

**DANE COUNTY**  
**CONDITIONAL USE PERMIT #1783**

THE ZONING AND NATURAL RESOURCES COMMITTEE OF THE DANE COUNTY BOARD PURSUANT TO SECTION 10.255(2) OF THE DANE COUNTY CODE OF ORDINANCES DOES HEREBY:

**GRANT:** Conditional Use Permit subject to conditions.

**FOR:** Mineral Extraction Site.

**EFFECTIVE DATE OF PERMIT:** 06/25/02 **EXPIRATION DATE:** (See Below)

**THE CONDITIONAL USE SHALL BE LOCATED ON THE PROPERTY DESCRIBED AS FOLLOWS:**

The NW 1/4 of the SE 1/4 Section 20, Town of Vienna.

**CONDITIONS:**

1. The applicant shall submit an erosion control plan covering the entire CUP area for the duration of operations, and receive approval of an erosion control permit prior to commencing extraction operations.
2. The applicant shall apply for and receive all other required local, state and federal permits.
3. The operator shall develop and operate the site according to the site/operations and phasing plan dated May 2002.
4. Operations shall cease no later than 20 years from the date of CUP approval.
5. Reclamation shall meet requirements of Chapter 74 of the Dane County Code of Ordinances.
6. "During operations, the edge(s) of the extraction area shall be maintained at a slope of no greater than 1:1." ]
7. The operator shall require all trucks and excavation equipment to have muffler systems that meet or exceed then current industry standards for noise abatement.
8. The operator shall meet DNR standards for particulate emissions as described in NR 415.075 and NR 415.076.
9. Dane County and the Town of Vienna shall be listed as additional named insureds on the Tricor Transit Inc.

liability insurance policy, which shall be for a minimum of \$1,000,000 combined single limit coverage per occurrence. The operator shall furnish a copy of a Certificate of Insurance as evidence of coverage before operations commence. The liability insurance policy shall remain in effect until reclamation is complete.

10. The Zoning Administrator or designee may enter the premises of the operation in order to inspect those premises and to ascertain compliance with these conditions or to investigate an alleged violation. Unless the operation is in reasonable compliance with these terms of this approval, such approval is subject to amendment or revocation.
11. The agreement between the Town of Vienna and the applicant dated June 3, 2002, in particular conditions; 5, 6, 7, 9, 12, 13, 14, and 15. and to find that the standards of the zoning ordinance are met; 1) That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare, 2) That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use, 3) That the establishment of the conditional use will not impeded the normal and orderly development and improvement of the surrounding property for uses permitted in the district, 4) That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made, 5) That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets, and 6) That the conditional use shall conform to all applicable regulations of the district in which it is located.

**THE ZONING AND NATURAL RESOURCES COMMITTEE AFTER PUBLIC HEARING AND IN THEIR CONSIDERATION OF THE CONDITIONAL USE PERMIT MADE THE FOLLOWING FINDING OF FACT:**

1. That the establishment, maintenance and operation of the proposed conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.
2. That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted will not be

**NOTICE OF PUBLIC HEARING BY THE DANE COUNTY  
ZONING & NATURAL RESOURCES COMMITTEE**

NOTICE IS HEREBY GIVEN that a public hearing will be held in Room 201 of the City-County Building, Madison, Wisconsin on Tuesday, 06/25/02 at 7:30 P.M. to consider the following matter:

37. CONDITIONAL USE PERMIT # 1783 BY MICHAEL & DIANE RIPP to allow mineral extraction site on property located North of 6939 Madigan Road in part of the NW 1/4 SE 1/4 Section 20, Town of Vienna

EFF 6/25/02

PUBLISHED: Wisconsin State Journal

ZONING & NATURAL RESOURCES  
COMMITTEE  
Helen Johnson, Chair

# COMPOSITE REPORT

## Dane County Zoning & Natural Resources Committee

Dane County Application for Change in Zoning or CUP

HEARING DATE: 06/25/02 ITEM#: 37.

ZONING PETITION#: None CUP #: 1783

TOWN / SECTION: Town of Vienna, 20

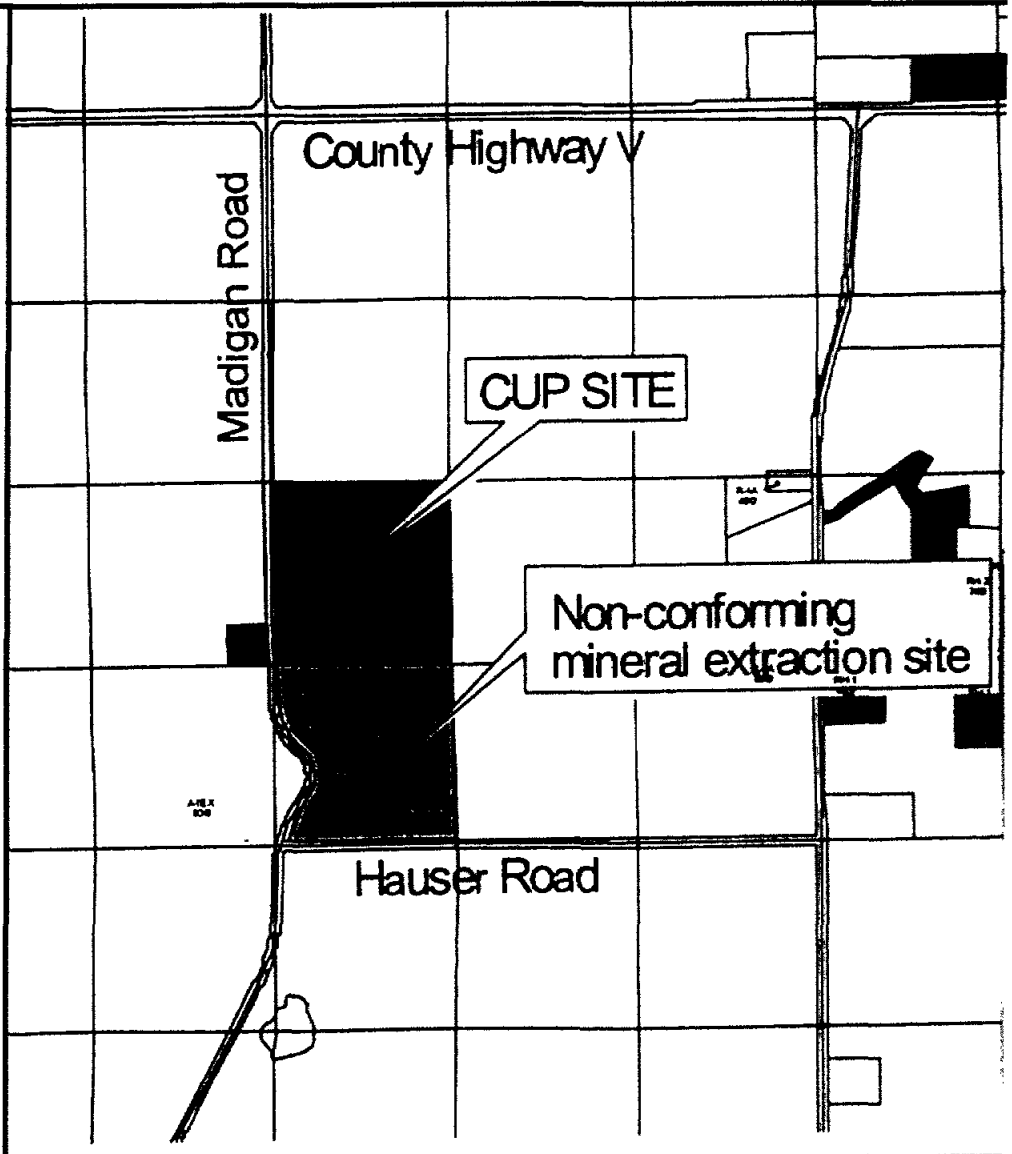
APPLICANT: MICHAEL & DIANE RIPP

LOCATION: North of 6939 Madigan Road

AREA: 40.3 AC acres DELAYED EFFECTIVE DATE: None

CHANGE: From the A-1 EX Agricultural to the A-1 EX Agricultural

PROPOSED USE: conditional use permit for a mineral extraction site.



**TOWN ACTION RECOMMENDATION:**

Approved June 3, 2002  
 DENY

**SUBJECT TO:**

Conditions  Amended

**IF CUP:**

Conditions  None

**ZNR COMMITTEE ACTION - REZONING**

Postponed \_\_\_\_\_  
 Approve  Cond/Amend Town  Cond/Amend. Comm.  
 As Condition \_\_\_\_\_

Amended  Changed Zone Dist. \_\_\_\_\_  
 Changed Boundary Description \_\_\_\_\_  
 DENY Vote  
 Action Date \_\_\_\_\_ - \_\_\_\_\_

**ZNR CUP APPROVAL**

Approved  As Specified by Town  
 Con by ZNR  DENY  
 Date June 25, 2002

**COUNTY BOARD ACTION REZONING**

Referred Date \_\_\_\_\_  
 Approved  Amended on Floor  
 DENY COUNTY BOARD AGENDA ITEM #

**DANE COUNTY PLANNING & DEVELOPMENT DEPARTMENT  
STAFF REPORT**

Petition No. **CUP # 1783**

Item No. **37**

Public Hearing Date: **6/18/2002**

Work Meeting Date: **7/9/2002**

Applicant/Agent: **Ripp, owner/Tricor Transit Inc., agent**

Town: **Vienna, Section 20**

**I. BACKGROUND & REQUEST**

The applicant requests a conditional use permit (CUP) to allow a mineral extraction (sand & gravel pit) operation in the A-1 Exclusive Agriculture District. The applicant intends to excavate, process, and remove sand and gravel from portions of a 40-acre site.

The subject property is located near the Village of Dane in the Town of Vienna, approximately one half mile south of CTH V, near the intersection of Madigan and Hauser Roads. An existing sand & gravel operation is located directly south of the subject property. This existing pit, approximately 4 acres in size, is located within a non-conforming site. The surrounding area is primarily rural agricultural in character, and under A-1 Exclusive zoning.

With this application, the applicant has submitted a reclamation plan. Erosion control and storm water measures are contained within this plan - the *Nonmetallic Mining Reclamation Plan*. This plan has been provided to each ZNR Committee member and is available for review at the Planning and Development Department in Room 116 of the City-County Building.

The operation will be conducted in 4 phases. The general approach is to have mining and reclamation operations occurring in phases to minimize soil disturbance and erosion. See attached *Map 3: Mine Layout*. As required by NR135, the site will be reclaimed to agricultural use.

**II. HISTORY**

Tricor Transit Inc. currently operates in a nonconforming site just south of the subject property. As one can see from *Map 3: Mine Layout Map*, operations had already started in a small portion of the subject property. Dane County Zoning inspected the site and worked with the operator to verify the NC site boundaries and determined that a CUP was necessary to operate on the subject property.

**III. ANALYSIS**

A. Compliance with Town Land Use Plan: The subject property is located in the Agricultural Preservation District. The purpose for this district is to "Preserve prime agricultural land and protect farm operations from the encroachment of incompatible land uses". Mineral and aggregate extraction operations, are allowed in this district "provided a land reclamation plan is approved by the Town Board".

B. Compliance with County Ordinances: Mineral extraction operations must meet requirements found in Chapters 10, 14 and 74 of the Dane County Code of Ordinances. The applicant has

submitted an erosion control plan to the Land Conservation Department. Land Conservation approved the plan (see attached letter). The applicant submitted a reclamation plan as required by Chapter 74. Land Conservation has reviewed and approved the reclamation element as well. The Zoning Administrator gives final approval of the reclamation plan. Section 10.123(3)(i) allows for mineral extraction as a conditional use in the A1-EX district. The six standards for granting a CUP in S. 10.255(2)(h) of the zoning ordinance are as follows:

1. That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or welfare.
2. That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use.
3. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
4. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made.
5. That adequate measures have been or will be being taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets; and
6. That the conditional use shall conform to all applicable regulations of the district in which it is located.

According to S. 10.123(3)(a) of the zoning ordinance, the ZNR Committee must also consider the following factors when approving CUPs in the A-1 Exclusive District:

- *The statement of purposes of the zoning ordinance and the A-1 Exclusive Agriculture District.*
- *The potential for conflict with agricultural use*
- *The need of the proposed use for a location in an agricultural area.*
- *The availability of alternative locations*
- *Compatibility with existing or permitted use on adjacent lands.*
- *The productivity of lands involved*
- *The location of the proposed use so as to reduce to a minimum the amount of productive agricultural lands converted.*
- *The need for public services created by the proposed use.*
- *The availability of adequate public services and the ability of affected local units of government to provide them without an unreasonable burden.*
- *The effect of the proposed use on water or air pollution, soil erosion and rare or irreplaceable natural resources.*

C. Public, Local, Government, and Agency Input:

- *Town Plan Commission:* The Vienna Plan Commission voted 5-0 to approve CUP #1783 subject to conditions (see below):
- *Town Board Action:* The Vienna Town Board voted 3-0 to approve CUP #1783 subject to the following:

“The town asks that the attached contract between the town, property owners, and the operator (Tricor Transit – Paul Munz) be attached as conditions to the approval to CUP 1783”. Please see the attached copy of the contract.

The town of Vienna has a local policy in which operators enter into a contract with the town. This particular contract involves mineral extraction activities in the existing non-conforming (NC) site as well as the subject property (CUP 1783).

The town clerk also requested that staff look through the contract and pick out those conditions that would be appropriate to separate out and list on the permit.

Appropriate conditions include numbers 5, 6, 7, 9, 10, 12, 13, 14, and 15.

- *Division of Environmental Health:* No objection to this petition.
- *Highway Department:* Not enough information provided to calculate traffic projections.
- *Land Conservation Department:* See attached letter.

IV. CONCLUSIONS

The applicant is requesting a conditional use permit (CUP) to allow a mineral extraction (sand & gravel pit) operation in the A-1 Exclusive Agriculture District in Section 20 of the Town of Vienna. The applicant intends to excavate, process, and remove sand and gravel from portions of a 40-acre site.

**Suggested Conditions:** In addition to the town conditions, the committee may wish to consider the following list of conditions prepared by county staff. Staff started with the standard list of conditions and edited it to account for those already covered in the town conditions.

## POTENTIAL CONDITIONS OF APPROVAL

1. The applicant shall submit an erosion control plan covering the entire CUP area for the duration of operations, and receive approval of an erosion control permit prior to commencing extraction operations.
2. The applicant shall apply for and receive all other required local, state and federal permits.
3. The operator shall develop and operate the site according to the site/operations and phasing plan dated May 2002.
4. Operations shall cease no later than 20 years from the date of CUP approval.
5. Reclamation shall meet requirements of Chapter 74 of the Dane County Code of Ordinances.
6. There shall be a safety fence around the entire extraction area at all times. That safety fence shall be a minimum of 5 feet in height with a single strand of barbed wire on the top. [If the extraction operation does not contain steep slopes, a safety fence surrounding the entire area may not be necessary. Instead, the following condition may be appropriate: ("During operations, the edge(s) of the extraction area shall be maintained at a slope of no greater than 1:1.")]
7. The operator shall require all trucks and excavation equipment to have muffler systems that meet or exceed then current industry standards for noise abatement.
8. The operator shall meet DNR standards for particulate emissions as described in NR 415.075 and NR 415.076.
9. Dane County and the Town of Vienna shall be listed as additional named insureds on the Tricor Transit Inc. liability insurance policy, which shall be for a minimum of \$1,000,000 combined single limit coverage per occurrence. The operator shall furnish a copy of a Certificate of Insurance as evidence of coverage before operations commence. The liability insurance policy shall remain in effect until reclamation is complete.
10. The Zoning Administrator or designee may enter the premises of the operation in order to inspect those premises and to ascertain compliance with these conditions or to investigate an alleged violation. Unless the operation is in reasonable compliance with these terms of this approval, such approval is subject to amendment or revocation.



## AGREEMENT

This agreement is made this June 3 day of June 2002, by and between the Town of Vienna (hereinafter Town) and Tricolor Transit, Inc., 6656 Lake Road; Windsor, Wisconsin (herein Operator) and Michael and Dianne Ripp, 6939 Madigan Road; Waunakee, Wisconsin (hereinafter Owner)

WHEREAS, the Owner and Operator desire to extract mineral aggregates such as sand, gravel, and subsoil from Owner's real estate located in the Town of Vienna, Dane County, Wisconsin, more particularly described as follows:

A parcel of land located in the West ½ of the SE ¼ of Section 20, T9N, R9E, except the portion lying westerly of Madigan Road, that includes 5 acres surrounding the existing house and buildings, Town of Vienna, Dane County, Wisconsin- Parcel ID numbers: 0909-204-8500 and 0909-204-9001 more particularly described in the Dane County Conditional Use Permit document.

WHEREAS, the Owner now needs to secure a conditional use permit for the proposed extraction from Dane County, and

WHEREAS, the Town desires to place certain conditions and restrictions on the proposed extraction and reclamation operation.

NOW, THEREFORE, for \$1.00 and other valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. The proposed extraction operation and reclamation of the real estate described above shall be completed within ten (10) years from the date of this agreement for the original site (entrance Hauser Road) and within twenty (20) years from the second site (entrance on Madigan Road), subject, however, to all the terms and conditions of this agreement.
2. The right to perform the proposed extraction is granted for an initial five (5) year period from the date of this agreement. After the initial five (5) year period, and every five (5) years thereafter until the expiration of this agreement, the extraction and reclamation operation shall be reviewed by the parties hereto in order to determine whether the terms of this agreement have been complied with. No amendments or changes to the agreement shall be binding on the parties unless agreed to in writing. If the terms or conditions of this agreement have not been complied with by either the Owner or the Operator during the term of this agreement, the Town may, after written notice to the parties and in its sole discretion, terminate this agreement and the mineral extraction operation shall be halted.
3. The Town, or its authorized representative, shall have the right to inspect the real estate at any time upon giving at least one (1) hour's prior notice. The Town may be accompanied by the Owner or his representatives while inspecting the real estate.
4. Owner shall restore as soon as practicable areas from which all useable material has been extracted. Restoration shall consist of returning the real estate to its current use, productive farm land. No additional topsoil shall be removed from the real estate. The topsoil shall be stockpiled as berms on the real estate so as to screen the operation as best as practicable. No foreign material shall

be buried or stored on the real estate other than those allowed under DNR statute NR 500.08 (a). The Owner and Operator agree that restoration of the real estate shall include the equivalent to the inches of topsoil being in place prior to the mineral extraction operation's commencement. The original site, with an entrance on Hauser Road, shall have the mineral extraction completed and the site reclaimed no later than ten years after the signing of this agreement.

5. The hours of extraction and/or reclamation operation shall be between 7:00 a.m. and 6:00 p.m., Monday through Saturday. Special permits shall be obtained from the Town in writing for any Sunday, or legal public Holiday operation. The Town may issue such permits in its sole discretion.

6. No permanent structures shall be erected on the real estate.

7. Excavation of the real estate shall be limited in depth so that it does not extend below the groundwater.

8. No new excavation or mineral extraction shall take place within 250 feet of the existing residence located at 5920 Hauser Road (Parcel # 0909-204-9290-0).

9. Drainage control shall be exercised so as to control movement and drainage of water to lands outside of and surrounding the real estate. Ponding of water shall be restricted so that there are no more than three acres of ponded water, one foot deep, on the real estate at any one time. The Owner and Operator agree that ponded water shall be pumped out at least every thirty (30) days. Drainage from the extraction operation to neighboring land shall not be altered from that which exists as of the date of this agreement.

10. Roads into and on the operation real estate shall be maintained in a dust-free condition. The extraction and/or reclamation operation shall be conducted in conformance with the air quality regulations of the State of Wisconsin. There shall be only one active entrance open to the operation site at any given time

11. If any written complaint is received by the Owner and/or Operator from the Town, it shall be responded to in writing by the Owner and/or Operator, within ten (10) days from the date of the complaint.

12. Owner and Operator agree that there shall be no hauling during any Town imposed seasonal weight restriction period without complying with the laws of the State of Wisconsin and/or the Town ordinances, unless special damage liability permits are applied for and granted by the Town.

13. Owner and Operator shall guarantee that any wells in the immediate vicinity of the operation which may go dry or become contaminated due to the extraction and reclamation operation shall be replaced at no cost to the well owner and/or the Town.

14. Owner and Operator shall provide a letter of credit or a surety bond for the term of this agreement in the amount of Fifty Thousand and no/100 Dollars (\$50,000.00) guaranteeing that the real estate shall be restored as provided for in this agreement. The Owner or Operator has the right to choose

either a letter of credit or a surety bond. However, the failure to provide either a letter of credit or surety bond shall immediately terminate the right to extract and require the reclamation of the real estate. Any and all costs for the failure to reclamate in accordance with this agreement shall be a lien on the real estate as provided by law.

15. No blasting or crushing shall be allowed at the site without written approval from the Town.

16. All terms of the Town's Weight Limitation Ordinance shall remain in effect under the terms of this agreement. The Town and the Owner and Operator will determine one direct route from the mineral extraction site to the nearest "Class A" road, as provided in the Town Weight Limitation Ordinance. Any over weight use during any restricted special weight limitation period shall be allowed only if a "Special Weight Limitations Use Permit" is granted by the Town.

17. Owner and Operator shall be solely responsible for full compliance with the terms of this agreement, and the requirements of Dane County Zoning Ordinances and State Ordinances which include, but are not limited to, operation and reclamation of mineral extraction sites.

18. The parties agree that the Town shall have the right to enforce this agreement by the commencement of an action in Dane County Circuit Court. However, prior to commencing such action, the Town agrees, except as provided in paragraph 13, to give the Owner and/or Operator fifteen (15) days written notice of any non-compliance which the Town alleges or considers to be a default within the terms of this agreement or any applicable law and the Owner and/or Operator shall have the right to cure such default within the fifteen (15) day period, or within such time as the parties may agree in writing. If such default is not cured, the parties agree that the Town shall be entitled to seek such equitable or other relief as may be permitted under the laws of the State of Wisconsin, including but not limited to its reasonable legal fees and costs.

19. Conditional Use: The terms of this agreement shall be incorporated as a part of the conditional use permit issued by Dane County.

20. Successors in Interest: If this agreement is permitted to be assigned, the terms of this agreement shall be binding upon the successors and assigns of the Owner and/or Operator.

21. Assignment, Transfer, Sale: During the term of this agreement the Owner shall not transfer, sell, lease, or otherwise convey the real estate described in this agreement to any other person, entity, or corporation; nor shall Owner assign or transfer this agreement to any other person, entity, or corporation without the express approval by resolution duly adopted by the Town. Such approval shall not be unreasonably withheld.

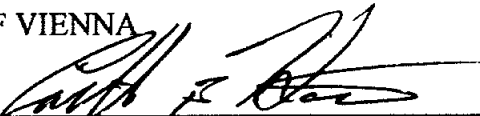
22. Compliance with Applicable Laws: During the term of this agreement, Owner and Operator shall comply with the provisions of any applicable state and federal laws and regulations, and the provisions of any applicable County and/or local ordinances.

22. Waiver: No waiver of any breach of this agreement shall be held to be a waiver of any other or subsequent breach. The failure of the Town to enforce at any time any of the provisions of this agreement, or to exercise any option which is herein provided, or to require at any time performance by Owner and/or Operator of the provisions hereof, shall be in no way construed to be a waiver of such provisions, nor in any way affect the validity of this agreement or any part thereof, or the right of the Town to thereafter enforce each and every such provision.

23. Severability: If any provision of this agreement is held invalid, the remainder of the agreement shall not be affected thereby.

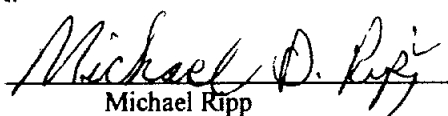
IN WITNESS WHEREOF, the undersigned parties have hereto set their hands and seals this \_\_\_\_\_ day of June, 2002.

TOWN OF VIENNA

By:   
Carlton B Hamre/ Town Chairperson


ATTEST:   
Robert Pulvermacher/ Town Clerk

OWNER:

By:   
Michael Ripp

By:   
Dianne Ripp

OPERATOR

By:   
Paul Munz/ Tricor Transit, Inc.

The above person represents that he is authorized to sign on behalf of Operator



**TOWN BOARD ACTION REPORT**

Regarding Zoning Petition # \_\_\_\_\_ CUP # 1783 Public Hearing \_\_\_\_\_, 2002

Whereas the Town Board of the Town Vienna, having considered said zoning petition, be it therefore resolved that said petition is hereby ( Approved / ~~denied~~ ).

**The Town Plan Commission,**

consisting of 5 members voted 5 in favor and 0 opposed / 0 absent

**The Town Board,**

consisting of 3 Members voted 3 in favor and 0 opposed / 0 absent

The above petition is subject to the following conditions: (Cross out or write none if there are no conditions)

The Town Asks that the attached contract between the town, the property owners, and the operator  
(Tri-Cor Transit- Paul Munz) be attached as conditions to the approval of CUP 1783

\_\_\_\_\_  
(attach additional pages as required)

**Please Note:** If the proposed zoning is approved by the Town Board, but the rezone does not comply with the Town Land Use Plan, please explain the approval. These reasons are critical for the Zoning Committee and the County Board in their consideration of the petition.

NA

**Please Note:** The following space (and additional pages if required) are reserved for comment by minority voter(s).

NONE

I, Robert Pulvermacher, as the Town Clerk of the Town of Vienna, County of Dane, hereby certify that the above resolution was adopted in a lawful meeting of the Town Board on June 3, 2002

Date: June 17, 2002

\_\_\_\_\_  
Robert Pulvermacher/ Vienna Town Clerk