



BUILDING COMMISSIONER

ZONING OFFICER

P.O. BOX 1305
LITTLETON, MA 01460
VOICE (978) 952-2308
FAX (978) 952-2321

November 27, 2009

 *COPY*

Claire Soja
95 Hartwell Ave
Littleton, MA 01460

Dear Ms. Soja,

This office received via e-mail a complaint from you to the Littleton Police Department regarding noise at 103 Hartwell Ave. I visited 103 Hartwell Ave on November 23, 2009 for the purpose of reviewing the area in question. The owner of the property was not home at the time. I observed a significant amount of landscaping in the form of re-grading and stone wall building. A Caterpillar E70B MIDI Excavator was onsite and recent grading marks on the landscape suggest this was the construction equipment being used onsite. A CAT E70B is a 54 HP mid-sized excavator. The complaint suggests a noise reading of 57 decibels, which I believe could be accurate for this size machine. It is my recollection that this activity has been taking place sporadically for more than a year.

Littleton Zoning Bylaw Article XVII regulating noise offers a list of exemptions from said bylaw. §173-78 p. B(7) exempts construction equipment from the noise bylaw provided said activity takes place between the hours of 7am and 7pm. The excavator is clearly construction equipment and therefore exempt unless operating outside the permitted hours. As such no further action will be taken.

You have the right to appeal this opinion pursuant to General Laws Chapter 40A, Section 8 and 15, to the Littleton Board of Appeals, provided such an appeal is taken within thirty days from the receipt of this letter.

Sincerely,


ROLAND BERNIER
Building Commissioner
Zoning Officer

Sent E-mail



OFFICE OF THE
LITTLETON BOARD OF APPEALS
LITTLETON, MASSACHUSETTS 01460
LITTLETON, MASSACHUSETTS 01460



Board Use Only Case # 772A Filing Date 12/22/09

The undersigned, having standing in this matter, hereby petitions the Littleton Board of Appeals for a VARIANCE SPECIAL PERMIT and/or ✓ APPEAL (Check all that apply)
as specified below and as provided by the Town of Littleton Zoning Bylaw

1. LOCATION OF THE PROPERTY:

A. Street Address 103 HARTWELL AVE *Please print* {THIS IS THE ADDRESS where
B. Assessors' Map and Parcel # R 17 # 15 noise emanates
R Zoning District Aquifer District Water Resource District
C. Deed Reference 30249 / 345

2. LITTLETON ZONING BYLAW SECTION(S)

A. Variance
B. Special Permit
C. Appeal § 173-6(13)(a); § 173-80 (noise)

3. STATE BRIEFLY REASONS FOR THIS PETITION *Use additional sheets, if necessary*

EXCAVATOR USE VIOLATES NOISE PROVISION

OF LITTLETON ZONING BYLAW (Section 173-80)

See ATTACHED LETTER

4. PETITIONER(S) CLAIRE E SOJA

Owner Tenant Licensee Agreed Purchaser Agent Other
NOTE: If petitioner is not the owner, furnish written authorization from owner below.

Signature

Clare E Soja
95 HARTWELL AVE

Mailing Address

12-22-09
Date
978 486-3663
Telephone #

.....
Town Clerk Use ONLY Filing Fee Paid \$ _____
Registry Fee Paid \$ 75.00 _____ Date _____

McGREGOR & ASSOCIATES

ATTORNEYS AT LAW, P.C.

15 COURT SQUARE – SUITE 500
BOSTON, MASSACHUSETTS 02108
(617) 338-6464
FAX (617) 338-0737

NATHANIEL STEVENS
(617) 338-6464 ext. 120

December 22, 2009

Sherrill Gould, Chair
Zoning Board of Appeals
Town of Littleton
37 Shattuck Street
Littleton, MA 01460

**RE: Appeal of Zoning Officer Determination of Zoning Compliance
103 Hartwell Avenue
Our File No. 2525**

Dear Ms. Gould and Members of the Board:

We represent Claire Soja of 95 Hartwell Avenue who hereby appeals pursuant to G.L. c. 40A, §§ 8 and 15, the November 27, 2009 written decision of the Town of Littleton Zoning Officer (copy attached) ruling that the extended and obtrusive operation of an excavator at 103 Hartwell Avenue is exempt from the Town of Littleton's Zoning Bylaw (hereinafter, the "Zoning Bylaw").

Ms. Soja has informed the Zoning Officer/Building Commissioner, the Chief of Police, and the Town Administrator, that in her home and yard she has suffered the noise and vibration from the use of an excavator by her neighbor at 103 Hartwell Avenue for almost four years, since March 2006. The noise and vibration caused by this approximately 7.5-ton piece of equipment occurs at all times of day, and even into the evenings. Also, it occurs on weekends and holidays. We attach a log maintained by Ms. Soja of her observations of this intrusive noise.

The Zoning Officer, Mr. Roland Bernier, has identified the source of the noise to be a Caterpillar E70B MIDI Excavator. This 54-hp diesel equipment weighs about 15,250 lbs (three to four times the weight of an average sedan).

This fall, Ms. Soja measured the sound from her yard (beyond the property line) to be 57 decibels, using an Extech 407730 40-to-130-Decibel Digital Sound Level Meter. The Zoning Bylaw limits noise in the Residential Zoning District to 50 decibels in the daytime and 40 decibels in the nighttime. The excavator noise is so piercing that Bose® noise-cancelling headphones worn inside the house are ineffective. It is so bad that Ms. Soja cannot enjoy her yard; if she wishes to be outside, she must leave her property and go to a park.



Printed on recycled paper.

McGREGOR & ASSOCIATES

This type of excessive noise is squarely within the purpose of zoning to prevent. The Zoning Bylaws are to regulate land so as to keep Littleton a "good place in which to . . . live." Zoning Bylaw, § 173-1.

In his November 27, 2009 determination, Mr. Bernier erroneously asserts that the excavator use at 103 Hartwell Avenue falls within an exception to the Zoning Bylaw's Noise regulations. Mr. Bernier states that the noise is exempt under § 173-78(B)(7) as it emanates from construction equipment, as long as the noise occurs between 7 a.m. and 7 p.m.

We strongly disagree that the excavator at 103 Hartwell Avenue is being used as "construction equipment" and thus is exempt from the Zoning Bylaw. First, at best, the excavator use is a hobby. Second, it sometimes is being done to annoy our client. Third, it is essentially permanent as an interference with the use and enjoyment of her property. Another way to say this is that any claimed construction must be long over. Whatever landscaping work was commenced in March 2006 (there is no record of a building permit being applied for or issued from the Zoning Officer/Building Commissioner) surely must have been finished long ago.

Regardless of what purported landscaping in general or retaining wall construction in particular was done beginning in 2006, Ms. Soja has witnessed and heard the excavator frequently and repeatedly driven around the property, including along the property line she shares with 103 Hartwell Avenue. Ms. Soja reports that there now effectively is a worn circular path or track around portions of 103 Hartwell Avenue on which this excavator is driven as an avocation.

In addition, our client reports that on November 29, 2009, likely around the time the owner of 103 Hartwell Avenue would have received the Zoning Officer's response to her zoning enforcement request, the excavator bucket/shovel was raised and dropped repeatedly for about 20 minutes intentionally and with no other purpose than to create noise and objectionable vibration.

Therefore, the Zoning Officer's November 29, 2009 determination should be reversed and the use of the excavator be ordered to stop immediately and permanently as a violation of the Zoning Bylaw.

Thank you for your consideration.

Sincerely,



Nathaniel Stevens

cc: R. Bernier, Zoning Officer

Encl.

**DATES OF NOISE
DURING 2009 and 2008
AT 103 HARTWELL AVENUE, LITTLETON
As Measured at 95 Hartwell Avenue
by Claire Soja**

“Noise” constitutes backhoe/excavator/bulldozer bucket banging on rocks, dropping rocks, digging, ground vibration, and running diesel engine, all heard at house at 95 Hartwell Avenue both inside and outside of residence.

Noise started in March 2006. Dates below illustrate extent of nuisance. Additional noise dates available for prior years.

NOTE: Listed dates and times coincide only with days at home and do not account for daytime work hours away, vacation away dates, or days forced from home due to noise.

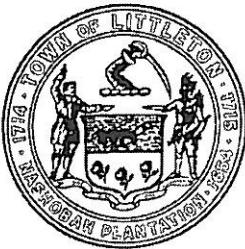
Please see additional notes below.

<u>DATE</u>	<u>BEGINS*</u>	<u>COMMENTS</u>
Dec 13, 2009	11:30AM	Bulldozing in snow close to house
Nov 29	3:00PM	Bulldozer bucket dropped repeatedly. No engine noise, coincided with formal complaint to building inspector
Nov 22		Very loud, used decibel reader, read 57
Nov 7		Noise intermittent all day
Nov 3	5:30PM	Bulldozer riding in the dark with headlamps on
Oct 30		Confronted surveyors
Oct 4		Noise all day
Oct 2	12:00 noon	Rest of day
Sept 26		Noise
Aug 28		Noise
Aug 15		Noise all day
Aug 14		Noise all day
Aug 9	10:30AM	Rest of day
July 25		Noise
July 17		Noise most of day
July 19	8:45AM	Noise
June 20		Noise all day
June 13		Noise
June 6		Noise
May 29		Noise
Apr 24		Noise all day
Apr 19		Noise all day til 5:30PM
Apr 5		Noise all day

Mar 15		Noise all day
Sep 1, 2008		Noise
Aug 31		Noise all day
Aug 30		Noise all day
Aug 29		Noise
Aug 16		Noise all day
Aug 3		Noise all day
July 26		Some noise
July 25	11:20AM	Rest of day
July 20	10:00AM	Rest of day
July 13	noon	Rest of day
July 5		Noise
June 29		Noise
Jun 14		Noise all day
May 24, 2008		Noise all day

***Where not specified as to start time, “Noise all day” indicates a regular start time of 7:45 AM continuing with an occasional lunch break from 1:30PM- 2:00PM until dusk; “Noise” indicates a combination of diesel engine, backhoe clanging on boulder rocks, dropping boulders, and ground vibration all heard from within and without residence at 95 Hartwell. The term “Noise” without time indicates intermittent noise or where it was necessary to leave and return to property at intervals (making it difficult to determine whether the noise had ceased for the day).**

There were 2 occasions where backhoe was operated until 9PM in the dark during summer 2009.



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November 27, 2009

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95 Hartwell Ave
Littleton, MA 01460

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Sincerely,

ROLAND BERNIER
Building Commissioner
Zoning Officer

Sent E-mail

BK30249 PG 345

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BK 30249 PG 346

governing the use of said driveway easement which are more particularly described in a Deed recorded with said Registry of Deeds in Book 13521, Page 388.

Being the same premises as conveyed to Grantor by Deed of John F. Massapica and Barbara A. Massapica dated September 30th, 1978 and recorded with said Registry of Deeds in Book 13567, Page 377.

Witness my hand and seal this 1 day of ^{June K.F.T} May, 1999.

Kim Fillmore Tarky Trustee
Kim Fillmore Tarky, Trustee of
D. J. Realty Trust *DJ Realty
Trust*

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

*June 1
May*, 1999

Then personally appeared the above named Kim Fillmore Tarky, Trustee of D.J. Realty Trust and acknowledged the foregoing instrument to be her free act and deed before me,

Joanne Blanchette
Notary Public
My Commission Expires:

JOANNE BLANCHETTE
NOTARY PUBLIC
MY COMMISSION EXPIRES OCTOBER 23, 2009



QUITCLAIM DEED

We, Jil A. Stoddard and James L. Goddard, husband and wife of 95 Hartwell Avenue, Littleton, Middlesex County, Massachusetts for consideration paid and in full consideration of FOUR HUNDRED AND FIFTY FIVE THOUSAND DOLLARS (\$455,000.00) **grant to**

Claire E. Soja, a single woman of 612 Old Stonebrook, Acton, Middlesex County, Massachusetts with **quitclaim covenants**

The land with buildings thereon situated in Littleton, Middlesex County, Massachusetts on Hartwell Avenue and shown as a parcel of land containing 287,559 sq. feet of land (6.597 acres of land more or less) on a plan entitled, "Plan of Land in Littleton, Mass. owned by Charles A. Hartwell, Jr." May 21, 1973, Harlan Tuttle Surveyor said plan being recorded with Middlesex South District Registry of Deeds as plan #814 of 1973 in Book 12470, Page End to which plan reference is hereby made for a more particular description. Said premises are bounded and described, according to said plan, as follows:

Beginning at a point on said Hartwell Avenue at a drill hole in a stone bound at corner of land of Stanley I. And Gloria J. Knox, as shown on said plan;

Thence N 82 degrees 18'20" E 290.36 feet by said Knox land to a drill hole in a stone bound at land of Charles A. Hartwell, Jr. as shown on said plan;

Thence N 75 degrees 54'10" E 162.05 feet to a drill hole in a stone bound at a corner; Thence N 11 degrees 03'25" E 834.17 feet to a drill hole in a stone wall at the of land of David F. and Julia K. Rouse, as shown on said plan;

The above two courses being by said Charles A. Hartwell, Jr.'s land;

Thence N 81 degrees 43'50" W 95.4 feet to a drill hole in a stone wall;
Thence N 81 degrees 50'20" W 125.46 feet to a drill hole in the wall at a corner of land of John F. and Barbara A. Massapica;
The above two courses being by said Rouse Land;

Thence S 19 Degrees 09'25" W 273.91 feet to a drill hole in the top of a large rock;
Thence S 18 degrees 30'05" W 292.58 feet to a stone bound at a corner;
Thence S 45 degrees 20'05" W 348.98 feet to said Hartwell Avenue;
The above courses being by said Massapica land;

Thence S 15 degrees 17'15" E 150.80 feet along said Road to the point of beginning.

Conveyed subject to covenants, conditions, appurtenances, rights, stipulations, easements, restrictions, takings by any governmental authority, and zoning laws and regulations for the city or town where situated, all of record insofar as the same may be still in force and applicable to the granted premises. Subject to Order of Layout Relocation and Taking recorded with said Registry in Book 11298, Page 679.

Being the same premises conveyed to us by deed dated _____ and recorded with Middlesex South District Registry of Deeds at Book _____, Page _____.

WITNESS our hand and seal this the 5th day of November 2003.

Jil A. Stoddard
Jil A. Stoddard

James L. Goddard
James L. Goddard

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

November 5, 2003

The personally appeared the above named Jil A. Stoddard and James L. Goddard and acknowledged the foregoing instrument to be their free act and deed, before me.

Brian E. Burke
Notary Public: Brian E. Burke
Commission Expires: 04-02-04

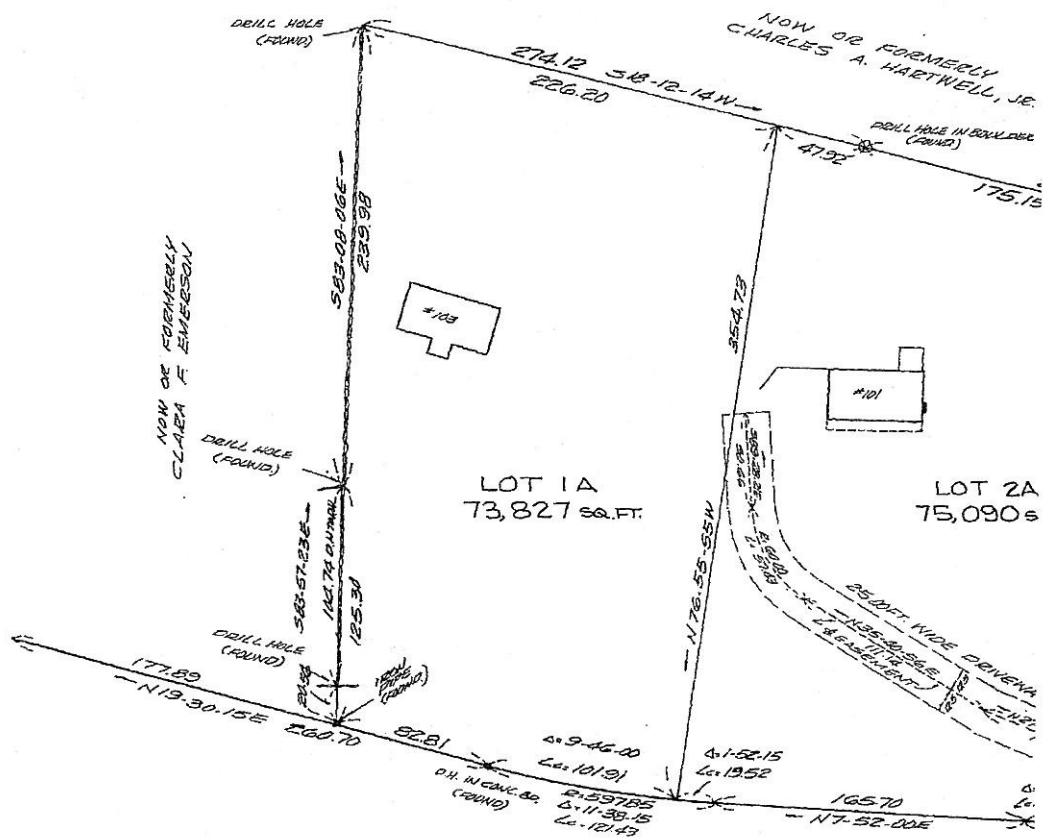
Google maps Address

To see all the details that are visible on the screen, use the "Print" link next to the map.



PLAN REFERENCES: SEE THE FOLLOWING PLANS RECORDED
AT MIDDLESEX SOUTH REGISTRY OF DEEDS

BL 10447 PG 220 - PLAN BY H.E. TUTTLE, SUB, DATED MAY 29, 1963
BL 11298 PG 679 - PLAN BY C.A. PERKINS CO, INC., DATED JAN 1967
BL 12472 PG END - PLAN BY J.W. BARRY, ELS, DATED MAY 1973



HARTWELL

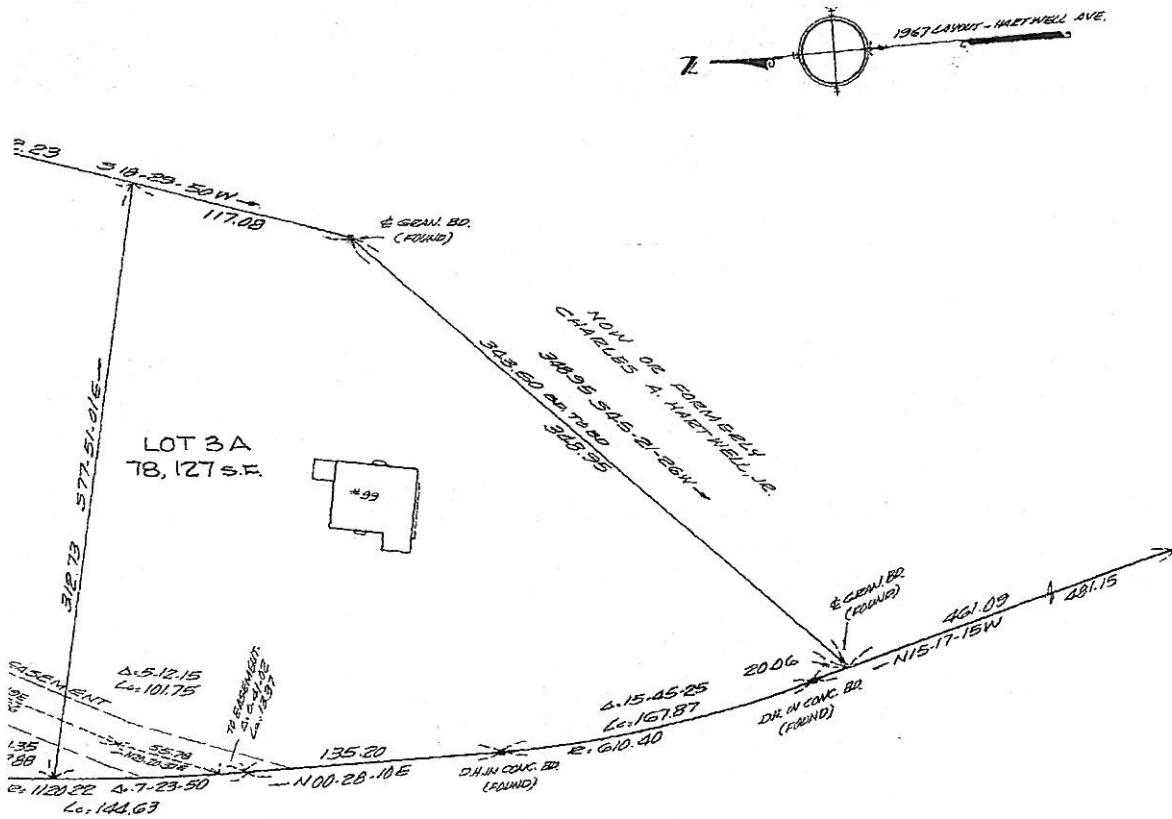
LITTLE
"APPROVAL
CONTROL CA
DATE: Aug

Attest:	
By: <u>John E. Murphy, Jr.</u>	FEES PAID
Register	

Attest:
John E. Murphy, Jr.
By: John E. Murphy, Jr.
FEES PAID
Register

"I CERTIFY THAT THIS PLAN HAS BEEN PREPARED
IN CONFORMITY WITH THE RULES AND REGULATIONS OF
THE REGISTERS OF DEEDS OF THE COMMONWEALTH
OF MASSACHUSETTS."

JOHN E. MURPHY, JR. - ELS. 22158
DATE: AUG 16, 1978



AVENUE

36'10" - 40' (WIDE)

4 PLANNING BOARD
UNDER THE SUBDIVISION
NOT REQUIRED.
10/1978

Philip H. Hensel, Jr.

174

PLAN OF LAND
IN
LITTLETON • MASS.
OWNED BY: JOHN F. MASSAPICA

SCALE: 1 INCH = 40 FEET AUGUST 3, 1978
ACTON SURVEY & ENGINEERING, INC.
277 CENTRAL ST. • ACTON • MASS.



A horizontal scale bar with the text "GRAPHIC SCALE" at the top. Below the text are numerical markings at 0, 40, 80, and 120.

FILE NO. 1264

951