



**Georgetown Zoning Board of Appeals**  
*Memorial Town Hall ♦ One Library Street ♦ Georgetown, MA 01833*  
*Phone (978) 352-5742 ♦ Fax (978) 352-5725*

**MINUTES OF A PUBLIC HEARING**  
**1 Industrial Way, Georgetown MA**  
**Caruso & McGovern Construction, Trustees Industrial Way Trust**  
**ZBA File #16-03**  
**Aggrieved Appeal of Determination of Building Inspector**  
**February 2, 2016**  
*(Postponed by agreement from 12/1/15, lack of quorum)*

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Board Members Present:                    *Gina Thibeault, Chairman - Absent*  
    *Jeff Moore, regular member, Acting Chair-Voting*  
    *Sharon Freeman, regular member - Voting*  
    *Paul Shilhan, regular member - Recused*  
    *Dave Kapnis, regular member - Voting*  
    *Shawn Deane, associate member – Absent*  
    *David Twiss, associate member - Voting*

**Attorney for the Applicant:**  
McCarthy & McCarthy – Attorney Michael McCarthy  
One Centre St. Wakefield, MA  
Applicant: Not Present

**Town Counsel – Attorney Jonathan Eichman**  
Note\* Board members are referred to with their initials.

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JM, acting chairman opened Hearing at 7:31pm. This hearing was postponed due to lack of quorum on 12/1/15, and both parties agreed in writing to postpone the opening of the hearing to 2/2/16, with an extension of time form.

DK - read legal ad; A Public hearing will be held on December 1, 2015 at the Georgetown Town Hall 3rd Fl. Meeting Room at 7:30 pm. An application has been filed by Stephen (aka Steven) Caruso & Gerard McGovern Construction; Trustees of Industrial Way Realty Trust located at 1 Industrial Way, Georgetown, Assessor's Map 16, Lot 43 in the IB zone. The applicant has filed this Appeal as a party aggrieved by the determination of the Building Inspector's Zoning Violation letter dated 10/5/15, in which the Building Inspector instructed the applicant to Cease and Desist the concrete crushing operation due to Noise and Vibrations going beyond the property.

The applicant is appealing this determination to the Zoning Board of Appeals as anyone aggrieved by a determination of the Building Inspector/Zoning Enforcement Officer has the right to appeal through the Zoning Board. This Appeal is pursuant to M.G. L. Chapter 40A, Sections 7, 8, 15 & 17, and the Georgetown Zoning Bylaw, Chapter 165 Section 98.    *ZBA File #16-03*

JM - Read an email from GT that she is unable to sit on the hearing.

PS – I will be recusing myself as I have a financial conflict.

JM – Introduced the Board members sitting and voting, Dave Kapnis (DK), Sharon Freeman (SF), Jeff Moore (JM), and David Twiss (DT)

**JM asked for Attorney McCarthy's Presentation (applicant not present)**

Attorney McCarthy started by passing out an Ariel photo of the area and a color copies of the Map that was submitted with the application. He gave background information, the owners acquired the property in 1996 and at that time the property was zoned as it is now IB, at that time also the area now known as Hickory Lane, was also zoned as IB. My client Mr. Caruso and his partner moved their business into Georgetown at that time. In 2007 my client submitted an application to the DEP for a license to operate a business named ABC Recycle Facility, as a part of that process, they hired engineering and permitting firm out of Westboro named Beal's and Thomas I was involved in that as well, part of that process was a very detailed examination of the site by DEP.

I believe the town received a copy of that initial application and was asked if they had any comments or objections, during that time both I and Beal's & Thomas had been in touch with the Building Inspector's office to inquire if any other permitting was required, we were told no, and you should have confirmation of that in correspondence by the then Inspector Mr. Metivier, he indicates that there was contact and he determined that no site plan review was required, or any other permit, as a result of all that the operation was commenced, prior to this operation the property was used by Caruso & McGovern as a contractors yard, garage and offices all permitted by the town.

My client didn't do anything incorrectly, we did meet with planning briefly Sept 9, 2013 and they had no issue and I believe satisfied them. We have the Oct. 5, 2015 letter there are 2 alleged violations, now the burden is on the building inspector I would argue to establish that a violation exists, it was more than 6 years, so I would argue section 7 under 40A, that it is grandfathered, the other issue is the inspector requiring a modification of a 1996 water resource permit, and then noise and vibration, the 1996 ZBA water resource permit, we don't believe there is a violation, and we don't think any modification is required, no evidence of violation. The permit does not restrict future use, or criteria that a future review would be required, there has been no identification or any fact or circumstance occurring at the site that would trigger the application of the water resource bylaw.

I would point again to the communications with the building inspector back in 2007, in the spirit of the bylaw this site has been before the conservation which has been done, we have orders of conditions that will be complied with.

With respect to the noise, the allegation that there is offensive or objectionable noise, the recycling use does include some crushing, the crushing operation in 2015 was for one 3 week period, when the use was commenced in 2007 I believe the hours of operation the abutter say it was on Saturdays, I am not sure, when we got the complaints in 2015 the crushing operations have been and will continue to be 7:00am to 3:30pm, Monday – Friday, no Saturday and Sunday operations or holiday operations. In addition, my client got quieter equipment and rules for noise.

McCarthy – With respect to the noise, there has been an allegation that there is objectionable noise occurring on the site and bothering the neighbors, As you know the town doesn't have a noise bylaw doesn't have anything that limits the decibel levels, I would suggest therefore the DEP standards and regulations apply here, My client has had noise studies done since 2012 both on the site and up against the Hickory lane development, done on 10/4 and 10/9/2015.

Mr. McCarthy presented a Noise regulation from DEP, a copy of the Boston Mass noise ordinances, a packet of Noise studies (named daily field reports), dated 8/15/14, 8/19/14, 9/15/14, 10/9/15 and 10/1/15 and 2/23/12 from the firm of Cardno ATC, 40 Strafello Drive, Avon MA.

Patty marked these new documents with the other Exhibits as:

#1 – Plot Plan dated 10/27/15 by Stephen Melesciuc, of Marchionda Associates of Stoneham Ma & Ariel

#2 - New correspondence, email from Conservation Agent dated Nov. 19, 2015 – Jeff read into record

#3 – Letter from Mr. Heneberry abutter dated 2/2/16

New information McCarthy presented on 2/2/14

#4 Document from DEP regarding Noise 210 CMR 7.10 (1) Noise

#5 the Boston MA Noise Ordinance

#6 A Packet of Dailey Field Report from Cardno ATC, of Avon MA, sound studies dated, 8/15/2014  
8/19/2014 and 9/15/14, 10/1/2015 and 10/9/2015.

#7 A one page document “Dailey Field Report from Cardno ATC, of Avon MA, sound study dated 2/23/2012.

McCarthy explains the DEP noise regulation, and explains the noise on the other documents, with noise levels and decibels in the documents above.

McCarthy – It’s not our burden to proof compliance, I submit there is no violation.

Patty let Attorney McCarthy know that per our application any new information shall be given to the board 2 weeks prior to the hearing.

JM – Let me read the Conservation email; Hello Patty, The ConCom approved the proposed project for 1 Industrial Way and issued an OOC on 8/24/2015. As part of the proposal the wall was to be relocated / modified and the filled wetland were to be restored this fall. As of last week they have not done this work as agreed upon at the meeting. When I asked why they claimed that they missed the planting window. Aside from that I have no additional updates to report. Anything else I can do please let me know. Thank you. Steve. (see attached).  
Exhibit #2

## **Audience**

Hall Mark, 8 Hickory Lane - *To: The Zoning Board of Appeals, All Town Departments, and to all residents of Georgetown because this can happen to you: My name is Mark Hall of 8 Hickory Lane and I have been authorized to make the following statement on behalf of all the residents of our street. Other residents will speak as well: It is unfortunate and aggravating that Hickory Lane has been subjected to noise and vibration pollution caused by the crushing, conveyor and logistics operations of Caruso & McGovern for more than 2 years. We have complained consistently about Caruso & McGovern’s violations of zoning law through the proper channels since late 2013 with no satisfactory response from that company. While we understand the root cause of the problem is the violator, we don’t understand why the Town has not enforced the laws to effect timely compliance. We hope tonight is the beginning of the end of this unpleasant situation which affects our property values and the enjoyment of our property which the zoning laws and the Town government are intended to protect. A brief recap of the facts is as follows:*

*The Caruso & McGovern operation (aka Georgetown Recycling) at 1 Industrial Way is Zoned as “Light Industry.” The noise, vibration and heavy tractor-trailer traffic associated with the operations violate the very definition of the classification;*

*The Georgetown Zoning Enforcement Officer has issued 4 Cease and Desist orders to the offender since November 19, 2013.*

*The 3<sup>rd</sup> such order issued on July 15, 2014, also stated the violator is not in compliance with the 1996 approvals indicated in the Special Permit from the Planning Board. Caruso & McGovern was ordered to return the site to the conditions approved in 1996. A plan to accomplish this was supposed to be submitted by August 14, 2014. As with any action of the Zoning Enforcement Officer, Caruso & McGovern was allowed to appeal that decision within 30 days. Their response was the same as for the prior 2 Cease and Desist orders...they ignored it.*

*The 4<sup>th</sup> Cease and Desist Order was issued on October 5, 2015. Their appeal of THIS order has brought us to the hearing tonight.*

*As serial offenders often do when they go unchecked, Caruso & McGovern made matters even worse by disturbing the wetlands at 1 Industrial Way without consulting the Town. Who knows what other violations exist on that site? All these actions indicate a pattern of behavior contrary to the interests of Georgetown and its residents.*

*As if on cue in preparation for this hearing, the noisy operation was going strong today and the police were notified.*

*What remedies are we seeking tonight? We simply want compliance with the law. We’ve been polite and patient and our patience has run out. Specifically, we are asking the ZBA to deny this appeal on whatever grounds you deem appropriate*

- *It could be for not filing the appeal timely. The dates of the 3 prior Cease and Desist Orders are 11/19/2013, 1/21/2014, and 7/15/2014, or*
- *It could be denied on the merits as they are not in compliance with Zoning laws regarding objectionable noise and vibration, nor are they in compliance with their own operating plan as initially approved;*

*We are requesting that no Georgetown Department or anyone affiliated with any Georgetown Department or Board patronize Caruso & McGovern until they comply with all Georgetown laws, rules, and orders. We ask the Board of Selectmen and Town Manager to implement this common sense policy immediately;*

*We are requesting that the Town of Georgetown, including this Board, not reward the offender's lack of response to Town authority and begin immediate enforcement actions including fines and any other legal remedies until they are compliant. In other words, as you decide this "case," don't let them benefit from calculated inaction. Doing business in ANY town or city in proximity to residential property is a privilege bestowed based on good faith and perpetuated as a result of good behavior. It is not a right;*

*Lastly, we want to thank all of the businesses operating in Georgetown who are good corporate citizens and neighbors. There are many such businesses in the Industrial Way/Tenney Street Light Industry area. We drive by these companies every day and know that their small business values make Georgetown a better place. We thank the Board for the opportunity to speak tonight. Hickory Lane residents*

Henneberry, John, 12 Hickory Lane – My wife Barbara and I have been here 30 years, 17 years on Hickory lane, 14 years were fine, the last 3 years we were confronted with noise and vibration, to the extent were things fall off the wall, the studies they submitted, they paid for. We came to Georgetown to enjoy being away from city noise. Attorney McCarthy stated work hours and no holidays, on Nov. 2013, the latest was 3:30am for 45 minutes, trucks were dumping, the latest was May 20, 2015 at 2am, it was like someone putting a boat horn at your ear, and July 4 2014, during the day, and Columbus day 2013, so that's not true about the hours. That resulted in a call to the police. If there is no objectionable noise, why are we here? Jon Metivier told us over a year ago that they purchased a sand and gravel crushing facility in Ipswich Ma, called Miles River, and that's where they go for crushing now.

Henneberry, Barbara of 12 Hickory Lane agrees it's unbearable with windows closed when they are crushing.

Gondella Michael, 10 Hickory Lane – I have live here since 2009. I am frustrated and disappointed, it's a constant noise, banging, screeching, the roar of the crushing machine, they have dump truck come in all times of night and day, the tail gate makes like a sonic boom sound, I can feel the vibration also, they have these mechanized tracks, and it's like nails on a chalkboard, and the excavator with a bucket and they do digging, and 50 to 60 ft. piles, and you can hear it move like a landslides, it's two years later this January I am studying, and I can hear it with the windows closed, I went into my car down the street. I would take audio video and sent to Jon Metivier the previous inspector.

He plays audio from 8/25/15 from his back deck, roughly 500 ft. away, that's just the truck and taken audio by a phone. I have another recording from September 2015, it's the actual rock crushing, it drowns out everything, He plays the audio from the back deck, this goes on all summer and when it's working.

Walsh Michael – 2 Hickory Lane – I am curious why Mr. McCarthy didn't site our bylaw but Boston Ma, our states light industry is defined as Fabrication, assembly, processing, finishing work or packaging in such a manner that Noise, Dust, Odor, Vibration and similar objectionable feature are confined to the premises. If they are measuring sound, doing these studies, that sounds to me like they also think they sound have left the premises and I was surprised this hearing is even taken place seeing that there are many outstanding Cease and Desists orders before this that were not address in the 30 day timeframe.

Elaine Shuttleworth, 13 Hickory – Where they took the noise decibels at 13 Hickory Lane, I am another 650-700 feet back from there and you here the noise back there as well, so it goes well beyond that. She shows that she is actually off the Map they show.

JM – If there is no one else I want to entertain questions from the board at this point.

Filenis McCarthur, 4 Hickory Lane – I echo everything my neighbors said, I belong to a group called Georgetown ma parents, on the 23<sup>rd</sup> of January, I want to read this from this woman online from someone in this group I won't mention the name it states; we live off Tenney St., there is a sound in the morning and in early afternoon that is so loud and sounds like machinery that makes a noise that could literally make you nauseous, does anyone know what this is or what it could be. So there are other people being affected.

McCarthy – Will I be able to respond to these comments.

Jeff – Yes. If there is no one else, I will bring it to the Board

### **Board Discussion**

DK – To Attorney McCarthy, I am very frustration with your presentation, you were not organized, passing out information with not enough copies, in some cases 1 copy for board members, you were flying through it not giving us a chance to absorb it, I am just very frustrated with way you were trying to present about what a good neighbor this company is.

McCarthy – I was trying to get through it quickly to economize on time. I meant no offensive.

DK – We are a volunteer board, you should really explain what your passing out, we are not attorney's you lost me in the first 5 minutes, you didn't allow us to follow along, we didn't even have a copy of what you passed out, and it seemed to me or it made me feel like you were trying to hide something by going so fast.

McCarthy – I didn't mean to. But you have the evidence.

DK – I have some of it you didn't give us enough copies to go around.

JM – I would like to get back to the actual appeal of the letter before us and look back here for a minute because there is some confusion on my part as to the timing of this appeal and the lack of appeal of previous cease and desist orders, or maybe you can clarify some of that, so there was a similar cease and desist order back on November 19 of 2013, were there was objectionable noise and you were ordered to cease any operations that transmit noise and vibration beyond on the premises, you were granted an extension at that time by the inspector to Monday January 6, 2014, why didn't you file then?

McCarthy – We put an appeal on record.

JM – It never came before this board.

McCarthy- That's right it was never taken up with this board, it was filed the town clerk. There was no one to file with, so we filed the notice of appeal with the Town Clerk.

JM – But we never received an application for an appeal.

Patty asked if Attorney McCarthy has the dated he filed. – No answer.

Patty stated - If I was not in the office on a particular day and it was filed with Town Clerk, she would take it in stamp it, take the check and call me immediately sometimes she will even call me at home, I received no application for this address.

JM – As far as I am concerned if it wasn't heard by this board it wasn't appealed.

JM – Do you know the date you filed it, do you have a copy?

McCarthy – No and I don't, I don't remember I can get the date for you.

Attorney Eichman – The question would be does the town clerk have anything, that should be put on the record.

JM – On January 21, 2014 there was a similar cease and desist order again ordered to cease any operations that transmit noise beyond the premises, Jeff reads. *(see attached)* Was that letter ever appealed?

McCarthy – I don't believe it was, but I don't think we were in violation.

JM – You felt you weren't in violation but you didn't appeal?

McCarthy – I don't think we were in violation with that order issues to cease any operations that transmit objectionable noise, no we don't believe we transmitted objectionable noise.

JM – So you didn't agree with that letter?

McCarthy – I didn't say that, I said I think we followed it, we didn't believe we transmitted any noise beyond the premises.

JM - So from that point on you didn't feel like you transmitted any objectionable noise.

McCarthy – Correct.

JM - May 5, 2014, there was a building code violation letter issued, an enforcement order for an unpermitted structure it's not a cease and desist it's a zoning code violation, to Steven Caruso acting on a complaint during a site visit and the inspector saw a large wall constructed of concrete block the structure greater than 10 ft. in height and was constructed without a building permit, Section 105.1 of the building code requires a permit for that structure, and this is the first you have seen of this letter?

McCarthy – Yes, I don't have that letter, but there was back and forth with the inspector. I think it went to conservation. With respect to all of these letters my client was working with the previous inspector to try to reduce the noise levels.

DK – You have 2 violations, no building permit and it was too close to the wetlands.

McCarthy – Well permit related to the wall. DK – But you needed a permit for that.

JM – Then the July 15, 2014 from Building Inspector Zoning Violation/Conservation Notice of Intent conditions, he said you violated and to cease and desist, again objectionable noise. And he mentions the January 21, 2014 order to cease operations, he's telling you that you continue to violate the zoning bylaw and the January 21, 2014 order to cease any operations. Jeff reads letter. *(see attached)*.

McCarthy – We didn't appeal that because we didn't violate anything we believe. What would be appealable would be to cease and desist the operation, we would appeal that, we did appeal that, we wouldn't appeal an order to cease operations that transmitted objectionable noise and we didn't believe we were doing that. We did make effort to reduce any noise.

JM – Now we have the October 5, 2015 letter to cease and desist the concrete crushing operation, which is the letter you're appealing tonight.

McCarthy – Not all the operations on the site are concrete crushing and it is not done in the middle of the night, so if there are noises reported at 2- 3am it's not concrete crushing, the crushing is limited, in 2015 it was only 15

business days, so there was nothing done in the summer, and there were complaints investigated that had no relation to us.

SF – Are you suggesting that other businesses are the ones creating this noise?

McCarthy – In some cases I am and it was determined by the inspector to be the case, it was an abutter.

SF – I don't have anything on that, we didn't receive anything about that.

JM – I would question this letter your appealing now, I would tend to argue that this is a series of conversations going on and I would somewhat question the timing of this appeal being valid, but none the less we are hearing this case so, this particular letter that you claiming, again that he's ordering a cease and desist the concrete crushing operation until such time as you modify the existing special permit to include recycling operation, and are able to operation without transmitting noise and vibration beyond the property. So he's encompassing the exact same thing again.

JM – The one thing we are missing from the first letter is anything on file that you said you appealed with the Town Clerk; we obviously didn't not receive an application from you here, so that process was not complete.

JM to Patty – No the town clerk's office would contact me immediately if an application came in, she actually will ask people if they have seen me first to check their application for completeness, but it's not mandatory of course, if I am not in the office I am part time, she would stamp in an application take the check, and call me when I get back in for processing, I never received an application on this address.

McCarthy stated the Zoning Clerk was not in.

SF – If it's not concrete crushing that making noise, something else is. It may be other machinery or trucks.

JM – For the record, this is a mobile piece of equipment that you bring on site.

McCarthy – Yes.

JM – Is it located on site today? McCarthy I don't believe so.

SF – It's still clearly an issue.

DK – If they are running recycling, it has to be trucked in, I assume its left on-site, and there are probably triaxles coming in that's the big tailgate slam. Dave explains perhaps how and when material and operation would work. The trucks may be coming in late or early in the morning I am assuming.

McCarthy – They may have other operations, I know they are a contractor for National Grid and there can be emergency calls sometimes.

JM – You're saying that you only used the concrete crushing machine for 15 days?

McCarthy – 15 working days (3 weeks) in 2015.

SF – Clearing there is something else going on there.

JM – in 2014?

McCarthy – In 2014 it was there twice.

DT- You had these studies done, with respect to the appeal, I guess I am having a hard time with this , you came in and you are appealing the decision by the inspector, yet there was not follow up, but more importantly, the idea of doing a study is important and would lend to one side or another, so I guess the question would become, why not approach the town or the inspector, and say I am willing to pay for a study but why don't we pay an independent 3<sup>rd</sup> party not hired by you, to come out and conduct a study, because then the citizens of Hickory Lane, maybe less apt to say, well they hired them, so it was a quiet day, I am not saying that was the intention, but you can see how it could be perceived that way and would be questioned.

McCarthy – My client was working with the building inspector, they erected and had to move a sound barrier the wall, which was in violation of the Wetland Protection Act, but that was a good faith effort to try and reduce the noise, one of the studies, mentions a loose wall, they were trying to reduce noise, they were not ignoring it, and working with the building inspector, and conservation the NOI with conservation was step 1, there was effort.

Discussion on independent studies.

JM – So say there is all this coordination with the building inspector, but yet I am not so sure there was because first of all what was done was not done with his coordination or with a permit, and I don't see anything that indicates that he would agree that this issue which has been going on for a number of years has been resolved to his satisfaction, and in fact to the contrary the most recent letter from last year says your still in violation, and from all the evidence that I have heard from the folks in this room that have to deal with this every day, I would say this is a pretty egregious violation quite frankly. I don't much care what Boston's noise ordinances are, we are not in Boston.

McCarthy – I would submit the DEP regulation applies in the absence of any other regulation here in town, and we are not in violation of that.

JM – Well we do have a bylaw.

DK – According to our bylaw you are in violation.

McCarthy – There we disagree.

JM – The Zoning Enforcement officer (inspector) disagrees as well, by virtue of multiple correspondences.

McCarthy – I would submit that his determination of objectionable noise is subjective, and that why the studies were done, the DEP regulation applies, so that's the point of the appeal.

JM – We are here to uphold in my opinion the bylaws of this town, and I am not here to determine if a DEP regulation is stronger than, more stringent than or less stringent than the town bylaws, I know what objectionable noise is when I hear it and from the folks in this audience, this is not just about noise, it's about vibration, I think there are a lot of things going on here, you have multiple pieces of equipment that anytime of the day or sometimes at night on weekends, holidays are making people's lives miserable.

McCarthy – I would just point out for the record that there is no evidence of vibration submitted by the inspector, that's before the board, and there is not objective evidence relative to the noise except to what I have submitted.

JM - I also take what folks have to say at this hearing as reasonable, and into consideration.

McCarthy – For the record that's subjective as well.

JM – Opens up to audience again. Is there something we have not heard already or someone not sure.



## **Audience**

Barbara Henneberry – If I knew there would be a debate about if there was noise or not, I would have taken all the logs we and neighbors have kept, and we have paper notes of every daily disturbance. We have diaries of this. We can get it if you need it.

DK – I am not sure we do. Some people had mentioned that was the call to the police, and it would be supportive of your case, and it is public information.

J. Henneberry – If you have access to the previous inspectors records and phone calls to him, and the conservation agent, I am sure it will show all the back and for. This impacts property values. We have the bylaw.

DK- Did they purchase a company in Ipswich. McCarthy – No there is no connection.

## **Board Discussion**

JM – What's before us is whether or not we feel if the zoning violation letter from Jon Metivier is valid as stands or if you accept an appeal by the applicant, that it is invalid essentially, and that's really the only matter before us at this point, he appealing the 10/5/15, letter.

DK asks counsel about a motion.

J. Eichman – A motion needs to be clear, I would make a positive motion to deny, if you're going to that, I just want to make one point, you phrased the issue here of the earlier orders not being appealed, I would suggest that if the board is so inclined to make a specific finding that they if they move to deny that they are denying in part because the order was not timely appealed, because otherwise you risk waiving that argument if you go forward on the merits, you could also and I would suggest that you do, rule on the merits of this particular appeal, but I would also make a motion to deny for that other reason as well.

SF – If this was denied, then they would come back?

JM – No then this October 5, 2015 letter stands.

SF – In the letter it says, until such time that you modify the special permit for the recycling.

JM – They would have to go through that process.

SF – Asks about process if we deny could they come back?

Eichman – If it was available under the bylaw, I did not see the \_\_\_\_\_ (inaudible) special permit for this use under the bylaw now that is not before the board.

JM – The special permit from 1996 was for water resource.

Eichman – There was also a special permit issued for bulk storage, and I believe that somewhat corresponds with what I see in the current bylaw, that was back in 1996, but for this particular operation which is essentially recycling operation, other than light manufacturing I don't see anything in the bylaw, that suggests that this is a special permit use.

DK – Asks about wording for a motion.

Eichman - I would suggest you make findings first about what you have concluded based on the evidence before you, move that the board find that the applicant has not timely appealed the prior cease and desist orders, the second would be, move to find that the applicant has failed to timely appeal the cease and desist orders prior to 10/5/15.

Paul Shilhan (audience) Asks to speak as a citizen.

J. Eichman stated that would be fine.

Paul Shilhan, 126 E. Main St. - What is the status if board denies this appeal, based on the fact that the applicant feels that there no evidence that they did nothing wrong from their prospective will they then be likely to appeal it to a higher level the state, and if they do does that allow them to not cease and desist in what they are doing currently, so can they stay in this sort of temporary state of appeal for as long as it takes, because it seems the applicant doesn't seem to have a disagreement about appeal per say, I feel it will be taken to another level and I am wondering why that would be.

JM – Obviously the zoning violation would stay in affect from the town's perspective, they would have to comply with that, if they chose to appeal our decision, I will let counsel explain.

DK – I have a question on the Cease and Desist order; is that in affect during an appeal, hence the fine of I believe it's \$300 per day.

JM – Question is does an appeal stay the violation order.

Eichman –So to the first question is, what is the appeal process, there is a right under Chapter 40A Section 17 to appeal that, and that would take the appeal to a state court, that would be the appellants choice based on the statue that is a zoning appeal specifically, if you are referring to the DEP regulations, counsel siting those as examples of what the State considers objectionable noise, but this appeal would be decided based upon the Town's Zoning Bylaw, in my opinion.

SF – Can they continue their operation should they exercise that right to appeal to the state?

Eichman – The objectionable noise based on the DEP criteria is a separate issue not a zoning issue, so that can be taken up with the state to the extent that the state if willing to consider it, but it's not something that this board

SF interjects, but they wouldn't have to stop operation if they are in the process of appealing to the state.

Eichman – Legally, the order of the Building Inspector has affirmed by the board here remains in effect, so the use is illegal, however, if it continues, the option of the board then is to seek the enforcement of its order's in court, of course if the appeal is filed, its already in court, and the likelihood, is that the court would simply allow the appeal to be heard before it issued any kind of orders.

SF – So they could continue what they are doing that is presumed to be objectionable.

Eichman – Motions could be filed to ask them to stop, the court would consider those motions, but that's essentially what would happen.

DK – How would the cease and desist order Violation is a \$300 a day fine.

Eichman – The fine has to be levied by the town, it's not automatic.

DK – So that could be also tied up based upon if he appeals to the state, or do we know that?

Eichman – I am not sure how that would tie to the appeal, if you're talking about the DEP issue....

DK interjects – I mean if this is denied, and they continue operation I would think the town wants to get their \$300 a day.

Eichman – Right, but that's a fine for a Zoning Violation, not a DEP fine.

DK – Who would enforce that?

Eichman – The Town would.

**Motions:**

**Motion by** SF – I move that the Board find that the applicant has failed to timely appeal the cease and desist orders issued by the Building Inspector on November 19, 2013, January 21, 2014, and July 15, 2014.

Seconded by DK. JM – Any Discussion? Hearing none, JM – I will do a roll call vote.

**Vote:**

DK – Yes, SF – Yes, DT – Yes, JM – Yes. Motion passed 4-0.

**Motion**

SF – I further move that the Board find that the applicant has failed to comply with the Building Inspector's October 5, 2015 order by continuing to allow objectionable noise and vibration to reach beyond the boundaries of the property. Seconded by DK.

Discussion; JM - I would just add that my vote is based on the evidence presented before this board.

**Vote:**

DT – Yes, DK – Yes, SF – Yes, JM – Yes. Motion passed 4-0.

**Motion** on the Actual appeal itself;

SF – I further move that based upon the board's findings to Deny the applicants appeal from the Building Inspectors 10/5/15 order would stand. Seconded by DK.

Discussion – JM, so a yes vote on this would deny the appeal before the board tonight and the letter from the Building Inspector dated 10/5/15 would stand.

**Vote:**

DT – Yes, DK – Yes, SF – Yes, JM – Yes. Motion passed 4-0.

**JM – This Appeal has been Denied.**

**Motion to Close Hearing:**

DK - I make a motion to close the hearing for 1 Industrial Way, seconded by SF.

Discussion – None. All in favor, no discussion, all answered yes. Motion carried.

*Patty Pitari  
Zoning Administrative Assistant*

*Approved at 4/5/16 Business Meeting*