

**THE COLLINGS FOUNDATION**  
**APPEAL FROM UNFAVORABLE ACTION**  
**JUNE 1, 2015**

The hearing was held in Stow Town Hall and opened at 7:32 p.m. on the Appeal From Unfavorable Action of the Building Commissioner filed by **The Collings Foundation, 137 Barton Road** concerning a cease and desist order related to the existing airport and landing field at said address. The property contains 2,208,000 sq. ft. and is shown on Stow Property Map R-25 as Parcels 16A, 16B and 17.

Board members present: Edmund Tarnuzzer, Charles Barney, William Byron, Bruce Fletcher, Ruth Sudduth (associate).

Mr. Tarnuzzer chaired and read the notice of hearing as it had appeared in the *Beacon Villager* on May 14 and May 21, 2015. The hearing notice had been forwarded to all abutters by certified mail, return receipt. Rather than read the long list of abutters, a sign-in sheet was passed around. Approximately 28 abutters signed in. and the list is attached to these minutes. Mr. Tarnuzzer introduced the members of the Board as well as Town Counsels Jonathan Witten and Barbara Huggins. Building Commissioner Craig Martin was also present.

The hearing was turned over to Mr. Witten. There was an application filed by the appellant in the Town Clerk's office on May 5, 2015 to appeal the decision of the Building Commissioner's cease and desist order. The Order is dated March 26, 2015 and was forwarded by certified mail, return receipt. A hand-carried copy of the Order was delivered by Mr. Martin on March 31st in accordance with M.G.L. Chapter 40A, Sections 7 and 15 after which there was a 30-day appeal period. Mr. Witten stated that thirty days is a fixed number, and the Board must receive an appeal within the 30-day period. The application for appeal is date-stamped May 5, 2015. It is his opinion that the appeal is untimely. Therefore, the Board lacks jurisdiction to hear the appeal of the matter.

Attorney Thomas Mullen, representing the appellant, presented the affidavit of Robert F. Collings. He related that after the Order was received, Mr. Collings caused copies of the Zarrow case to be prepared. He requested a meeting with Mr. Martin to explain the history of the site and provided a bound copy of the Zarrow case. Apparently the Zarrow case was not known to Mr. Martin, but he agreed to review it and take the matter under advisement. On April 8th Mr. Martin advised he had reviewed the material and had decided to proceed with the cease and desist. Mr. Mullen maintains that April 8th is the actual date of the Order.

Mr. Mullen raised questions concerning the Order as addressed to Robert Collings. He is owner of the property with his wife, Caroline, who was not notified. Mr. Witten did not feel that was improper notice.

Concerning the Zarrow case, Mr. Mullen said the court had dismissed the matter and the Town signed of. The airstrip is a protected use. He requested a continuation of this hearing until after a court decision on the appellant's injunction to stay the cease and desist order. Mr. Witten did

not agree and stated this hearing involves a procedural matter. Mr. Mullen said that by the next meeting, a decision on the injunction will have been received. If not, no activities can be conducted. Cancellation of plans will be a problem for those who expected to attend. There will be damage to the reputation of the Foundation. He suggested continuation until there is a proper appeal before the Board.

Mr. Tarnuzzer inquired into the starting date of the Order. It was dated March 26th and forwarded by certified mail. Subsequently, it was hand-delivered on March 31st. The 30-day appeal period had begun, therefore the May 5th appeal filing was untimely. The Board does not have jurisdiction. It is a complicated matter but the law is quite clear.

The Zarrow case decision was a settlement between the Town and Zarrow, based on the merits of a former ZBA decision written by former Town Counsel Jacob Diemert that the Town may not be favorable to Collings position. In that case, it supports the Building Inspector. Mr. Witten reminded again that the Board has jurisdiction only when an appeal is filed timely. The cease and desist order is status quo unless an injunction is issued by the court.

Mr. Barney moved, pursuant to G.L. c.40A, s.15, that the Stow Board of Appeals vote to declare the appeal of Robert Collings from the Building Commissioner's cease and desist order dated March 26, 2015 be denied as the same was not filed with the Board of Appeals or Stow Town Clerk within thirty days from the Building Commissioner's order. As the relevant appeal to the Board of Appeals was not filed in the Stow Town Clerk's office until after the 30-day appeal period provided by statute, in fact it was filed on May 5, 2015, the appeal is untimely and the Board of Appeals lacks jurisdiction to hear this appeal. Mr. Barney further moved that the Board instruct Town Counsel to draft an appropriate decision reflecting the Board's vote in this matter for the Board's signature and filing with the Town Clerk within fourteen days of this vote. Second by Ms. Sudduth. The vote was unanimous in favor of the motion.

The appellant was reminded that Chapter 40A, Section 15 provides appeal of the Board's decision may be filed with the court and Town Clerk within twenty days of the date of its filing.

On motion of Mr. Fletcher, second by Ms. Sudduth, it was voted unanimously at 8:05 p.m. to close the hearing.

Respectfully submitted,  
Catherine A. Desmond  
Secretary to the Board