Zoning Board of Appeals – Minutes
March 8, 2022
Location: Town Hall Moitoza- Pettey Hearing Room
Time: 7:00 to 8:00pm

Board Member Attendees: Marc Oliviera Acting Chairman, Tony Carmo Alt Member & Lucas Tourgee Alt Member

Board Member Out: Marcus Baptiste Chairman & Jeanne Russo Member - The board had a quorum.

Attendees: Michael Ricardo, Angela Ricardo, Atty. Neil B. Smola, Atty. Johnathan Silverstein, Atty. Adam Costa- via Zoom, & Many Abutters were present.

Topic	Discussion:
Mail & Minutes	**7:00pm**- M. Oliviera opened the meeting by introducing the Board and himself as acting Chairman. **Minutes:** The meeting minutes from 2/1/22 were reviewed. T. Carmo made a motion to accept the minutes as read. L. Tourgee seconded. **Bills**: A bill from Atty. Adam Costa for $112.00 services for Ricardo 1 Ricardo Way Map 16 Lot 98-5 -was paid on 2/2/22. A bill from Atty. Adam Costa for $368.00 services for Ricardo 1 Ricardo Way Map 16 Lot 98-5 was paid on 3/3/22 **Correspondence**: None **No other New Business came in front of the Board at this time.**

Michael & Angela Ricardo 1 Ricardo Way Map 16 Lot 98-5 40A Public Hearing Continued	**7:05pm**- - Marc Oliviera continued the 40A Public Hearing for Michael & Angela Ricardo 1 Ricardo Way Map 16 Lot 98-5 requesting an appeal to an administrative decision of the Building Inspector to the said property. Atty. Johnathan Silverstein representing the Zoning Board of Appeals was present and Atty. Adam Costa representing the Building Inspector was on zoom. Atty. Neil Smola representing Mr. & Mrs. Michael Ricardo was present. There were many abutters present. Atty. Neil Smola introduced himself to Board. He gave the background of the Ricardo's property. The Ricardos have lived at this address of 48 acres for 8 years. Mr. Ricardo has previously met with the Board of Selectmen about his bike track and wants to start a business. There has been a lot of complaints and harassment from the community. The neighbors can complain in a private action in court. On October 13th 2021 he met with the Board of Selectmen about a noise complaint. After the meeting Sgt. Newhook came out to the property and did a sound test and it came back all in a normal threshold. The Board of Selectmen confirmed it can't be a commercial operation, but can have family and friends on the track. At that meeting the Board requested to issue a Cease and Desist letter for strictly a commercial operation. Prior to writing that letter the Building Inspector Mr. Joseph Biszko did an unannounced site walk on the property, Mr. Ricardo was not prepared for it. On 10/28/2021 Mr. Ricardo was issued a Cease and Desist letter prohibiting the entire use of the track, not just commercial use without a Special Permit. The Cease and Desist letter was beyond what was told to the Ricardo's, the Board of Selectmen never mentioned a Special Permit was needed. The track takes up 3.5% of the parcel, rural area, and it sets back a ¼ mile from any residents. It is a simple dirt track with no permanent structures. They are only using it for recreational use for family and friends only. Atty. Smola further explained recreational use in a residential neighborhood is clearly what is going on. He told the Board the Cease and Desist letter has several unfounded conclusions. One is that it is not a professional track and second there is nothing in the By-Laws about noise. M. Oliviera questioned Atty. Smola about the Cease and Desist letter having nothing to do about noise. Atty. Costa told the Board the Cease and Desist letter is only speaking about usage only, nothing to do about noise. M. Oliviera told Atty. Smola the Board was only discussing usage. T. Carmo asked Atty. Smola to explain customarily and subordinate. Atty. Smola explained to the Board further that he means the bike track is not the primary use of the property. Mr. Ricardo then came up and spoke to the Board. He told the Board the bike track is not the primary use of his property. They ride about 2 times a week, but he also lets friends ride on the track but it is controlled. He does restrict how many people do use it due to liability. The bike track is not open to the public. He wanted to explain the track is not a professional track, he does not feel Mr. Biszko compared his track to other tracks. There are no restrooms, permanent structures, or signage. The SPGA/ Board of Selectmen were adamant he did not need a Special Permit. He has looked into case law and found a same issue in New York, where you do not need a Special Permit to ride with family and friends. He told the Board he does not feel the Cease and Desist letter that was issued to him does not pertain to his property. M. Oliviera asked Mr. Ricardo how many days out of the week is the track used. Mr. Ricardo answered 4-5 days a week it is used and he is tired of the harassment and vandalism. Atty. Adam Costa who is representing the Building Inspector spoke to the Board via zoom. He explained to the Board the reason for the issuance of the Cease and Desist letter. Two questions that were asked, Accessory Use in residential district (customarily use) second is use of the site. Incidental, Customarily- commonly used, Sufficiently Related- open to friends and public. Motor cross tracks on not customarily associated with single family home/ use. The letter was determined by the Zoning By-Law. Motor cross track is recreational use which needs to seek a Special Permit from the BOS. Under 40A the Board is to determine if Cease and Desist letter was issued correctly.

40A Public Hearing Continued	M. Oliviera opened the Hearing to public discussion. Bruce Newcomb 51 Plain St. E- He told the Board there was an apology letter from Mr. Ricardo, the bldg. inspector issued the Cease and Desist letter due to BOS advising him to do so. David Destefano 5 Plain St. E- Customarily, research how many people have a race track in MA. A lot has gone on without permits all done after the fact. Uncustomary. Mr. Lippold 50 Plain St. E- He thanked the Board and strongly urged the appeal to be denied, it is a quiet peaceful town. Walter Bezanuik 45 Plain St. E- He told the Board he lives the closest to the track. It has been 7yrs. of interrupted life. It is more than a typical hobby. Liability, 6 days a wk., 7-8 hrs.a day, people stop in his driveway to ask where the track is. John Burke 47 Plain St. E- How do you separate usage and noise. If this is allowed it will let everyone do things. Karen Kullas 51 Plain St. E-She read part of the Cease and Desist letter out loud, there is traffic and parking on the street, tents set up, parking area, soil being moved, track is being very well taken care of. The D.P.W. has swept mud off the roads. She is in favor of denying the Permit. She gave a packet of pictures to the Board Diane Enos 25 Plain St. E- a lot of traffic, the bike track is just not for them or family John Norton 80 Cotley St. E. Taunton- He hears a lot of noise. Saturdays are 12 hr. days in the summer, Sundays also start early, during COVID it ran crazy 4:00pm til dark, It would be beneficial to put in as a Special Permit to the BOS. Atty. Adam Costa did comment after all the abutters that the BOS has no role to make the Building Inspector to issue a Cease and Desist letter, it is all up to the Bldg. Inspector. Mr. Ricardo commented the pop-up canopies are brought in by the riders, they are not permanent, the mud mentioned is from the railroad construction, there is no parking on the road, and the track is used 6 months out of the year his house is used 12 months out of the year. Mrs. Ricardo commented that tracks are very common. Kids from the neighborhood knock on their door to ride. They own 48 acres, it's a minor use of recreational activity. The problem people have is the noise, not that they have a track. The bikes are all regulated. Kathleen Frisbie 45 Plain St. E- she told the Board she has been logging decibel readings since 2014- 7 hrs. a day, she has not heard a lot with in the past 3 wks. **8:10pm-** T. Carmo made a motion to close the hearing. L Tourgee seconded. The Board further discussed for a decision. Atty. Johnathan Silverstein spoke to the Board. He explained the Board needs to determine if the Bldg. Inspector was wrong in writing the Cease and Desist letter. Look at: Personal knowledge in this town, Customarily, used in a residential lot, what is customarily and what is incidental. The Board further reviewed everything and discussed. T. Carmo told the Board he felt more of what was said from the audience would be more appropriately said before the Board of Selectmen for a Special Permit. He feels the Zoning Official has a sound understanding of zoning and our local zoning, and that he felt certain the Zoning Official's interpretation and determinations were correct, clear and apparent, and that it was within the privy of his office to issue such an order. The Board members agreed it is a recreational facility. T. Carmo made a motion to affirm the Zoning Official thereby denying the appelant's petition. The Cease and Desist letter remains, the applicant needs a Special Permit.

	Mr. Ricardo asked Town Council why he should have to pay for all of this, he is being called an applicant in this situation. He is not an applicant he received the letter. Atty. Johnathan Silverstein explained to Mr. Ricardo he has a right to appeal the letter. Mr. Ricardo then asked what he can do on his property. Atty. Costa stated the role for the ZBA is only to decide if the Bldg. Inspector was supposed to write the letter. All further questions are up to the Building Inspector.
	All Motioned the next meeting date will be on April 5, 2022 @ 6:00pm.
	Motion to adjourn was made by L. Tourgee @ 8:27pm
Signatures	1. 2. 3. Antonio Carmo