



# BOARD OF ADJUSTMENT

## MINUTES

### Town of Carrboro

301 W. Main Street Carrboro, North Carolina 27510

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MEMBERS PRESENT		TOWN ATTORNEY	STAFF
David Collins	Catherine DeVine	Bob Hornik	Marty Roupe
Thomas Arnel	Richard Ellington	Beth Trahos	Jane Tuohey
John Gant	James Dingfelder		
Mark Brantley			
Sriv Navaratnam			
Robert Kirschner			
<b>Absent/Excused: 0</b>			

### RECOGNITION OF RETIREE

Richard Ellington recognized James Dingfelder's service to the Board of Adjustment. This will be the last matter James Dingfelder hears while serving on the Board of Adjustment for the Town of Carrboro.

### MINUTES APPROVAL

MOTION MADE BY JOHN GANT AND SECONDED BY JAMES DINGFELDER TO APPROVE DECEMBER 5, 2007 MINUTES. VOTE: AYES 9 (David Collins, Thomas Arnel, Sriv Navaratnam, Mark Brantley, Robert Kirschner, Catherine DeVine, John Gant, Richard Ellington, James Dingfelder). NOES 0; ABSENT/EXCUSED 0

### PUBLIC HEARING of Zoning Decision Regarding Land Use at 8812 Old NC 86

Review an appeal of the decision of the Zoning Administrator stating that the nonconforming use of land at 8812 Old NC 86 has illegally expanded. The property is residentially zoned and

legally used for commercial purposes via the nonconforming use provisions of the Land Use Ordinance.

First David Collins asked the Town Attorneys to introduce themselves and explain their role and who they are representing, Attorney Beth Trahos works for Smith Moore and was hired to represent the Town of Carrboro and staff of the Town of Carrboro. Bob Hornik works for Brough Law Firm; he is representing the Board of Adjustment, for guidance through the process, guidance through questions and help apply standards that have to be applied.

Chair recognized that the subject matter is of the utmost importance due to livelihoods, use of properties and quality of life, so all speakers will be heard and all presentations, testimonies and questions are directed to the Board, not to each other and staff, so he asked all to be respectful. It was noted that the meeting will stop at 10:30 pm and be continued later if necessary.

Jane Tuohey a Notary Public swore in all who wished to speak.

Marty Roupe, Development Review Administrator gave the staff presentation and noted that the correct address is 8812 Old NC 86 not 8806 Old NC 86 and also on the bottom of page 2, the date of the aerial photos are 1988 not 1998. Mr. Roupe explained that just over a year ago a complaint was received from a neighbor, stating that use has been expanded. An investigation was done, Mr. Roupe said that he was not employed at the Town of Carrboro in 1988 when this property came under Carrboro's jurisdiction, he started in 2000 so only observation done since then. So research was done which included checking the LUO and found section 15.124.C which states in part that a non conforming use of open land may not expand to further cover the ground, we have a residentially zoned piece of property under the Town's jurisdiction in 1988 that had a non conforming commercial business on it so it was grandfathered in as long as it does not expand and violate LUO. Aerial photos were reviewed; they focused in on 1998 to 2003 where noticeable changes seemed to have taken place. In January 2007 a preliminary letter was given to the owner stating a LUO violation giving 90 days to bring the property into compliance with the ordinance. Near the end of the 90 day period, Mr. Rooks, attorney for the property owner, submitted a letter with 4 affidavits stating the claims were erroneous and asked the Zoning Division to reconsider the decision made, so it was decided to investigate more. Over the summer more affidavits and statements came in from neighbors and in September 2007, Zoning Division issued a final notice of violation which gave a timeline for the property to be brought into compliance. The owner was not cited for types of materials sold, noise issues and truck operations because no sufficient evidence was found relating to a LUO provision for which a violation was appropriate, only the expansion of footprint on the ground was cited. Over the past year, careful documentation has been taken including photos for future use. We received an appeal in late October, stating the staff erroneously interpreted the situation.

Mr. Roupe showed photos from 1998 and 2003, one showing a blue area which staff determined to be an acceptable use of the land, the red area is cited as an expansion from the 1998 photo, the yellow area is based on field observation as additional encroachment from 2003 to today. Other photos were shown, showing pallets and rocks by the road, in 1998 there did not show use of land by Dairyland Road.

Mr. Roupe informed the Board that Mr. David Bishop who was the original complainant was in attendance, and also Ms. Angelette Alston and Ms. Carol Johnson who are neighbors were also there.

Mr. Rooks, attorney for the Roberts, expressed that he would like to cross examine the witnesses.

Mr. Bishop gave his presentation; he thanked Mr. Roupe and the Board. Mr. Bishop stated that he had approached the Roberts on numerous occasions to move the mulch and put up a fence. Mr. Roberts said that if Mr. Bishop would pay half he would, but Mr. Bishop said "why should he do this when he didn't create it". He expressed that this business expanded after Mr. Brockwell died six years ago. Mr. Bishop said that the original business didn't start near his property line; it started behind the Brockwell house which since burnt down, adjacent to the lower property. Mr. Bishop said he had been there for 30 years and knew what was there. He strongly stated that he disagreed with the affidavits presented by the Roberts' Attorney.

Beth Trahos asked Mr. Bishop if he can show on the 2003 map where his house is. Mr. Bishop said that when he built his house in 1998 there were only 2 or 3 piles of mulch there. Mr. Bishop pointed out where his house is located, but had recently sold it. Ms. Trahos asked the extent of the business when he moved in his house and where the closest active site to his house was. Mr. Bishop said that there were a few piles of mulch next to the business driveway.

Ms. Angelette Alston next gave her presentation. Ms. Alston built her house in 1987 and stated that there was a small section up front which had gravel, saw dust and a couple of other things. As time progressed and especially after Mr. Brockwell died the business increased, then gradually it moved further back towards Mr. Bishops home. After the first letter in January 2007, Mr. Bishop talked to her and they went and talked to the Roberts. Ms. Alston told the Roberts her list of concerns, stench, noisy, dust, trucks arriving at 2:30 in the mornings; the Roberts said they would stop that. Ms. Alston also expressed that it was a fire hazard and asked if they could move it, to which they responded that because of certain areas, they couldn't do that. Within the next few months, Ms. Alston noticed that an area was cleared off near her home, but slowly big piles of mulch appeared directly beside her house. Ms. Alston asked if it was necessary for this pile to be beside her house, just across her property line. Thanksgiving morning the pile of mulch beside her house was on fire, the following Saturday morning, she smelled burning and called Mr. Roberts. After two weeks of water hoses, night and day, Mr. Roberts went to her house and talked to her about it. Again, she asked if the mulch could be moved because of appearance and noise, and because it is steadily growing near her property. Ms. Alston stated that her quality of life has changed; her peace and quiet has gone and her house is full of debris and dust when the grinding machine is being used which has been moved closer to her house. Ms. Alston said that they had previously discussed a fence being put up but it has not been erected. Ms. Alston asked the Board to visit before making a decision and said that she has pictures to show the Board if they wish. Mr. Roupe asked that the pictures be entered into the record. Bob Hornik asked if the photographs show the current situation at the property, to which she responded that they are current now, they were taken within the last two weeks. Mr. Hornik also asked if her home can be seen on the aerial photo, Ms. Alston pointed

out her home and Mr. Bishop's property and said that there was never anything of the magnitude back there but since March all has been moved beside her.

Richard Ellington asked Mr. Roupe if there is any way to determine the square footage of the blue area, this area was being used in 1998. Mr. Roupe said that we could come up with an approximate square footage. It was noted that the yellow and red area shows adding on. Mr. Bishop stated that the 1998 photo shows a lot on the blue are but it was mostly used by cows, the piles of mulch were very small then. Mr. Roupe said that it was a broadly defined area by staff. John Gant asked who owns the private road at the top, it was noted that it is a family driveway. Mark Brantley asked if Mr. Bishop's home had been sold to which he responded yes and asked if anyone is occupying it, the buyer of the home was there but she is not living in the house.

Bob Hornik asked Marty Roupe to compare the 1998 and 2003 photographs. He asked what the small yellow area represents in 1998, Mr. Roupe stated that in 1998 and 2003 the area is filled with trees, today the area has been cleared, this is the area that Ms. Alston referred to that there are mulch piles there. Regarding the red area further south, Mr. Roupe stated that it is an undisturbed area in 1998, in 2003 though it appears to be disturbed, today there is storage of materials. Further south in the larger red area, in 1998 – undisturbed, in 2003 – disturbed, mainly between the blue area and the road, there is a large amount of pallets of rocks and equipment, there is general use in that area, whereas in the past there wasn't. Regarding the other yellow area further south, it represents additional disturbed area since 2003, it was noted that in 1998 it was an open field.

Mr. Rooks stated that Mr. Roupe made a series of judgments based on a comparison to a photograph from 1998, he asked Mr. Roupe when he visited or inspected the property between 1988 to when. Mr. Roupe stated that he started employment in January 2000 and soon after when driving around noticed the property. So it was noted that from 1988 to 2000 he could not make a judgment on how the property was used then. Mr. Rooks asked if any observations were made about the extent of the use of the property on the ground between 2000 and tonight, Mr. Roupe said he had made various field visits since the issue came up approx a year ago. Mr. Rooks asked about the tax tract, and is it a much larger tract. Mr. Roupe was asked to show where the entire lot is and where the area that has been described in his exhibit is, Mr. Roupe said that by tax records, everything in the red color, is part of the tract. So it was noted that the Brockwell/Roberts property is on both sides of 86, Dairyland Road and Homestead Road, Mr. Roupe said that by tax records it is but by Town of Carrboro LUO definition the lot differs, Mr. Rooks asked if Mr. Roupe had looked at the entire lot for the purpose of determining what changes had been made since 1988, Mr. Roupe said they only focused only on the lot being talked about tonight, which is the corner by 86 and Dairyland Road. Mr. Hornik asked Mr. Roupe to explain the difference between the tax lot and the lot referred to in considering this property. Mr. Roupe stated that tax records view this all as one parcel, but our local LUO ordinance defines an individual lot where we find a lot line and so we only looked at the lot in question tonight so only the North West quadrant. Mr. Rooks asked if the owner has not created a subdivision, recorded a plat or a deed breaking up the larger tract on all sides of the road, how could there be a lot line anywhere but where the exterior lot lines are? Mr. Roupe stated that by Carrboro LUO definition, the roads create the subdivision and thereby create the lot.

Mr. Rooks, attorney for the Roberts called Bob Epting to testify. Mr. Epting has been in the area since 1963. Mr. Epting met Mr. Brockwell in the late 70's and would drive around with him. He stated that he is a pilot and would fly over the property and stated that it is his very clear recollection from those rides taken in 1982 and beyond that piles of materials, saw dust, mulch, were all over the property. In the red area, in the far northern corner on the 1993 map, Mr. Epting said there was a saw mill, adjacent to the property where Ms Alston lives. He was interested in the 1993 photograph because the designated red areas were suggested to be expanded uses, the area where he was talking about where the saw mill was in the early 80's and where the first mulch piles were is the green area on top of the blue area. So Mr. Epting stated that the saw dust and early mulch piles were all over the property, in different seasons different amount of mulch were needed, so photos don't show the extent of use every day, it was noted that in 1988 all property was made use of for cattle and grazing in the green area and everything on the blue track across to Dairyland Road with mulch piles and equipment. He doesn't remember seeing flat stone in the yellow area by Dairyland Road but piles of mulch and other materials were there. Mr. Epting said that since then he has viewed the property regularly, piles of materials sold by the Brockwells are moved around on that property, sometimes large piles, sometimes small, but always piles in different locations. Mr. Epting wanted to point out that in Mr. Brockwells era, he used all the property that is bounded by the property lines to place piles of materials for sale as he found convenient. He stated that at one time or another before 1988 was covered with a mulch pile, not all the area at once but all covered by different mulch piles during the years, so they can move it in different locations when needed. He testified that all of the property shown in color and is bounded by the property lines from the blue area into the north has been used from one time or another and as of 1988 was being used for the purpose of this business. Mr. Rooks asked is the area in use larger today than in 1988, Mr. Epting said no it is the same area, it is bounded by the perimeters of the property, not all of the property has been used and covered at any particular time, but he believes that all the property over time has been used by these varying piles but the coverage today is the same as in 1988.

Mr. Roupe pointed out for the record Section 15-127A, when a non conforming use is discontinued for a period of at least 12 consecutive months, the property may thereafter only be used for conforming purposes. This explained that part of the logic in determining the area of acceptable extent of disturbed area on the land is why it was defined broadly. No evidence was found that the entirety of the plot was used. Mr. Roupe asked Mr. Epting to the best of his knowledge to describe whether the property had been utilized without a break of 12 consecutive months in certain areas. Mr. Epting stated that he couldn't fairly answer the question, it is certainly true that the entirety of that area has been used as found convenient and necessary during the years. Beth Trahos asked if Mr. Epting could testify that there was a saw mill at one point generally operating in the heavily wooded area and was he referring to the yellow area in the north east corner, he stated yes, and then Beth Trahos asked when the saw mill stopped operating to the best of his knowledge. Mr. Epting said that he is not certain but he remembers it being there when he first went there and it was pointed out that it was one of the precursors of the successful business. That is where the remains were in the mid to late 80's, he never saw it operating but he wasn't there every day. Catherine DeVine asked if logging trucks were going in and out of the property, Mr. Epting wanted the Brockwell's to answer this question. Mr. Ellington asked if there was any larger equipment there in the 80's, Mr. Epting said that there were tractors, tractor trailers, equipment for moving mulch piles, delivery equipment,

transportation equipment and handling equipment was there, the only difference is the piles are higher today, but more in total he doesn't know.

Mr. Rick King came before the board; he has been buying mulch since 1984. He stated that the yellow area by Dairyland Road was a good area to turn around and nothing grew there to his recollection, so that has nothing had anything growing there. The shredded hardwood was by the house and in 1987 further down was pine bark mulch, gravel, saw dust, sticky fill dirt and that was distributed throughout the area. Mr. King remembered somewhere where the small red and blue area meet, standing on a pile of mulch and seeing Mr. Bishop's house being built in the mid to late 90's. He said that the piles moved around constantly.

Mr. Rooks asked about the colored area, the entire western area, has that area to the best of his knowledge been in use since 1988 for the Brockwells materials handling enterprises, Mr. King said yes. Also Mr. Rooks asked if the area is any larger now than in 1988, Mr. King said no.

Mr. Roupe asked if Mr. King has seen areas go into disuse for more than 12 months, Mr. King said that he couldn't comment on time frame, when he first started his business in 1987, most mulch piles were by the house, the hardwood moved around, so it was never known where to pick it up.

Mr. Hornik, asked Mr. King if he could testify if the entire colored area in the north western third of the property has been used in the mulch operation for the entire time from 1987 to the present, he reminded Mr. King that he is under oath and repeated the question. Mr. King said that the far upper right corner where the yellow dot is, is an area that he doesn't know that he visited in the late 80's or early 90's, he said in the late 90's he was in that area, but there was always tree cover and would get lost. Mr. Hornik asked again if he could testify if the entire area was being used in the mulch operation for the entire 20 year period from 1987 – 2007, Mr. King said yes, so Mr. Hornik said the entire area, so Mr. King said that he never visited that back corner so, no he cannot testify to that back corner.

John Gant asked how he navigates and turns his trucks around; he said that he has not visited in the past two years, he said that the major turnaround area in the 90's was in the red area off Dairyland Road, he stated that he hasn't driven there since 2000, but goes there to view the mulch.

Mr. Ellington said that the yellow area adjacent to Dairyland Road was the place to turn trucks around earlier; it is now being characterized as there being rocks there now. It was asked when Mr. King used that area, how long was the area open and available for turning of trucks. Mr. King said that for most of the 90's, there was a pile of fill dirt that was in the middle of the red area that they would swing around the dirt to get back to the mulch.

Catherine DeVine asked Mr. Roupe how much land he is looking for when he asked the other two speakers about land not being in use for consecutive 12 months. Mr. Roupe said any amount of land, but there has to be a reasonable determination of amount of land, so it is in the Board's hands to determine what an acceptable amount is.

Beth Trahos stated to Mr. King that he hasn't visited the site in two years, to which he responded, more or less, so certainly within two years the one year time period for non conforming use to be extinguished could have passed, Mr. King responded without a doubt.

Debra Parsons stated that she bought the property at 342 Dairyland Road; this is Mr. Bishop's house. She bought the house for her daughter because there was so much land there. Her daughter has not moved in however they have been to visit, they have no problems with the land, trucks etc. Ms. Parsons discussed the real estate transaction.

Catherine Ward has been a landscaper since 1974; she has bought dirt and mulch from the Brockwells since then. Ms Ward remembers going there with her daughter, they would drive to the house and they would go down to the field beyond the house to feed the pony, they couldn't see the pony because the mulch piles were so big, this was all beyond the blue area. Mr. Brockwell bought dirt from down east and mixed it with his saw dust, so the piles were constantly being mixed and changing. Ms. Ward said that she would get lost behind piles of mulch but the mulch and dirt piles changed and this was since 1974.

Mr. Rooks asked where the mulch and dirt piles were since 1974. Ms. Ward said that the pony and the cows were alongside the mulch piles, they were amongst the piles. Mr. Rooks asked Ms. Ward thinking back to 1988 and coming forward has the area for their operation decreased or increased. Ms. Ward said the place is never the same, it has not increased, but all the piles move constantly. Ms. Ward said there are 6 or 7 different kinds of mulch all moving constantly; if she cannot find suitable dirt in one location then she goes to another pile by the yellow place and gets dirt there.

Beth Trahos asked Ms. Ward how often she visits the site, Ms. Ward said in the spring and fall, once a week to every two weeks, she goes there to get the dirt and mulch. Ms. Trahos asked where she has been buying her dirt and mulch over the past 12 months; Ms. Ward said that because of the drought she hasn't been working much. So Beth asked when was the last time she visited, Ms. Ward responded June this year, Ms. Trahos asked where did she get it from to which Ms. Ward said in the small blue area, the red area is where there was a huge pile of trash dirt for years. Ms. Trahos asked if she has been in the blue area over the past 12 months, which the Town planning staff indicated as being active, Ms. Ward said yes. Mr. Rooks, said for the record, he does not accept the 12 month analysis. Mr. Rooks asked Ms. Ward about the blue area on attachment E on the west to the top of the map, to her knowledge in the last 12 months, has it been in use for materials, Ms. Ward said yes, Mr. Rooks asked the same question regarding both yellow areas on the map, Ms. Ward said she doesn't go there much because it doesn't have the mulch that she likes there, but she knows it is there, she said if it is muddy you have to take your truck and go down around the back of the big pile so you can see where the yellow is. Ms. Ward was asked if she had been in the top right yellow area in the past 12 months and if it was in use, also Mr. Rooks asked about the area in the front and was it in use, then Mr. Rooks asked the whole area with the three colors and have they been in use to her knowledge for the Brockwell mulching/dirt operation since 1988, Ms. Ward said yes and before 1988.

Bob Kirschner asked in Ms. Ward's recollection has it all been mulch there or have there been stones and rocks there as well. Ms. Ward said that everything has been there from mulch/

dirt/gravel to stones and rocks, whatever she needs she buys there, Ms. Ward said that the flat rocks have expanded a little but she has always bought rocks from there.

John Gant asked where the new traffic patterns and truck turnaround areas. Ms. Ward said you never know where, because in the spring and fall the piles go down quickly, in the summer it changes, if it is really muddy with a lot of rain you have to swing around to a different area. Mr. Brockwell scraped the roads regularly. Ms. Ward said every time you go it changes but it is always in use.

Robin Holmes moved here in 1978 across from the Brockwells property. Ms. Holmes and her husband have been buying mulch from the Brockwells since 1983, Ms. Holmes stated that the piles may be higher now, the piles move because of degrading. Ms. Holmes said that they are out there night and day working and moving things around. Mr. Rooks asked if all the colored areas have been in use for the Brockwell/Roberts business the same in all those years, Ms. Holmes said as far as she knows.

David Collins asked if you would take a huge pile of mulch and split it into five smaller piles so it doesn't rot. Ms. Holmes said she doesn't know but it heats in the middle so the more air you can get to it, it won't heat as much. The piles smoke because of bio-degrading. Ms. Holmes said in general if you split it up too much, then it gets whiteness so you have to mix it to get it fresh again.

Beth Trahos asked how frequently she has been lately. Ms. Holmes said she has been twice this week. Ms. Holmes said that using pictures to figure out a living business is difficult because at different times are different amounts of mulch. Beth Trahos asked if the colored area in the North has constantly been in use. Ms. Holmes said yes. Ms. Trahos asked if Ms. Holmes was familiar with the tree area in yellow, Ms. Holmes said no, because she gets hardwood mulch and she doesn't think they keep the hardwood mulch in that corner, but she gets it from areas that move constantly.

Rachel Preston started a landscaping company in 1978. She has been buying mulch from the Brockwells since 1978, she testified with certainty that in the mid 80's they were in all areas. The piles move constantly but all the colored areas were in use at one point or another.

Mr. Rooks asked about the colored area at the top of the map, to her knowledge has been in use from 1988 to present in connection with the Brockwells Landscaping Materials Operation, Ms. Preston said it certainly has. Mr. Rooks asked if it has expanded. Ms. Preston said no, the entire field has been in use since before 1988.

Jeff Coke has been doing business with the Brockwells/Roberts since 1977; he stated that in his opinion the footprint has not enlarged or changed since that time, in his opinion, it has decreased in terms of the mulch business because the mulch used to be by the house but is not there anymore. Mr. Rooks asked if there has been an increase in the mulch/rock/dirt operation since 1988 to present. Mr. Coke said there has been diversity but not an expansion in the colored areas since and it has been in use since 1977.

Beth Trahos asked how frequently he visits the site, Mr. Coke said during the mulching season 2-3 times a week. Mr. Coke said he visits the site once a month right now but sometimes 3-4 times a week in any given month since 1977. Ms. Trahos said for clarification Mr. Coke's testimony is that within the recent past the only areas he has seen mulch or materials being sold are in the colored area; Mr. Coke said yes, it has all been in use within the last three years. Ms. Trahos asked if he is testifying the entire site has been used. Mr. Coke said no the colored site. Mr. Coke said the diversity has changed but not the overall footprint of the business.

Marty Roupe asked about the area near the house where materials are not being stored anymore, and if Mr. Coke knew of any other areas that have gone into disuse over the last three years for a period of 12 months or more. Mr. Coke said no the use just changes but no disuse, piles are moved around due to age and material, the entire site has been in use since he has been going out there. Mr. Roupe asked if he was meaning the colored areas or the whole site, Mr. Coke said he is talking about the whole site.

Mr. Kirschner asked about the yellow area at the top, and did Mr. Coke recollect whether it has been in use over the past 2-3 years, Mr. Coke said yes. Mr. Kirschner asked about prior to that, to which Mr. Coke said the saw mill was out there when he first started going there and it was a storage place for brick pieces and wood etc. Mr. Kirschner asked if Mr. Coke recalls trees growing there, Mr. Coke said off and on there is a row of trees along the neighbors' property, and there are trees within there amongst the storage.

Jake Hardy has been living on Homestead since 1973, he knew Mr. Brockwell and his Father, he has been driving by there since he was little and stated that Mr. Brockwell always used all the property for his business, he used to stack lumber and hauled it, he sawed it and hauled and sold it, mulch saw dust, all has been used since he can remember. Mr. Rooks asked Mr. Hardy if the red and yellow areas had been used all along in the business. Mr. Hardy said as far as he can remember, he has been there for the last 20 years to buy his own mulch. He said the last time he was in there; there are 3-4 trees that shade a house. Mr. Rooks asked if there were piles of something in the colored areas since 1988, Mr. Hardy said some kind of material was there. Mr. Rooks said so what is out there today isn't any different from what was there in the past, Mr. Hardy said probably more of it, Mr. Rooks said in terms of volume and bigger stacks, so Mr. Hardy said yes bigger stacks but no more volume.

Kelly Blackwood represented his grandfather and the rest of his family who lives directly across Dairyland Road. They also own land north of the Brockwell/Roberts property, his grandfather signed the affidavit because it stated that the area that was considered to be part of the mulching business had not increased, there is more mulch but it is not taking up anymore area.

Mr. Rooks asked if he grew up there and had been driving by there, Mr. Blackwood said yes since 1973. Mr. Rooks asked if the colored area had been in use, Mr. Blackwood said there is an electric wire there that separates the cows from the mulch. The line hasn't changed so the piles and equipment have moved around but the area hasn't increased, Mr. Rooks asked if it has been in use since 1973, Mr. Blackwood responded, yes.

James Dingfelder asked about the fire, and have the fire departments been called, Mr. Blackwood said his grandfather said there had been one fire years ago and then he mentioned the other fire in November last year.

Richard Ellington asked about the large grinder and if that kind of noise has been there all the time. Mr. Blackwood said they were not using the grinder, they were using equipment and it makes noise, there has been noise.

David Collins asked to see where the electrical wire is, and how long has it been there. Mr. Blackwood said it has been there 20 years and in the same place. Mr. Collins asked if all the mulching business has been to the north of the electric wire. Mr. Blackwood said that the equipment wasn't always parked up there, the motor graders were there and some of the hauling trucks, his grandfather said that they used to have smaller piles over a larger area years ago. To the best of his knowledge it has been on the west side but it was originally thought and stated by Mr. Collins to be on the north side. Mr. Collins asked Mr. Blackwood if to the best of his knowledge the mulching business has always to the west of where the wire is, Mr. Blackwood said yes.

Marty Roupe stated for the record that there will be a public hearing portion where individuals will be free to come and speak. Mr. Collins said that if they cannot come to the next meeting, they may write their comments and send them to Mr. Roupe and they will be put into the record. Mr. Rooks objected to using testimony that is not sworn, Bob Hornik said that it can be accepted into the record but unsworn testimony and written submissions that are not subject to cross examination, bear a lot less weight. Mr. Collins (Chair) said that they will accept it, but it carries a lot less weight. Mr. Roupe said that notice of the next meeting will be posted on the website.

The meeting was continued to February 13, 2008 at 7:30pm.

## **PUBLIC HEARING of Zoning Decision Regarding Land Use at 8812 Old NC 86 Cont'd**

Floor was opened to anyone wishing to speak.

Beth Trahos wanted to let the board know that there has been some discussion with the applicant about asking for a continuation for time, so there will be an opportunity to work with affected community members and with the Town.

Bob Hornik said that a day or two after the previous meeting; he contacted the Board Chairman and members, he thinks it is in everyone's best interest for stake holders to get together amongst themselves to try to arrive at some kind of proposed solution that will be satisfactory to the neighbors, Brockwell's and interested parties in the outcome. They could then present the outcome to the Board as a proposed modification to Marty Roupe's decision which may bring some finality. Everyone is agreeable to try to work it out but busy schedules have prevented this so far, so over the past couple of days, they have all discussed it and come up with the proposal that was made at this second meeting. They would like to ask the Board to continue the hearing again to a set date and in the interim, there will be more time for everyone to see if there is common ground, then reconvene and present to the Board. If there is nothing to present then the hearing process will complete with additional witnesses and interested members of the public with comments to make, so that the Board could finish the hearing, close it and go into deliberation.

Mr. Collins wanted it made clear that it is a public hearing and that anyone who wants to speak will be given the opportunity tonight, however, the meeting will be continued to a later date in anticipation of neighbors getting together and attempting to find a mutually satisfying suggestion of a modification for the Board to look at.

Melonie Bishop, daughter of Mr. Bishop came forward; Ms. Bishop resided at 425 Dairyland Road. Ms. Bishop asked to see the slides from 1998, 2003 and present day. Ms. Bishop pointed out that where her father's house is now and also where their previous (mobile) home was, they lived in the mobile home from 1984-1994. Ms. Bishop stated that she sees a noticeable difference today, in that it used to be a small business but is not so anymore. Her bedroom window in the mobile home looked out on the yellow/red area at the top left of the 1994 slide. Ms. Bishop said that livestock were in that area before, occasionally they used to go into her yard. There were small mulch piles, gravel, mulch and dirt sporadically spread out, maybe 12' in diameter, not very high, they were alongside the driveway in 1998. Today though, there are landscaping rocks by Dairyland Road which have appeared in the last year or two and they go all the way up to the fence. Ms. Bishop said that there is a distinctive line where Mr. Blackwood said there is a fence and has been there all along, but Ms. Bishop said when you look back to 1998, it is a cleared off area. There were two major expansions of the area, after Mr. Brockwell passed away around 2003. Also since the first letter was sent out, there has been an expansion of the area, so the piles were spread out and are higher in the last year or so. Ms. Bishop said she has concerns and asked if there could be some research done or to see if there is a solution for this problem because mulch is hazardous material. Ms. Bishop asked if there are any laws or permits needed for mulch to be so close to a residential area and stated that the area and the mass of production have expanded so it has caused and created other issues. Ms. Bishop said that in 1998, there was not a grinder there and there were not as many trucks which are a nuisance and create noise. Ms. Bishop said that by their records it would show when these items were purchased. Ms. Bishop said that when the people spoke at the last meeting in support of the Brockwell's that they had a vested interest in their statements because of doing business with them. Ms. Bishop said they do not have a vested interest and she advised her father to sell his property, but she has an interest because it is family property. Her grandfather wrote an affidavit, had it signed and notarized of his knowledge about this property because they were all there every day, now she lives in Hillsborough but still sees the property at least once a week.

Her father moved because he had a contract on the house for \$345,000, however it fell through at the last minute, she feels that this company is depreciating the property there. The house went under three different real estate companies, they received feedback from people who sent emails, they said the house is too close to the mulch business and can show the Board the emails if they wished. Ms. Bishop said that the business poses dangers and hazards to the neighboring property. Ms. Bishop pointed out on the aerials how much larger the piles of mulch are today, the aerials do not show how high the piles are but she pointed out how close the brush and dry area is to her Aunt's house and the danger of fires and again asked about certain permits for this type of business or if this is an EPA issue. Mr. Collins said the Board cannot talk about mulch being hazardous or if permits are needed but said that the county or two would be able to answer that question. Mr. Arnel asked if all the years that Ms. Bishop has been living there if there has been a period of time where one area has been clear for 365 days, Ms. Bishop said yes and pointed out an area where there was a grassy filled area where cows roam, she said that there were a couple of small piles here and there, nothing ever expanded back so there were definitely clear areas. Ms. Bishop said that she has researched large mulch businesses to see how frequently or what happens if mulch catches on fire, and pointed out that there was a large fire in San Antonio, Texas called the Lotus Fire, it cost the city \$5.5 million dollars to put it out and took over 3 months.

Ms. Candace Johnson was sworn in by Jane Tuohey, Notary Public, she lives two houses over from the property at 425 Dairyland Road, so they are neighbors. Ms. Johnson stated that the business has expanded, there were not large mulch piles and pointed out the property line where the trees were, cows used to come to the fence and they would feed them. Ms. Johnson expressed concerns about the fire at her Mother's house, Ms. Angelet Johnson. Regarding the area at the front by Dairyland Road, there was not any mulch, tiles, rocks or paving, so now the business has expanded. Mr. Kirschner asked about the trees near Ms. Angelet Johnson's house and the driveway, Ms. Johnson said there is the same amount of driveway. Ms. Trahos asked for clarification if the distance between her mother's house and the buffer is the same, Ms. Johnson said as far as the driveway, it is the same, but the mulch is now much closer to the house and now there are huge piles of mulch that were put there after the first letter was sent, it is like a wall of mulch now, but in 1998 there were trees there.

Germaine Simmons is a neighbor of the Brockwells and has lived all her life on the property. She remembers in the 70's that it was always very muddy. The Brockwells had piles of sand and stones and so when it rained, it would be very messy. Where the road is there would be berries growing and they would see the cows, she remembers seeing small piles of sand and rocks because of rain issues. The sand and rock piles were not a bad distraction and were not as tall as she is, which is 5' 8". They would pass by the property weekly. In the 80's and 90's, the piles were not much different, after that though gradually the piles became larger and the cows moved further back. So around 2000, she noticed that the business expanded, the noise level was unbelievable and the grinder made a lot of noise and dust. Ms. Simmons thought that they were working with the city because it had grown so much. Ms. Simmons suggested fencing and moving the piles 100-200 yards so it doesn't interfere with the community.

MOTION MADE BY THOMAS ARNEL AND SECONDED BY JOHN GANT TO SUSPEND THE PUBLIC HEARING TO A DATE TO BE DETERMINED. VOTE: AYES 8 (David

Collins, Thomas Arnel, Sriv Navaratnam, Mark Brantley, Robert Kirschner, Catherine DeVine, John Gant, Richard Ellington) NOES 0; ABSENT/EXCUSED 0

Next meeting determined to be March 19<sup>th</sup>, 2008.

Mr. Rooks stated that by that time they would know if they had a resolution or not. Mr. Rooks said that he will keep staff informed of the situation.

Ms. Bishop asked who she should contact regarding permits required for mulch businesses. Mr. Roupe said that he will contact the county and ask about this.

With everyone being in agreement of the March 19<sup>th</sup>, 2008 date. MOTION MADE BY JOHN GANT AND SECONDED BY ROBERT KIRSCHNER TO CONTINUE THE PUBLIC HEARING TO MARCH 29, 2008. VOTE: AYES 8 (David Collins, Thomas Arnel, Sriv Navaratnam, Mark Brantley, Robert Kirschner, Catherine DeVine, John Gant, Richard Ellington) NOES 0; ABSENT/EXCUSED 0