

**PROCEEDINGS OF THE TOWN OF VERNON PLAN COMMISSION**  
**Thursday, July 24, 2008**  
**6:30 P.M.**  
**At the Vernon Town Hall in the Meeting Room**  
**W249 S8910 Center Drive**

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Pursuant to the requirements of Section 19.84, Wis. Stats., notice is hereby given of a meeting of the Town of Vernon Plan Commission, at which a quorum of the Town Board may attend in order to gather information about a subject which they have decision making responsibility. The meeting will be held on **Thursday, July 24, 2008** beginning at **6:30 P.M.**, at Vernon Town Hall, W249S8910 Center Dr, Big Bend, WI 53103.

1. Call Plan Commission meeting to order with the pledge to the flag.
2. Open Meeting Law Compliance Check. Clerk Nelson stated the Town of Vernon is in compliance pursuant to the open meetings law requirement.
3. Roll Call Commissioners, Craig, Johnson, Bartholomew, Supervisor Ludwig, Chairman Paff, Town Planner Jamie Rybarczyk, Waukesha county representative Dick Mace, Deputy Clerk Mascione, Clerk Nelson, Town Engineer Tom Ludwig, and Fire Chief Buchholtz. Commissioners Benkowski and Kunert have excused absences.
4. Notice of Town Board Quorum. (Plan Commission Chair to announce the following, if a quorum of the Town Board is in attendance at the meeting: Please let the minutes reflect that a quorum of the Town Board is present and that the Town Board members may be making comments under the Public Comments section of the agenda, during any Public Hearing(s) or if the rules are suspended to allow them to do so.)

Chairman Paff stated please let the minutes reflect that a quorum of the Town Board is present and that the Town Board members may be making comments under the Public Comments section of the agenda, during any Public Hearing(s) or if the rules are suspended to allow them to do so

5. **MOTION TO OPEN MEETING TO PUBLIC COMMENTS** (Please be advised per Wisconsin Act 123, the Town Plan Commission will receive information from the public for a three minute time period, per the Chairperson's discretion, per person; be further advised that the public comments must be agenda specific and after completed, the Plan Commission Members may have limited discussion on the information received, however, no action will be taken under public comments.)

**MOTION** Commissioner Ludwig moved to open the meeting to public comments, seconded by Commissioner Johnson, motion carried.

**Robin Faust, S75W23800 Vernon Hill Drive**, stated she is here representing Al Kunert. She stated for the time Mr. Kunert was chair he was proud of all of the business he had brought to the Town of Vernon and the ones he kept here. Mario Deluca has a business and is a resident of the Town of Vernon; Mr. Deluca tries to accommodate everyone. She stated if the Deluca application is denied the Town is setting precedence for other issues in the community. Robin Faust stated please give this great thought because the Deluca's are a great asset to the community.

**Joe Reilly, S67W24425 Skyline Road**, stated he is appearing tonight as a Supervisor and asked for the rules to be suspended. Supervisor Reilly stated in the past he had requested for a letter of review for all Site Plans, Plans of Operations, and Conditional Use Permits issued by the Plan Commission. Attorney Macy stated there was an ordinance that does not allow this. Supervisor Reilly stated he plans on carrying his issues to the County. Supervisor Reilly stated the Town Board and Plan Commission are an elected body and responsible to the public. Supervisor Reilly stated it is the Town Boards and Plan Commission's job to keep the public interests in mind. Supervisor Reilly stated the Town Board exercises some restraint or at least review. Supervisor Reilly read his statement from the July 3, 2008 Town Board meeting. **Deputy Clerks Note: Statement is attached to the minutes.** Supervisor Reilly states that Chairman Paff and Commissioner Kunert have known all along what is going on with the Deluca situation. Supervisor Reilly stated that he wants from now on a direct answer to his questions because it is his job to keep the people informed and keep himself educated.

Chairman Paff stated there are no more public comments.

6. **NOTICE IS HEREBY GIVEN** that a Joint Public Hearing will be held by the Town of Vernon Plan Commission and a Staff Representative of the Waukesha County Department of Parks and Land Use – Planning and Zoning Division on

**Thursday, July 24, 2008, at 6:30 p.m.**, at the Vernon Town Hall located at W249 S8910 Center Drive, Big Bend, WI, 53103, to consider the Conditional Use request (**SCU-1488**) of the **Hidden Lakes Community Association** to repair the existing dam which is located on two outlots in the subdivision. The properties are described as follows: Outlot 2 and Outlot 3, Block I, Hidden Lakes, located in part of the SW ¼ and the SE ¼ of Section 18 and NE ¼ and the NW ¼ of Section 19, T5N, R19E, Town of Vernon.

**Chairman Paff called the public hearing to order at 6:45 p.m. and read the published notice.**

Attorney Macy reviewed with the residents and with the Commissioners the order of how the Public Hearing process works.

Planning and Zoning Manager Dick Mace reviewed the process of approval. He stated the decision from the Plan Commission is made and then brought to County for final approval. He stated the Park and Planning Division at the County will go through the process after the approval from Plan Commission.

Planner Rybarczyk stated currently, there is a dam on Outlot #2 and #3 that provides the western boundary of a pond within the Hidden Lakes Subdivision. Due to deterioration of the dam outlet structure over the years, the association wishes to repair the dam. The association is currently working with the Department of Natural Resources to obtain permit approval to accomplish this task.

Donald Anderson President of Hidden Lakes, stated: in 2003 it was noticed the dam was leaking. He stated he is here for approval to fix the dam before it breaks. Donald Anderson stated that this is the first inspection the dam has received, and it is the 40th year anniversary. Mr. Anderson stated he has working with Department of Natural Resources and an engineering firm to find the best process to correct the leak. Donald Anderson stated when the leak is fixed t he public will not be able to notice the change in the dam. Donald Anderson stated he just found out the subdivision needed approval from County and the Town of Vernon Plan Commission in order to complete the process. Donald Anderson reviewed with the Commissioners how the dam will be fixed.

Planning and Zoning Manager Dick Mace asked about the recent flood issues over the past two months and how the dam held up. Donald Anderson stated that the lake, with all the rain, did what it was supposed to do. Donald Anderson stated that a pond liner is being used on the dam and it has currently been working. Dick Mace asked what the size of the overflow pipe is. Donald Anderson stated the old pipe is 18" and the new pipe will be 24". Engineer Ludwig stated the outflow of the lake and using the larger pipe will help lessen the overflow when the amount of water is higher than normal. Dick Mace, Engineer Ludwig and the Plan Commission discussed engineering issues pertaining to the two lakes and the dam.

**PUBLIC COMMENTS:**

**Ty Barber W232 S6750 Millbrook Circle**, asked how much it is going to cost and who will pay for the repairs.

**Donald Anderson stated** the Association will be paying for the repair and has no idea of the cost. Planning and Zoning Manager Dick Mace asked when was the DNR notified. Donald Anderson stated the leak prompted the inspection from the DNR.

**MOTION Commissioner Craig moved to close the public hearing, seconded by Commissioner Bartholomew, motion carried.**

**The public hearing closed at 7:15 p.m.**

7. **Discussion and action** to consider the Conditional Use request (**SCU-1488**) of the **Hidden Lakes Community Association** to repair the existing dam which is located on two outlots in the subdivision. Outlot 2 and Outlot 3, Block I, Hidden Lakes, located in part of the SW ¼ and the SE ¼ of Section 18 and NE ¼ and the NW ¼ of Section 19, T5N, R19E, Town of Vernon.

Planner Rybarczyk stated currently, there is a dam on Outlot #2 and #3 that provides the western boundary of a pond within the Hidden Lakes Subdivision. Due to deterioration of the dam outlet structure over the years, the association wishes to repair the dam. The association is currently working with the Department of Natural Resources to obtain permit approval to accomplish this task. The area is located within the Waukesha County's Shoreland and Floodplain jurisdiction; therefore, the requested repairs require a Conditional Use Permit per Waukesha County Shoreland and

Floodplain Protection Ordinance. The repair and removal of two trees does not meet the threshold requirement of 3000 SY of disturbance; therefore, a County Erosion Control permit is not required as part of this project. He reviewed with the commission the conditions.

**MOTION** Commissioner Craig moved to recommend to the Waukesha County Parks and Land Use, approval of the conditional use request for Hidden Lakes Community Association, to repair the existing dam which is located on two outlots in the subdivision. Outlot 2 and Outlot 3, Block I, Hidden Lakes, located in part of the SW ¼ and the SE ¼ of Section 18 and NE ¼ and the NW ¼ of Section 19, T5N, R19E, Town of Vernon. Subject to the following Planners conditions:

1. The applicant shall obtain all required Wisconsin Department of Natural Resources permitting for working in a navigable waterway and maintenance of the dam structure, and documentation of said permits shall be provided to the Town of Vernon Town Engineer and staff of Waukesha County prior to commencement of work.
2. The applicant shall obtain, if applicable, all required Waukesha County Land Resources permitting for earth altering and land disturbing activities related to the dam structure, and documentation of said permits shall be provided to the Town of Vernon Town Engineer and staff of Waukesha County prior to commencement of work.
3. The operation shall be conducted in compliance with all Federal, State, County and local ordinances, licenses and permits.
4. Town Attorney Review. The Plan Commission's recommendation shall not be in full force and effect until such time that the Town Attorney has reviewed the conditions and placed them in final form.
5. Applicant Agreement. As a condition precedent to the issuance of the Conditional Use Permit, the applicant is required to accept the terms and conditions of the same in its entirety in writing.
6. Any use not specifically listed as permitted shall be considered to be prohibited except as may be otherwise specifically provided herein. In case of a question as to the classification of use, the question shall be submitted to the Plan Commission for determination.
7. No use is hereby authorized unless the use is conducted in a lawful, orderly and peaceful manner. Nothing in this order shall be deemed to authorize any public or private nuisance or to constitute a waiver, exemption or exception to any law, ordinance, order or rule of either the municipal governing body, the County of Waukesha, the State of Wisconsin, the United States of America or other duly constituted authority, except only to the extent that it authorizes the use of the subject property above described in any specific respects described herein. This order shall not be deemed to constitute a building permit, nor shall this order constitute any other license or permit required by Town ordinance or other law.
8. This conditional use hereby authorized shall be confined to the subject property described, without extension or expansion other than as noted herein, and shall not vary from the purposes herein mentioned unless expressly authorized in writing by the Plan Commission as being in compliance with all pertinent ordinances.
9. Should the permitted conditional use be abandoned in any manner, or discontinued in use for twelve (12) months, or continued other than in strict conformity with the conditions of the original approval, or should the petitioner be delinquent in payment of any monies due and owing to municipality, or should a change in the character of the surrounding area or the use itself cause it to be no longer compatible with the surrounding area or for similar cause based upon consideration of public health, safety or welfare, the conditional use may be terminated by action of the Plan Commission, pursuant to the enforcement provisions of this Conditional Use Order, and all applicable ordinances.
10. Any change, addition, modification, alteration and/or amendment of any aspect of this conditional use, including but not limited to an addition, modification, alteration, and/or amendment to the

use, premises (including but not limited to any change to the boundary limits of the subject property), structures, lands or owners, other than as specifically authorized herein, shall require a new permit and all procedures in place at the time must be followed.

11. Unless this conditional use permit expressly states otherwise, plans that are specifically required by this conditional use order may be amended upon the prior approval of the Plan Commission if the Plan Commission finds the plan amendment to be minor and consistent with the conditional use permit. Any change in any plan that the Plan Commission feels, in its sole discretion, to be substantial shall require a new permit, and all procedures in place at the time must be followed.
12. Should any paragraph or phrase of this conditional use permit be determined by a Court to be unlawful, illegal or unconstitutional, said determination as to the particular phrase or paragraph shall not void the rest of the conditional use and the remainder shall continue in full force and effect.
13. If any aspect of this conditional use permit or any aspect of any plan contemplated and approved under this conditional use is in conflict with any other aspect of the conditional use or any aspect of any plan of the conditional use, the more restrictive provision shall be controlling as determined by the Plan Commission.
14. **Professional Fees.** Applicant shall, on demand, reimburse the Town of Vernon for all costs and expenses of any type that the Town incurs in connection with this Conditional Use Permit, including the cost of professional services incurred by the Town (including engineering, legal, planning and other consulting fees) for the review and preparation of required documents or attendance at meetings or other related professional services for this application, as well as to enforce the conditions in this conditional approval due to a violation of these conditions.
15. **Payment of Charges.** Any unpaid bills owed to the Town of Vernon by the Subject Property Owner or his or her agents, tenants, operators or occupants, for reimbursement of professional fees (as described above); or for personal property taxes; or for real property taxes; or for licenses, permit fees or any other fees owed to the Town; shall be placed upon the tax roll for the Subject Property if not paid within thirty (30) days of the billing by the Town, pursuant to Section 66.0627, Wisconsin Statutes. Such unpaid bills also constitute a breach of the requirements of this conditional approval that is subject to all remedies available to the Town, including possible cause for termination of the conditional approval.

**Seconded by Commissioner Bartholomew, motion carried.**

**Chairman Paff called the public hearing to order at 7:20 p.m. and read the published notice.**

8. **Immediately following the above public hearing,** another Joint Public Hearing will be held to consider the Conditional Use request (CU-749D) of **Mario & Diane De Luca, W234 S6650 Big Bend Rd., Waukesha, WI, 53189,** to amend the existing Conditional Use that permits a landscaping and snow-plowing business. The proposed modifications include the creation of a new outside storage area for the outside storage of vehicles, and the elimination of the limit on the number of vehicles allowed on site. The petitioner is proposing to install landscape screening and to construct a berm that will provide additional screening of the proposed storage area. The property described as follows: The property is located in part of the NE ¼ and part of the SE ¼ of Section 2, T5N, R19E, Town of Vernon. More specifically, the property is located at W234 S6650 Big Bend Rd. and contains approximately 45 acres.

Attorney Macy reviewed with the commission members the difference between the old and new conditions. Attorney Macy stated the Plan Commission can deny or keep the original and recommend new conditions. Attorney Macy stated the Plan Commission can not remove the original Conditional Use. Attorney Macy stated that if Plan Commission changes the original Conditional Use the applicant can withdraw the petition at any time. Attorney Macy stated the applicant could go back to the original. Planning and Zoning Manager Dick Mace reviewed with the Plan Commission, Planner, Engineer, Attorney and the residents the original approval of the Conditional Use issued on May 5, 1990. He stated in 1991 a request was made to amend the Conditional Use regarding outside storage and building a salt shed, in the end the request was denied.

Planner Rybarczyk stated the applicant operates a landscaping and snow-plowing business located at W234 S6650 Big Bend Road. The subject property is approximately 46 acres. The Northwest 27 acres of the 46 acres is used for the business and a single family residence. A majority of the business is for maintenance of shopping center areas and snowplowing in the winter months, with no retail business conducted from the site. The hours of operation are Monday through Saturday from 6am to 7pm, except during snowstorms.

Mario Frank Deluca stated he is here seeking an amendment on the existing Conditional Use permit from 1990. Mr. Deluca stated since the Conditional Use was put in place the company has fine tuned their operation, and has had a healthy growth. Mr. Deluca stated he takes pride in their customer's needs. Mr. Deluca stated the company has acquired many attachments for the larger equipment, and cube vans for the storage of equipment for crews. He stated the plows for the trucks are kept outside. Mr. Deluca stated he is looking to be in compliance and is trying to be courteous. Mr. Deluca stated he would ultimately like to keep the equipment outside. He stated using the foliage for screening would be better than a fence.

Planning and Zoning Manager Dick Mace stated the original request was for a large poly structure, he asked why Mr. Deluca proposed a structure and then pulled out. Mr. Deluca stated it is not necessary for inside storage. Mr. Deluca stated the poly structure is more noticeable versus putting up a screening. Mr. Mace asked if equipment is left at the site during snowplowing. Mr. Deluca stated that is correct. Mr. Mace asked why Mr. Deluca would not want to use a decorative fence. Mr. Deluca stated a fence gets banged up; it is hard to work around. Mr. Mace agreed that the site is in a pretty remote area but some screening is needed in the Southwest area. Mr. Deluca stated in the Southwest area a fence could be considered. Mr. Mace and Mr. Deluca reviewed certain areas needing more screening and clarified berm areas and mulch areas. The parking lot is elevated and Mr. Deluca stated he would raise the area around the parking lot to screen it from the public. Mr. Mace stated there is not enough room to store all the equipment and the trucks inside, that is one of the reasons he is not in compliance of the first Conditional Use permit. Planner Rybarczyk stated Mr. Delucas proposal is to eliminate the inside storage, add landscape materials, new outside storage and to eliminate the number of cars and trucks that can be stored on the property. Mr. Deluca stated his vision is for outside storage for skid-sters, dump trucks, pick ups, snow plows, trailers with skid-sters and Kubota's on them. Mr. Deluca stated he would like to have his equipment ready to go for the next day to make it easier. Mr. Mace asked how many trucks he sees being stored outside. Mr. Deluca stated fifty. Mr. Mace asked how many trailers would be outside. Mr. Deluca stated the fifty includes trailers, skidsters and other equipment. Mr. Mace asked again how many trucks with or without dump bodies. Attorney Macy clarified the question of how many trucks will be stored on the property. Mr. Deluca stated outside that there would be 10 trailers with Kubota's on top, skid-sters, dump trucks, pick up trucks (Thirty trucks) some with plows some without, cube vans, and snow plows. Mr. Mace asked for clarification of how many, of each type of equipment there would be. Mr. Deluca stated 10 trailers, 4 tractors, 6 skid-sters, 3 front end loaders, and 30 trucks (with or w/o dumps).

Planner Rybarczyk asked where the equipment was going to be stored. Mr. Deluca stated the equipment will be stored on the dirt and gravel area. Mr. Deluca stated he is not looking to expand; he is looking to be in compliance. Planner Rybarczyk stated he concurs with Mr. Mace that the West side needs to be screened. Planner Rybarczyk stated the opaque screening per the Town of Vernon Ordinance and the existing vegetation is doing well on the East side. Engineer Ludwig asked what size of pines Mr. Deluca was going to put up. Mr. Deluca stated 6ft. Commissioner Craig stated Mr. Deluca has a wonderful business and it has grown, maybe it has outgrown the area. Commissioner Johnson asked how big of a radius Mr. Deluca business covers. Mr. Deluca stated Walworth, Waukesha, and Milwaukee County. Mr. Deluca stated businesses grow and need to be spread out; he stated he has satellite sites at 76<sup>th</sup> and Brown Deer, Slinger, and Johnson Creek.

#### **Public Comments:**

**Dennis Prosser W229S6555 Garrett Drive** asked for a satellite vision so he can see where Mr. Deluca plans on making his changes. Mr. Prosser stated he is pro business but he is against an unlimited number of vehicles but there could be a healthy number.

Chairman Paff asked the Commission Members for a five minute break at 8:10 p.m. the Commission agreed.

Planner Rybarczyk reviewed with the residents the aerial photo from the Waukesha GIS Mapping System.

**Jeff Seefeld W234S6765 Millbrook Circle** stated he built his home over thirty years ago in the Town of Vernon. He stated he and his wife moved from Milwaukee to get away from the city life, and he does not want to hear trucks all day long. He stated when Deluca first applied for the Conditional Use; the business was supposed to be a small

landscape business. He stated the business has grown three times the size. Mr. Seefeld stated the main problem with a growing business is there are more employees and more equipment. He stated Big Bend Road was not made for business traffic. Mr. Seefeld stated young children ride their bikes and run out and play in the road. He asked can the Plan Commission guarantee nothing will happen to those children. He stated the residents deserve more from the Town of Vernon to protect the lives and safety of the residents. Mr. Seefeld stated this change would affect more than 200 people. He stated he moved here to enjoy his property. Mr. Seefeld stated to the Plan Commission is one business or one hundred homes more important. Mr. Seefeld stated the he and his wife feel strongly, and if this change is passed he will seek legal council and will do anything he can to remove any supervisor that votes for these changes.

**Richard Puls, W234S6785 Millbrook Circle** stated he is concerned about the existing Conditional Use and the fact that Mr. Deluca is not in compliance. He stated all the vehicles were supposed to be in a building that was never built. Mr. Puls asked how much equipment will be stored and where would equipment be stored if Mr. Deluca loses a contract.

**Rick Mueller W264S7540 Mount Whitney Avenue** stated his concern is safety, because the lane is too narrow for the big trucks. He stated there is a foot and half left on the road when the trucks drive down it. Mr. Mueller stated that if there are 20 vehicles that come in during the day to the property, than twenty are leaving. He stated this is a Class B road. Mr. Mueller stated the dump trucks weigh more than a Class B road allows. Mr. Mueller stated he does not believe it is up to the Town of Vernon to pay for the replacement of the road. Mr. Mueller stated he believes in healthy growth and that Mr. Deluca takes very good care of his business.

**Anita Johnson W234S6540 Big Bend Drive** stated she is against changing the original Conditional Use because Mr. Deluca is not in compliance with the current Conditional Use. She stated there is no berm or fence that will block the noise from the front end loaders and the stink of the trucks. Anita Johnson stated she does not want a fence. She stated fences are ugly and do not stop any noise. Anita Johnson stated she is concerned with the pressure washing of the salt trucks outside regarding the wetland and contamination.

**Don Senske W234S6845 Millbrook Circle** stated he moved out to the country for quiet. He stated he can't walk his dog with out being run off the road. Mr. Senske also stated he is concerned about the wear and tear on the road that it was not made to take that heavy wear and tear everyday. Mr. Senske stated his other concerns are the oil, gas and engine fluid getting into the wells and wetlands. Mr. Senske stated he is looking for denial of an amended Conditional Use.

**Jana Boschi W232S6820 Millbrook Circle** stated she can hear the sounds of the vehicle backing up all day, the crashing of the back of the dump loaders. She stated her second concern is the enormous amount of traffic. She stated the Deluca's have not been in compliance as of yet why would they be in compliance if they were allowed unlimited trucks'. Jana Boschi stated she was a witness to an accident were a Deluca truck rear ended a car with teenagers. She stated this road is very heavily used with the trucks from the Delucas. She stated she would like to see a denial of this amended Conditional Use.

**Jeffery Radtch W232S6860 Millbrook Circle** stated he is a 15 year resident and he is opposed to the original Conditional Use being amended. He stated the noise is unreasonable; it starts at 6am on Saturdays. Mr. Radtch stated he lives farther than most and he still hears this noise. Mr. Radtch stated traffic is heavy and not just trucks, but trucks with trailers and they leave a trail of liquid behind them. He stated there is no room on the road for these trucks. Mr. Radtch stated the drivers are very courteous of the residents but there is just no space. He stated the Delucas have outgrown this area.

**Jim Duka W234S6450 Big Bend Drive** stated there is noise; all he hears all day long is beep, beep, and beep. Mr. Duka stated that Big Bend Road is a Class B highway and asked what the ordinance on roads is for the Town of Vernon. Mr. Duka stated he does not want another junk yard like the Deluca's have on National Ave. Mr. Duka stated would like to know where the Deluca's store salt. He stated the business is hurting property taxes and ruining the roads.

**Fred Michalek S69W25205 Longview Drive** passed out pictures and congratulated Mr. Deluca on growth but stated it is inevitable; Mr. Deluca has out grown the area. Mr. Michalek stated that a fence and coniferous trees would be okay, but a 6ft fence on the west side has no barring at all. Mr. Michalek asked how a pickup truck is the same as a pickup dump. Mr. Michalek stated that definitions need to put in the Conditional Use for each type of equipment so that there is no misunderstanding. Mr. Michalek stated he is disappointed that the representative for the Deluca

business cannot be more specific. He stated Mr. Deluca does not know how many trucks, trailers etc are at the site. Mr. Michalek stated that the Conditional Use permit states that the landscaping material is not to exceed the berm but it does. Mr. Michalek stated the Sherriff's Department was called when he took pictures of the Deluca property and was told he was not allowed to take pictures or go on the property. Mr Michalek stated he cannot enter the property, and asked who is permitted to enter the property during business hours to see if the Deluca's are in compliance. He stated someone from the Town of Vernon should be allowed on the property. Mr. Michalek stated a review of the violations for the current Conditional Use permit should be done before anything is allowed to be changed on it. Mr. Michalek stated he does not understand how someone on the committee can be of assistance to someone who is causing such a significant change to a residential area with their existing Conditional Use permit. He stated this can be a significant, conflict of interest and unless it is made public the person should excuse himself from any activity on the matter. Mr. Michalek stated the commissioners need to move forward in a positive manner. He stated to the members of the Plan Commission to look at the Town of Vernon as a residential area not industrial. Mr. Michalek stated he would like the members of the Plan Commission to come to one of the houses around the Deluca's for the day and listen all day long to what the residents listen to everyday. Mr. Michalek stated he would like for the business start time later in the morning and wanted to know what time Waste Management starts.

**Gary Wilde, W234S6800 Millbrook Circle** stated he is concerned about the current Conditional Use being in violation. Mr. Wilde stated the Conditional Use states no retail business can be on the property. He stated the petitioner said he had customers on the property. Which would mean he is running a retail business and that would make him in violation. Mr. Wilde stated the board that passed the original Conditional Use had no regard for what the people of Vernon wanted. He stated this is residential area and to allow further expansion, and no condition regarding unlimited amount of equipment would be wrong. He stated he urges the Commission for denial because the Delucas are not in compliance of the current Conditional Use.

**Mark Tylinski, W250S8855 Center Drive** stated he congratulates the business owner but stated the business has out grown his Conditional Use. Mr. Tylinski stated the business belongs in an industrial park. Mr. Tylinski asked where the fuel is stored, and how is it contained. Mr. Tylinski asked how the gas, oil, antifreeze and salt that is washed off the trucks, affect storm water utility. Mr. Tylinski concurred about noise and the exhaust from the trucks. He stated he can hear the Town vehicles when there is a snow storm, he lives across the street and this is only once in awhile and his house is closed up. He stated he can just imagine what the residents by Deluca hear everyday.

**Joe Reilly, S67W24425 Skyline Road** stated he is speaking as a town supervisor. He stated he does not know why anyone would choose to reward someone who has been in non-compliance with his existing Conditional Use. The Town Board did pass a noise and nuisance ordinance to protect property. He stated in both ordinances you can not have an abundance of noise or nuisance. Supervisor Reilly stated those two ordinances were written to protect people's enjoyment and evaluation of their property. Supervisor Reilly asked who grants unlimited anything to anyone. He urged the Plan Commission to please take into consideration what everyone is saying. Supervisor Reilly stated lets protect the residents.

**Ty Barber W232S6750 Millbrook Circle** stated if the Plan Commission opens up this Conditional Use to unlimited, it is saying The Town of Vernon has no integrity to the resident's neighbors. Mr. Barber stated the Town is allowing an individual residence that needs to be in an industrial park to be operating in a residential area. He stated where does the truck business stop fifty, a hundred trucks. Mr. Barber stated Mr. Deluca likes to have fires, he asked if there a size limit on how big a fire can be. Mr. Barber stated this winter was bad and when spring came he went to open his windows for fresh air and he gets smoke instead. He stated truck loads of brush are being burned at a time. Mr. Barber asked the Commissioners how they would like the noise everyday. He stated he has no problems with the farmers working their plows and farm equipment they where there before he was and they are doing farming business. He stated the Deluca's did not have a specification on the size of trucks so that is how Deluca ended up with all of the dump trucks. He stated one of the Deluca trucks was seen going around the corner on Big Bend Dr. and went in the ditch and plowed up a driveway, the Deluca's fixed the driveway , but the blades from the plows are out over the lines, and that it is not safe.

**Gerald Krenke, S63W23155 Townline Road** states he can not see the Deluca business but he can hear it and smell it. He stated he was here to get a nuisance petition. He stated he would tape the noise if the Commission would like.

**Fred Michalek S69W25205 Longview Drive** stated in one of the pictures he brought up before there are 3 mailboxes for a property that has two addresses. He stated the original Conditional Use showed the building being one size but then it was modified to a different size. He stated that after the original meeting the original design of 10,000 sq ft was changed to 18,000 sq ft building. Mr. Michalek stated he would get the committee a copy of the amendment if the

committee did not have a copy. He stated the original Conditional Use was changed and reconfigured with no approval.

**Jim Duclon W234S6450 Big Bend Drive** stated he is concerned with the burning on the property. He stated he heard the Delucas dug a pit for fires and burn all weekend long. He stated he has asked Fire Chief and the Chief Buchholtz stated the Deluca's call in for permits.

**Barb Wilde W234S68 Millbrook Circle** asked if Mr. Deluca is in violation, what is the penalty. She asked why the County can't consider this meeting as a complaint. Mr. Mace stated he would defer this to County council. Barb Wilde stated if she were to do something wrong someone would be on her door step but when it is a larger business they just get a slap on the wrist. Ty Barber asked who enforces the Conditional Use rules. Mr. Mace stated the County does.

Mr. Deluca stated he has a Conditional Use; and has the right to operate at this location and to operate in a manner most beneficial to the area. Mr. Deluca stated he can be in compliance but that is not the right answer, and he respects everyone's concerns. Mr. Deluca stated the roads are bad because of heavy trucks, and the long winter. He stated the 10ft plows are DOT approved. Mr. Deluca stated he has contacted caterpillar about the beeping and the decibels can be lowered and it is OSHA approved. Mr. Deluca stated the constant burning is not true. Mr. Deluca stated that the work starts at 8 am and work half days on Saturday. Mr. Deluca stated the site is kept up and he does not store fuel on site. He stated the equipment is thoroughly checked for no leaking. Mr. Deluca stated Big Bend Drive is a narrow road. He stated the importance of sidewalks or bike paths. Mr. Deluca stated the unlimited amount of vehicles could be changed; he stated that the Plan Commission could come to some agreement. Mr. Deluca stated the salt is stored inside and DOT approved. Mr. Deluca stated the smoke, noise and diesel fumes are being over exaggerated. Mr. Deluca stated the best interest is to narrow this down on what works best for everyone involved. Mr. Deluca stated there are plenty of people who are not here at the hearing, because he is not a horrible neighbor.

Planner Rybarczyk reviewed with the residents and Plan Commission the questions that were clarified.

Mr. Mace asked about the pressure washing of salt trucks. Mr. Deluca stated this is done on the Northwest side of the building on a hard surface. Mr. Mace asked how the salt water drains. Mr. Deluca stated it pitches to the South; and there is no run off to a catch tank.

Chief Buchholtz stated what type of material is being burned. Mr. Deluca stated he burns brush. Chief Buchholtz clarified with Mr. Deluca that he is only burning brush from his site and not from the business.

Commissioner Bartholomew asked about the fertilizer being stored in 55 gallons drums. Mr. Deluca stated weed killer is stored in 5 gallon or 2 1/2 gallon containers. Commissioner Bartholomew asked if the DOT regulation on chimes override the town's ordinance. Attorney Macy stated business activity would be difficult to consider a noise ordinance violation especially when it is required by OSHA.

Mr. Mace asked what the decibel limits on the new device would be. Mr. Deluca stated he did not know but could get the information. Mr. Deluca stated the Northwest area of the site is where the burning is taking place.

Commissioner Johnson stated there are many questions that Mr. Deluca does not have an answer for. Commissioner Johnson suggests the Plan Commission go on site to inspect and see what is going on now.

Attorney Macy stated that a building inspector, unless asked by the owner would need an inspection warrant to go on a property, otherwise it would be considered a violation of constitutional rights of a property owner. Commissioner Johnson asked if Mr. Deluca is denying the Plan Commission from going on the property than Mr. Deluca must have something to hide. Chairman Paff stated Mr. Deluca is not denying anyone from going on the property. Mr. Deluca stated he does not think he has to open his doors to the public but he welcomes the Planning Commission. Attorney Macy stated if the Plan Commission goes to the property all at one time it is would be a public meeting and is open to the public. Mr. Deluca stated the Plan Commission could come individually.

Engineer Ludwig stated a Class B road is a 5 ton road. He stated when roads are rated; it is for maintenance and integrity of the road. Engineer Ludwig stated load rated roads are exceptions to the weight limit. He stated this road is a swampy area and likely to have no base area. Engineer Ludwig stated Storm Water utility calculates with the impervious and liquids running off of an area and the NR216 are the purpose for the current study. He stated in terms of berm and earth berm would hold noise out better than a fence would.

Mr. Mace asked Mr. Deluca about the traffic patterns of their trucks. Mr. Deluca stated that fifty percent go North and fifty percent go South. Mr. Mace stated why do the trucks have to go North on Big Bend Road to Townline. Mr. Deluca stated they go in the direction of their jobs. Engineer Ludwig stated that 22 feet wide roads are typical of Town roads.

Chairman Paff asked the Commission Members for a five minute break at 10:00 P.M. the Commission agreed.

Chairman Paff read into the minutes two residents' letters submitted for public comments. The letters are from Mary Cantrell and Commissioner Mark Benkowski. **Clerk's Note: Letters are attached to the minutes.**

Supervisor Tyliniski stated he would like to know how the loaders get fueled.

Gary Wilde stated he would like a clarification on the salt issue, he is unsure if Mr. Deluca is storing salt on site. Mr. Wilde stated the original Conditional Use states no salt or sand.

Fred Michalek stated he would like a copy of the meeting. Clerk Nelson stated an audio is five dollars and a DVD is fifteen.

Attorney Macy clarified that salt can be stored on site per the Conditional Use.

Commissioner Craig stated in 1991 Mr. Deluca wanted to put in a state of the art salt shed with catch wells around it, but the public said it would contaminate the water. Commissioner Craig stated years ago salt and sand were used for snow, so you did not see all the salt. He stated today only salt is used and the water is not being contaminated. Commissioner Craig stated Mr. Deluca is allowed to keep salt in the building but he was denied a salt shed.

Mr. Deluca clarified some of the questions that were asked. He stated the loaders have piggy back tanks on the trucks or are taken to the gas station and are DOT approved. He stated there is no fuel stored on site. He stated the salt is delivered during winter and dumped in the building, and is DOT qualified. He stated there is a basin catch for contaminated liquids. Mr. Deluca stated he would invite the members of the committee on an individual basis to come for a visit. Mr. Deluca stated that he is not asking for an amendment for the matter of expansion; but to operate in a manner that is organized and sheltered from residents with less traffic so there is not so much shuffling. Mr. Deluca stated he will get information on the decibels for the back up sound and will look at burning on certain days. Mr. Deluca stated that he is willing to have a set a number for the vehicles.

Attorney Macy explained to the commission that they can adjourn and go individually to the property and come back with comments and open the hearing back up to the public. Attorney Macy suggested seeing were each commissioner sits on the Public Hearing. He stated it would give everyone an idea of where they sit on the matter and weather to close the hearing or leave it open and get more information on the matter.

Chairman Paff stated he would like to amend with certain conditions. Chairman Paff stated if the committee has not seen the property he recommends they go and see it. Attorney Macy stated Commissioner Benkowski would need to step down due to his comments that he had read into the minutes. Attorney Macy stated to the committee they can make a choice tonight or not, this is not the official vote it is only how they feel.

Commissioner Ludwig stated that going to the property would not make a difference in his decision.

Commissioner Bartholomew stated going to the property would not make a difference in his decision.

Commissioner Johnson stated he is out of town for a week and half and he can make a decision with out going to the property.

Commissioner Craig stated he can make a decision tonight.

**MOTION Commissioner Ludwig moved to close the public hearing seconded by Commissioner Bartholomew, motion carried.**

**The public hearing closed at 10:40 p.m.**

9. **Discussion and action** to consider the Conditional Use request (**CU-749D**) of **Mario & Diane De Luca, W234 S6650 Big Bend Rd., Waukesha, WI, 53189**, to amend the existing Conditional Use that permits a landscaping and snow-plowing business.

Planner Rybarczyk stated the conditions that he had given would not be the same he would change the conditions because of the hearing.

Chairman Paff stated he would amend with certain conditions.

Commissioner Craig stated he would amend with certain conditions.

Commissioner Johnson stated he would not amend and would stay with the original Conditional Use.

Commissioner Bartholomew stated he would not amend and would stay with the original Conditional Use.

Commissioner Ludwig stated he would not amend and would stay with the original Conditional Use.

**MOTION Commissioner Bartholomew move to deny the recommendation to Waukesha County Parks and Land Use, The Conditional Use request (CU-749D) of Mario & Diane De Luca, W234 S6650 Big Bend Rd., Waukesha, WI, 53189, based on the following:**

1. **The Plan Commission believes that a strong likelihood exists of the potential**
  - a. **Increase in traffic (additional trucks, trailers and trackers entering and leaving the site along Big Bend Drive) with the expansion of the operation through the Conditional Use amendment request.**
  - b. **Increase in noise (additional trucks, trailers and trackers moving around the site) with the expansion of the operation through the Conditional Use amendment request.**
  - c. **Increase in the land use conflicts between the Applicant's operation and the surrounding existing residential neighbors.**
  - d. **Continuation of non-compliance by the Applicant with respect the to Town of Vernon and Waukesha County conditions of the existing Conditional Use permit.**
2. **The Plan Commission believes the approval of the Conditional Use amendment is inappropriate in a residential area.**

**Motion to deny Seconded by Commissioner Johnson, Two nays from Commissioner Craig and Chairman Paff, motion carried.**

Commissioner Craig stated that he voted the way he did because the Plan Commission could of made changes to the original Conditional Use with new conditions, now nothing can be changed and the Deluca's can withdraw at anytime.

10. Minutes For Approval: None

9. Next Meeting: August 28, 2008

10. Adjourn.

**MOTION Commissioner Bob Bartholomew Moved to adjourn, seconded by Commissioner Bill Ludwig, motion carried.**

Meeting adjourned at 11:00 pm.

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Jamie Nelson  
Town Clerk  
Town of Vernon  
Waukesha County  
APPROVED:  
As printed ()

With corrections ( )

\_\_\_\_\_  
Brian Paff, Chairperson  
Town of Vernon

\_\_\_\_\_  
Date