



Town of Stow  
**PLANNING BOARD**

**380 Great Road  
Stow, Massachusetts 01775  
(978) 897-5098  
FAX (978) 897-4534**

**NOTICE OF DECISION AND DECISION**

**COLLINGS FOUNDATION INC.**

**SITE PLAN APPROVAL**

**&**

**EROSION CONTROL SPECIAL PERMIT**

**137 and 0 Barton Road**

**August 26, 2015**

**1. APPLICATION**

This document is the DECISION of the Stow Planning Board (hereinafter, the Board) on the Applications of the Collings Foundation Inc. (hereinafter, the Applicant) for property located at 137 Barton Road.

This decision is in response to applications filed by the Applicant for Site Plan Approval, and Erosion Control Special Permit, submitted to the Board on February 11, 2015 (hereinafter the Petitions), pursuant to Sections 9.2, 9.3, 3.8.1.10 of the Stow Zoning Bylaw (hereinafter the Bylaw), and Special Permit and Site Plan Approval Rules and Regulations (hereinafter the Rules). The Applicant seeks permission to construct a 66,000+/- square foot museum and service road accessed from 137 Barton Road in Stow and 568 Main Street in Hudson, MA.

**2. APPLICANT**

Collings Foundation, Inc.  
P.O. Box 248  
Stow, MA 01775

**PROPERTY OWNERS**

Collings Foundation, Inc.  
P.O. Box 248  
Stow, MA 01775

Maynard Sand and Gravel, Inc.  
C/O Quinn Bros. Corp.  
3 Caldwell Drive  
Amherst, NH 03031

Robert F. and Caroline J. Collings  
137 Barton Road  
Stow, MA 01775

### 3. LOCATION

Said property is located at 0 and 137 Barton Road shown as Parcels 13, 16A, 16B, and 17 on Assessor's Map Sheet R-25; Parcel 54 on Assessor's Map Sheet U-2, and Parcel 3 on Hudson Assessor's Map 35 (hereinafter, the Site).

### 4. BOARD ACTION

After due consideration of the Application and Petition, the record of proceedings, and based upon the findings and conclusions set forth below, the Board, on August 26, 2015, by a vote of 5 members present at the public hearing, voted 3 (Lori Clark, Ernest Dodd and Margaret Costello) to 2 (Leonard Golder and Stephen Quinn) to **DENY** the requests for Site Plan Approval Erosion Control Special Permit.

### 5. PROCEEDINGS

The Petitioner presented the Petition for Site Plan Approval and Special Permits to the Board at a duly noticed public hearing held on March 4, 2015, and continued to April 1, April 29, 2015 and June 4, 2015 with the Applicant's consent. The Public Hearing was closed at the conclusion of the June 4, 2015 session. Board Members Lori Clark, Stephen Quinn, Leonard Golder, Ernest Dodd, Margaret Costello were present throughout each of the hearing sessions. The record of proceeding and submission upon which this decision is based may be referred to in the Office of the Town Clerk or the Office of the Planning Board.

### 6. APPLICATION

Plans and associated documents, as part of the Application, submitted for the Board's deliberation are identified below. Additional documents comprising the record are listed in the Appendix. See also Section 7, "Additional Materials in the Record," below.

- EXHIBIT 1      1. Plan entitled "The Collings Foundation Site Development Plan", dated January 20, 2015, revised through May 18, 2015, prepared by Andrews Survey and Engineering, Inc., consisting of the following sheets:

Cover Sheet

C 1.0

Overall Plan

C 2.1 – C 2.6

Site Plan

C 3.1 – C 3.2

Erosion and Sediment Control Plan

C 4.1 – C 4.2

Wetland Crossing and Replication Plan

C 5.0 – 5.3

Landscape and Lighting Plan

C 6.1 – C 6.2

Construction Details

2. Plan Sheets entitled "Landscape Plan," dated 5.18.2015

L 5.1 – L 5.3

- EXHIBIT 2      Supplementary documents required by the Rules, consisting of the following:

- Application for Site Plan Approval, by Andrews Survey and Engineering dated February 5, 2015

- Application for Erosion Control Special Permit, by Andrews Survey and Engineering dated February 5, 2015
- Development Impact Statement Form
- Supplement to Development Impact Statement – “Measures to Mitigate Impacts.”
- Certified List of Abutters by the Stow Board of Assessors
- Certified List of Abutters by the Hudson Board of Assessors
- Stormwater Management Report, by Andrews Survey and Engineering, Inc. dated January 20, 2015, revised April 22, 2015
- Storm Water Pollution Prevention Plan (SWPPP), dated April 22, 2015

**EXHIBIT 3** American Heritage Museum Exhibit Designs:

- Cover Sheet
- Sheet EX 01 – EX 12

**EXHIBIT 4** Architectural Floor Plans by AHP Architects, dated April 23, 2014

- A. 101 – First Floor Plans
- A. 102 – Mezzanine Plan
- A. 201 – Exterior Elevations
- A. 202 – Exterior Elevations

Exhibits 1 through 4 are referred to herein as the Application.

**7. Additional Materials in the Record**

Correspondence and submissions from the Applicant; the Board's consultants; and members of the public, all comprising the remainder of the record, are listed in the Appendix to this Decision

Prior to conducting the public hearing on the Application that is the subject of this Decision, the Board had conducted public hearing on a prior application submitted by the Collings Foundation Trust, identical in most respects to the current Application. The Public hearing on this prior application was held on five dates between June 18, 2014 and October 8, 2014, during which time the Board received materials from the applicant, the Board's consultants, and the public. This prior application was withdrawn on November 5, 2014, and the Board subsequently received the current Application from the Collings Foundation, Inc.

The Board determined that many of the submissions received during public hearing on the prior application are of equal relevance to the current Application. By agreement with the Applicant, as an administrative convenience, all materials submitted in the prior

hearing were carried over and incorporated into the record in this case, with the exception of the project plans submitted. The Applicant and public have had the opportunity to inspect the record in the current proceedings, including the materials carried over and incorporated into the record in this case.

The Planning Board has reviewed the materials submitted by the Applicant, the record of proceedings, the exhibits, and comments from the Town's Consulting Engineer, Board Members, other Town Departments, Boards and Committees, and from Stow residents and abutters. The Board has reviewed the materials for compliance with the Zoning Bylaw, Erosion Control rules, and the Special Permit and Site Plan Approval Rules and Regulations.

## **8. Findings**

### **8.1 Applicant and Project Locus**

**Finding:** As stated herein, the Applicant is referenced in this Decision as Collings Foundation Inc. The Collings Foundation Trust, a separate entity, will be described as such.

**Finding:** The Site consists of 99.97 acres (90.78 acres in Stow and 9.19 acres in Hudson) as shown on the Town of Stow Assessor's Map R-25, parcels 13, 16A, 16B, 17; Map U-2, parcel 54; and Hudson Assessor's Map 35, parcel 3.

**Finding:** The proposed project is located in the Town of Stow Residential and Recreation/Conservation Districts, with portions located in the Floodplain and Water Resource Protection Overlay Districts and Town of Hudson Industrial District. The site is located along the Assabet River with frontage off of Barton Road, a densely populated Lake Boon neighborhood with small lots and private well and septic systems.

**Finding:** The Application shows a proposed 66,000+/- s.f. (square foot) museum building, associated parking and approximately 1745' (foot) access road in Stow, originating from 568 Main Street in Hudson, to service the proposed museum. An existing 32,000 square foot hangar, 7500 square foot barn/office building, 2,600 foot long Private Restricted Landing Area, and an associated site plan configuration for three "Open House Events" are shown on the plans.

**Finding:** The Application includes 2,600 foot long and 250 foot-wide, north to south oriented, grassy surfaced Private Restricted Landing Area registered with MassDOT and numbered 690.

### **8.2 Use Regulations and Petitions Filed**

**Finding:** The proposed use as described in the Application is not an allowed use in the Residential or Recreation/ Conservation District.

**Finding:** Although the Applicant asserts that prior to the current Application, activities on the site "included aviation related events such as airshows, barnstorming, historical reunions, Wings of Freedom Tour, Vietnam Memorial Flights, joint museum displays,

and living history events," the Board finds Site Plan Approval for these existing activities was never applied for or approved.

**Finding:** The Applicant asserts that the proposed use is lawful, notwithstanding the Bylaw prohibition on such use in the Residential or Recreation/Conservation Districts, as an "educational use" protected under G.L. c. 40A, s. 3 (so-called "Dover Amendment") and Section 9.9<sup>1</sup> of the Stow Zoning Bylaw. The Applicant has submitted materials and testimony in support of this claim. The Board's consideration of this claim under applicable law is discussed below.

**Finding:** Absent evidence supporting findings that the Applicant meets the necessary qualifications established under G.L. c.40A, s.3, the Application is subject to Site Plan Approval pursuant to Section 9.3 of the Stow Zoning Bylaw and Site Plan Approval Rules and Regulations, as well as subject to an Erosion Control Special Permit pursuant to Section 9.2 and 3.8.1.10 of the Zoning Bylaw.

### 8.3 Qualification under G.L. c.40A, s.3 as an "Educational Use"

The Applicant claimed that the proposed use - prohibited under the Zoning Bylaw - is protected as an "educational use" under G.L. c. 40A, s. 3, the so-called "Dover Amendment." G.L. c. 40A, s. 3 provides in relevant part that a zoning bylaw may not:

"...prohibit, regulate, or restrict the use of land or structures for . . . educational purposes on land owned or leased by the commonwealth or any of its agencies subdivisions, or bodies politic . . . or by a nonprofit educational corporation, provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements."

See *Regis College v. Town of Weston*, 462 Mass. 280, 285 (2012). The Dover Amendment "protects only those uses of land and those structures that have as their bona fide goal something that can reasonably be described as educationally significant." *Regis College*, 462 Mass. at 285 (internal citation omitted). "The educationally significant goal must be the 'primary or dominant purpose for which the land or structures will be used.'" *Id.* (internal citation omitted). The word "education" is "a broad and comprehensive term," and the Courts have "refused to limit Dover Amendment protection to traditional or conventional educational regimes." *Id.*; see also *Gardner-Athol Area Mental Health Assn. v. Zoning Board of Appeals of Gardner*, 401 Mass. 12 (1987) (residential facility for adults with mental disabilities protected under G.L. c. 40A, s. 3). In contrast, see *Metrowest YMCA, Inc. v. Town of Hopkinton*, 2006

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<sup>1</sup> Section 9.9 of the Zoning Bylaw states: "Exemptions - Religious, Educational, Agricultural or Municipal Uses - Nothing in this bylaw shall be construed to limit or prohibit the use of land in any district or any BUILDING or STRUCTURE, for any church or religious purpose, for any non-profit educational purpose which is religious, sectarian, denominational or public, for agricultural use except piggeries or raising animals for fur, or for any municipal purpose with the exception of REFUSE disposal area,. Such uses shall nevertheless conform to the dimensional, parking and BUILDING coverage requirements of this Bylaw."

The Board finds that Section 9.9 provides no greater protection than that provided by G.L. c. 40A, s. 3.

WL 1881885 (Land Court, July 6, 2006)(predominant use of proposed facility recreational and for exercise purposes; no Dover protection); *Whitinsville Retirement Society, Inc. v. Town of Northbridge*, 394 Mass. 757 (1985)(nursing home without instructional program not educational; no Dover protection). The burden is on the proponent to establish that it is entitled to Dover protections.

A preliminary requirement is that the proponent entity qualifies, under the Dover Amendment, as a nonprofit educational corporation:

" 'The proper test in deciding whether a nonprofit corporation is an educational one is whether its articles of organization permit it to engage in educational activities, a question easily answered by a review of documents filed with the State.' " The court has required only that educational activities 'be within the corporate purposes of the nonprofit corporation. . . ' not that the educational purpose be the corporation's primary one.' "

*Metrowest YMCA, Inc. v. Town of Hopkinton*, 2006 WL 1881885 (Land Court, July 6, 2006) at p. 4, quoting *Gardner-Athol Area Mental Health Assn. v. Zoning Board of Appeals of Gardner*, 401 Mass. at 15-16.

### **8.3.1 Determination on Application Regarding Qualification Pursuant to G.L. c. 40A s.3 and Section 9.9 and 3.10 (5)**

#### **A. Qualification of Applicant**

**Finding:** The Planning Board finds that under G.L. c.40a s.3, the Applicant must establish that it is a qualifying entity, in particular:

- The Applicant must prove that it is a Non-profit corporation; and
- The Applicant must prove that the nonprofit corporation is an "educational" one.

**Finding:** A copy of the Collings Foundation Inc. *Articles of Organization*, dated September 30, 2014, pursuant to G.L. c.180 of the Commonwealth of Massachusetts were received on April 13, 2015.

Article II of the *Articles of Organization* state that "This non-profit corporation is formed and shall be operated exclusively for the charitable, scientific and educational purposes of establishing and operating a museum for the study, preservation, and public exhibition of articles of cultural, scientific and historical importance and for the education of the public with respect to such articles..."

Article II s.3(a) of the *Articles of Amendment* dated December 17, 2014, stating "the Corporation is organized exclusively for charitable, educational, scientific and religious

purposes, including, for such purposes, the making of distributions to organizations exempt from federal income tax under IRC Section (501)(c)(3)."

**Finding:** The Planning Board finds that Article II of the Collings Foundation Inc. *Articles of Organization* identifies the organization's educational intentions pursuant to G.L. c.40A s. 3.

**Finding:** Applicant's Position Summary states that "the Applicant has a pending application to the IRS for qualification as a 501 c-3 entity. The regulations of the IRS permit the Applicant to operate, and in all respects, as a 501 c-3 while that determination is under consideration by the agency."

A copy of IRS Form 1023 was received April 28, 2015, although it is unclear whether the form has been completed and submitted.

**Finding:** Based on the information submitted, the Planning Board finds that it appears the Applicant is organized as a non-profit corporation, and that educational activities are stated in the corporate purposes of the Articles of Organization. The Board finds that for purposes of this application, the Applicant has submitted sufficient evidence to establish that it is a qualifying nonprofit educational corporation under G.L. c. 40A, s. 3.

## **B. Educational Use**

A determination that a nonprofit corporation is an "educational" one does not, however, determine whether the proposed use is Dover-protected. See *Metrowest YMCA* at p. 4-5.

Having found that the Applicant is qualified, the Board must determine, based on the facts presented at hearing, whether the proposed use qualifies for Dover protection, that is, whether use of those parcels and structures has an "educationally significant goal" and whether that educationally significant goal is "the primary or dominant purpose for which the land or structures will be used." See *Regis College* and *Metrowest YMCA*. There are no reported cases involving Dover protections for a museum, or for the "living history" events (the Applicant's description) conducted on the subject parcels. The Board must apply the principles of Dover case law to the use described in the application.

To that end, it should be noted that the Dover Amendment "seeks to strike a balance between preventing local discrimination against an educational use . . . and honoring legitimate municipal concerns that typically find expression in local zoning laws." *Regis College*, 462 Mass. at 289, citing *Trustees of Tufts College v. Medford*, 415 Mass. 753, 757 (1993). As a practical matter the protection afforded by the Dover Amendment can be financially advantageous to the land owner. *Regis College*, 462 Mass. at 289. But the requirement of an "educationally significant" goal" ensures "that a party invoking Dover Amendment protection does so without engrafting an educational component onto a project in order to obtain favorable treatment under the statute." *Regis College*, 462 Mass. at 289-90.

Noting the difficulty of determining whether a use is "educational," the *Metrowest* decision offers some general guidance:

"[I]n a broad sense, anything taught might be considered, to a greater or less degree, educational. The court must look beyond individual activities, some of which may in isolation constitute educational use, to see whether, in the aggregate, the overall use of the structures in question amount to educational use. The educational use must be the 'primary or dominant purpose of the facility to qualify under the Dover Amendment. The question remains whether the dominant activity will be educational."

*Metrowest YMCA at p. 7* (internal citations omitted). In *Metrowest*, the Court found that although some of the YMCA's activities had an educational or instructional component, the "primary and driving intended use of [the] land" was recreational and for exercise purposes. *Id.*<sup>2</sup> at 7-8.<sup>3</sup> Further guidance regarding the "dominant purpose" requirement, and its relationship to zoning, is found in *Regis College*:

"The dominant purpose requirement is consistent with the zoning act as a whole. In categorizing uses or land under the zoning act, courts have traditionally sought to determine the principal use of an establishment 'viewed in its totality.' Once identified, that principal use rather than any subsidiary use generally controls determinations of the property's consistency with zoning ordinances. Thus, the requirement that it is a project's primary purpose rather than any subsidiary purpose that controls whether it is protected by the Dover Amendment is consistent with an interpretation of the statute as part of a 'harmonious . . . and consistent body of land use law."

*Regis College, 462 Mass. at p. 290* (internal citations omitted).

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<sup>2</sup> There is a related issue of whether the parcels not currently owned by the Collings Foundation (e.g., owned by Robert and Caroline Collings) are eligible for Dover protections.

<sup>3</sup> The Court notes:

"The YMCA confers no diplomas or degrees on anyone using the Hopkinton site. Nor is there a real possibility of failing any instructional program offered at MetroWest. No formal education of the sort required to be regulated by the Commonwealth takes place there. The Hopkinton facility is not a "campus" in any academic sense. The YMCA members and others who participate in programs there are not "students." The most common name the YMCA has given to the Site over the years has been the "Hopkinton Outdoor Center." The overwhelming majority of those who use the Hopkinton site receive no instruction, and those that do, mostly receive it in connection with sports and exercise activities."

*Metrowest YMCA at p. 7*. The Court further noted testimony that "there is no need or requirement for anyone who becomes a member of Metrowest to take any instructional courses whatsoever." *Id.*



### 8.3.2 Review of G.L. c.40A s.3 Case Law: Analysis of Educational Indicators

**Finding:** Based on a review of relevant case law regarding G.L. c. 40A s.3, the Planning Board finds that for a proposed use to be protected as an "educational use" under G.L. c.40A s. 3 that use must be the "primary and dominant" purpose for the land or structures proposed. This formulation is found in many Dover cases including *Regis College v. Town of Weston*, *Whitinsville Retirement Soc., Inc. v. Town of Northbridge*, and *Metrowest YMCA, Inc. v. Town of Hopkinton*).

Dover cases advise that the term "educational" should not be construed narrowly. But Dover cases also caution that because "in a broad sense, anything taught might be considered, to a greater or lesser degree, educational," and the Board "must look beyond individual activities, some of which may in isolation constitute educational use, to see whether in the aggregate, the overall use of the structures in question amount to an educational use. *Metrowest YMCA v. Town of Hopkinton* at p. 7.

The Board finds that to determine whether proposed activities *in the aggregate* constitute an educational use, the Board must first examine the individual activities proposed to determine whether they are "educational" under Dover case law. That is, the Board cannot reach a conclusion regarding the sum of the proposed use without first understanding its component parts. To this end, the Board has - as did the Court in *Metrowest YMCA* and other cases - carefully reviewed each proposed activity in the Application and considered whether they are "educational" in nature under the guiding case law. No single activity or determination of its "educational" nature was determinative and the Board kept in mind that it is the aggregate of these activities upon which the determination of "educational use" is based.

The Board further found that because no Dover case has addressed a use similar to the one proposed in the Application, there is no specific guidance available from the Courts regarding whether the proposed use is "educational" and entitled to protection under G.L. c. 40A, s. 3. For this reason, the Board found it necessary to distill common principles or indicators of "educational use" from existing Dover case law for application to the proposed use. In so doing, the Board found no single principle or indicator to be necessary or dispositive in determining whether a given use is "educational." Instead, the Board found these distilled principles a practical and productive way of analyzing the proposed activities - more useful than the generalities expressed in the factually-dissimilar Dover cases. These common principles did not displace the language of the Dover cases themselves as guidance to the Board, but rather enabled the Board to apply Dover law to the application before it.

The Board identified five recurring indicators of educational activity in the case law reviewed. Again, none of these indicators, when considered alone, is meant to be dispositive of the question of whether a proposed use is "educational." Rather, the Planning Board has utilized these five indicators as a means to substantiate and apply the concept of "educational use" under G.L. C.40A s.3 case law.

**Finding:** The Planning Board identified the following five indicators of "educational use" in the relevant case law.

**1. The presence of purposeful and planned development of educational information, similar but not limited to the concept of a curriculum**

"Education" under Dover is not limited to schools or formal academic programs. Yet the cases strongly indicate that a Dover-protected use must contain some degree of planned and purposeful development of educational material and/or information. See *Timothy Hill Children's Ranch, Inc. v. Webb*, 2012 WL 444018 (Land Court, Feb. 12, 2012) (noting that regardless of recreational and religious components, the "camper's daily schedule was devoted exclusively to team building and religious instruction and the curriculum included a theme each week..."). Contrast *MetroWest YMCA, Inc. v. Town of Hopkinton* at p. 7 ("The YMCA confers no diplomas or degrees on anyone using the Hopkinton site. Nor is there a real possibility of anyone failing any instructional program offered at MetroWest. No formal education of the sort required to be regulated by the Commonwealth takes place there").

The Planning Board finds that while the presence of a curriculum is a strong indicator, the presence of purposeful and planned development of educational information, in any of a variety of forms, better accommodates the broad field of educational activity as discussed in case law relevant to G.L. c. 40A s.3.

**2. The presence of a systematic and uniform method of delivering the information to defined audiences**

The Planning Board finds that a systematic and uniform method of delivering educational information to defined audiences is indicated by Dover case law. See, e.g., *Whitinsville Retirement Soc., Inc. v. Town of Northbridge*, 394 Mass. 757 (finding that "[m]erely an 'element of education'. . . provided not by a formal program or trained professionals, but only informally gleaned from interplay among residents of the nursing home community, is not within the meaning of 'educational purpose' pursuant to G.L. c. 40As, .s 3).

An emphasis regarding the "uniformity" of the education provided is also found in *Metrowest YMCA, Inc. v. Town of Hopkinton* case (Court finds no requirement for YMCA members to take instructional courses; once a membership is paid, members are "free simply to enter the facility for any purpose, whether to participate in an activity which is some way instructional, or not.")

**3. The evaluation of individuals participating in the informational process**

Case law further indicates that evaluation of participants may be an indicator of "educational use." See *Regis College v. Town of Weston*, 462 Mass. at 292-93 (noting "mandatory academic requirement[s]" and evaluative tools for proposed residents). See also *MetroWest YMCA v. Town of Hopkinton*, above (noting

absence of diplomas, degrees, or "possibility of failing any instructional program.")

**4. Qualifications of individuals assigned to the development of the educational subject matter and/or the effectiveness of the delivery of the subject matter, and showing adequate credentials to serve in such roles**

G.L. c. 40A s.3 case law points to educational credentials and qualifications of those who are tasked with developing and delivering the educational information as an indicator of educational significance.

The Court in *Timothy Hill Children's Ranch Inc. v. Webb* noted that the camp counselors held degrees relevant to the subject matter that they incorporated into their programs, and that camp counselors were chosen in part by their relevant degree, as well as experience in "integrating educational...components" into the camp curriculum. The Court then referenced such "specific care to educate participants" as one basis for a finding of education as the primary use. Contrast *Whitinsville Retirement Society*, 394 Mass. at 410 (noting absence of "trained professionals" leading activities alleged to be educational).

**5. The development and delivery of educational programs or materials that develop and train the powers and capabilities of human beings; prepare and fit the individual for any calling or business, or for activity and usefulness in life, and be directed to further the mental, moral, or physical powers and faculties of those participating**

Alongside the more particular indicators of "educational use" discussed above, Dover case law contains repeated reminders that the term is not to be construed narrowly. Many Dover decisions cite the following language from *Mount Hermon Boys School v. Gill*, 145 Mass. 139, 146 (1887), in defining the term "education":

"Education is a broad and comprehensive term. It has been defined as "the process of developing and training the powers and capabilities of human beings." To educate, according to one of Webster's definitions, is "to prepare and fit for any calling or business, or for activity and usefulness in life." Education may be particularly directed to either the mental, moral, or physical powers and faculties, but in its broadest and best sense it relates to them all."

Where Dover case law consistently references this broad definition of "education," the inclusion of the above indicator ensures that the Board does not unduly narrow its focus in reviewing the Application and its claim to protection as an "educational use."

### **8.3.3 Review of Application In Accordance with G.L. c.40A s.3 and Section 9.9 and 3.10 (5) of the Stow Zoning Bylaw**

**Finding:** The Planning Board finds, the following materials were considered by the Board in determining whether the use is educational.

#### **Educational Definitions**

*See Applicant Submissions under Section 6.1 of the Appendix*

#### **Educational Awards and Honors**

*See Applicant Submissions under Section 6.2 of the Appendix*

#### **Package of 281 Letters of Support for Collings Foundation**

*See Applicant Submissions under Section 6.3 of the Appendix*

#### **Petition in Support of Applicant's Goals and Purposes**

*See Applicant Submissions under Section 6.4 of the Appendix*

### **A. Open House Events**

*See Applicant Submissions under Section 6.12 - 6.12.3 of the Appendix*

**Finding:** The Planning Board finds that the three Open House events account for the overwhelming majority (90%) of visitors to the site.

**Finding:** The Planning Board finds that the primary purpose of the Open House events are for entertainment of visitors. The Planning Board further finds that the components of the events as described in the *Summary of Current Activities* include Docent Conducted Tours and Museum visits, which contain some elements of the Educational Indicators regarding the 1) planned development of information and 2) systematic and uniform method for delivering that information, are incidental to the primary entertainment use.

**Finding:** Regarding the Battle for the Airfield Open House event, the Planning Board finds that the record contains no indication of how the Battle for the Airfield event is organized, including any programmatic plans, scripts, schedules, discussion topics, or details on how the displays and programs are integrated into the overall experience and delivered in a uniform manner, similar to the Educational Indicator's 1 and 2. Nothing in the record demonstrates whether all participants engage in the same experience, or whether every participant is subject to a tour, museum visit or specific set of experiences.

**Finding:** The Planning Board further finds that there is no information regarding the number of docents that participate in the event activities, their specific role in the

activities or the volume, duration, or type of tour provided during an event that would provide information as to whether the events show evidence of Educational Indicator 2.

**Finding:** Regarding the Wings and Wheels Open House event, the Planning Board finds there is nothing submitted into the record that provides a programmatic description of the Wings and Wheels event, including any scripts, schedules, discussion topics, or details on displays. There is no indication of how the various displays listed, including "tactical robot, Nashoba High School FIRST program" and other activities listed are integrated into the educational theme of the Wings and Wheels event. Nothing in the record demonstrates whether all participants engage in a consistent experience, or whether every participant is subject to a tour, museum visit or specific set of experiences.

The Planning Board finds there is no indication of what the "flight training" instruction entails programmatically, how the trainings were developed, the expectations of those being trained, or whether the experience is tied into other educational programming during the Wings and Wheels event.

**Finding:** Regarding the Race of the Century Open House event, the Planning Board finds there is nothing submitted into the record that provides a programmatic description of the Race of the Century event, including any scripts, schedules, discussion topics, or details on displays. There is no indication of how the event is integrated into the docent conducted tours, and museum visits, and whether the subject matter is altered to fit this certain event. Nothing in the record demonstrates whether all participants engage in the same experience, or whether every participant is subject to a tour, museum visit or specific set of experiences.

**Finding:** The Planning Board finds there is no indication of evaluation of participants corresponding to Indicator 3 in any of the three Open House events described herein.

**Finding:** The Planning Board finds that although the Application implies subject matter expertise on the part of narrators, presenters and docents, the Application lacks any information regarding educational credentials, certificates, trainings or degrees that would provide substantiation of qualifications relating to the educational credentials corresponding to Indicator 4 in any of three Open House events described herein.

**Finding:** The Planning Board finds there is insufficient information in the Application regarding the three Open House events described herein, corresponding to Educational Indicator 5, regarding the "development and delivery of educational programs or materials that develop and train the powers and capabilities of human beings; prepare and fit the individual for any calling or business, or for activity and usefulness in life, and be directed to further the mental, moral, or physical powers and faculties of those participating."

## **B. Proposed Museum**

*See Applicant Submissions under Section 6.5 of the Appendix*

**Submission:** Applicant proposes to construct a 66,000+/- square foot "American Heritage Museum facility to house the Jacques M. Littlefield Collection of military artifacts.

The Board notes that its inquiry is not "whether a museum is an educational use." Rather, the Board's inquiry is whether the proposed use of the property as specifically described in the Application - otherwise unlawful under the Zoning Bylaw - is an "educational use" as that term is used in case law under G.L. c. 40A, s. 3. To assist in this inquiry, the Board references the identified principles or indicators of "educational use" common to Dover cases.

**Finding:** The Planning Board finds there is no indication within the Application regarding the level of educational and subject matter expertise that led to the development of the three historical themes, which the proposed museum's story lines are based upon.

**Finding:** The Planning Board finds that there is insufficient information to determine how the educational center and library will be incorporated into the delivery of educational information.

**Finding:** The Planning Board finds that the Exhibits plans, layout and associated story lines correspond to Educational Indicator 1 (a purposeful and planned development of educational information), due to the chronological layout of historical museum exhibits and the organized display of information.

**Finding:** The Planning Board finds that the various methods of information delivery as described in the Story Lines and exhibits, including the use of docents, narrated video presentations, graphic displays, interactive activities and role plays and tablet tours to convey the information that the artifacts depict, fails to provide sufficient information as to whether participants will be afforded a systematic and uniform presentation of material. There is no information in the documents, plans and story lines submitted by Boston Productions Inc. (BPI), which indicates whether the method for delivering the educational information is designed for a particular audience, age group or knowledge level, or whether the information has been integrated into docent programs.

**Finding:** Although not dispositive of whether the proposed use is educational, the Board finds that as proposed in the Application, the use lacks a systematic and uniform method of delivering the information to defined audiences. This is due to the lack of submissions regarding how the educational information will be integrated into docent conducted tours, and the apparent lack of educational uniformity and consistency provided to the attendees, who may or may not be accompanied by a docent, may be of an age or knowledge level inappropriate for the material being conveyed, or may choose to explore the museum in an undefined manner.

**Finding:** The Planning Board finds that although not dispositive of whether the proposed use is educational, the Application provides no indication of any of evaluation of museum participants corresponding to Educational Indicator 3.

**Finding:** The Planning Board finds that although not dispositive of whether the proposed use is educational, insufficient information has been submitted to determine relevant qualifications of the individuals developing or conveying the information or subject matter, corresponding to Indicator 4. This is because the limited information provided is unclear as to whether the docents responsible for conveying the educational information contain qualifications regarding instructional efficacy, and the information submitted for Boston Productions Inc. substantiates their multimedia skills, but fails to provide substantiation of their educational background and credentials.

**Finding:** The Planning Board finds that information submitted regarding the exhibits and story lines does not provide sufficient information corresponding to Educational Indicator 5: The development and delivery of educational programs or materials that develop and train the powers and capabilities of human beings; prepare and fit the individual for any calling or business, or for activity and usefulness in life, and be directed to further the mental, moral, or physical powers and faculties of those participating.

### **C. Docent Conducted Tours**

*See Applicant Submissions under Section 6.6 of the Appendix*

**Finding:** The Planning Board finds that the application contains insufficient information to corresponding to Educational Indicator 1: The presence of purposeful and planned development of educational information, similar but not limited to the concept of a curriculum. No materials have been provided to indicate the presence of a Docent Conducted Tour program. There are no training or educational materials, program brochures, descriptions, or scripts for "tailored docent tours" as described in the Application. Nor is there any indication in the record that the docent conducted tours are designed for differing groups or learning abilities, which could substantiate the presence of purposeful and planned development of educational information.

**Finding:** The Planning Board finds there is insufficient information corresponding to Educational Indicator 2: The presence of a systematic and uniform method of delivering the information to defined audiences. There is no information in the Application regarding whether docents will be available to all participants, or whether the information being conveyed will be uniform and consistent for all visitors.

**Finding:** The Planning Board finds there is no indication in the record regarding the evaluation of subjects as it relates to Educational Indicator 3. The Planning Board finds that the reference to a proposed on site facility for training docents is not accompanied by any training program descriptions, proposals, materials or plans that describe evaluation of participants by docents.

**Finding:** The Planning Board finds there is insufficient information to determine the qualifications corresponding to Educational Indicator 4: Qualifications relevant to both the development of the educational subject matter and the effectiveness of the delivery of the subject matter. Notwithstanding the four resumes, bios and credential sheets submitted by the Applicant, there is no information provided regarding training materials, certificates offered or required for serving as a docent, programs directed at volunteer

docents, brochures or program descriptions, outreach or recruitment plans for docent trainings, or scripts submitted as part of the Application.

**Finding:** The Planning Board finds that the application does not provide adequate information to determine whether the educational information conveyed by the docents would substantiate Educational Indicator 5: The development and delivery of educational programs or materials that develop and train the powers and capabilities of human beings; prepare and fit the individual for any calling or business, or for activity and usefulness in life, and be directed to further the mental, moral, or physical powers and faculties of those participating.

#### **D. Proposed Educational Programming**

*See Applicant Submissions under Section 6.7 of the Appendix*

**Finding:** Regarding the Applicant's description of Inter-Educational Programs, the Planning Board finds that it is unclear from the record whether United Nations weapons inspectors have undergone training in Stow or with the Scud Missile as part of the Jaques Littlefield Collection in California.

**Finding:** Regarding the Applicant's description of trainings provided and artifacts as educational tools, the Planning Board finds there is no indication in the record that the Applicant has developed educational materials to support United Nations or defense industry trainings.

**Finding:** Regarding internship opportunities, the Planning Board finds no current or proposed internship descriptions, advertisements, or work plans were submitted into the record.

**Finding:** The record contains no indication that the examples of Computers, Atomic Energy, Weapons of Mass Destruction, Jet Aircraft, Radar, Unmanned Aircraft, Ballistic Missile Technology and Turbo Charger programs will be or have been integrated into the exhibits or story lines and educational activities described in the American Heritage Museum.

**Finding:** The Planning Board finds that there is insufficient information submitted corresponding to Educational Indicator 1: The presence of a systematic and uniform method of delivering the information to defined audiences.

There is no indication in the record regarding the specific supporting materials involved in the educational programming, such as the presence of utilizing curriculum designers or descriptions of lesson plans. No materials, brochures, curricula, lesson plans,



program descriptions, designs, evaluations or logic models have been submitted regarding the proposed Inter-educational programs.

There is no information in the record regarding discussions or programs developed in conjunction with MIT.

**Finding:** The Planning Board finds that there is insufficient information submitted on the educational programs corresponding to Educational Indicator 2: The presence of a systematic and uniform method of delivering the information to defined audiences.

No training or educational materials, program brochures, outreach or recruitment plans for docent trainings, scripts, evaluations or program descriptions for the docent conducted tours have been provided by the applicant. There is no information submitted in the record regarding the current status of the proposed programs or a plan for integrating such programs into the proposed uses.

There are no materials in the record regarding specific schools or institutions where programming will be integrated into curricula. The record provides no programmatic details of docent and reenactor outreach programs, nor any record regarding the existence or implementation plan for a "Two hour history tour."

There is no information submitted regarding whether proposed new programs will ensure uniform delivery of educational information or whether any of the programs are tailored to specific populations or age groups.

**Finding:** The Planning Board finds that there is no direct indication or description regarding the evaluation of participants in the discussion of new programs, corresponding to Educational Indicator 3.

**Finding:** The Planning Board finds that there is no indication in the record of facts corresponding to Educational Indicator 4, regarding the qualifications of staff who will be responsible for integrating history tour programming into school curricula. The information on educational programs provides insufficient information on the Foundation's professional capacity for developing educational programs.

**Finding:** The Planning Board finds that the submission of information on proposed educational programming is not adequate to support Educational Indicator 5: "The development and delivery of educational programs or materials that develop and train the powers and capabilities of human beings; prepare and fit the individual for any calling or business, or for activity and usefulness in life, and be directed to further the mental, moral, or physical powers and faculties of those participating."

## **E. STEM (Science, Technology, Engineering and Math) and STEAM (Science, Technology, Engineering, Arts and Math) Programs**

*See Applicant Submissions under Section 6.8 of the Appendix*

**Finding:** The Planning Board finds that the information submitted regarding the STEM and STEAM was limited. While the information submitted indicates potential future involvement, it is not well enough defined to support Educational Indicator 1: The presence of purposeful and planned development of educational information, similar but not limited to the concept of a curriculum. It is unclear whether the Collings Foundation Inc. is supporting programs of other institutions or developing their own. The record does not indicate the capacity in which the Collings Foundation Trust has supported outside STEM programs, nor are there any materials in the record regarding specific schools or institutions where programming will be integrated into curricula.

**Finding:** The Planning Board finds that there is insufficient information presented corresponding to Educational Indicator 2: The presence of a systematic and uniform method of delivering the information to defined audiences.

The Exhibit Designs and Story Lines for the "American Heritage Museum" by Boston Productions Inc., submitted on March 25, 2015 demonstrate details on the proposed artifact exhibits, but offer no other indication regarding how the exhibits will be utilized programmatically in the delivery of STEM learning.

Nothing in the record demonstrates which educational institutions and/or teachers would be involved and/or supported in the proposed STEM programs. There is no explanation as to the duration of the programs, the preferred audience or how the programs would be integrated into the museum experience.

**Finding:** The Planning Board finds there is insufficient information corresponding to Educational Indicator 3, regarding evaluation of participants. There are no details on record other than a statement that Lynn Lewis's proposed duties will include evaluation of STEM programs.

**Finding:** The Planning Board finds insufficient information was submitted corresponding to Educational Indicator 4: Qualifications relevant to both the development of the educational subject matter and the effectiveness of the delivery of the subject matter. There is no resume, bio or specific credentials for Lynn Lewis in the record, other than mention of her work with MIT outreach initiatives and museum experience, that would allow the Planning Board to determine the adequacy of her qualifications. There is nothing on record substantiating her educational program development experience and/or ability to integrate and implement the Applicant's STEM objectives.

**Finding:** The Planning Board finds that the information proposed on the STEM and STEAM programs represents ideas and potential for future programs, but not specific information and details on the operation and implementation of the programs. The Board finds insufficient information corresponding to Educational Indicator 5: The development and delivery of educational programs or materials that develop and train the powers and capabilities of human beings; prepare and fit the individual for any calling or business, or

for activity and usefulness in life, and be directed to further the mental, moral, or physical powers and faculties of those participating.

#### **F. Relationship Between Collings Foundation and Collings Foundation Inc. and Past, Present and Current Activities**

*See Applicant Submissions under Section 6.16 of the Appendix*

**Finding:** Applicant submitted an unsigned *Affiliation Agreement Between The Collings Foundation and The Collings Foundation Inc.* dated April 14<sup>th</sup>, 2015.

**Finding:** The *Affiliation Agreement between the Collings Foundation and the Collings Foundation Inc.* indicates that Collings Foundation staff will provide support and services to Collings Foundation Inc., that office space will be provided, activities coordinated and intellectual property rights licensed to Collings Foundation Inc.

**Finding:** The Planning Board finds it is unclear which entity will have ownership of, or otherwise be responsible for each of the various programs and initiatives proposed in the Application.

#### **G. Collings Foundation Inc. Staff Qualifications**

*See Applicant Submissions under Section 6.6 of the Appendix*

**Finding:** The Board received four resumes, credentials and Bios of Collings Foundation Inc. staff, including Dr. Robert Collings Sr., Caroline J. Collings, Robert Collings Jr., and Hunter Chaney. It is not clear how these individuals are involved in various activities.

##### **Robert Collings Sr. Resume**

*See Applicant Submissions under Section 6.9.1 of the Appendix*

**Finding:** Resume of Robert Collings Sr. indicates he holds a Doctorate in Business Administration.

The listing of M.B.A programs, Center for Entrepreneurial Management, and Daniel Webster Leadership Initiative do not indicate specific duties, roles, responsibilities, or duration of employment or activity.

**Finding:** Resume of Robert Collings provides "Building Project Development" examples, including role as "Founder and CEP of Resource Dynamics, Inc. Facilities Management and Planning Systems," as well as listing other display and residence facilities. It is unclear from the record, how the Building Project Development qualifications relate to educational qualifications as defined in the indicators.

The resume does not indicate any specific training, degrees or certificates in an educational field of study.

### **Caroline J. Collings Resume**

*See Applicant Submissions under Section 6.9.2 of the Appendix*

**Finding:** Resume includes teaching positions from 4 different schools and universities.

Resume includes program development from the Center for Entrepreneurial Management.

Resume includes participation on various school and college boards.

Resume of Caroline Collings does not indicate the type of B.A. degree earned.

**Finding:** No evidence has been provided in the record regarding the current development of STEM programs or Docent Training Programs. No trainings, credentials, certificates, educational materials, program brochures, scripts, evaluations, program descriptions, outreach or recruitment plans for the docent conducted tours or various educational programs have been provided by the applicant, other than indications provided in the Stow/NRSD Teachers letter regarding 5<sup>th</sup> Grade Field Trips.

**Finding:** It is unclear from the resume submitted, whether Caroline Collings contains specific knowledge and training of the subject matter of the Collings Foundation Inc. There are no subjects noted in the degrees conferred, no trainings, certificates or areas of expertise noted on the resume.

### **Bio of Robert Collings Jr.**

*See Applicant Submissions under Section 6.9.3 of the Appendix*

**Finding:** Bio of Rob Collings Jr. indicates thousands of hours of flight experience in historic aircraft and proficiency in restoration of historic aircraft. There is no indication of degrees, certificates, positions, roles or responsibilities in relation to the delivery of educational information.

### **Bio of Hunter Chaney**

*See Applicant Submissions under Section 6.9.4 of the Appendix*

**Finding:** Applicant has stated Hunter Chaney is a certified English Teacher. However, no information is provided related to schools, certifications or degrees.

**Finding:** The bio of Hunter Chaney provides indication that he performs duties customary for a Director of Marketing.

**Finding:** Applicant indicates Hunter Chaney's many "Director Positions," but provides no evidence of the specific location of such positions, duration or roles and responsibilities that would provide an indication into specific educational qualifications.

**Finding:** Applicant indicates Hunter Chaney's educational media understanding, but provides no further substantiation of educational credentials, certificates, or degrees obtained and no indication of educational programs designed or implemented by Hunter Chaney.

**Finding:** Applicant indicates the result of Hunter Chaney's work is "an educational experience in history, science and technology that is proven to be effective." There are no indications of program evaluations in the record.

**Finding:** No information is provided regarding educational training.

#### **Summary of Findings: Collings Foundation Inc. Staff Qualifications**

**Finding:** The Planning Board finds that although qualifications corresponding to Educational Indicator 4 may be apparent, the Application is unclear as to who will be responsible for developing and administering educational programming. There is nothing in the record indicating how the expertise of the four employees represented in the bios, resumes and credential sheets will be utilized in conjunction with any of the proposed programs described in the Application. It remains unclear if other employees yet to be hired will be filling such roles or if existing staff are expected to take on additional educational roles responsibilities.

#### **H. Special Events as Identified by The Collings Foundation Inc.**

*See Applicant Submissions under Section 6.11 of the Appendix*

The Applicant has submitted a document entitled "Current Activities in Stow." To the extent the Applicant intends that the activities listed in this document will continue as part of the proposed use, the Board reviews these activities as components of the current Application.

**Finding:** The list of "Current Activities in Stow" is categorized differently than the matrix, submitted by the applicant, in the "Summary of Current Activities." The educational organizations are identifiable as such on both documents, although it is unclear which events and activities would fall under Evening or Day Time events.

**Finding:** The list of "Current Activities in Stow" indicates that all of the listed activities do not take place every year. It is unclear which activities may be ongoing or one time events.

**Finding:** The Planning Board finds that the primary purpose of General Events as listed in the *Applicant's Response to Form 1023 Part IV*, and listed as "daytime" events and "evening" events in the *Summary of Current Activities* document are for private purposes of the entity renting the facility. The Planning Board further finds that the activities listed as taking place at such events are perks and benefits that are connected with the rental of the facility, but do not confer status of the rental as a primary educational function.

**Finding:** The Planning Board finds that except for private clubs, the Mathworks tour, and the Harvard Class of 1951 event, the Educational Organization visits that are listed in the *Applicant's Response to Form 1023 Part IV*, as well as under "Daytime Educational visits" in the *Summary of Current Activities* document, supplement the learning goals of other educational organizations, deliver information and subject matter to a wide range of grades and skill levels, and represent a primarily educational use.

#### **I. Museum Interactions and Affiliations**

**Finding:** The Planning Board finds that the category of "Other Museum/Historical Activities and Interactions" provides insufficient information to either substantiate or unsubstantiate whether the bulleted items are activities or visits. Rather the museum interactions and affiliations represent only an unspecified "interaction."

#### **J. Scholarship Programs and Leadership Initiative**

*See Applicant Submissions under Section 6.13 of the Appendix*

**Finding:** The Applicant's September 3, 2014 memo indicates that "the 25 leadership scholarship recipients have participated in TCF's Leadership Initiative," consisting of four days in the Boston area "learning about our founding fathers, the Constitution, the Freedom Trail, the 'shot-heard-round-the-world,' the Boston Tea Party and interviewing five leaders to discuss issues of leadership."

**Finding:** The Planning Board finds that the Scholarship programs described in the Application represent typical activity of private foundations. The Planning Board further finds that while the information submitted indicates support for education, it is not indicative of activity on the project site corresponding to "educational use" as that term is used under G.L. c. 40A, s. 3.

#### **K. Wings of Freedom Tour**

*See Applicant Submissions under Section 6.14 of the Appendix*

**Finding:** Although the Wings of Freedom tour takes place outside of Stow, the Application indicates that the administrative duties take place in Stow.

**Finding:** The Wings of Freedom Tour does not occur in Stow and is therefore has no bearing on the educational qualifications of the proposed museum and site plan uses. The Board finds that such administrative activity conducted on the site does not constitute "educational use" of the property as that term is used under G.L. c. 40A, s. 3.

#### **L. Preservation of Artifacts**

*See Applicant Submissions under Section 6.15 of the Appendix*

**Finding:** The Planning Board finds that a significant amount of preservation activities occur away from the Stow site, although a considerable measure of administrative tasks related to the preservation and maintenance take place in Stow. The Board finds that the administrative tasks conducted on site do not constitute "educational use" of the property as that term is used under G.L. c. 40A, s. 3.

#### **M. Hours of Operation of Proposed Museum**

**Finding:** In the Introductory Remarks to the Planning Board on September 10, 2014, the Applicant indicates the following dates and hours of operation for the proposed American Heritage Museum:

- Closed November 1 – April 30 each year.
- Open to Public May 1 – October 31 (Friday, Saturday and Sunday)
- Hours of Operation 9:00am – 4:00pm or 10:00am – 5:00pm
- Special groups by appointment May 1 – October 31

**Finding:** During the April 29, 2015 Public Hearing session, Robert Collings Sr. noted that for six months per year "the road (in Hudson) will not be plowed, and will have a gate and be locked." Robert Collings Sr. said that school groups could come at that time, and that "smaller groups could come (using the Barton Road access), perhaps between 40-50 people."

**Finding:** During the Planning Board Public Hearing of June 4, 2015 Bob Collings Sr. said the Collings Foundation Inc. "will not be plowing the road (in Hudson) and will not be hosting events in the winter." Bob Collings Sr. said there "is not enough heating for human comfort."

#### **N. Summary of Current Activities Document**

*See Applicant Submissions under Section 6.10 of the Appendix*

The Applicant has submitted a document summarizing and quantifying, in the Applicant's view, the "educational use" of the subject property as proposed in the Application.

**Finding:** The Planning Board finds it is unclear how the percentages of educational activity were calculated.

**Finding:** The percentages of educational activity are not relevant to G.L. c. 40A s.3 or the Educational Indicators as defined by the Board.

**Finding:** The Planning Board finds the description of Operational Historic Artifacts does not include any information regarding specific use as part of an overarching educational program or planned curriculum.

**Finding:** The Planning Board finds there is nothing in the record regarding the development of narrations or scripts for presenters, or reenactors. The Planning Board further finds that although reenactors have been described as knowledgeable in letters from the Applicant's supporters, there is not enough information indicating specific educational credentials to substantiate both parts of Educational Indicator 4, regarding qualifications.

**Finding:** The record indicates Enigma and Art as activities, but provides no background information into how it is displayed or developed for use.

**Finding:** The Planning Board finds it is unclear from the record what the participation of the Nashoba Robotics club consists of.

**Finding:** There are no details in the record of a Desert Storm Robot, or how it is used in conjunction with educational programs.

**Finding:** Applicant notes "alternative fuels, Steam and Electric." There is no indication in the record of a defined program that correlates to these concepts.

**Finding:** There is no indication in the record of how Other Activities as described are "integrated into studies"

**Finding:** The Summary of Current Activities document provides insufficient information to make an informed finding on whether the "Other Activities" taking place at the Special Events, including "Panel Discussion Presentations," "Integrated into Studies," and "Donation of Rides," support a finding of educational use.

## **O. Education as the Primary and Dominant Purpose of the Proposed Use**

**Finding:** The Planning Board finds that the Applicant has not established that the primary or dominant purpose for which the property will be used as described in the



Application is educational pursuant to G.L. c. 40A, s.3. Therefore, the Applicant has not established that it is entitled to those protections provided under said statute for "educational uses", nor those protections offered pursuant to Section 9.9 and 3.10 (5) of the Stow Zoning Bylaw.

- The Planning Board notes that in determining whether the primary or dominant use of the property, as proposed, is educational, it has applied Dover case law, including the principles or indicators the Board determined were common to Dover cases. The Applicant's Supplied Educational Definitions are unrelated and not applicable to the context in which the Board evaluated educational uses relevant to G.L. c.40A s.3.
- Having reviewed all proposed uses of the subject property, as described in the Application, the Board has "look[ed] beyond individual activities, some of which undoubtedly may in isolation constitute educational use, to see whether in the aggregate, the overall use of the [land] and structures in question amount to educational use." *MetroWest YMCA v. Town of Hopkinton* at p. 6.
- The Planning Board finds that while some activities entailed in the proposed use may be educational for some participants, *in the aggregate*, the predominant use of the property as proposed is not educational. Rather, the predominant use of the property as proposed is open air festival/exhibitions primarily for entertainment, and acquisition, restoration and curation of artifacts. "These are the uses which predominate, and they do not fall within the educational purposes over which the Dover Amendment extends its protective umbrella." *MetroWest YMCA v. Town of Hopkinton* at p. 6. Much of the activity described as "educational" is, for many visitors, "entertainment". Other activity suggested by the Applicant to be "educational" is in fact administrative activity pertaining to offsite activity. "These do not fall within the accepted understanding of what constitute educational purposes under the Dover Amendment, even if some training. . . or demonstrative instruction is involved." *Metrowest YMCA* at 6-7.
- The Board further finds that where the primary or predominant use of the property, as proposed, was not established by the Applicant to be "educational," the proposed use is not entitled to the protections of G.L. c. 40A, s. 3 or Section 9.9 of the Zoning Bylaw.
- Where the proposed use, as described in the Application, is not allowed in the Recreational-Conservation District or in the Residential District in which the project site is located, and is not entitled to the protections of G.L. c. 40A, s. 3, the Application submitted for Site Plan Approval and an Erosion Control Special Permit cannot lawfully be approved.

- The Board has nevertheless reviewed, on the merits, the Application for Site Plan Approval and for an Erosion Control Special Permit, with the assistance of consultants. As the proposed use is not entitled to the protections of G.L. c. 40A, s. 3 or Sections 9.9 and 3.10 (5) of the Zoning bylaw, all Bylaw requirements pertaining to these two approvals applications, as well as all Planning Board Rules. are applicable to the proposal.

#### **8.3.4 Site Plan Approval and Erosion Control Special Permit Review**

**Finding:** The Planning Board finds that where the Application does not meet the qualifications related to G.L. c. 40A s.3 regarding education as the primary and dominant purpose of the proposed use, the necessary Special Permits and Site Plan Approval evaluation applies.

#### **A. Dimensional Regulations – Section 4 of Zoning Bylaw**

**Finding:** Section 4.1.2 of the Bylaw requires that only one main building may be built or placed on any lot within the residential district and said building shall be on a lot which has frontage on a street.

**Finding:** Section 4.4 of the Bylaw – Table of Dimensional Requirements requires minimum setbacks for structures in the residential zone.

**Finding:** The Application shows a proposed museum building on the site plan straddling parcel 16A of Assessor's Map R-25 and parcel 54 of Assessor's Map U-2, with parcel 16A containing no frontage on a street.

**Finding:** The Planning Board finds that the proposed building in the Application does not meet Section 4.4 - Table of Dimensional Requirements in the Bylaw regarding frontage and side yard setbacks and lacks compliance with Section 4.1.2 of the Bylaw regarding number of buildings on a lot.

#### **B. Hammerhead Lot Special Permit - Section 6.1 of Zoning Bylaw**

**Finding:** The Applicant has filed a separate Special Permit application for a Hammerhead Lot in accordance with Section 6.1 of the Bylaw, to provide conforming frontage and building setbacks to the proposed structure.

**Finding:** On August 10, 2015, the Board approved a Hammerhead Lot Special Permit Application filed by Robert Collings for the joining of Assessor's Map R-25, parcel 16A and U-2, parcel 54 into a single conforming Hammerhead Lot with legal frontage on

Barton Road, pursuant to certain conditions and plan modifications as stated in the decision.

**Finding:** Approval of the Hammerhead Lot Special Permit provides conforming frontage and setbacks for the proposed building but does not infer approval of the Site Plan subject to this decision.

**Finding:** The Hammerhead Lot currently contains one existing museum building. The proposed museum building would constitute a second building on the Hammerhead Lot and would be in violation of Section 4.1.2 of the Zoning Bylaw.

### **C. Access to Site**

*See Applicant Submissions under Section 7.1 of the Appendix*

**Finding:** The site is currently accessed via Barton Road, a public/private way stretching from Sudbury Road in Stow, south to the Hudson town line where it becomes Hunter Avenue. Barton Road is a public way from the intersection with Sudbury Road, running approximately one thousand five hundred (1500') feet south, where it becomes a private way for the rest of its length, terminating at Hunter Avenue in Hudson.

**Finding:** Correspondence received from residents of Stow and Hudson noted concern over the use of Barton Road, regarding the transport of tanks and other military artifacts, passing of construction vehicles for the proposed site work and visitors to the museum and Open House events. Resident correspondence included comments, concern and documentary photographs regarding the following issues:

- Structural integrity of the Lake Boon dam due to transport of heavy tanks and military artifacts
- Insufficient road widths, down to 10 feet, which do not meet residential roadway standards
- Inability for vehicles to travel in two directions without pulling off of the road
- Overburdening of and damage to a minimally maintained private way
- Inability for emergency response vehicles to pass during times of peak visitor traffic
- Traffic congestion and pollution due to slow or idling vehicles
- Safety of residential users, including dog walkers, joggers and children
- Concerns regarding the accuracy of the Conley Associates Traffic report

**Finding:** Due to comments and concerns regarding traffic safety and congestion on Barton Road, the Applicant proposes to construct a variable width access road to the

proposed 66,000+/- square foot museum building, an existing 32,000+/- square foot museum building and a 7500+/- square foot barn/office building, beginning at 586 Main Street in Hudson and running approximately 2,222 feet through parcel 3 on Hudson Assessor's Map 35 and 1745' (feet) in Stow, over parcels shown on the Town of Stow Assessor's Map as R-25, parcels 13, 16B and Map U-2, parcel 54.

An existing access and egress currently servicing the residence at 137 Barton Road and existing museum and event space will be utilized six months out of the year according to the Application. The existing egress, currently used for the existing museum and related events, is noted on the plans as an emergency egress and will be utilized for six months out of the year according to the Application.

**Finding:** The plans submitted with the Application show a proposed access road of approximately 20' (feet) in width.

**Finding:** The proposed access road consists of a 20 foot wide wetland crossing with proposed alteration of 436 linear feet of Bordered Vegetated Wetland subject to Conservation Commission approvals in accordance with the Massachusetts Wetlands Protection Act and Stow Wetlands Bylaw.

**Finding:** The Conservation Commission issued an Order of Conditions for the proposed site work on June 17, 2015.

**Finding:** Written correspondence from an abutter and self-identified principle engineer noted concern regarding the accuracy and legitimacy of the traffic study, including:

- Lack of nearby intersection analysis
- No indication of an analysis regarding operational condition of Barton Road
- Lack of roadway segment assessment
- No indication of road width analysis
- Incorrect land use codes applied to trip generation analysis
- No indication or estimation of traffic usage based on special events and Open House events
- Traffic counts were conducted off season from the typically busy summer season in a lakefront community
- No indication regarding analysis of operation for school buses and other large vehicles
- No indication of emergency vehicle access

**Finding:** During the April 29, 2015 Public Hearing session, Robert Collings Sr. noted that for six months per year "the road (from Main Street, Hudson, will not be plowed, and will have a gate and be locked." Robert Collings Sr. said that school groups could come at that time, and that "smaller groups could come, perhaps between 40-50 people."

**Finding:** The Town of Hudson Planning Board Decision dated February 12, 2015 for the proposed access road at 568 Main Street contains the following conditions: no salt or de-icing agent will be applied to the road; A lockable gate shall be installed. The Town of Hudson Planning Board Decision does not require that the road be closed for any fixed duration.

**Finding:** Based on the Application, the record of proceedings and the findings herein, the Planning Board finds that Barton Road will function as an access for approximately six months per year or otherwise during times of snowfall.

**Finding:** The Planning Board finds that the addition of an access road through Hudson would mitigate concerns regarding the volume of traffic using Barton Road for events, as well as impacts to Barton Road due to heavy trucks and payloads during the duration in which it is open for use.

**Finding:** Based on the Application, the record of proceedings and the findings contained herein, the Planning Board is unable to determine the expected pattern of use during the six month period in which the Applicant plans to close the Hudson access road, and use Barton Road as the primary access.

**Finding:** Based on the Application, the record of proceedings and the findings herein, the Planning Board finds that although it is unclear as to the degree to which the Applicant will utilize the proposed site during the duration that the Hudson access is closed, the existing conditions and existing patterns of use on Barton Road are not sufficient to provide safe and convenient access to increased activities at the site.

**Finding:** The Board finds that Barton Road is not adequate to serve a significant volume of traffic, including transport of heavy equipment such as military tanks.

**Finding:** Based on input and concern raised about the dam, the Board finds that it is not appropriate to cross the dam with heavy equipment such as military tanks.

#### **D. Landscaped Berm to Mitigate Impact to Stow Abutter**

**Finding:** An abutter at the Public Hearing raised concern that his home is 200 feet from the event grounds and that the access road will be at grade with his house. The abutter noted at the Hearing that he would be in favor of a landscaped berm higher than the previously proposed 6 foot barrier, and stretching at least 100 feet due to the wide

open view of the Applicant's property. The abutter noted that the berm could help mitigate the visual and noise impacts to his property.

**Finding:** The Planning Board finds that the abutter's request for the Applicant to construct a berm could help mitigate impact from the proposed access road and uses on the site.

**Finding:** The abutter, engineers and landscape architects on behalf of both the Applicant and the Planning Board, met on site visit to determine the proper plants, alignment and height for the proposed landscaped berm. The meeting was determined by the Planning Board to be an adequate response to address the concerns of the abutter.

#### **E. Extension of Hudson Berm to Mitigate Impact to Hudson Abutter**

**Finding:** As a result of the site visit, the parties agreed on a plan revision including moving the proposed access road twenty two (22) feet to the west to accommodate an eight foot (8') tall berm proposed east of the access road and just west of the abutting property owner's parcel boundary.

**Finding:** An abutter from 90 Hunter Avenue in Hudson noted concern over noise and impact to his property from the proposed access road, indicating that the extension of a berm to be built in Hudson would mitigate the impacts to his property.

**Finding:** The Hudson Planning Board's minutes of January 6, 2015 and conditions reflected in the January 20, 2015 Decision indicate that the Applicant agreed to create "as large of a natural buffer as possible with a minimum of a 40 foot buffer from the berm to the abutters property lines at 88 and 90 Hunter Avenue.

**Finding:** The Planning Board finds that the natural buffer noted in the Hudson Planning Board Decision of January 6, 2015 would adequately address mitigation of the potential noise and visual impact to abutters of 88 and 90 Hunter Avenue in Hudson.

#### **F. Parking Regulations – Section 7 of the Zoning Bylaw**

*See Applicant Submissions under Section 7.2 of the Appendix*

**Finding:** At the April 1, 2015 Public Hearing session, the Applicant noted that the number of visitors they expect to visit the proposed museum is based on speculation and that overflow parking areas, totaling 1,000 spaces, exist at each end of the runway.

**Finding:** Overflow parking areas for the Open House events are not shown on the plans.

**Finding:** Section 7.3.3.4 of the Bylaw requires one space for every 300' square feet of museum floor space.

**Finding:** The Application consists of a proposed museum building, existing museum building and barn/office building totaling 105,500 +/- square feet and requiring 352 parking spaces in accordance with Section 7.3.3.4 of the Bylaw.

**Finding:** Section 7.2.5 of the Bylaw – Reserve Parking Spaces, allows for initial development of no less than 65% of required spaces where spaces are not immediately required for a particular intended use.

**Finding:** Section 7.2.5.2 of the Bylaw requires the remaining spaces to be labeled on the plan and properly designed as an integral part of the parking layout with adequate drainage provided for both the partial and total parking areas.

The remaining spaces marked as reserve, along with adequate drainage designs, are shown on the plans.

**Finding:** Section 7.2.5.4 requires a landscaped ground cover for portions of the parking not initially paved under 7.2.5.

**Finding:** Section 7.2.5.5 requires a covenant in recordable form and to be recorded at the Registry of Deeds for the construction of future parking. No covenant was submitted as part of the Application.

**Finding:** The required number of parking spaces to be constructed upon approval under Section 7.2.5 - Reserve Parking, is 228.

The Application proposes to construct 70 parking spaces.

- 47 parking spaces are included on a recycled asphalt pavement lot at the north entrance of the museum, including seven (7) handicapped spaces
- 23 parking spaces are labeled as overflow and located on a concrete pad to the south of the museum building.

**Finding:** The Board's consulting engineer notes the Applicant proposes to construct less than 20% of the minimum reserve spaces.

**Finding:** The Planning Board finds that the number of proposed parking spaces for the museum does not conform to Section 7.2.5 of the Bylaw.

**Finding:** As stated in the Planning Board Stormwater Management Policy, the Board places "a high priority on environmentally sensitive site design techniques for stormwater management, including: minimizing impervious surfaces."

## **G. Off Street Parking and Loading Area Design Requirements - Section 7.7 of the Zoning Bylaw**

**Finding:** Section 7.7.4 of the Bylaw requires perimeter landscape screening for all parking areas with five (5) or more spaces.

**Finding:** Section 7.7.5 of the Bylaw requires a minimum of 10% interior landscaping.

**Finding:** Interior landscaping is proposed on 11.4% of the reserve parking area.

**Finding:** Sheet L.5.2 of the Application shows proposed landscaping for the provided museum parking spaces and reserve parking spaces in conformance with Section 7.7.4, 7.7.5, and 7.7.6.

**Finding:** Section 7.7.6.5 states that wherever possible the requirement for interior and perimeter landscaping shall be met by retention of existing vegetation.

**Finding:** The Planning Board finds that the existing forested areas at the site provide sufficient screening for the event parking area, reserve parking area and proposed museum parking areas to conform to Sections 7.7.4, 7.7.5, 7.7.6 of the Zoning Bylaw.

## **H. Exterior Lighting - Section 3.8 of the Zoning Bylaw**

**Finding:** Section 3.8.1.5.1 – Exterior Lighting states that exterior lighting on lot shall be subject to a cap of 25,000 lumens/acre or 10,000 lumens, whichever is greater.

**Finding:** Section 3.8.1.5.2 requires a Special Permit when installing new fixtures or replacing existing fixtures resulting in initial design light output of more than 100,000 lumens on any lot.

**Finding:** Section 3.8.1.5.6 requires all exterior lighting fixtures to be full cutoff.

**Finding:** A memo from the Board's consulting engineer indicates that additional lighting may be warranted along the access drive to assist entering and exiting drivers in inclement weather.

**Finding:** The Application includes a photometric Lighting Plan sheet showing 13 proposed wall mount lights.

**Finding:** The Application includes lighting cut sheets that contain differing models with various options and outputs. The lighting plans does not indicate the model of lighting fixture proposed in the 13 identified locations.

**Finding:** The Application does not propose lighting along the access driveway. The Planning Board finds that lighting along the proposed driveway is not necessary.

**Finding:** The Application does not indicate any lighting fixtures in the proposed museum parking area other than two fixtures at the main entrance.



**Finding:** There are no fixtures indicated in the vicinity of the seven (7) handicapped parking spaces.

**Finding:** The Planning Board finds that the lighting plans submitted are sufficient to determine that the Applicant does not need a Special Permit in accordance with Section 3.8 Exterior Lighting.

## **I. Odor, Dust and Smoke - Section 3.8 of the Zoning Bylaw**

**Finding:** Section 3.8.1.2 – Odor, Dust and Smoke states that “no such offensive emissions shall be discernible beyond the property line...”

During the Public Hearing abutters provided the following submissions in regard to concerns of odor, dust and smoke:

- Quotations by Robert Collings Jr. in a November 21, 2013 issue of *The Almanac* regarding the Littlefield Collection moving to Stow, Massachusetts, stating “the public will hear the grumble of tank engines, and the ominous clanking of metal treads. They will feel the ground shake and the smell of diesel permeating the air. ‘It’s a much more immersive and impactful experience,’ said Rob Collings.”
- Smoke, odors and potentially harmful particulate matter from ordnances drifting onto private property
- Coughing and breathing problems due to explosive materials, smoke and smog
- Exposure to diesel emissions and fumes from outdated vehicles
- Links to web videos depicting drifting smoke and ordnance emissions at Collings Foundation events.
- 6 photographs of explosives detonations and smoke at Open House Events
- Abutter letter to Board of Health regarding home evacuation and health concerns due to fumes and smoke from ordnances

**Finding:** The Application indicates that the Open House events are proposed to continue under the direction of the Collings Foundation Inc.

**Finding:** Correspondence from abutters noted concern regarding the possession of a Federal Bureau of Alcohol, Tobacco, Firearms and Explosives Type 10 License for Manufacturing of Destructive Devices by the Collings Foundation.

During the Public Hearing the Applicant indicated that the Collings Foundation hires a contractor to deliver and detonate explosives during the Open House events.

The Applicant stated at the Public Hearing that explosives do not have contact with the ground.

Photographs submitted by abutters, and a documentary film of the Collings Foundation submitted by Syzygy Media on behalf of the Applicant, depict ordnance detonation at ground level.

During the Public Hearing the Applicant stated that the “explosives permits are obtained through ATF (Bureau of Alcohol, Tobacco and Firearms) and the Fire Chief.

**Finding:** The Planning Board finds the Applicant has not provided any indication regarding the chemical makeup of the ordnances being used for the events, including the chemicals resulting from discharge or detonation, nor has the Applicant provided any indication regarding whether the chemical makeup and/or discharge is in compliance with Occupational Safety and Health Administration standards.

**Finding:** The Planning Board finds that based on the correspondence from abutters regarding vehicle emissions and ordnance detonation and emission drift from the current and proposed uses, the Board is unable to determine that the current or proposed uses can and will meet Section 3.8.1.2 of the Zoning Bylaw.

#### **J. Noise - Section 3.8 of the Zoning Bylaw**

*See Applicant Submissions under Section 7.3 of the Appendix*

**Finding:** Section 3.8.1.3 – Noise: states that no noise generated on a lot shall cause the total noise level at the property line to be more than three decibels above the natural ambient sound unless it is limited to no more than 10 decibels for five minutes within any one hour period or limited to thirty decibels for no more than sixty minutes in any seven day period.

Correspondence from abutters and comments at the Public Hearing indicate that noise generated at the Collings Foundation included the following concerns:

- Noise from the airfield occurs at other times in addition to the three Open House Events
- Noise is a health, safety and welfare concern
- Noise measurements in the sound study are not representational of the impact to the neighborhood
- Events are loud, scary and incongruous with the residential neighborhood
- Petition with 86 signatures from Stow residents, titled “Petition to Stop the Collings Foundation Dangerous and Destructive Commercial Activities in a Residential Zone cites “noise and destruction of a peaceful, quiet neighborhood.”

- Noise from pyrotechnics
- Combined traffic noise from busy apple picking operations in the fall
- Emotional and psychological issues resulting from noise
- Irritation from noise of aircraft, cannon fire, explosives and traffic
- Close aircraft flyovers that "buzz" residents' homes
- Noise from events is significant enough to warrant wearing earplugs at events
  - 13 minutes video shows sound levels taken at 222 Barton Road measured by resident on a handheld decibel meter reached up to 86 decibels during tank ordnance explosions and reenactment gunfire

**Finding:** A sound study (submitted by the Applicant) conducted during the 2014 Battle for the Airfield Open House Event, on Saturday, October 11 and Sunday, October 12, 2014, concludes that the decibel levels on the two reenactment days were approximately two (2) decibels higher than ambient, during sound levels measured on non-event days.

**Finding:** Abutters at the Public Hearing and in written correspondence noted that the location of the sound study measurements were taken at the farthest end of the property from the Open House events, approximately 2,000 feet from the source of the event noise and that typically several sound measurement locations are submitted with sound studies.

**Finding:** The Planning Board finds that although a sound study was submitted with the location of measurements and results providing compliant results, the Board is unable to determine that the noise will not be detrimental or injurious to abutting properties as there are several locations where residences are approximately 500 to 1,000 feet closer to the site events than the location submitted as part of the Applicant's submitted noise study.

## K. Erosion Control – Section 3.8 of the Zoning Bylaw

**Finding:** Section 3.8.1.9 of the Bylaw requires that all projects considered under Site Plan Approval shall contain adequate drainage designs to show that pre-development surface water runoff rates and volumes and erosion and sedimentation rates shall not be increased so as to avoid erosion damage, sedimentation or uncontrolled surface water runoff.

**Finding:** Section 3.8.1.10 – Erosion Control requires a Special Permit from the Planning Board in accordance with Section 9.2 of the Bylaw, where grading or construction will create slopes of 25% or greater on fifty percent (50%) or more of the lot area or occur on thirty two thousand (32,000) square feet or more on a single parcel.

**Finding:** The Application includes an Erosion Control Special Permit due to proposed grading and construction for the proposed museum and access road resulting in greater than thirty two thousand (32,000) square feet.

**Finding:** The Application indicates the post-development rates of runoff do not exceed pre-development rates.

**Finding:** The Planning Board finds that although the site contains well drained soils and is large enough to reasonably accommodate the required drainage, there are several requirements that have not been met to confirm conformance with Section 3.8.1.9 of the Bylaw, Section 4.13 of the Special Permit Rules and Regulations, and the Planning Board Stormwater Policy, which is meant to both ensure that peak runoff is no greater after the development is completed, and that water quality will meet required Department of Environmental Protection standards:

- No soil testing in the of the Stormwater basins/infiltration areas were provided.
- The Long Term Pollution Prevention Plan does not address all items listed in the DEP checklist for Stormwater Report, Standard 4: Water Quality for Construction, including:
  - Erosion and dust control
  - Maintenance of temporary construction entrance
  - Requirement for stockpiles to be covered or stabilized if not in use for more than 21 days.

**Finding:** Section 3.8.1.10 (7) requires a Stormwater Pollution Prevention Plan where more than one acre or more land will be disturbed.

**Finding:** The Planning Board finds the Applicant has submitted a draft Stormwater Pollution Prevention Plan.

### **8.3.5 Review of Application in Accordance with Special Permit Rules and Regulations**

**Finding:** The Planning Board finds that a Special Permit was triggered by Section 3.8.1.10 – Erosion Control and will therefore apply the Mandatory Findings of Section 9.2.6 of the Bylaw only as they apply to Erosion Control.

**Finding:** The Planning Board finds insufficient information has been presented to confirm the mandatory findings as stated in Section 9.2.6, regarding the protection of abutting properties and ways, the neighborhood, community amenities and the Town of Stow:

- Based on the submissions and findings stated herein, the Planning Board is unable to confirm that sufficient mitigating measures will be implemented regarding erosion control and stormwater pollution prevention.
- Based on the submissions and findings stated herein, the Planning Board is unable to confirm that the proposed project will result in no pollution or contamination of the ground water, ground water recharge area, wells, ponds, streams, watercourses or inland wetlands.
- Based on the submissions and findings stated herein, the Planning Board is unable to confirm that the proposed project will result in no redirection of existing surface water runoff.
- Based on the submissions and findings stated herein, the Planning Board is unable to confirm that the proposed project will result in no transport by air or water of erodible material beyond the boundary line of the lot.
- The Planning Board finds that the Application does not comply with all requirements of Site Plan Approval and all other applicable requirements of this Bylaw.

### **8.3.6 Review of Application in Accordance with Site Plan Approval Rules and Regulations**

#### **Section 1.5.2 – Waiver of Rules**

**Finding:** The Planning Board finds that no requests for waivers were submitted by the Applicant.

#### **Section 4.5 – Other Permits and Variances**

*See Applicant Submissions under Section 8.1 of the Appendix*

**Finding:** Section 3.8.1.10 – Erosion Control requires a Special Permit from the Planning Board in accordance with Section 9.2 of the Bylaw, where grading or construction will create slopes of 25% or greater on fifty percent (50%) or more of the lot area or occur on thirty two thousand (32,000) square feet or more on a single parcel.

The Application includes an Erosion Control Special Permit due to proposed grading and construction for the proposed museum and access road resulting in greater than thirty two thousand (32,000) square feet of disturbance.

**Finding:** Based on input from the Board's consulting engineer, the Planning Board finds that standard Industrial Classification codes covering Airfields and maintenance require a Multi Sector General Permit for an Industrial Use from the Environmental Protection Agency under the National Pollution Discharge Elimination System (NPDES), which is separate from the permit which governs the construction. No information has been submitted regarding the applicability of the Multi Sector General Permit.

**Finding:** The Conservation Commission issued an Order of Conditions for the proposed access road's work regarding the wetland crossing on June 17, 2015.

**Finding:** Applicant has not submitted a variance decision or application regarding non-conformance with Zoning Bylaw Section 7.2.5 – Reserve Parking.

**Finding:** A septic tank, proposed leach field and proposed leach field reserve area are shown on the Application plans. There is nothing in the record confirming approval of the sewage disposal system in accordance with the Department of Environmental Protection Title V requirements or Stow Board of Health regulations.

**Finding:** Correspondence from the Board of Health indicates that they are working with the Applicant and DEP on a public water supply well permit and septic design for the proposed site plan.

**Finding:** The Planning Board finds no confirmation of the required water quality analyses and pumping test results, in accordance with Department of Environmental Protection regulations 310CMR22, and as noted in the letter from Purnachander Rao, Permit Manager for the Massachusetts Department of Environmental Protection Drinking Water Program.

**Finding:** Correspondence from the Board of Assessors indicates that the following parcels noted in the site plan are currently being assessed at reduced rates in accordance with G.L. c. 61B designation:

Map U – 2, Parcel 54

Map R – 25, Parcel 16A

Map R – 25, Parcel 16B

Map R – 25, Parcel 17

**Finding:** The Application does not include a notice of intent to sell or convert the land to another use in accordance with G.L. c. 61B s.9.

#### **4.7.3.1 – Legends**

**Finding:** Except for Plan Sheets L5.1, L5.2 and L5.3, the plans sheets do not contain a legend. Legends on each of the plan sheets are required under Section 4.7.3.1 of the Site Plan Approval Rules and Regulations.

#### **4.7.3.2 – General Site Characteristics**

*See Applicant Submissions under Section 8.2 of the Appendix*

**Finding:** The Site Composite Plan and associated plan sheets do not identify all of the abutting property ownership.

**Finding:** Setback lines and distances are not shown on the plans.

**Finding:** The Planning Board finds that the five parcels consisting of the Site Plan Application contain different owners and different uses, including the proposed and existing museums and office space, pedestrian and vehicular circulation plans, a single family home, driveway and emergency access.

**Finding:** The Applicant submitted a signed Property Lease between Robert Collings of 137 Barton Road, and Hunter Chaney, Secretary of Collings Foundation Inc. for property as shown on Assessors Map R25 as parcels 16 and 13, including a parcel in Hudson at 568 Main Street in Hudson, to be utilized by the Collings Foundation Inc.. The Property Lease submitted terminates on September 30, 2019.

### **Refueling Location**

**Finding:** The Applicant noted the location of an existing refueling area on the plans.

**Finding:** Based on input from the Board's consulting engineer, a potentially large amount of fuel is necessary for the events.

**Finding:** Based on input from the Board's consulting engineer, the existing refueling area contains no catchbasin or concrete pad to contain fuel spills, such as is included in the vehicle washing area.

**Finding:** The Applicant indicated the use of Massachusetts Department of Transportation certified trailer for the transport of fuels for refueling of aircraft and vehicles.

**Finding:** The Planning Board finds that the recommendations provided by the Board's consulting engineer, including, but not limited to fueling trainings, spill prevention protocol, and/or supplies to protect against a spill at the refueling area could help mitigate the concerns expressed herein.

### **Existing Right-of-Way on Site Plan**

**Finding:** The Planning Board finds that an existing right-of-way easement legally established on a "Plan of Land in Stow, Massachusetts," dated November 2, 1988, by Stamski and McNary, Inc. and referenced in a Middlesex County Land Court Decision with a Registration Case No. of 42502, and a width of 8-10 feet, is shown crossing parcel 13 owned by the Collings Foundation and parcel 16B, owned by Robert and Caroline Collings.

**Finding:** The Planning Board finds that the established right-of-way is shown on the Application's Plan sheet C – 2.0, specifically as it exits 199 Barton Road, crosses the proposed access road, continues west-northwest between two drainage basins, travels over the existing private restricted landing area, and eventually connects with a 12.35 acre parcel of land of the same owner as the easement.

**Finding:** The Planning Board received correspondence from the owner of the right-of-way, stating that the Applicant does not have permission to disturb or otherwise alter the right-of-way in any way.

**Finding:** The Planning Board finds that the location of the right-of-way as it appears in the Application is seemingly unchanged from the location as shown on the November 2, 1988 plan referenced in the Land Court decision described herein. In the Public Hearing, the Applicant noted a proposed drainage basin was split into two separate basins to allow unhindered passage by users of the right-of-way.

#### **Easements**

*See Applicant Submissions under Section 8.3 of the Appendix*

**Finding:** The Planning Board finds there is no reference to the easement on the plans.

**Finding:** The Planning Board further finds there is no indication of all of the necessary easements on the plans submitted confirming the ability of the Applicant to implement the site plan as designed, given the fact that lots are owned by different entities.

#### **4.7.3.4 – Site Improvements**

*See Applicant Submissions under Section 8.4 of the Appendix*

**Finding:** The location of the existing private drinking water well is shown adjacent to the existing hangar museum.

**Finding:** The existing private drinking water well is located approximately thirty five (35') feet from the existing refueling area.

**Finding:** The location of a proposed public water supply Zone 1 radius of one hundred and forty five (145') feet.

**Finding:** The Application indicates an approved fire pond and adjacent dry hydrant, as well as a proposed 24,000 gallon fire cistern within 500' (feet) of the proposed museum building.

**Finding:** The Application indicates a fire protection well at the northwest corner of the proposed museum building.

**Finding:** A septic tank, proposed leach field and proposed leach field reserve area are shown on the Application's plans. There is nothing in the record confirming approval of the sewage disposal system in accordance with the Department of Environmental Protection Title V requirements or Stow Board of Health regulations.

Correspondence from the Board of Health indicates that they are working with the Applicant on a public water supply well permit and septic design for the proposed site plan. A Zone 1 Public Water Supply Source Approval letter from the Department of



Environmental Protection dated November 17, 2014 was submitted. The Planning Board finds no confirmation of the required water quality analyses and pumping test results as noted in the letter by Purnachander Rao.

**Finding:** The Planning Board agrees with the town's consulting engineer's recommendation that a traffic re-direction/mitigation plan to be prepared for and reviewed by the Board, including the location of temporary signage to direct traffic to the Hudson entrance would help mitigate concerns regarding traffic congestion on Barton Road. The Planning Board further finds that no traffic re-direction/mitigation plan was submitted.

#### **4.8.5 – Outdoor Lighting Details**

**Finding:** The information and findings described herein do not provide sufficient detail of proposed lighting. Cut sheets for lighting were provided with different lumen outputs and features. Compliance with Section 4.8.5 cannot be confirmed without information on the specific models of lighting proposed.

#### **4.9 – Landscape Plan**

*See Applicant Submissions under Section 8.5 of the Appendix*

**Finding:** Based on input from the Board's consulting engineer, the Board finds that species including River Birch, Red Maple, and Serviceberry are appropriate where irrigation or regular watering will be taking place. The Planning Board further finds that no irrigation measures have been proposed.

**Finding:** Based on comments from the Board's consulting engineer, the Planning Board finds that little leaf linden is used extensively in the parking lot and can be messy when in bloom. The Planning Board finds that alternative selections would be more appropriate.

#### **4.9.3 – Landscape Buffers and 4.9.3.1 – Opaque Screen**

**Finding:** In accordance with Section 7.7.6.5, the Planning Board finds there is adequate existing vegetation on site to provide the necessary landscape screening for the parking areas.

**Finding:** The Planning Board agrees with their consulting engineer's recommendation that the planting of large species of evergreens at the southeast corner of the proposed museum would help break up the massing and scale of the building. The Planning Board further finds that the plan was not modified to include the recommendations.

**Finding:** The Planning Board agrees with their consulting engineer's recommendation that the Tree Planting Details be modified to show a slice in the lower sections of burlap on the planted trees to encourage the spread of roots in the dry, sandy soils. The Planning Board further finds that the plan was not modified to include the recommendations.

**Finding:** The Planning Board agrees with their consulting engineer's recommendation of having snow plow operations and overall maintenance procedures in place to address the maintenance of the well landscaped islands and foundations in the proposed parking areas. The Planning Board further finds that the plan was not modified to include the recommendations.

#### **4.9.3.2 – Plantings**

**Finding:** The Planning Board agrees with their consulting engineer's recommendation that the proposed rhododendron and witch hazel on the landscaped berm may not be able to survive on exposed, sand based soil, and that there are other plants more appropriate for the soil and landscape conditions. The Planning Board further finds that the plan was not modified to include the recommendations.

**Finding:** The Planning Board agrees with their consulting engineer's recommendation that sheets L-5.1 and L5.2 regarding the turf grass parking area do not indicate the separation between full sun and shade varieties of turf to be established.

#### **4.9.3.3 – Maintenance of Plantings**

**Finding:** The Planning Board agrees with the town's consulting engineer's recommendation that:

- The plan was not revised to show sufficient depth of loam on the landscaped berm for retaining organic matter.
- The Application lacks specific identification of slope stabilization materials and maintenance procedures on the landscaped berm.

#### **4.13 – Stormwater Management and Drainage Calculations**

**Finding:** Based on input from the Board's consulting engineer, and the findings contained herein, the Board finds that several requirements of the Stow Planning Board Stormwater Policy, which is meant to both ensure that peak runoff is no greater after the development is completed, and that water quality will meet required Department of Environmental Protection standards, have not been met.

#### **4.15 – Traffic Study**

*See Applicant Submissions under Section 8.6 of the Appendix*

**Finding:** A traffic study prepared by Conley Associates for the Collings Foundation was submitted, detailing sight lines and stopping distances at the current entrance and egress to the site, as well as existing and future trip generation statistics and estimations.

**Finding:** Written correspondence from an abutter and self-identified principle engineer noted concern regarding the accuracy and legitimacy of the traffic study, including:

- Lack of nearby intersection analysis

- No indication of an analysis regarding operational condition of Barton Road
- Lack of roadway segment assessment
- No indication of road width analysis
- Incorrect land use codes applied to trip generation analysis
- No indication or estimation of traffic usage based on special events and Open House events
- Traffic counts were conducted off season from the typically busy summer season in a lakefront community
- No indication regarding analysis of operation for school buses and other large vehicles
- No indication of emergency vehicle access

**Finding:** During the April 29, 2015 Public Hearing session, Robert Collings Sr. noted that for six months per year "the road will not be plowed, and will have a gate and be locked." Robert Collings Sr. said that school groups could come at that time, and that "smaller groups could come, perhaps between 40-50 people."

The Town of Hudson Planning Board Decision dated February 12, 2015 for the proposed access road at 568 Main Street contains the following conditions: no salt or de-icing agent will be applied to the road; A lockable gate shall be installed. The Town of Hudson Planning Board Decision does not require that the road be closed for any fixed duration.

Based on the Application, the record of proceedings and the findings herein, the Planning Board finds that Barton Road is proposed to function as the main access for approximately six months per year or otherwise during times of snowfall.

**Finding:** The Planning Board finds that the addition of an access road through Hudson would mitigate concerns regarding the volume of traffic using Barton Road for events, as well as impacts to Barton Road due to heavy trucks and payloads during the duration in which it is open for use.

**Finding:** Based on the Application, the record of proceedings and the findings contained herein, the Planning Board is unable to determine the expected pattern of use during the six month period in which the Applicant plans to close the Hudson access road, and use Barton Road as the primary access.

**Finding:** Based on the Application, the record of proceedings and the findings herein, the Planning Board finds that although it is unclear as to the degree to which the

Applicant will utilize the proposed site during the duration that the Hudson access is closed, the existing conditions and existing patterns of use on Barton Road are not sufficient to provide safe and convenient access to increased activities at the site.

### **8.3.7 Review of Application in Accordance with Zoning Bylaw Section 9.3 – Site Plan Approval**

#### **Section 9.3.12 – Findings by the Site Plan Approval Granting Authority**

**Finding:** The Planning Board is unable to make the Mandatory Findings required for Site Plan Approval.

**Finding:** The Planning Board finds that the Application's proposed use is not consistent with the uses permitted in the Residential District.

##### **Section 9.3.12.1**

**Finding:** Based on the Application, the record of proceedings and the findings contained herein, the Planning Board finds that the Application does not adequately provide for protection of abutting properties and ways, the neighborhood, community amenities and the Town against seriously detrimental or offensive uses on the site and against adverse effects on the natural environment. The Planning Board further finds:

- The Planning Board received numerous letters from abutting property owners and area residents, noting concern over the inappropriate nature of the activities in the residential district, including:
  - The taking off and landing of aircraft over a dense residential area
  - Noise associated with aircraft and special events
  - Detonation of ordnances and explosives during special events
  - Traffic congestion, over-burdening of a private way and restriction of emergency vehicle passage along Barton Road
  - Inappropriate use in a neighborhood designated by the State of Massachusetts as a "Priority Heritage Landscape"
  - Increased air pollution
  - Potential for groundwater pollution in an area of private water wells and proximity to the Assabet River
  - Concern over the storage and manufacturing of explosive devices in a residential neighborhood
- Concern over existing noise due to landing, takeoff and flying of aircraft, detonation of explosives and ordnances, gunfire and the operation of tanks and artillery in association with the existing and proposed events, activities and uses.

- Concern regarding groundwater contamination due to hundreds of vehicles parked on the lawn at Open Houses and special events, including the use and operation of antique cars and military equipment that may be prone to leaking. The Planning Board further finds the Application does not contain mitigating measures as recommended by the Board's consulting engineer, including but not limited to, the creation of spill prevention and cleanup plans, spill notification procedures and inspections.
- Concern regarding groundwater contamination due to explosives and ordnances detonated at ground level. The Planning Board further finds that the Application contains no known list of chemicals and substances used in the manufacturing of said devices or expended in their detonation. There is no confirmation in the Application that the chemicals used in the explosives are in compliance with Occupational Safety and Health Administration standards.
- Concern regarding groundwater contamination due to lack of spill prevention protections at the existing refueling area and the close proximity of the water supply well. The Planning Board further finds that no revisions to the plans were submitted based on the Board's consulting engineer's recommendations that catch-basins along the southerly concrete pad could be made waterproof and affixed with a valve to contain and facilitate the cleanup of spills.
- First hand accounts, letters, videos, and photographs of smoke, fumes and emissions from the operation of vehicles and detonation of ordnances, some of which are reported to have extended into the surrounding neighborhood and caused one report of a resident having to evacuate their home.
- Concern over event and truck traffic utilizing Barton Road off season, when the proposed access road is proposed to be closed.
- Concern regarding compliance with Federal Aviation Administration "airshow" guidelines and regulations relating to public safety at aviation events, including:
  - Approvals to perform certain aerial maneuvers
  - Compliance with "above ground level" flight operations
  - FAA waivers for "fly-bys" in a congested area
  - Radio protocol for operating in close proximity to Minuteman Airfield
  - Compliance with required setbacks from spectators
  - Insufficient information on the site plan to indicate crowd barriers between spectators and the airfield
  - Documentary video showing spectators in close proximity to landing aircraft
  - Documentary video showing aircraft performing low altitude fly-bys simulating bomb drops during reenactments

- No information was submitted into the record regarding compliance with, or relevancy of, FAA regulations and guidelines.

#### **Section 9.3.12.2**

**Finding:** Based on the Application, the record of proceedings and the findings contained herein, the Planning Board finds that the Application does not provide sufficient information to confirm adequate circulation of pedestrians and emergency vehicle use.

- The Application notes a removable barricaded egress to be used by emergency vehicles but does not include the barricades in the detail sheets or provide indication on whether a public safety plan has been created for the events, or how the barricaded egress will fit into the Fire and Police Department procedures.
- The Application shows pedestrian and traffic circulation extending over five properties of varying ownership, but provides no indication of applicable access easements to confirm the ability of emergency vehicles to access the site at different times of the year and for the site plan to function as intended.
- A pedestrian circulation path extends along the western end of the grass parking area, but includes no indication of temporary barricades to prohibit exiting vehicles.
- A bus turnaround area is located along the pedestrian circulation path, but contains no indication of temporary fencing or barricades to separate buses from pedestrian corridors.
- The proposed portable toilet area is shown in the same location as the geo-cell bus parking area.

#### **Section 9.3.12.3**

**Finding:** Based on the Application, the record of proceedings and the findings contained herein, the Planning Board finds that the Application does not provide sufficient information to confirm there is adequate, convenient and safe arrangement for parking and loading spaces in relation to the proposed use of the site.

- An overflow parking area is shown as located on the concrete loading pad to the south of the proposed museum. It is unclear if the loading pad will be utilized during times of pedestrian activity and overflow parking use. There is no visitor entrance to service this overflow area and no indication on the plan that pathways, sidewalks or signage indicating the entrance location exist.
- The Application does not include any easements for the proposed parking located on 137 Barton Road. The Planning Board further finds that it is unable to confirm the

parking plan can function as intended without easements over property not owned by the Applicant.

#### **Section 9.3.12.5**

**Finding:** Based on the Application, the record of proceedings and the findings contained herein, the Planning Board finds that the Application derogates from criteria establishing the purpose of this bylaw, as stated in Section 9.3.5 of the Zoning Bylaw.

#### **Section 9.3.12.6**

**Finding:** Based on the Application, the record of proceedings and the findings contained herein, the Planning Board finds that the Application does not comply with all applicable requirements of this bylaw.

### **9. APPEALS**

Appeals, if any, shall be made pursuant to Section 17 of the Massachusetts General Laws, Chapter 40A and shall be filed within twenty (20) days after the date of filing this decision with the Town Clerk.

Witness our hands this 26<sup>th</sup> day of August 2015

Lori Clark  
Lori Clark

Leonard Golder  
Leonard Golder

Ernest Dodd  
Ernest Dodd

Stephen Quinn

Margaret Costello  
Margaret Costello

Received and Filed  
Volume II, Page 595

Linda E. Hathaway August 31, 2015  
Linda Hathaway, Town Clerk Date

This is to certify that the twenty (20) day appeal period on this decision has passed and there have been no appeals made to this office.

Linda Hathaway, Town Clerk

Date