that back-up beepers equates to approximately one hundred decibels. Mr. Dowler stated that they still do not know what the official measurement is

at the property lines. Mr. Curtin stated that it sounded to him as though the applicant had not met its burden of proof. He noted that it is upon the applicant to show that it will not have the adverse effect. There is no study, but a proposal for a barrier that is recent. They did this because it is not in sufficient form to present to the Board in any detail. Mr. Dowler stated that there is the evidence that is before them and is the only evidence that they have. He stated that it is prima facie case before them. Additional discussion continued regarding what is considered acceptable noise levels.

Chairperson Potter stated that he had not seen any medically treated diseases that were submitted in support of these assertions. He asked if they could provide the Board with some. Mr. Curtin stated that there is a 1981 EPA treatise sited in his remarks. He stated that he has it with him but did not know if it was in the materials submitted. Chairperson Potter asked if that could be submitted. Mr. Curtin agreed.

Mr. Chumley stated with respect to the statement of depleted property values, he noted that there is a general impression that the Northeast section of Town's property values continue to rise. He asked staff what the status is for the property values in that general area. Mr. Hembree stated that his information is unscientific but based upon the permit activity that has been going on Town wide along with that quadrant he had seen no evidence of any adverse effect on property values.

Mr. Curtin stated that if he were in the market for a house and had the option of a house that directly abutted a noise source that produced eighty-two decibels for six solid hours a day versus a house in another location where that was not a factor, then he would choose the latter.

Mr. Lillis stated that if it were up to six hours a day it would far exceed the ninety-six hours that the machine actually ran. Mr. Curtin responded that to ask the residents for twenty to twenty-five days is too much. They are approaching a time when the grinder is running for a month on weekdays, depriving them the use of their property, which is too much. Mr. Lillis asked if the twenty days is spread over a five or six month period. Mr. Curtin answered in agreement, stating that is too many given the existence of alternatives. He stated that the grinding does not have to go on at this site but simply a matter of the Town's priorities. He noted that it is very clever of them to make the Board the custodians of how the Town decides to or what it spends its money on. Assuming that it is fifty thousand dollars to haul the leaves out of Town to grind the leaves where it affects no one, in a budget of fifteen million dollars, seemed like its fair that everyone pays their share rather than the residents of their neighborhood. Mr. Lillis complimented both groups on the amount of work and documentation provided to the Board. He stated that during the Town's presentation it spoke to a number of the complaints. With respect to noise, a barrier could be installed given that it was of sufficient size to break the line of site between the tub grinder and the residents that could reduce the noise up to twenty decibels, as was testified by Mr. Ehrlich. He stated that the twenty decibels was including other noise suppressions some of which the Town has already enacted. He did not know if twenty decibels could even be reached. Mr. Lillis stated that in all of the calculations discussed none of them have been calculated by professionals. Mr. Curtin agreed, stating that they used the manufactures data and did not think that the Town had. He stated that the Planning Commission decided that they should not let the Town grind this year. They allowed them to run the grinder for three weeks allotting time for running noise tests to determine what the level is. They could then come back for a conditional use permit when they had all the necessary data. He stated his agreement with the Planning Commissions decisions.

Chairperson Potter asked if the erection of the barrier would alleviate complaints about vibrations. Mr. Curtin answered that the appropriate standard for vibration is the same standard as in the Town Code standard for CMP zoning district, which states that if you can feel it for hear it its too much vibration. He asked that the question be directed to both the Town's and their sound experts. Chairperson Potter stated that it had been stated that there are ways to solve the issue of the grinder and leaf collection. He asked if they had any suggestions. Mr. Curtin answered that in their submitted materials there are three options listed noting that the Town was approached by a company called Prism who offered to take every leaf out of the Town to a site at a cost of one hundred thousand dollars.

Mr. Ehrlich approached the dais. He stated in response to Chairperson Potter's question, that they should address the noise issue first, which would alleviate the vibration issue. There being no more question Mr. Ehrlich was seated.

Mr. Haight stated that they have three thresholds of criteria to consider. He asked if they contend that there is a safety issue. Mr. Curtin answered yes, stating that it is in grinding in proximity to a residential neighborhood, in addition to the increased truck traffic in and out of Beulah Road Park on roads that are not designed for that volume of traffic. Mr. Height asked with respect to health concerns, if any residents have had any health issues where they had to seek medical attention for as a result of the activities on that site. Mr. Curtin answered not to his knowledge stating that they have had anecdotal evidence of residents whose children have asthma whose allergies are exacerbated during that season. Mr. Haight asked with respect to detriment to public welfare, who that would encompass. Mr. Curtin answered that would include everyone in the Town but did not think is encompasses the issue of money. He asked if it is it fair that some citizens bear the brunt of this while others who don't have to pay one third of a percent of the tax base to bear the brunt to fund a program such as this.

Mr. Chumley stated that it has been stated that the whole town should pay for the cost for the possible alternatives. He stated that it is a nice piece of property that possibly could be developed for housing and so forth. He stated that he would not like to see what open space that they have disappear. He asked if they would be opposed to putting in more housing on that plot. Mr. Curtin answered that the land was deeded to the Town subject to a deed restriction of public use forever.

Mr. Hembree stated that has been misstated twice by both Mr. Curtin and Mr. Adamson along with submitted information. He stated that they have selected certain pieces of the actual deed as basis and that there is a set of minutes that goes along with it. He stated that the property was acquired by the Town of Vienna on August 15, 1934. It was not deeded to the Town or given for public use forever. There were a set of conditions under Charles Delano Hines' will. One of those conditions came to pass; Katrina Hines Echols survived her nephew. She got possession of the property and as a result she was able to sell a section of that property to the Town of Vienna. He stated that this information has been indicated in his staff report. He stated to reiterate that it is not deeded to the Town forever as public use, if it was, he asked then how did 8.7 acres get sold off for development that now has houses on Broadleaf Drive, NE. He stated that it could never have been done otherwise. The property is zoned residential and has been zoned so since 1959. He stated that yes; single-family residential use could be put on that property. Mr. Chumley stated that if the current use is stopped on that property it could then open a case of what should be done with that property. Mr. Hembree agreed, stating that it could support eighteen to

nineteen residences on that property within the zoning requirements of the RS-12.5 zoning district. Mr. Chumley thought that it was worth approximately six million dollars. Mr. Hembree agreed. Mr. Curtin stated their disagreement noting that it is not the forum for them to discuss. He stated that if staff is trying to make some differential between whether it was deeded or purchased is not relevant at all for a valid deed restriction.

There being no further questions at this time, Mr. Curtin was seated.

Mr. Schoeberlein came forward. Mr. Schoeberlein stated in response to the testimony of NEVCA/FOBRP that the piece of property is not a park and is not designated as a park but designated for Governmental use. He stated that with respect to drainage, that the Board has a copy of the report put together by Whitman, Requardt and Associates. He proceeded to read number six of their conclusions. The overall combined impact of clearing portions of the site, paving portions of the cleared area and constructing the earth and to detain and filter the site runoff is estimated to have minimal impact on the drainage leaving the site. It is estimated that the total ten year peak runoff leaving the site is less than 1CFS greater than if the site were completely wooded. Since this small increase leaves the site by sheet flow in two different directions and is spread across a large length of the sites perimeter, the increase of any individual location is negligible. He stressed the words "paving portions." He stated that it had been accused before that it was not considered but that it was considered by their consulting engineers.

Mr. Schoeberlein stated that he had done a quick calculation on the number of work days minus holidays between November 1st and March 31st, which is the time frame that they requested for the grinding operation. He found that the exact number is one hundred days needing one hundred thirty hours. The tub grinder does have an accurate record with a meter on the motor, which indicates that it ran ninety-six total hours including all testing and grinding. He reiterated that they have met all threshold requirements. He stated that he will have Mr. Miller address questions regarding sound.

He stated that with respect to statements made regarding noise levels in the CMP zone, it does not apply to this site. There are questions as to whether they are even enforceable but has never come before them. He noted that the Department of Environmental Equality and nor any other governmental agency has found any violations on the site. Comments have been made regarding the DEQ but there have been no violations and have not received any citations.

He stated that with respect to distances a lot of numbers have been discussed. He stated that a map was provided to the Board which indicates the location of the tub grinder. He stated that they should note that to the rear of the home at 405 Holloway Court, NE, is a distance of three hundred twenty feet. To the rear of the home at 324 Sherwood Drive, NE, is a distance of three hundred twenty five feet. To the rear of the home at 311 Broadleaf Drive, NE, is a distance of three hundred sixty feet.

Mr. Schoeberlein stated that there have been references have been made to Northside Property Yard, which has a totally different topography than the Beulah Road site. Northside Property Yard is down in a bowl, which does create an issue with respect to noise because it will radiate up. He stated that any issue that arose regarding what to do with the tub grinder at Northside Property Yard does not apply as far as the Beulah Road site is concerned.

He stated that the reading that was taken at the property line at 407 Holloway Court, NE, on November 24, 2003, by the Director of Public Works, the Mayor and a member of the Town Council was fifty-seven decibels.

He stated that a company named Prism had been mentioned. It was his understanding that Prince William County, who is one of their major customers, is not renewing their contract with them. They have not heard any more from Prism regarding their ability to come and take away all of their leaves.

Mr. Schoeberlein stated that left over mulch is delivered to nurseries free of charge so that they can clear the area by April 1st of each year. What mulch that they cannot get delivered in Town they haul out of there so that the site is clean on April 1st. With respect to the Planning Commission meeting on August 11, 2004, they had a sound meter in the room and the average decibel reading was sixty-four with a maximum of sixty-nine and a minimum of fifty-nine decibels.

Mr. Brewer asked for the date when the fifty-seven decibel reading was taken from 407 Holloway Court, NE. Mr. Schoeberlein answered November 24, 2003. Mr. Brewer asked if the tub grinder was in operation. Mr. Schoeberlein answered yes. Mr. Brewer asked when the additional mufflers mentioned were added. Mr. Schoeberlein answered within the last week to ten days. Mr. Brewer asked if the reading could be less if the muffler had been installed at the time of the reading. Mr. Schoeberlein answered possibly.

Mr. Chumley stated that it had been stated that they never knew when the ninety-six hours were going to come up. He asked if there was a way to specifically schedule the times. Mr. Schoeberlein answered that it would have to be subject to the weather. He stated that when there are heavy snows the machine does not operate. It would not be operating outside the hours of 9 A.M. to 3 P.M. He stated that it probably stops at 11:30 when the operator took his lunch hour. They could look into installing a remote on the machine so that the operator could throttle it down while they are still scooping up the leaves. They could also look at a schedule but could not speak to the unknown variables. He stated that they could probably put out a notice on their website to notify the residents.

Mr. Vander Nat asked if the total potential days are one hundred and a maximum number of one hundred thirty hours. Mr. Schoeberlein answered yes. Mr. Vander Nat asked if it would be more reasonable to run it three hours a day over a potential of fifty days. Mr. Schoeberlein answered that was a reasonable suggestion.

Mr. Miller came forward. Mr. Miller stated that the mufflers referred to were not installed during the time periods that the readings were taken. It was recently installed. He explained that there are four types of mufflers that are available for almost any kind of industrial type engine. They are; industrial, commercial, residential, and a critical hospital quiet muffler. When they are designing for an emergency generator that is going in a sensitive site they recommend a critical hospital quiet type muffler. The Town would not have known to request this. A device such as this is going to be equipped with an industrial or commercial muffler at best. It looked to him that the exhaust is approximately eight to ten decibels louder than the other noise from the equipment. That indicates to him that it does not have a high quality muffler on it. He stated that it is plausible that they could get an eight to ten decibel reduction just from the muffler. If they could get that and another ten decibel from the barrier then they could meet their target. He

stated his appreciation of Mr. Ehrlich's concurrence with his testimony. He stated that there is no way to get a total of twenty decibels reduction from a barrier. He stated that closer to ten decibels is more realistic from a barrier and up to ten decibels reduction from the muffler. He stated that ten decibels is half as loud and fifteen decibels is a third as loud, which is an enormous reduction. He thought that they could get fifteen decibels possibly and twenty decibels reduction by a combination of muffler techniques and barriers.

Mr. Brewer asked for the approximate cost of the hospital quiet muffler referred to. Mr. Miller answered that he did not know for certain and his best estimated was a couple thousand dollars.

Mr. Dowler stated that they were told that there was a measurement of fifty-seven decibels taken in November while the tub grinder was operating at the boundary of 407 Holloway Court, NE. He asked for an opinion if that is a reliable opinion. Mr. Miller stated that he did not have a good feel for the area and asked how far away is Holloway Court, NE, from the site. Mr. Dowler stated that it is three hundred twenty feet to the back of the house noting that it is less to the rear-yard property line. Mr. Miller stated not knowing the equipment or how it was measured is difficult for him to answer but thought that the reading was a little lower than expected.

Mr. Brewer asked if it would be expected to be higher. Mr. Miller answered yes, stating that it could be due to shielding. He noted that it was testified to that the measurement dropped when they went behind a mulch pile. It dropped substantially, which indicates how effective a barrier could be.

There being no further questions, Mr. Miller was seated.

Mr. Curtin came forward. He submitted the documents requested from the EPA regarding the adverse health effects. He asked that they view the measurements with a jaded eyed, taken by the Town and their own reading. He stated that it is a one time sound level and not at the property line which, in almost every jurisdiction is where the noise is measured from. There being no further questions, Mr. Curtin was seated.

Chairperson Potter asked for public testimonial of support of the application.

Mr. William Tesch, owner of 714 Spring Street, SE, was sworn in to speak. Mr. Tesch stated his support of the application. He stated that it is an appropriate use of the land. He stated that everybody would like to have a park in their backyard but it is a small area and that they need to support the functions provided by the Town. He stated that there is a handout that shows the measurement of 67.5 feet and thought that with testimony of a possible reduction of twenty decibels then they should have a result of 47.5 foot measurement. He stated with respect to who uses the mulch, that many of his neighbors could not get any this year because it was over subscribed. It is a service that the Town needs and that they use.

Mr. Vander Nat asked where the 67.5 foot measurement is referenced. Mr. Tesch answered on the hand out.

There being no further questions, Mr. Tesch was seated.

Mr. George E. Biles II, owner of 108 Oak Street, SW, was sworn in to speak. He stated that he is one of the citizens who receives mulch and would like to continue doing so. He thought that the

Town had addressed each of the material points that NEVCA had, which was noise abatement, odor abatement, particular matter abatement, and runoff abatement. The NEVCA presentation clearly indicates that their issues are deeper than numbers appearing on a power point presentation.

He stated his disappointment that the Town has come to such a disagreement with one of its citizens associations. He stated that he would not want to see another benefit of living in the Town go away. He stated that they have lost the appliance pick-up and read today that the Nottoway Fair was cancelled this year. He would not want to see the loss of mulch. He heard the potential for other uses of the land and would not want to advocate the sale of that land for housing.

There being no further questions, Mr. Biles was seated.

Mr. David G. Wilson II, owner of 513 Nelson Drive, NE, was sworn in to speak. Mr. Wilson stated that as a Town citizen they are all very sensitive to their neighbors. He stated that they have not done their due diligence on how to manage the noise. He asked what the noise threshold is. They have two experts present representing two opinions with no empirical data at all. He suggested that they step back and try to help the community by analyzing it to try to find a solution for problems rather than throwing it back and forth at each other. He stated that he lives on Nelson Drive, NE, and can hear it and smell it on occasion but it is not a big deal to them. He asked how they can resolve the smell issues and if there are other technologies available to manage the situation. He wondered if they did not need more experts involved in order to meet everybody's needs. He noted that they do utilize the Town's leaf mulch and love having their leaf pickup. They would not want to see the trees cut down because they do not have an opportunity to remove the leaves as easily. He would therefore like to see a mutual solution allowing for the Town to continue using the property as best they can.

There being no further questions, Mr. Wilson was seated.

Mr. George Creed, owner of 217 Audreys Court, SE, was sworn in to speak. Mr. Creed stated that he is also chairman of the Planning Commission. He stated that they supplied the Board with a memorandum indicating their recommendation to the Board. He stated concern that there is a full evaluation of the site including full collection and full mulching. The mulching done at the site adds more to the leaf pile providing a natural barrier to work with. He stated that additional time needs to be taken for sound evaluation using calibrated equipment over a longer period of time. He thought that the discussion of barriers and mufflers were good. The meetings that they have had have been a work in progress and it was obvious to him that the efforts ongoing are still a work in progress to try to cut noise. They need the time for additional study of the noise issue and need time to study how to control the odors. He noted that they never did find a way. He stated that it had been discussed that the University of Virginia Technology be quarried to find a way for additional options. He thought that they should consider granting a full year for a conditional use permit and re-evaluate it after a study period.

Mr. Chumley asked if one year would be sufficient time. Mr. Creed answered that there was a 5-3 vote where he was in the minority. He stated that he does have some concerns and thought that if it were studied when there is a full operation they could then run studies during the January through March time frame.

Mr. Haight stated his agreement noting that what occurred to him was that in all of the information received they did not have specific numbers. He stated that they need to go and listen to it in order to make an appropriate decision. Mr. Creed stated that none of the Planning Commission members had had an opportunity to walk through and listen to it. They had to come up with a recommendation in August in order for the Town to commence operations next month to continue to support the function for its citizens. Mr. Haight asked if the Planning Commission had no better information than the Board does. Mr. Creed answered no. He stated his support of the application as was requested.

There being no further questions, Mr. Creed was seated.

There being no further testimony in support of the application Chairperson Potter asked if anyone would like to testify against the application.

Mrs. Betty Collins came forward. Mrs. Collins stated that the noise at Beulah Road Park during the mulching season has become unbearable. She stated that over the past ten years there have been many unnatural noises coming from the park such as loud dumping noises when old Park Street, NE, debris was dumped and buried, the sound of the fire truck coming to put out the spontaneous combustion from the leaf pile, the constant beep of Town trucks backing and tooting around the park and in more recent years.

She stated that the noise pattern took a sharp turn upward in the summer of 2003. After hearing the sounds of construction go on for days she walked over to the site and there to her amazement there was a fifteen foot wide road constructed up to her neighbor's back yard. The road was being constructed by dumping chunks of black road bed topped by a black tar-like substance and further topped with gravel. In addition trees and brush had been cut to provide a 40-foot by 40-foot turnaround for all of the heavy equipment. When she thought that things could not get any noisier along came industrial jumbo grinder number two with the capability to make as much noise as a large jet. The grinder roared hour after hour day after day during the mulching season. Mrs. Collins presented a set of acoustical noise canceling headphones stated that they are similar to those worn by airline pilots. She explained that they drown out all background noises wearing them both indoors and outdoors. She stated that they are probably as effective as the full size ear protection worn by Town workers working around grinder number two.

Mrs. Collins stated that six of the nine homes on Holloway Court, NE, have members at home during the day. They find the high levels of noise during the mulching season to be causing them an unnecessary hardship. It should be perfectly clear by now as it was by the Planning Commission that the noise produced by the machine is so far in excess of any reasonable standards for a residential area it should be removed.

Mr. Vander Nat asked for her opinion on placing a sound barrier at the site. She asked if they would like a barrier that tall around their property. Mr. Vander Nat answered that there is the issue of how to place it in an aesthetic manner. Mrs. Collins stated that if they got rid of the grinder they would not need it, commenting that there is nothing aesthetic about barriers noting that you see them along the sides of highways. She asked why they would want that in a park that has been in their neighborhood. She stated that she has lived there since 1969. It seemed to her that the grinder was going to be placed at Northside Property Yard but was too expensive.

There being no further questions, Mrs. Collins was seated.

Mr. Ray C. Collins, owner of 405 Holloway Court, NE, was sworn in to speak. Mr. Collins stated that he had intended to speak to the facts that the residents see as different from the Town and its testimony and to rebut specific points that the Town has made. He stated that he has since decided that it is not useful. He stated that when NEVCA proposed to the Town a resolution that NEVCA and the Town get together to form a joint task force to get the facts and to consider alternatives to deal with leaf collection, mulching, and the delivery of mulch to Town residents. It was a joint proposal and the Town never seriously considered it. In his judgment what has happened over the past year with respect to conflict between the two could have been avoided. He urged them to give thought to the alternatives and go forward and accept the recommendations of the Planning Commission to continue the operation for leaf collection only and test the tub grinder to get the facts that the Board does not have the confidence that they need. He felt that the recommendation of a noise barrier is premature given that they do not know the facts of the site.

There being no further questions, Mr. Collins was seated.

Mr. Robert P. McCormick owner of 428 Knoll Street, NW, was sworn in to speak. Mr. McCormick stated that he is a former member of the Town of Vienna' Town Council. He stated that he owed the Board and the citizens of the Town an apology because in 1999 when the Town Council had to make a decision as to what to do with the tub grinder they were faced with the issue and it went away. He stated that they did not do due diligence to the matter. It was moved and the issue didn't go away, and moved again to another neighborhood. It was a money issue back then and now the Board is faced with the issue today. He stated that it had been his opinion that they needed to pull in all of the steak holders before they make a decision, which in this particular case they did not do. As a result the Board is faced with the issue today. The Town decided what needed to be done without involving the steak holders at the time.

He stated that there are some facts, noting that they do not have all of the technical facts, but that there are some facts that are available. He stated that when asking the question if it is injurious to the neighborhood, they have heard neighbor, after neighbor testify to this. He stated that it is a question of whether they trust what is being stated. If so, then they have those facts. It is injurious as far as the residents are concerned and are relying upon the Board to protect them. He stated that the second fact not taken in to consideration was best practice. There is no other jurisdiction that is doing this, he asked what makes them different that the Town thinks it ok and that no other jurisdiction does. He asked if the operation was not presently there and the application was before them, would the Board approve it. He stated that he is there as a leaf mulch recipient and as a neighbor. He would be very happy to be charged for it. He stated that they could spread the cost around. He did not think that the residents should have to bear the burden of that.

There being no further questions, Mr. McCormick was seated.

Mrs. Kathleen R. Williams, owner of 318 Broadleaf Drive, NE, was sworn in to speak. Mrs. Williams stated that she is in support of FOBRP and NEVCA position. She stated that with respect to leaf mulch delivery they want to continue the services and feel that they can be produced. She stated that the Town has had a whole year, noting that they complained about this before leaf collection season last year and have not done anything to help give the Board the

information that they require. She stated that she did not feel that they have done their job in presenting tonight.

There being no further questions, Mrs. Williams was seated.

Mrs. Pamela J. Bartlett, owner of 324 Sherwood Drive, NE, was sworn in to speak. Mrs. Bartlett stated that she is in agreement with NEVCA and FOBRP. She lives adjacent to the mulching operations wanting to answer questions regarding the noise. She stated that it is true that the grinder often times does not grind from 9 A.M till 3 P.M. but there is noise up there seemingly all the time. She stated that they might grind for a few hours then there are the front end loaders that are turning the leaves and loading them on the to the trucks. There seems to be noise up there daily. She stated that it is a shock when there is no noise at all. With respect to the stench and odor they are liming it now. She thought that the reason that they do not have more than 400 pages of complaints for previous years was that she had read that the Town does not have the capability nor the time to keep track of how many complaints that they receive. She stated that there was an instance when they were walking back from home from Town and could smell it several blocks away. As a result of the odor they cannot sleep with their windows open and cannot use their decks for meals or entertaining guests because the stench is so bad.

Mr. Dowler asked if it is a constant stench. Mrs. Bartlett answered that it often comes in the evenings so that if the mulch has been limed the dampness of the evening seems to bring it on. She stated that years ago it was not as bad but lately it has been all of the. She asked if they would consider giving a conditional use permit to an outside company who wanted to do this type of work in a residential community.

Mr. Brewer asked, after April 1st when the leaves are cleared out, if the smell lingers for a few weeks after. Mrs. Bartlett answered that once all of the mulch is gone the smell goes away. She stated that the cleared area seems to be increasing and thought that the increase of complaints is in combination of more trees dying, the area is getting larger so that they could look out their windows and see the driver of the front end loader when he is working because the tree barrier has decreased. Over the years it has become more smell, more noise, and fewer trees and has gotten to be too much.

There being no further questions, Ms. Bartlett was seated.

Mrs. Leah Giovanniello, owner of 317 Broadleaf Drive, NE, was sworn in to speak. Mrs. Giovanniello stated that she would be discussing odor and odor control. She stated that there have been a lot of questions about the odor control and the Town seems to think that they cannot do anything about it except to place lime on the pile, which has not worked. She stated that she had done a lot of internet research finding a document from the EPA, which references the work of dozens of scientists over twenty-five years. She stated that she had been in contact with Dr. Tom Richard who has been practicing in the area for between twenty-five and thirty years. She briefly described to him the environment at Beulah Road Park. He asked her what they are doing for odor abatement and told him that they are just putting lime on the pile and his immediate response was "lime doesn't work." What lime does is to change the Ph in pile, which effects the bacteria that are breeding in it but is a temporary fix and has an impact upon the whole balance of the system, which is why they have to keep doing it every day. She stated that she would give them a bit of background on where the odor is coming from in the mulch pile and what needs to be done to balance it out.

She stated that everything listed is from the EPA document noting that she did not have it completely referenced but was happy to give it to the Board as a source. It is approximately 175 pages long and could be downloaded from the EPA internet site. Another distinction as to why they are getting odor is that they gather up leaves for the mulch but as soon as they are put onto the pile they start to compost or degrade or rot. To get nice compost for putting in your yard that system has to degrade in a balance and it is not happening at Beulah Road Park.

She stated that the odor that they smell, according to Dr. Tom Richard, is a combination of hydrogen sulfide gas and other sulfur compounds generated under anaerobic conditions, meaning that there is not enough oxygen there.

These are all of the variables that a scientist would be looking at or a manager of a municipal yard waste lot in order to get these balances of all of the interdependent parameters in order to minimize odors. Interdependent parameters, meaning that as you change out one variable such as adding water or moisture to the system you would change the others. It is a very delicate balance. Mrs. Giovanniello continued on with her slide presentation.

Mr. Lillis asked if there was a copy of the materials presented. Mrs. Giovanniello answered yes.

There being no further questions, Mrs. Giovanniello was seated.

Mr. William F. Foster, owner of 501 Glyndon Street, NE, was sworn in to speak. Mr. Foster stated that when they walk down Broadleaf Drive, NE, which is approximately three hundred feet from the site and can smell it. He commented that it really reeks. He stated that they can also hear the noise of the equipment from both the Northside property yard and the Beulah Road Park. He noted that they are seeing more and more parks taken over by the Town to become Town property yards.

There being no further questions, Mr. Foster was seated.

Mr. Anthony Giovanniello, owner of 317 Broadleaf Drive, NE, was sworn in to speak. Mr. Giovanniello stated thanks to the Board for calling a public meeting and listening to the citizen's concerns regarding the Town of Vienna's application for a conditional use permit. He stated that with respect to the sound barrier, he would not like his house bordered by an iron Curtin and did not want to see an open woodland park destroyed by a ten to fifteen foot sound barrier.

Mr. Giovanniello stated that the leaf grinding operation has caused enormous frustration for residents living in the vicinity of this publicly owned property. He stated that since acquisition by the Town during the 1930's Beulah Road Park has been an open woodland park as designated in the Town Comprehensive Plans dating back to at least 1979. In the early 1990's the Town began using the site as a leaf collection staging area without a conditional use permit. In 1996, the Town moved its leaf grinding and mulching operation to this site without a conditional use permit. In July, 2003, residents became very concerned when they discovered that the Town's Department of Public Works had been using the site for discarded machinery and equipment and for the dumping of various kinds of construction debris and other waste materials including asphalt millings from the renovation of Maple Avenue. Residents did a walk through and found that the property had been badly neglected by the Town. Trees around the perimeter of the open space were in poor condition and many trees had been cut down significantly enlarging the size of

the open space area. The previous fall of 2003, the Town began operations using a new industrial leaf grinder at the site. The grinder operates in excess of acceptable noise levels per Fairfax County and other local noise ordinances. This has caused a great deal of stress and anxiety for residents especially for stay-at-home moms, their babies and young children. Unfortunately several very active members of the neighborhood association are on vacation and were not able to testify.

He stated that in addition residents have had to endure the acrid odor and putrefying leaves and the air born dust and mold generated by the industrial leaf grinding operation. These nuisances cannot be minimized as the Town has attempted to do. They exist and are real impacting the residents living in the vicinity of Beulah Road Park. He urged the Board to consider the recommendations of contained in the Town Comprehensive plans.

There being no further questions, Mr. Giovanniello was seated.

Mr. Brewer called Mr. Schoeberlein forward for questioning. Mr. Brewer asked with respect to the water runoff if core samples have been taken to see if there is a block to the pervious surface. Mr. Schoeberlein answered no, not to his knowledge. He stated that the report put together by the Town's consulting engineers were aware of what has been on the site addressing the issue of paving and impervious surfaces and found that it does not create an issue.

Mr. David O'Connor, owner of 319 Broadleaf Drive, NE, was sworn in to speak. Mr. O'Connor stated his agreement with NEVCA and FOBRP urging the Board to accept the Planning Commission's recommendation to deny the Town's application.

Mr. O'Connor stated that he moved in to his home May, 2003, and has had no less than six floodings of his basement. His house sits geographically in one of the worst positions located under the Beulah Road Park. He stated that when it rains there is a torrent into his backyard. The back yard acts as a catch basin of all of the water that is running off of that hill. He stated his belief that it is due to the impervious surface which is exacerbating the problem. He stated that the impervious surface is causing excess runoff and as a result his backyard is flooding and is definitely impacting his quality life, in a negative way.

Mr. Brewer asked if there is a sump-pump in the basement. Mr. O'Connor answered yes, stating that he had landscaped his rear yard but is now faced with flooding in the front yard. Mr. Brewer asked if the sump pump was there when they bought the house. Mr. O'Connor answered yes. Mr. Brewer wondered if it were a part of the original design of the house in anticipation of potential flooding. Mr. O'Connor disagreed stating that he believed that it was added. Mr. Brewer asked if he knew when. Mr. O'Connor answered no.

There being no further questions, Mr. O'Connor was seated.

Mrs. Lee L. Decker owner of 320 Sherwood Drive, NE, was sworn in to speak. Mrs. Decker stated that at the time of purchase in 1972, they were assured by the realtor that the land was given to the Town to remain undeveloped park land. She noted that they had three small children when they moved in. At the time Beulah Road Park was used as a cut through to get to Glyndon Park for the kids. She noticed over time that it began to change from the 1980's and 1990's where kids were not running through the area as much. She stated that at the time she and her husband both worked and have since retired within the last few years. They now know what the level of

noise is. During the season there is a lot of noise. They have had new windows put in within the last five to six years. It does drown out some of the noise but does not drown out the grinding level. She stated that they have lived there for many years, raising their children their and like the small town feel of the area and would like to see that the Beulah Road site stay that way.

There being no further questions, Mrs. Decker was seated.

Mrs. Mary Ellen Larkins, owner of 317 Church Street, NE, was sworn in to speak. Mrs. Larkins stated that tonight's meeting is about a conditional use permit. The applicant is responsible no matter what it costs to protect the citizens who live nearby and that they need to come up with a working agreement with its citizens. They have asked the Town for over a year to do sound and environmental studies; they have not. The proof is on the Town and they are still waiting. Other jurisdictions around the Town have not put their residents in the same situation as their Town has. They do not have an industrial mulching and grinding operation in a residential zone. Why does one neighborhood have to bear the cost that all of its residents including the Board benefit from. She supports the Planning Commissions recommendation of August 11, 2003. The Town has spent more time fighting these citizens than working with them. She stated that the Town Council's campaign is that they are a small town trying to protect the small town atmosphere. They are all neighbors who love their town. She asked the Board to please not do any more harm to its citizens. It is time for the Town to obey its own laws for a conditional use permit, which is why they have the laws on the books to protect its citizens. She stated that the Board would not want it in their backyard. She stated that they should not move it again but come up with good ideas to help its citizens.

There being no further questions, Mrs. Larkins was seated.

Mr. Brewer called on Mr. Schoeberlein to ask if the barrier would be limited to the confines of the cleared area. Mr. Schoeberlein answered that it would be placed along the edge of the cleared area to get it as close to the tub grinder as possible.

Mr. Chumley made the motion to close the public hearing. Mr. Brewer seconded the motion.

Motion:	Chumley
Second:	Brewer
Carried:	7-0

There being no further testimony the item was closed for discussion.

BOARD OF ZONING APPEALS MINUTES

SPECIAL MEETING

September 1, 2004

The Board of Zoning Appeals held a special meeting for one advertised public hearings in the Council Room of the Vienna Town Hall, 127 Center Street, South, Vienna, Virginia, on September 1, 2004 beginning at 8:00 PM with Marshall Potter presiding as Chairperson. The following members were present: Robert W. Dowler, Gregory Haight, Don Chumley, Frank Lillis, Charles Brewer, and Peter Vander Nat. Also attending and representing the staff were Gregory M. Hembree, Director of Planning and Zoning, and Jennifer M. Murphy, Board Clerk.

ITEM NO. 1:

Request for approval of a conditional use permit for continued temporary leaf storage and associated mulch operations on Town-owned property at 442 Beulah Road, NE, in the RS-12.5, Single-Family Detached Residential zone. Filed by the Town of Vienna, owner.

Mr. Chumley observed that he is not ready to get rid of the mulching operation unless there is a lot more study done. He stated that he would prefer to continue the present arrangement but with an understanding that the Town is going to take a good hard look at the matter. He stated that he would like to make a decision tonight with a strong recommendation that it be approved with the strong recommendation that the conditional use permit be approved with the very strong recommendation that the Town take a look at it. He noted that it is not a problem that is going to go away. He stated that they do not really know what the levels are and should have a real study made of it before making a real decision. He stated that with respect to odor that his neighborhood has that issue every spring but disappears every year. They have gotten used to it and meanwhile the real estate values continue to rise. He reiterated that he is not ready to eliminate something that the residents of the Town want but noted that the neighboring residents have a right to some legitimate study and real answers to the questions being raised.

Mr. Vander Nat agreed that more facts are needed. He stated that he too would also like to see some more studies. The issue that he has with recommending to the Town that they take a good hard look at it may not be enough. So that if a condition use permit is granted there ought to be some stipulations about the study. They need to think more about what it is that they want to know about the actual decibel levels, where to take them, an actual study of them. With respect to odor, one of the residents pointed them to an internet site detailing an EPA document. He thought that it is something that they should consider. They should at least thing about the odor. He stated that he would like to emphasize that they do need more facts, that they do want these studies and they don't want to say that they recommend them. If they create a conditional use permit they have to stipulate something about this as conditional matter. He thought that an agreement can be worked out noting that it will never satisfy every one. If a conditional use permit is granted under stipulations, realizing they may be quite strong about barriers and things

to be done it cannot satisfy all people. He reiterated needing to see the actual studies to see how that informs the decision.

Chairperson Potter asked Mr. Chumley if he is making a motion.

Mr. Chumley made a motion to approve the application subject to certain detailed studies for two years.

Mr. Lillis stated that they have received a lot of material prior to the meeting, noting that they have also received additional material from both the Town and the citizens. He stated that it would be an over simplification to say with some stipulations. He suggested that they continue the business meeting to their next regular meeting, September 15, 2004. Mr. Hembree noted that they currently have two variances on that application now.

Mr. Lillis stated that the application is for the continuation of the temporary leaf collection and mulching. He stated that the recommendation of the Planning Commission is to continue the leaf collection, stop the mulching except for a test period. They have heard from the Chairman of the Planning Commission who has some concerns. He stated that he needed some time to "digest" all of the information to be in a better position to either offer some suggestions or to agree or disagree with his colleagues.

A point of order discussion followed.

Mr. Brewer noted that at the given hour of the evening/morning that he is not fresh enough to consider the specifics. He thought that the specifics of the stipulations do have to be that, very specific and enumerated in such detail that they cannot be obfuscated or ignored by the Town should they approve it in that fashion. He stated that such a list of stipulations would have a better result if they gave it more time.

Mr. Chumley tabled his motion.

Mr. Haight stated his agreement with Mr. Lillis and Mr. Brewer's comments. He stated that they do need more time. He made the observation that it is clear to him that there is a choice that has to be made and it is a choice between whether they are going to continue with the mulching operation or not. He did not believe that the mulching operation, no matter how well it is done, is going to satisfy all members of the community in that area. He stated that they have heard a lot of testimony that leads him to believe that there is a problem there for sure with respect to noise and odor. How much of a problem it is he did not know and how they remedy it he did not know either. The Town has been faced with a problem and this has been an ongoing thing which, apparently was done without a conditional use permit. He noted that the Town had done an excellent job in presenting their side. He stated that no matter how it is presented they still are going to have a lot of people who are going to be very unhappy and who are also suffering in one degree or another the way that it currently is. He stated that it is his belief that this is a political decision that the Town Council has to make. He stated that you are going to offer free mulch to the citizens or not and it is a choice. It is not for them to make such a decision reiterating that it should be made politically. He stated that the Board would take time to think about it but thought that in the interim the political forces need to get involved to see if it could be placed on a future agenda.

Mr. Dowler stated that they are not involved in the political decision and is purely for them to decide whether to approve this conditional use permit or not. He agreed that they need additional information. He stated concern that if they are considering allowing for the use to continue in the interim they need to look to how to alleviate some of the problems of the citizens. He thought that these measurements are needed before they ask the Town to put a condition on it that they build a barrier. He stated that they do have a lot of work to do and hoped that it could be done quickly.

Chairperson Potter stated agreement with Mr. Lillis, that they have had additional information brought to their attention at the meeting that has to be considered to make a quality decision. He hoped that there might be some compromise between the parties. He stated that the applicant is entitled to a decision.

Mr. Lillis made a motion to continue the business meeting to the next regularly scheduled meeting on September 15, 2004. Mr. Brewer seconded the motion.

Mr. Lillis stated that at a minimum it is fair to the Town, to the applicant, and to the residents who have been involved doing an amazing amount of work in the last year. He stated that unfortunately, the Board is the only Board that can approve or disapprove a conditional use permit. The Town Council does not have that authority.

Chairperson Potter stated his agreement that both sides have gone to extraordinary lengths to present their cases and for them to not consider the evidence and so forth as it has been submitted would be a disservice to both sides. He stated that he too is in favor of calling for postponement.

Motion: Lillis
Second: Brewer
Carried: 7-0

There being no further business to discuss, the meeting adjourned at 12:27 A.M.

Respectfully submitted,

Jennifer M. Murphy
Board Clerk