
MIRICK O'CONNELL

ATTORNEYS AT LAW

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September 19, 2018

HAND DELIVERED

Councilor Edward Clancy, President
Marlborough City Council
City Hall
Marlborough, MA 01752

Re: Capital Group Properties LLC, 685 Farm Road;
Order No. 18-1007136 (X17-1006963C)

Dear Councilor Clancy:

On behalf of my client, Capital Group Properties LLC, I hereby submit two items related to the petition to place the Marlborough Airport property in the Retirement Community Overlay District.

Enclosed is:

1. A sound study of the Airport and surrounding areas; and
2. A memo concerning a property in Southborough where a residential community was located near commercial areas.

We would be happy to discuss these items with the Urban Affairs Committee or the full Council. Thank you for your time and attention to this matter.

Sincerely,



Brian R. Falk

BRF/

cc: Client
Arthur P. Bergeron

MIRICK, O'CONNELL, DEMALLIE & LOUGEE, LLP

WORCESTER | WESTBOROUGH | BOSTON

www.mirickoconnell.com

July 5, 2018

Mr. William Depietri
Capital Group Properties
259 Turnpike Road, Suite 100
Southborough, MA 01772

Re: 685 Farm Road, Marlborough, MA – Ambient Monitoring Study

Ref 4370

Dear Bill:

Tech Environmental, Inc. (Tech) has conducted unattended ambient sound monitoring at the north and south property lines of the Marlboro Airport property at 685 Farm Road in Marlborough. The goal of the ambient monitoring was to document the existing sound level impacts from neighboring properties at the Marlboro Airport property lines. The measured ambient sound level impacts have been compared to maximum allowable sound levels contained within chapter 431 (Noise) of the Code of the City of Marlborough (referred to herein as the “Noise Code”). The measured ambient sound levels demonstrate that existing ambient sound levels are elevated at times and may exceed the noise limits contained in the Marlborough Noise Code that are applicable to 685 Farm Road.

This letter report summarizes the ambient monitoring study. Section 1.0 provides an introduction to the common measures of environmental sound, Section 2.0 presents the noise limits contained in the Marlborough Noise Code that may be applicable to 685 Farm Road, Section 3.0 presents the ambient sound monitoring results, and Section 4.0 presents a comparison of the measured ambient sound levels to noise limits contained in the Marlborough Noise Code.

1.0 Common Measures of Environmental Sound

Noise is defined as "unwanted sound", which implies sound pressure levels that are annoying or disrupt activities that people are engaged in. The human sense of hearing is subjective and highly variable between individuals. Noise regulations and guidelines set quantitative limits to the sound pressure level (measured with sound analyzers and predicted with computer models) in order to protect people from sound exposures that most would judge to be annoying or disruptive.

The loudness of a sound is dependent on the radiated energy of the sound source and the propagation and attenuation characteristics of the air. The standard unit of sound pressure level (L_p) is the decibel (dB). A property of the decibel scale is that the sound pressure levels of two separate sounds are not directly additive. For example, if a sound of 40 dB is added to another sound of 40 dB, the total is only a 3 dB increase, not a doubling to 80 dB. For broadband sounds, a 3 dB change is the minimum change perceptible to the human ear. Table 1 presents the perceived change in loudness of different changes in sound pressure levels.

TABLE 1
SUBJECTIVE EFFECT OF CHANGES IN SOUND PRESSURE LEVELS

Change in Sound Pressure Level	Perceived Change in Loudness
3 dB	Just perceptible
5 dB	Noticeable
10 dB	Twice (or half) as loud

The acoustic environment in a suburban commercial/residential area, such as that surrounding 685 Farm Road in Marlborough, primarily results from motor vehicle traffic on Farm Road and Route 20, and activities associated with neighboring properties. Typical sound levels associated with various activities and environments are presented in Table 2.¹

TABLE 2
COMMON SOUND LEVELS

Sound Level (dBA)	Common Indoor Sounds	Common Outdoor Sounds
110	Rock Band	Jet Takeoff at 1000'
100	Inside NYC Subway Train	Chain Saw at 3'
90	Food Blender at 3'	Impact Hammer (Hoe Ram) at 50'
80	Garbage Disposal at 3'	Diesel Truck at 100'
70	Vacuum Cleaner at 10'	Lawn Mower at 100'
60	Normal Speech at 3'	Auto (40 mph) at 100'
50	Dishwasher in Next Room	Busy Suburban Area at night
40	Empty Conference Room	Quiet Suburban Area at night
25	Empty Concert Hall	Rural Area at night

¹ U.S. DOT, FHWA, Noise Fundamentals Training Document, Highway Noise Fundamentals, September, 1980.

2.0 Marlborough Noise Code

The Code of the City of Marlborough chapter 431 (Noise) states that, “no person shall create or cause to be emitted from or by any source subject to this chapter any noise which causes or results in a maximum noise level, measured at any lot line of any lot located in a Marlborough zoning district in excess of the levels defined by Tables 1.0 and 2.0”. Table 1.0 of the Noise Code identifies the noise standard applicable to the particular lot use and zoning district. And, Table 2.0 of the Noise Code provides the maximum allowable sound pressure limits for each particular lot use and zoning district. The Noise Code contains limits for each octave band spanning from 31.5 hertz (Hz) to 8,000 Hz, and for the A-weighted single number equivalent value (dBA). Table 3 provides a summary of the A-weighted single number equivalent values that may be applicable to 685 Farm Road.

**TABLE 3
SUMMARY OF MARLBOROUGH NOISE CODE A-WEIGHTED LIMITS**

Zoning District	Lot Use	Daytime Limit (7 AM to 7 PM)	Nighttime Limit (7 PM to 7AM)
Limited Industrial District (LID)	Industrial Use	58 dBA	48 dBA
Any Residential District	Residential Use	53 dBA	43 dBA

3.0 Existing Sound Levels

Tech deployed long-term sound analyzers between to collect multiple days of unattended ambient sound monitoring data at the north and south property lines of 685 Farm Road between Thursday, June 14, 2018 and Tuesday, July 3, 2018. The locations selected for this sound monitoring study are illustrated Figure 1 and were as follows:

- #1) Southwest Property Line – adjacent to Expert Auto Repair (667 Farm Road);
- #2) Southeast Property Line – adjacent to Trombetta’s Farm (655 Farm Road); and
- #3) North Property Line – adjacent to American Eagle Auto Sales (729 Farm Road).

The sound level measurements were collected using ANSI Type 1 (high precision) sound level analyzers. The sound level analyzers measured hourly sound levels for four (4) to five (5) days at each monitoring location, including both week days and a weekend, to characterize existing ambient sound conditions. The sound analyzers were mounted at an elevation of approximately five feet with a windscreen. The sound analyzers were programmed to measure continuous real-time peak (L_{max}), average (L_{eq}), background level (L_{90}), higher transient levels (L_{10}), and octave band frequency measurements throughout the monitoring period. At the end of the monitoring sessions, Tech collected the sound analyzers and downloaded the data at our office for analysis.

Location #1 – Southwest Property Line

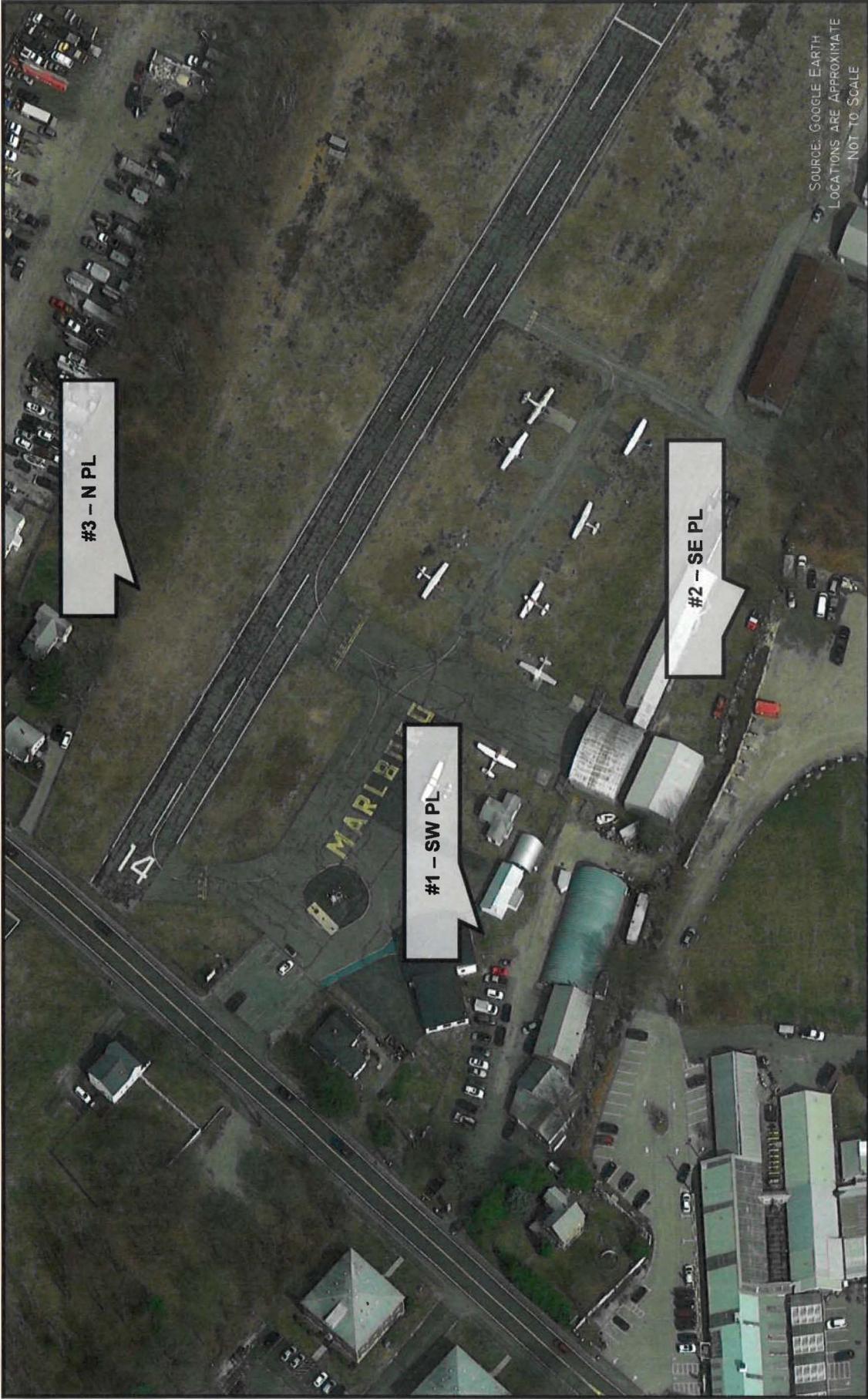
The results of the measurements at the southwest property line (i.e. #1, adjacent to Expert Auto Repair) are presented in Figure 2. The average measured existing ambient sound levels (L_{eq}) at that location ranged from 36 dBA late at night and in the early morning, to 73 dBA during the late afternoon. These are typical sound levels for a suburban area near busy local roads. Elevated sound levels were also measured throughout daytime hours.

Location #2 – Southeast Property Line

The results of the measurements at the southeast property line (i.e. #2, adjacent to Trombetta’s Farm) are presented in Figure 3 and Figure 4. The average measured existing ambient sound levels (L_{eq}) at that location ranged from 38 dBA late at night and in the early morning, to 58 dBA during the morning hours. These are typical sound levels for a suburban area near busy local roads. Elevated sound levels were also measured throughout daytime hours.

Location #3 – North Property Line

The results of the measurements at the north property line (i.e. #3, adjacent to American Eagle Auto Sales) are presented in Figure 5 and Figure 6. The average measured existing ambient sound levels (L_{eq}) at that location ranged from 35 dBA late at night and in the early morning, to 63 dBA during the late evening. These are typical sound levels for a suburban area near busy local roads. Elevated sound levels were also measured throughout daytime hours.



**Figure 1. Ambient Sound Monitoring Locations
685 Farm Road, Marlborough**

**Figure 2. Hourly Measured Ambient Sound Levels (L_{eq})
at Location 1 (SW PL) - Expert Auto Repair (Session 1 of 1)**

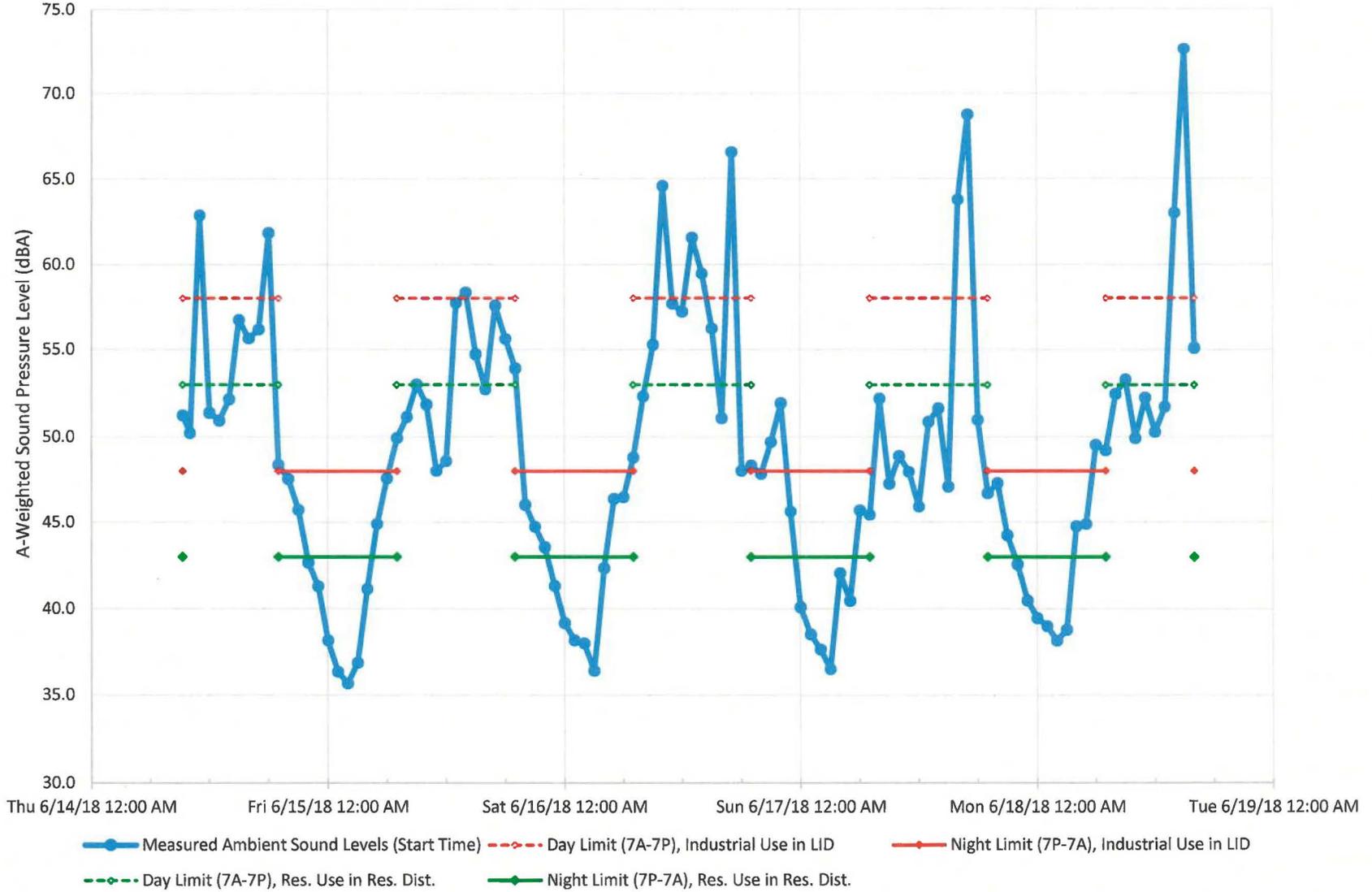


Figure 3. Hourly Measured Ambient Sound Levels (L_{eq}) at Location 2 (SE PL) - Trombetta's Farm (Session 1 of 2)

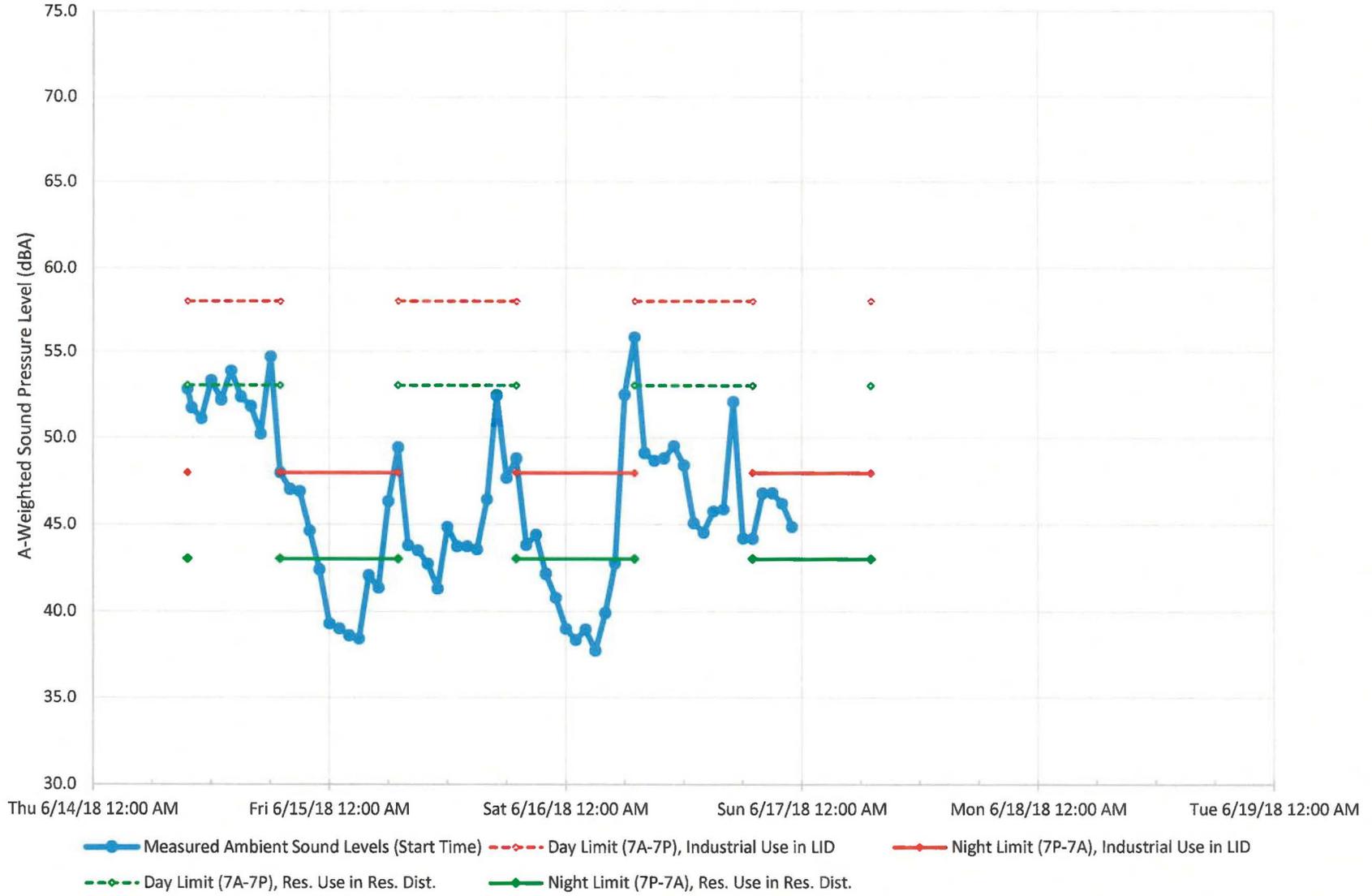
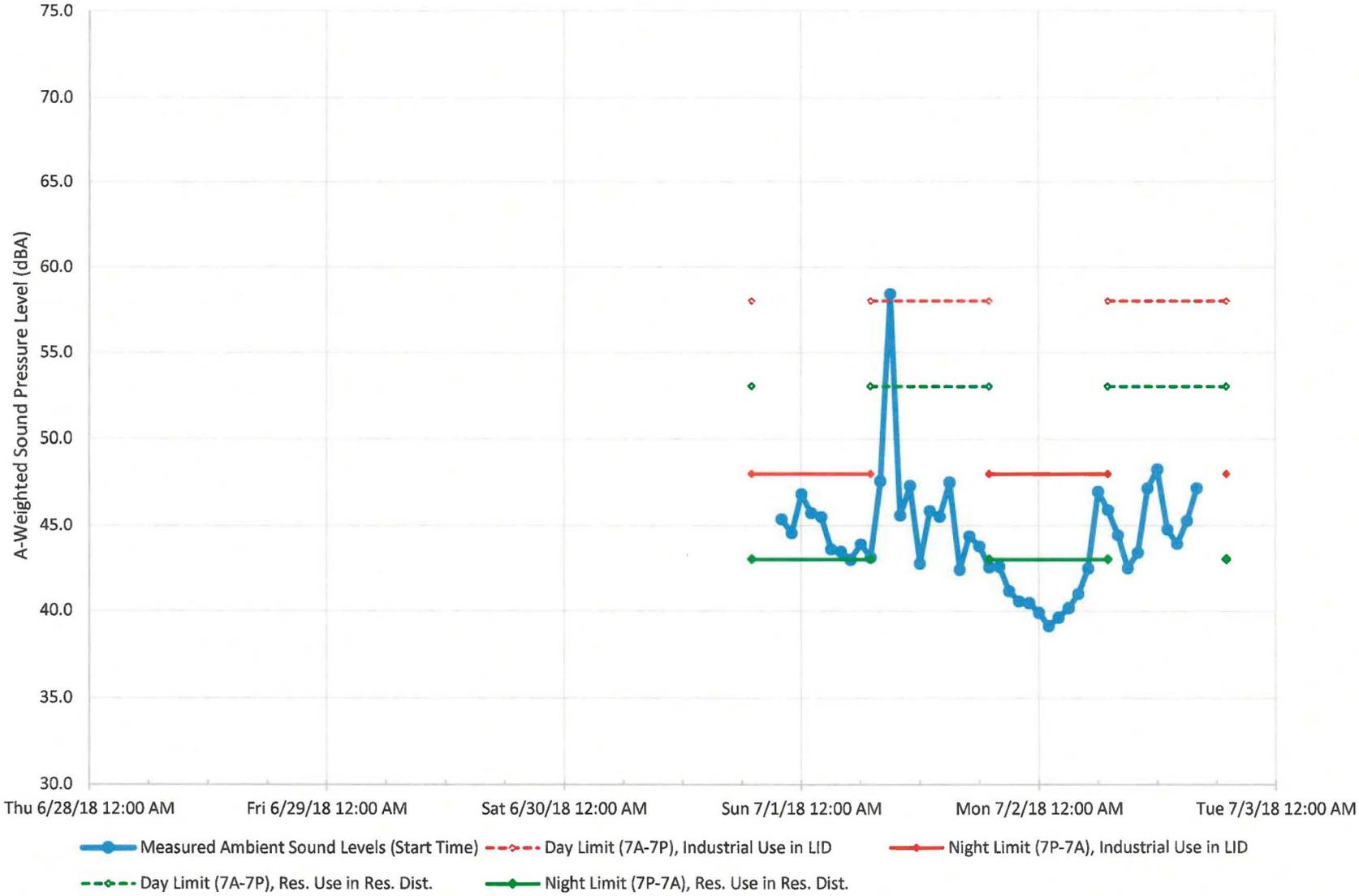
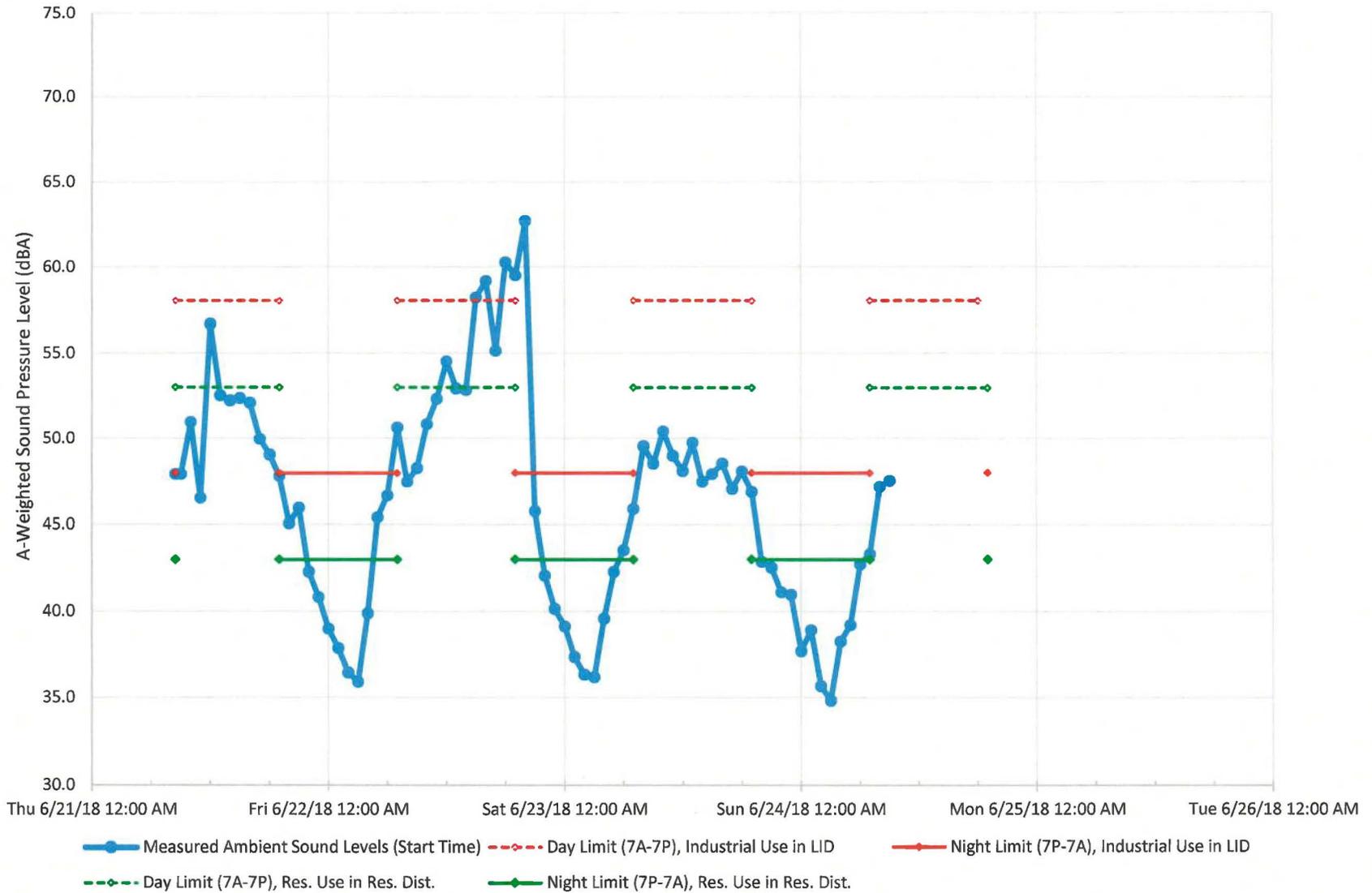


Figure 4. Hourly Measured Ambient Sound Levels (L_{eq}) at Location 2 (SE PL) - Trombetta's Farm (Session 2 of 2)



**Figure 5. Hourly Measured Ambient Sound Levels (L_{eq})
at Location 3 (N PL) - American Eagle Auto Sales (Session 1 of 2)**



4.0 Comparison to Marlborough Noise Code

This section presents a comparison of the measured ambient sound levels to noise limits contained in the Marlborough Noise Code. Table 4 presents a summary of the of the daytime A-weighted noise limits from the Marlborough Noise Code that may be applicable to 685 Farm Road, and the maximum one-hour daytime sound level measured at each location during the ambient monitoring study. Table 5 presents a summary of the of the nighttime A-weighted noise limits from the Marlborough Noise Code that may be applicable to 685 Farm Road, and the maximum one-hour nighttime sound level measured at each location during the ambient monitoring study. Figures 2 through 6 illustrate these same noise limits with red lines representing the noise limits for a residential use in a Residential District, and the green lines representing the noise limits for an industrial use in a Limited Industrial District. Table 4 and Table 5 summarize that the sound levels measured during the ambient monitoring study exceed noise limits contained within the Marlborough Noise Code.

TABLE 4

**SUMMARY OF MARLBOROUGH NOISE CODE A-WEIGHTED LIMITS
AND MAXIMUM MEASURED DAYTIME SOUND LEVELS (7 AM to 7 PM)**

Monitoring Location	Daytime Limit for Industrial Use in LID District	Daytime Limit for Residential Use in Residential District	Max. Measured Daytime Sound Level (Leq)
#1 – Southwest PL (Expert Auto Repair)	58 dBA	53 dBA	73 dBA
#2 – Southeast PL (Trombetta’s Farm)	58 dBA	53 dBA	58 dBA
#3 – North PL (American Eagle Auto Sales)	58 dBA	53 dBA	60 dBA

TABLE 5

**SUMMARY OF MARLBOROUGH NOISE CODE A-WEIGHTED LIMITS
AND MAXIMUM MEASURED NIGHTTIME SOUND LEVELS (7 PM to 7 AM)**

Monitoring Location	Nighttime Limit for Industrial Use in LID District	Nighttime Limit for Residential Use in Residential District	Max. Measured Nighttime Sound Level (Leq)
#1 – Southwest PL (Expert Auto Repair)	48 dBA	43 dBA	54 dBA
#2 – Southeast PL (Trombetta’s Farm)	48 dBA	43 dBA	53 dBA
#3 – North PL (American Eagle Auto Sales)	48 dBA	43 dBA	63 dBA

Location #1 – Southwest Property Line

Ambient nighttime sound levels measured at the southwest property line (i.e. #1, adjacent to Expert Auto Repair) were above the nighttime residential use/Residential District noise limit in the early evening and early morning hours, and a for few hours were measured above the nighttime industrial use/LID noise limit. These exceedances are likely due to nearby local traffic on Farm Road and other local roads. Ambient daytime sound levels measured at this location exceeded both the daytime residential use/Residential District noise limit and the daytime industrial use/LID noise limit, particularly during the afternoon hours. These exceedances are also likely due to local traffic. Ambient sound levels measured at this location that were well above the daytime noise limits are possibly due to local traffic, or other background sound sources near the site, or a combination of both.

Location #2 – Southeast Property Line

Ambient nighttime sound levels measured at the southeast property line (i.e. #2, adjacent to Trombetta's Farm) were above the nighttime residential use/Residential District noise limit in the early evening and early morning hours, and for a few hours were measured above the nighttime industrial use/LID noise limit. These exceedances are likely due to nearby local traffic. Most of the ambient daytime sound levels measured at this location were below the daytime residential use/Residential District noise limit. And, most of the ambient daytime and nighttime measured sound levels at this location were below the appropriate industrial use/LID noise limit.

Location #3 – North Property Line

Ambient nighttime sound levels measured at the north property line (i.e. #3, adjacent to American Eagle Auto Sales) were above the residential use/Residential District noise limit in the early evening and early morning hours, and for a few hours were measured above the nighttime industrial use/LID noise limit. These exceedances are likely due to nearby local traffic. Ambient daytime sound levels measured at this location exceeded both the daytime residential use/Residential District noise limit and the daytime industrial use/LID noise limit for several hours in the late afternoon on Friday, June 23, 2018. These exceedances are possibly due to nearby local traffic, or other background sound sources near the site, or a combination of both. During other daytime hours, there were intermittent measured ambient sound levels that exceeded the daytime residential use/Residential District noise limit, and were generally less than the daytime industrial use/LID noise limit.

Conclusions

The results of the ambient sound survey show that the acoustic environment is representative of what one would expect in a suburban commercial/residential area, such as that surrounding 685 Farm Road. The primary sources of sound are motor vehicle traffic on Farm Road, Route 20 and other local roads, and activities associated with neighboring properties. The ambient sound levels measured for this study that exceeded the daytime and nighttime residential use/Residential District and industrial use/LID Noise limits are likely associated with vehicle traffic on Farm Road, Route 20 and other local roads. Those intermittent elevated sound levels that significantly exceed the Marlborough Noise Code limits could be associated with local traffic, other background events, or from sound sources associated with adjacent commercial properties.

685 Farm Road, Marlborough

July 5, 2018

Please call us at (781) 890-2220 if you have any questions.

Sincerely yours,

TECH ENVIRONMENTAL, INC.



Marc C. Wallace, QEP, INCE
Vice President



Matthew L. Riegert
Environmental Engineer
4370/Marlboro Airport Ambient Monitoring 7-5-18



Robert Depietri <rjdepietri@cgpllc.net>

Marlboro Airport Attended Monitoring

2 messages

Marc Wallace <MWallace@techenv.com>

Tue, Aug 14, 2018 at 9:33 AM

To: William Depietri <wad@cgpllc.net>

Cc: Bobby Depietri <rjdepietri@cgpllc.net>, Daniel Ruiz <permitting@cgpllc.net>

Bill-

We conducted attended sound monitoring at the three (3) property boundary locations last Thursday evening and last Friday early morning. The goal of the monitoring was to verify what sources of sound are causing elevated sound levels and exceedances of the noise ordinance at the property line. During each monitoring session our field engineers rotated through the 3 property boundary locations and collected "spot" sound measurements and documented what was causing the sound. The results of that monitoring are summarized in the attached nineteen (19) figures. Those figures illustrate that we did observe exceedances of the appropriate noise ordinance limits, but those exceedances were generally associated with local traffic, insects and/or overhead aircraft. We did observe sound impacts from the neighboring properties, but those measured sound levels were in compliance with the appropriate noise code limits for an industrial use in a Limited Industrial District, with the exception of two short events at Location 3 due American Eagle Auto Sales (hammering and moving equipment between 6:10 am and 6:15 am). Therefore, the data we have collected does not document extended periods of exceedances of the noise code by the neighboring properties. It is possible that additional attended sound monitoring could document additional exceedances by the neighboring properties, but we cannot guarantee when that would be.

However, we can provide you with documentation that the neighboring properties will be in compliance with the noise code limit at the future residential uses under the assumption that they are in compliance now. The basis of that statement is the preliminary sound wall modeling we already performed. That work determined that sound walls 8 to 12 feet tall on top of the 3- and 6-foot berms would achieve a noticeable change in the resulting sound level impacts at the second story windows. To finalize that document we need a final determination from you (or your attorney, or the City Clerk) as to what limits in the noise code apply to the future residential uses. Table 1 below summarizes our understanding of the limits that are most applicable to 685 Farm Road operating as the Marlboro Airport. Table 2 below summarizes the possible limits applicable to 685 Farm Road with residential uses in an overlay district. We need clarification on the future zoning and how that applies to the noise code.

TABLE 1. Existing Marlborough Noise Code A-Weighted Limits Applicable to 685 Farm Road

Zoning District	Lot Use	Daytime Limit (7A-7P)	Nighttime Limit (7P-7A)
Limited Industrial District (LID)	Industrial Use	58 dBA	48 dBA

TABLE 2. Possible Future Marlborough Noise Code A-Weighted Limits Applicable to 685 Farm Road

Zoning District	Lot Use	Daytime Limit (7A-7P)	Nighttime Limit (7P-7A)
Commercial/Automotive District	Residential Use	58 dBA	48 dBA
Industrial District	Residential Use	58 dBA	48 dBA
Limited Industrial District (LID)	Residential Use	58 dBA	48 dBA
Business District	Residential Use	53 dBA	43 dBA
Residential District	Residential Use	53 dBA	43 dBA

If you would like to discuss, further please do not hesitate to call me.

Regards,

Marc C. Wallace, QEP, INCE
Vice President

TECH ENVIRONMENTAL

Focused Knowledge. Real Solutions.

Hobbs Brook Office Park

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web: www.TechEnv.com

3 attachments

 **Loc 1 Attended Monitoring.pdf**
230K

 **Loc 2 Attended Monitoring.pdf**

222K

 **Loc 3 Attended Monitoring.pdf**
219K**Robert Depietri** <rjdepietri@cgpllc.net>

Thu, Sep 13, 2018 at 8:06 AM

Draft To: Bob Depietri <rjdepietri@aol.com>, "Mr. Robert Depietri Jr." <rjdepietri@cgpllc.net>

From: **Marc Wallace** <MWallace@techenv.com>

Date: Tue, Aug 14, 2018 at 9:33 AM

Subject: Marlboro Airport Attended Monitoring

To: William Depietri <wad@cgpllc.net>

Cc: Bobby Depietri <rjdepietri@cgpllc.net>, Daniel Ruiz <permitting@cgpllc.net>

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Bob Depietri
Capital Group Properties
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rjdepietri@cgpllc.net
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www.Facebook.com/CapitalGroupProperties



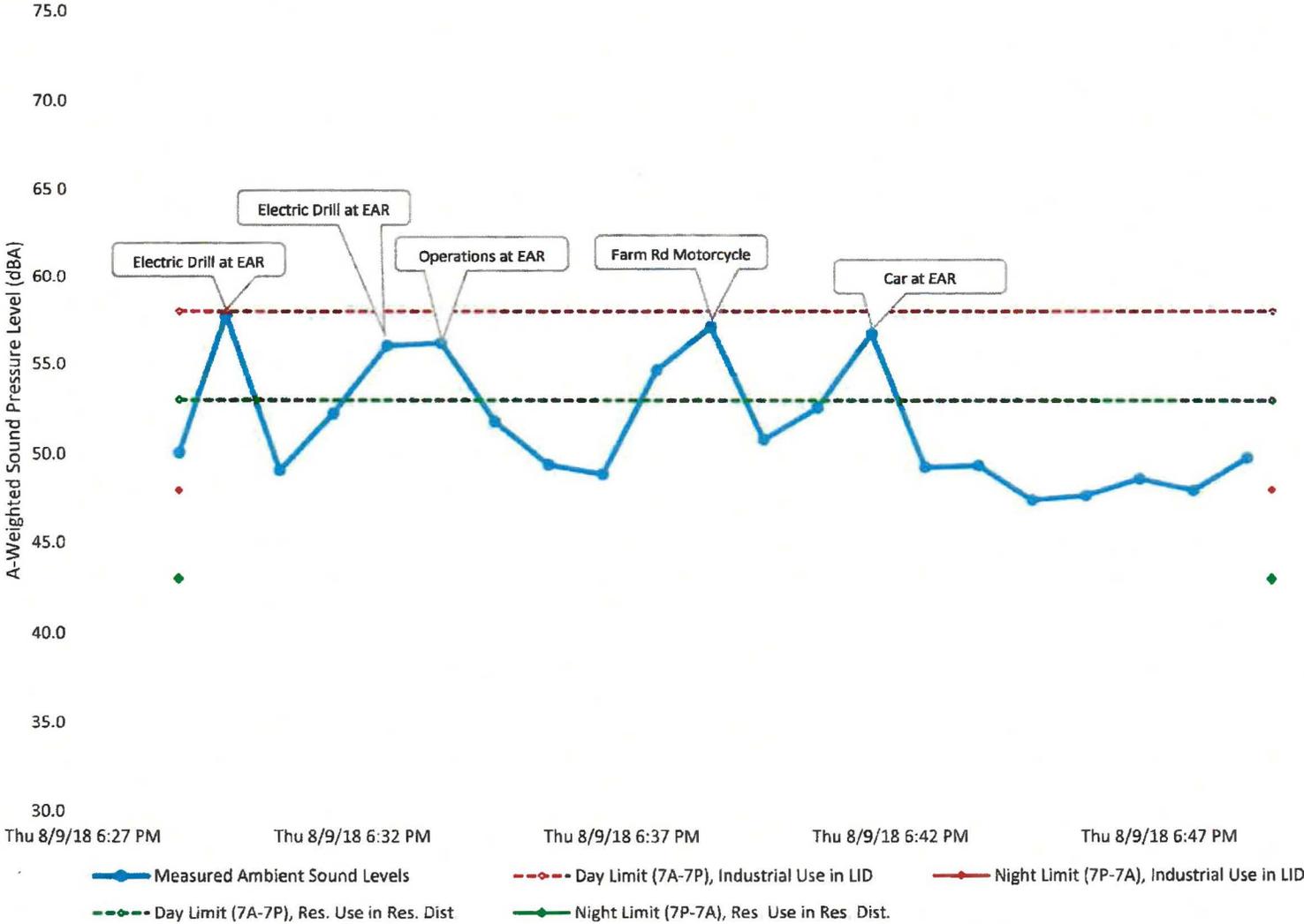
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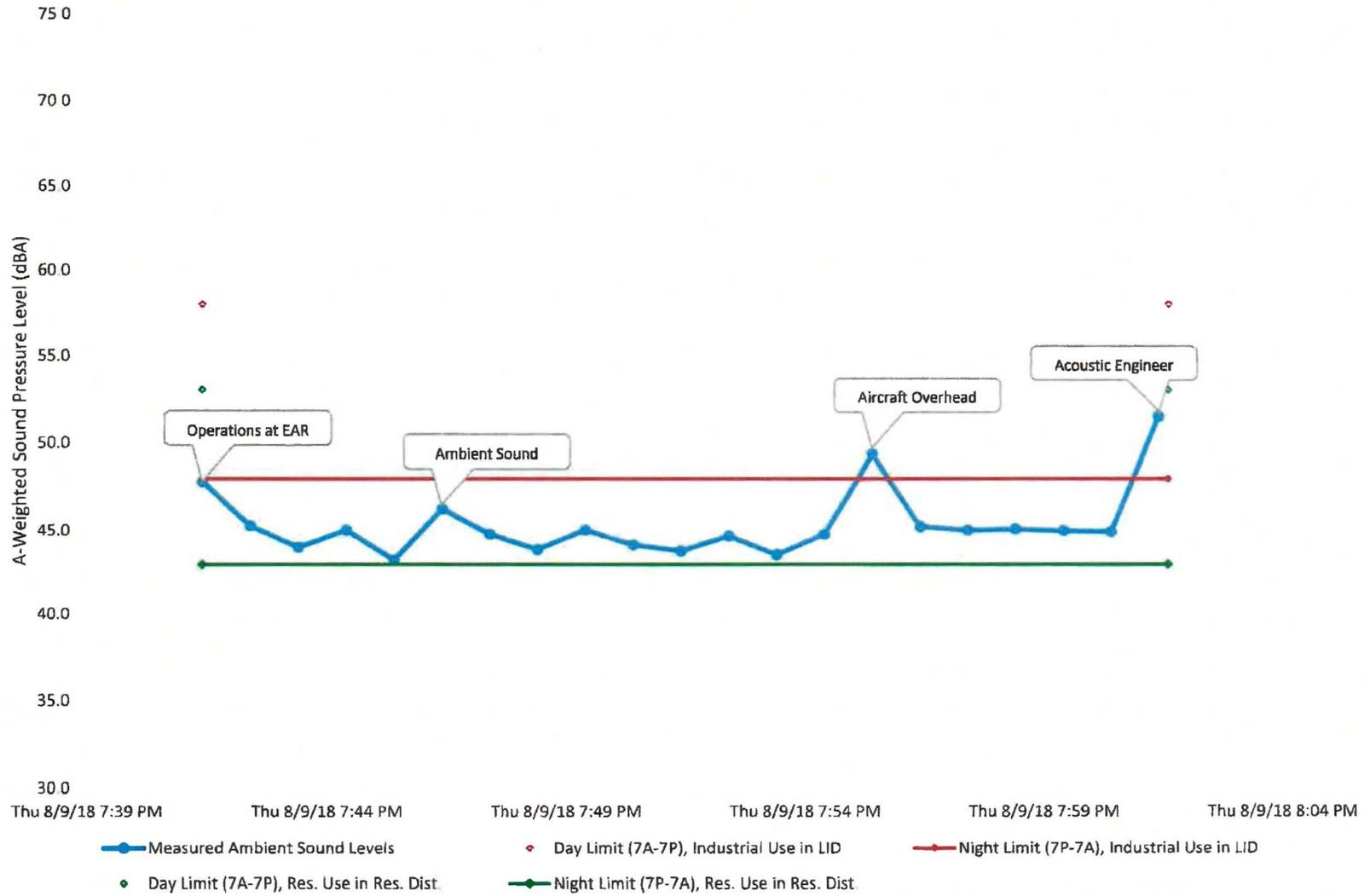
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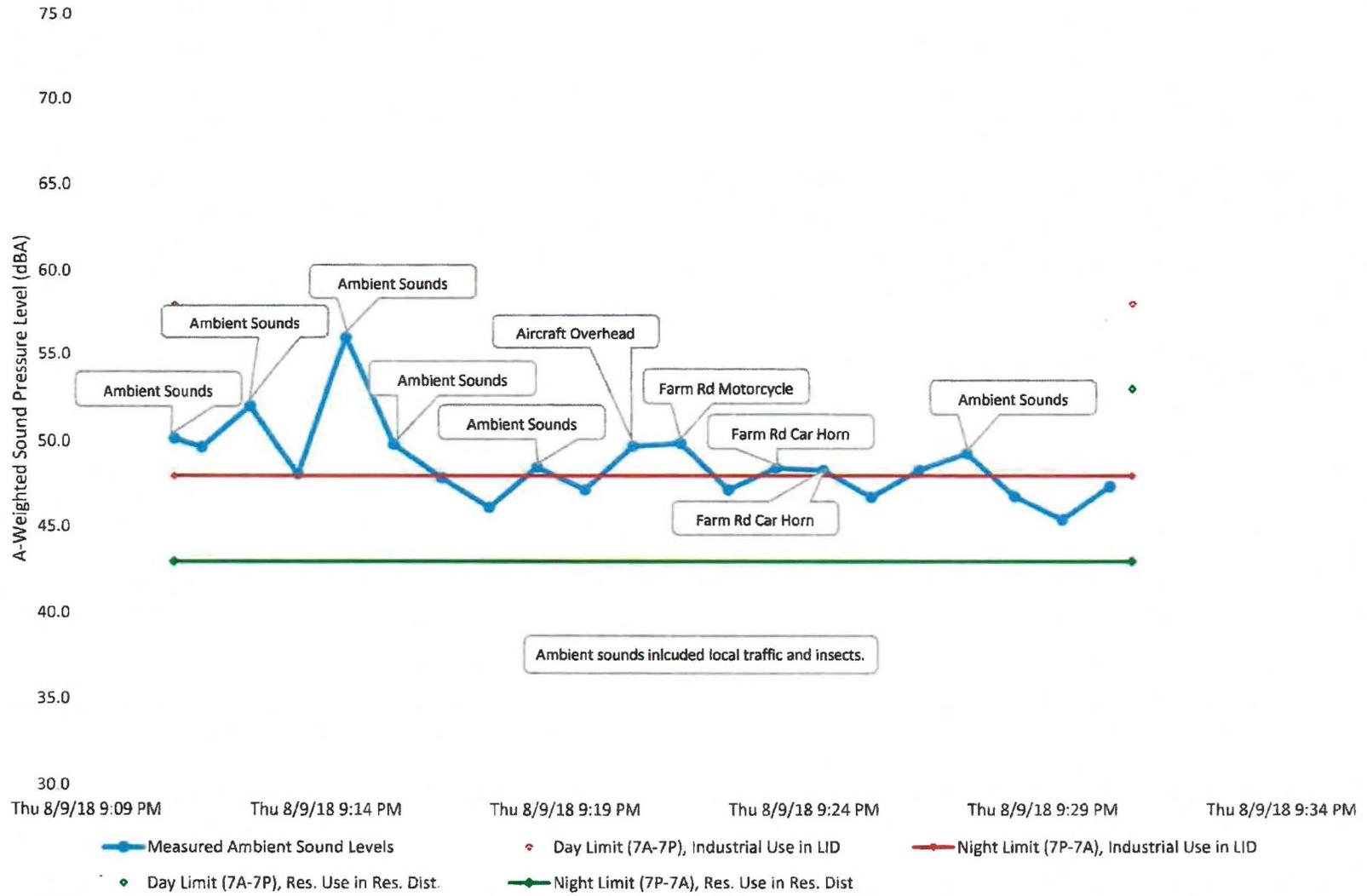
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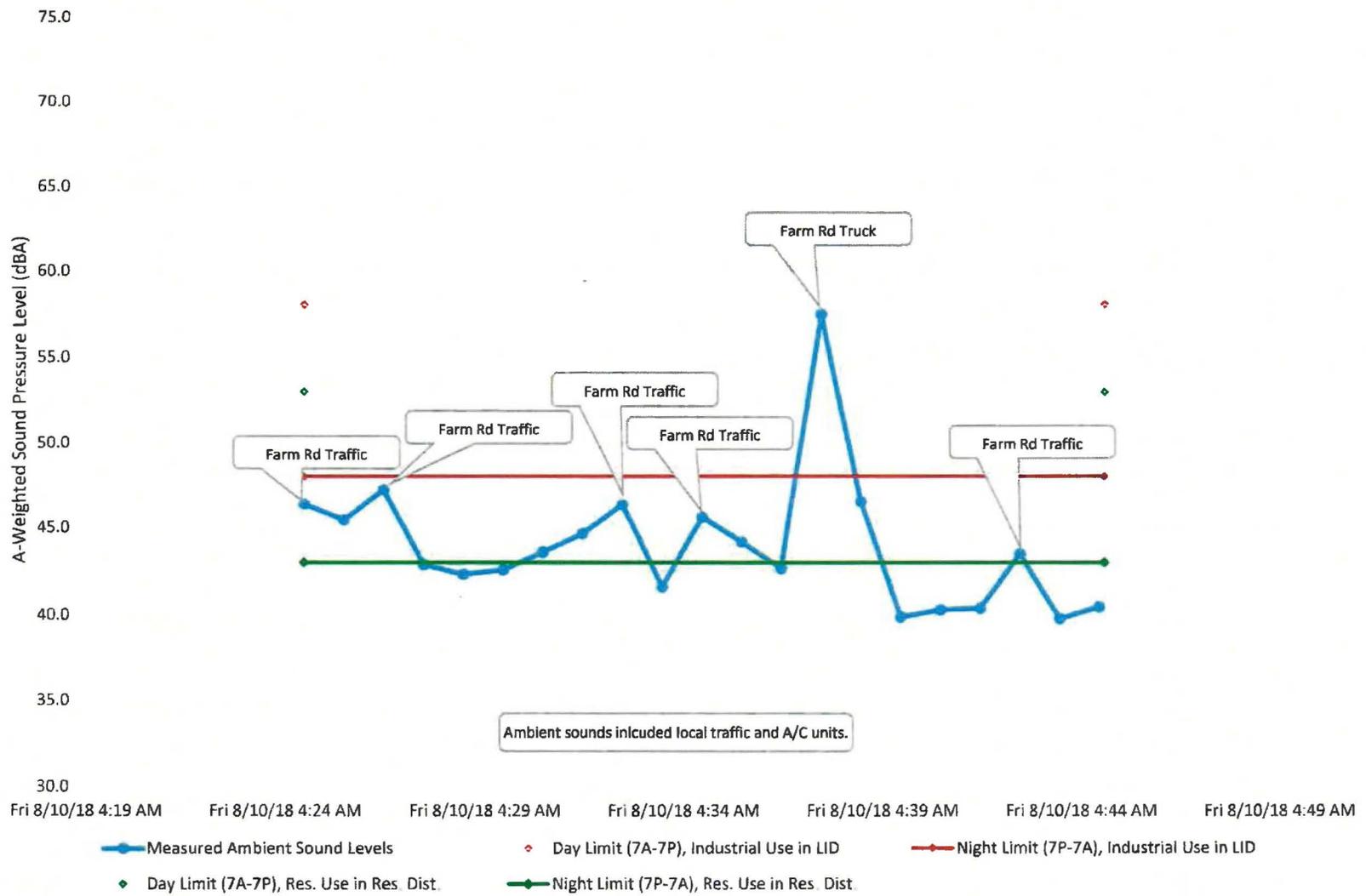
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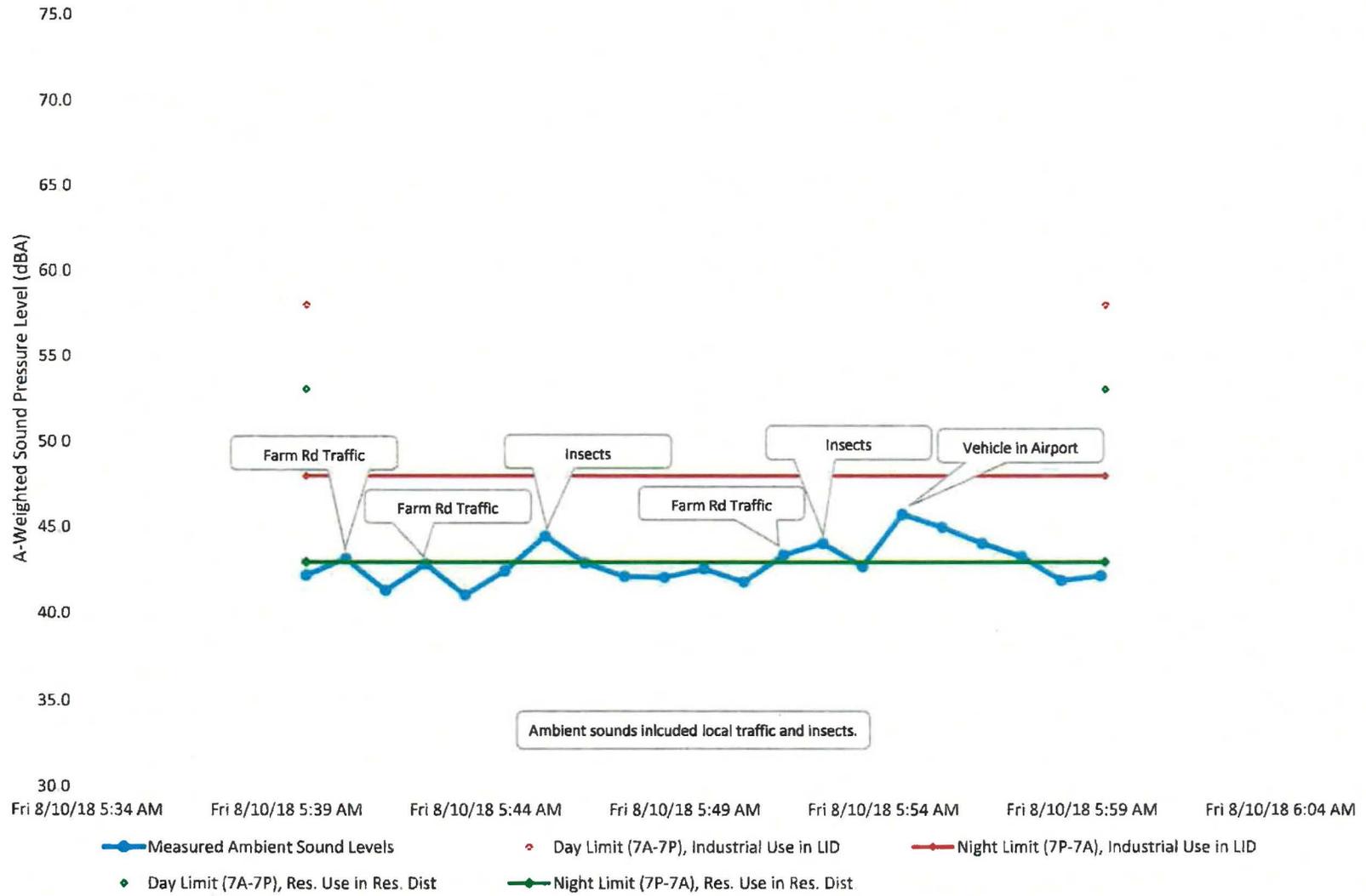
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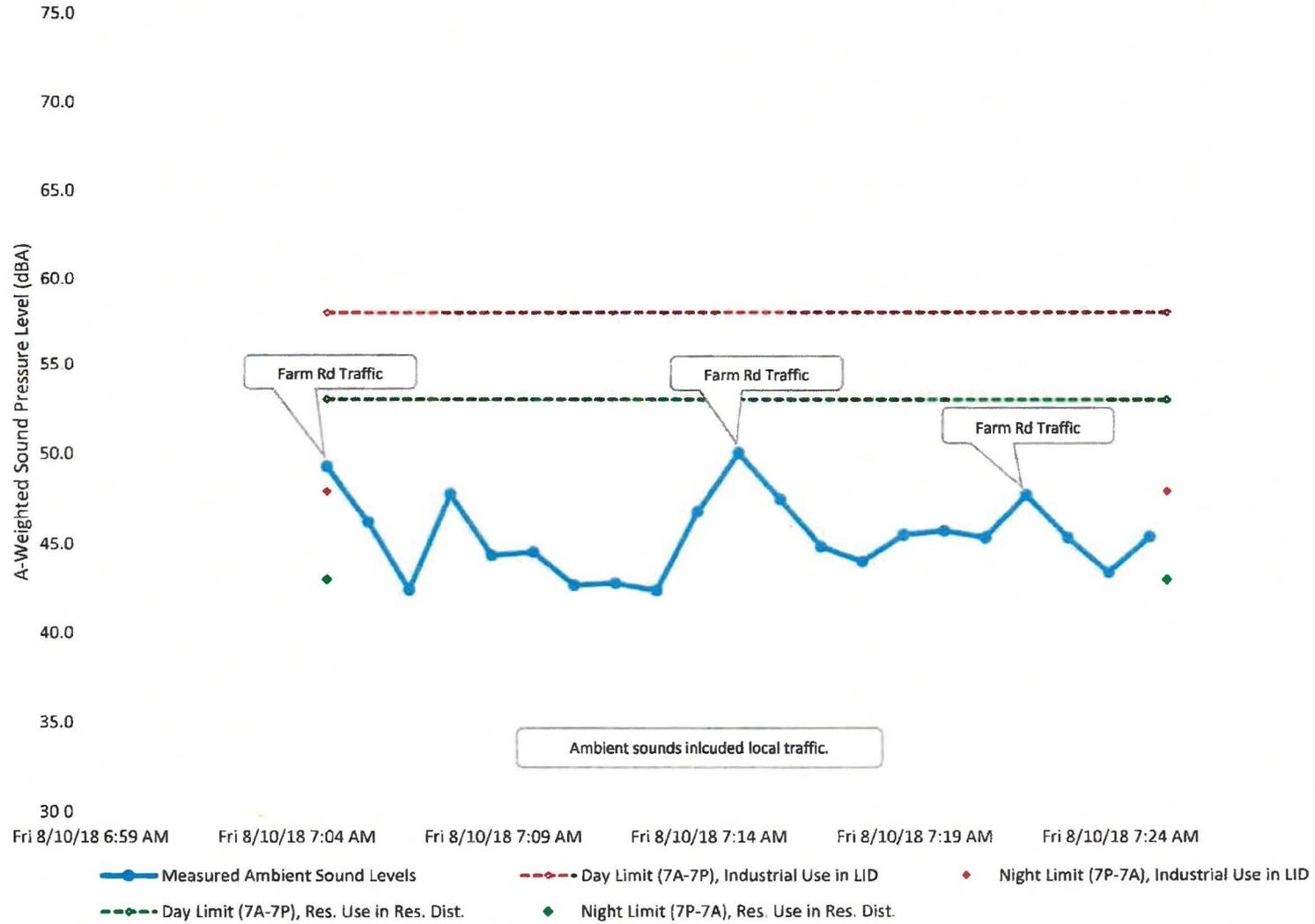
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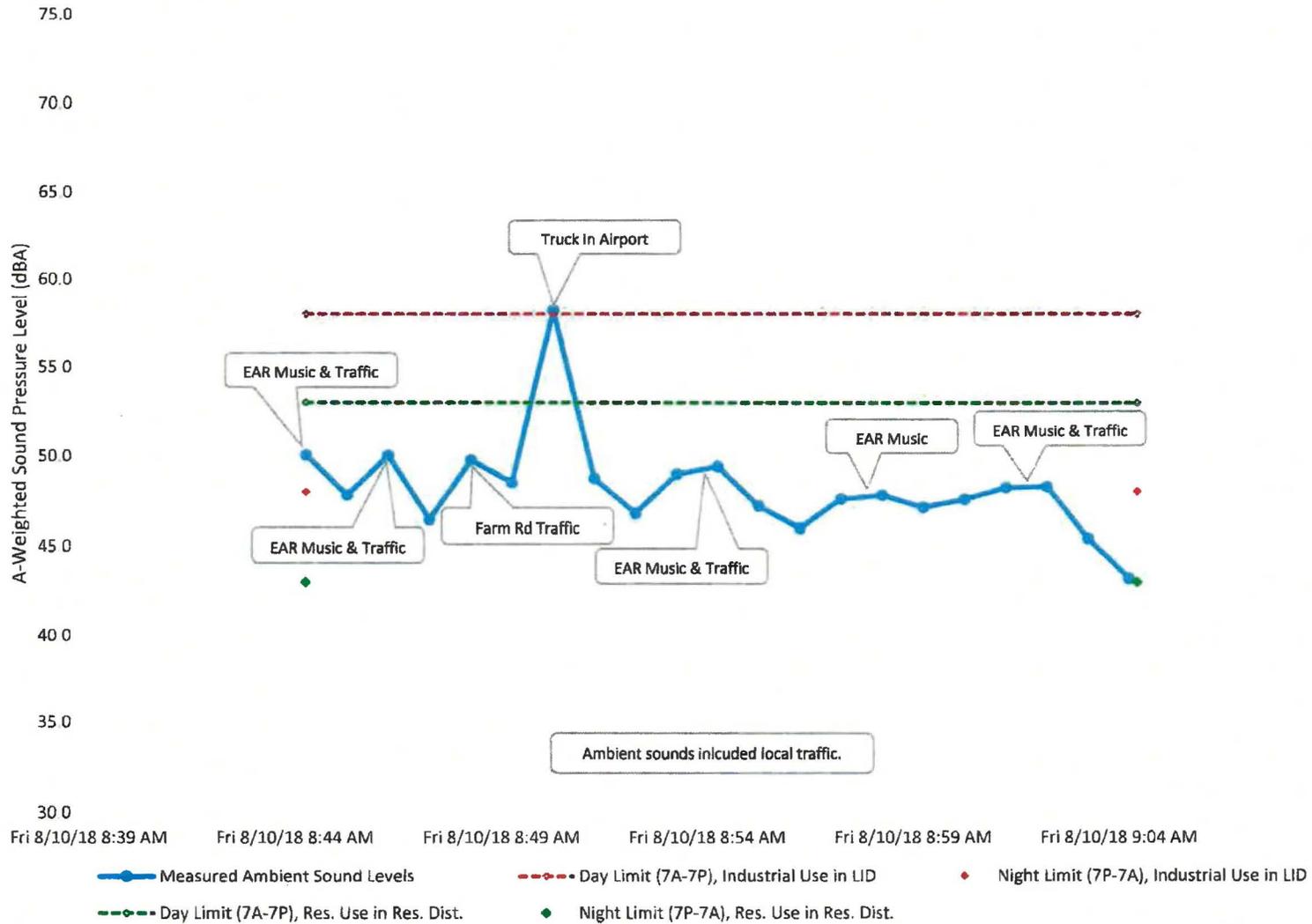
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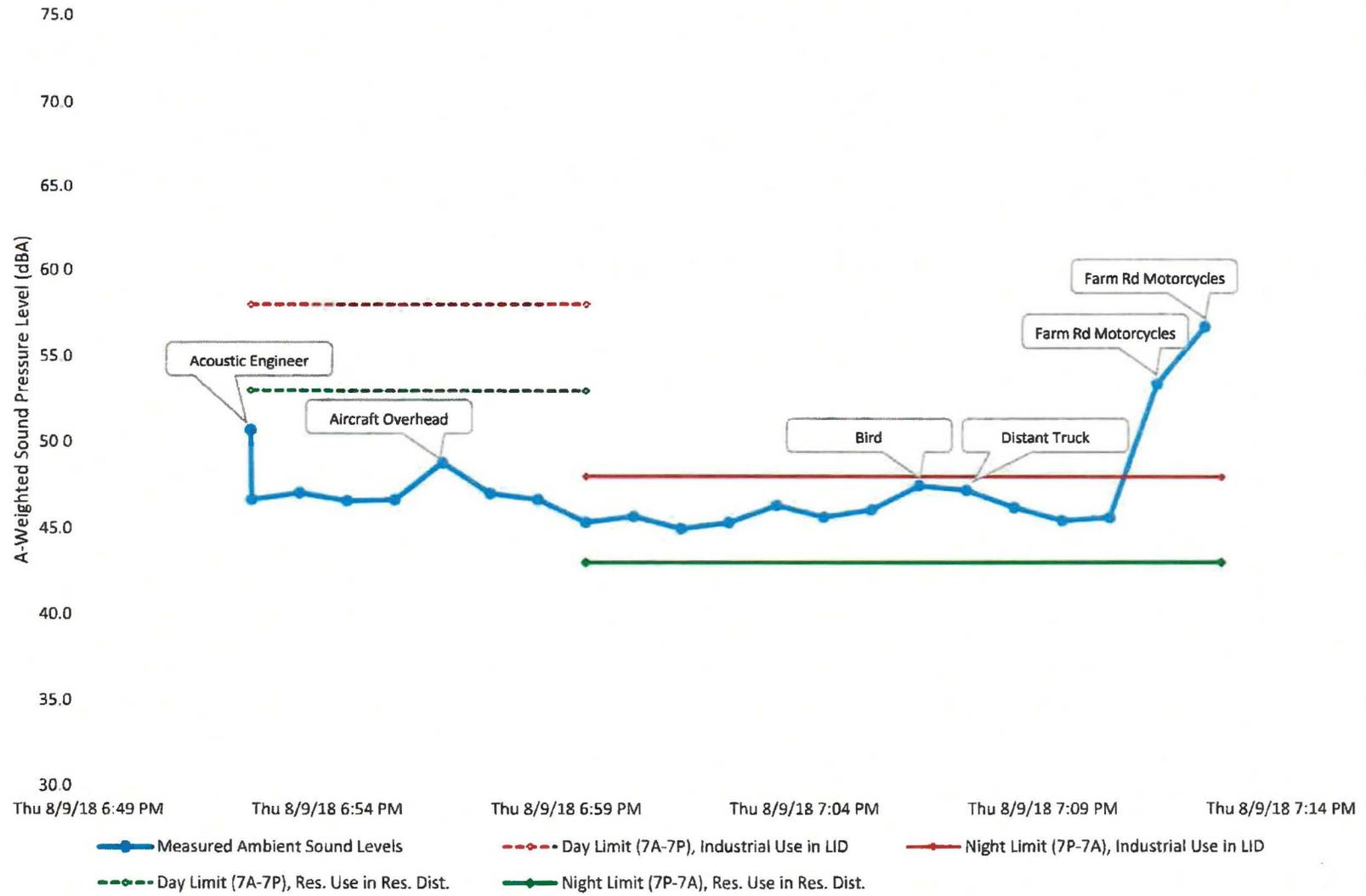
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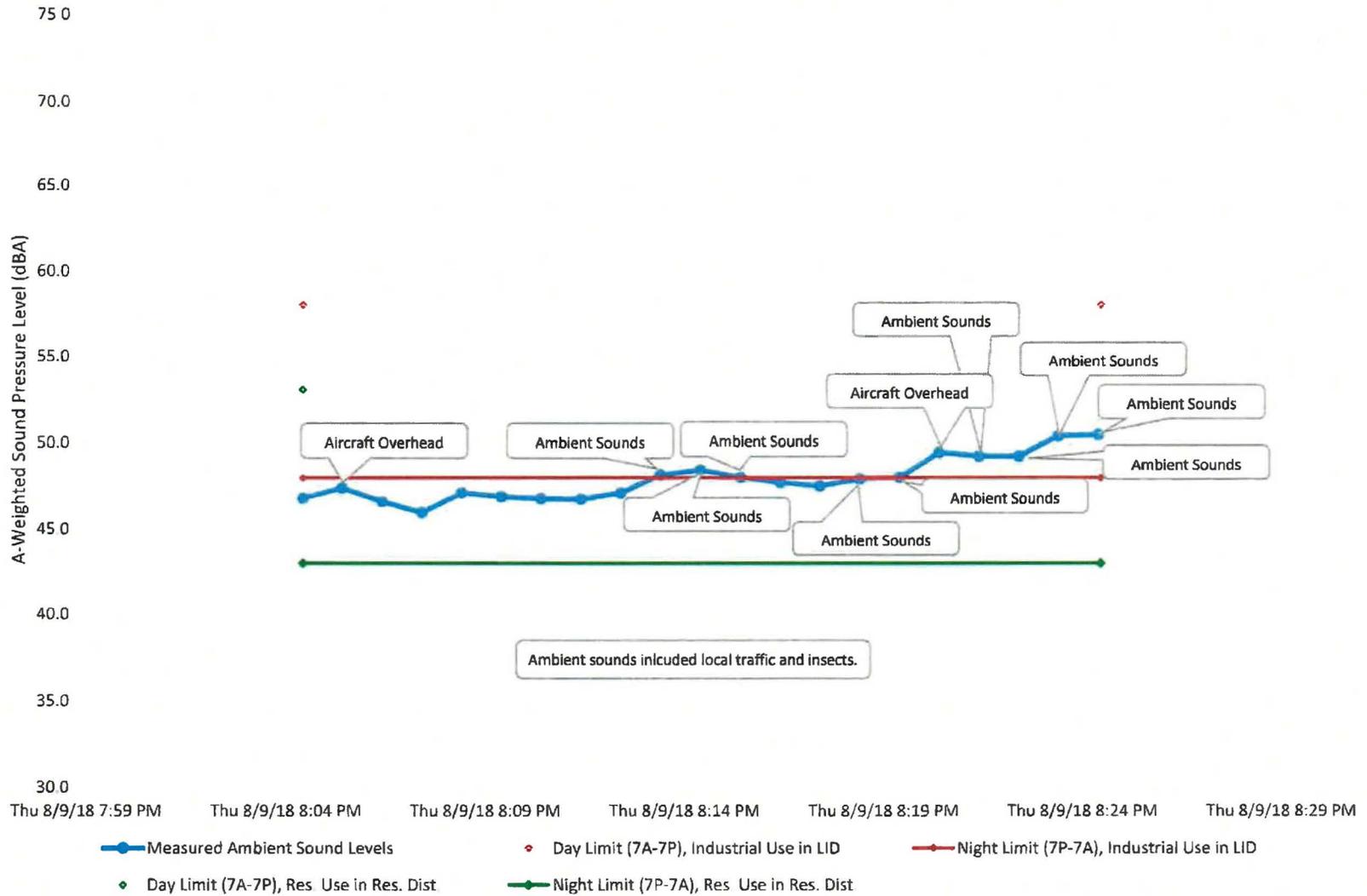
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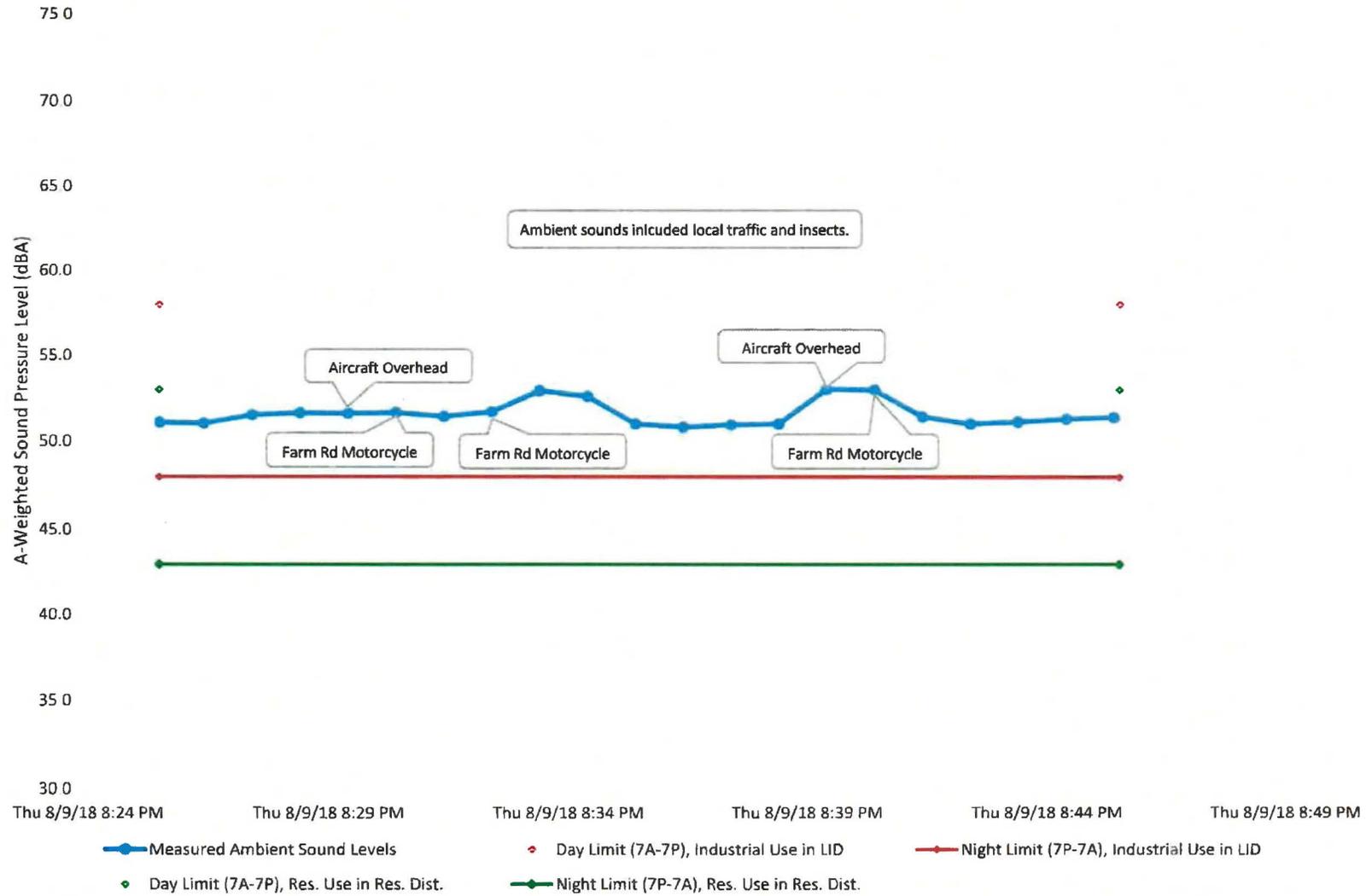
Attended 1-Minute Measured Sound Levels (LA_{eq}) at Location 2 (SE PL) - Trombetta's Farm (TF)



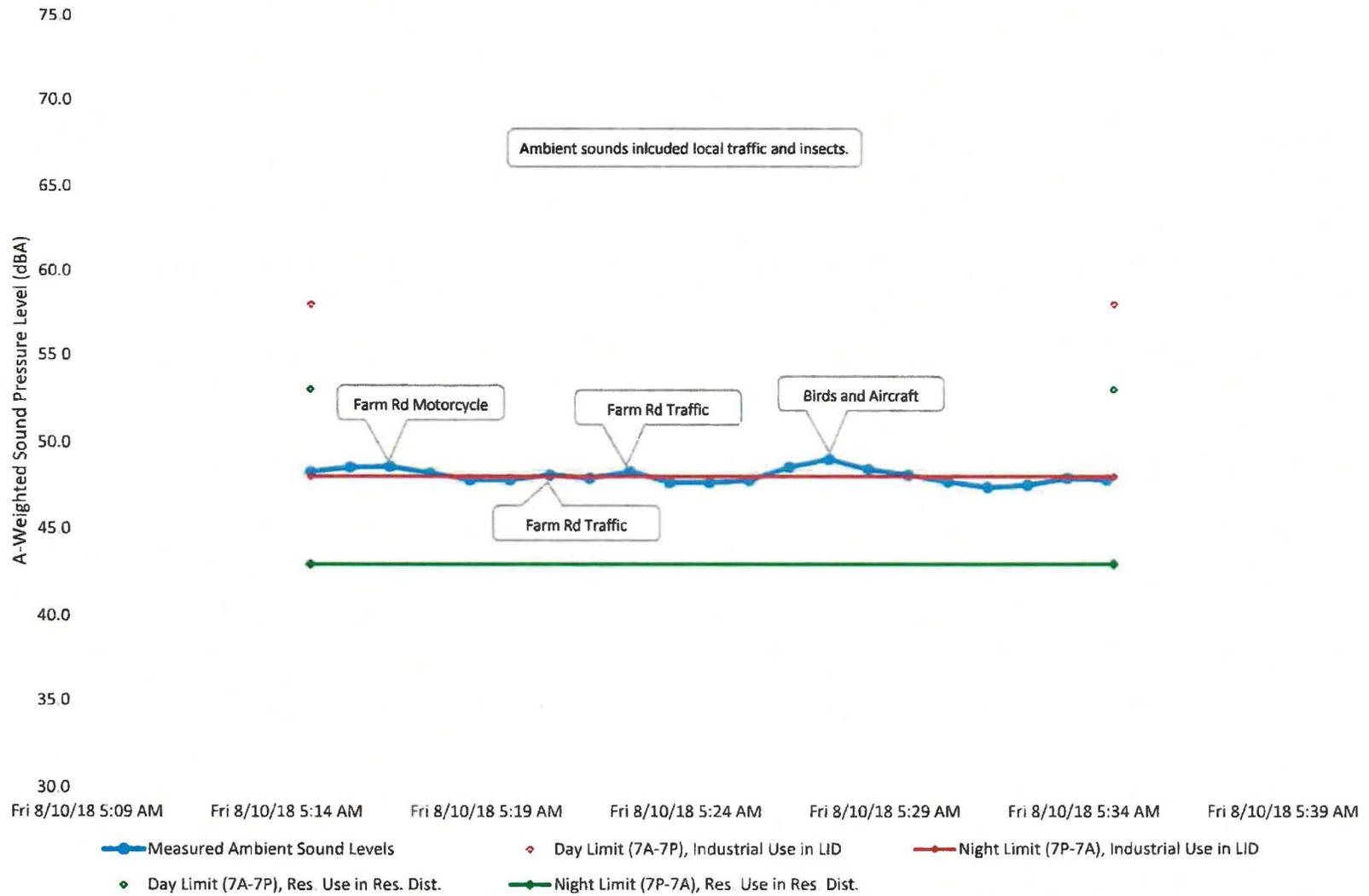
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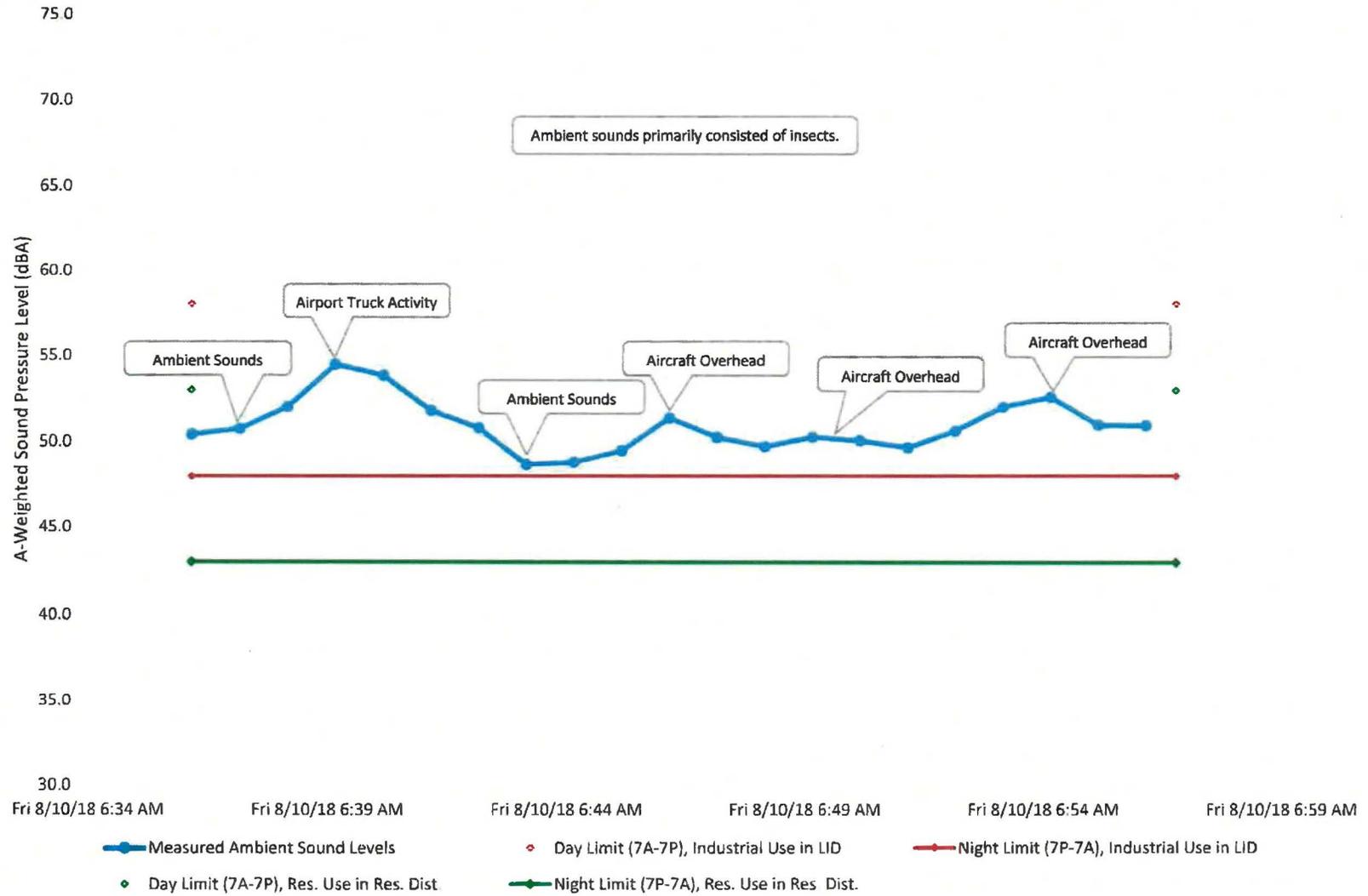
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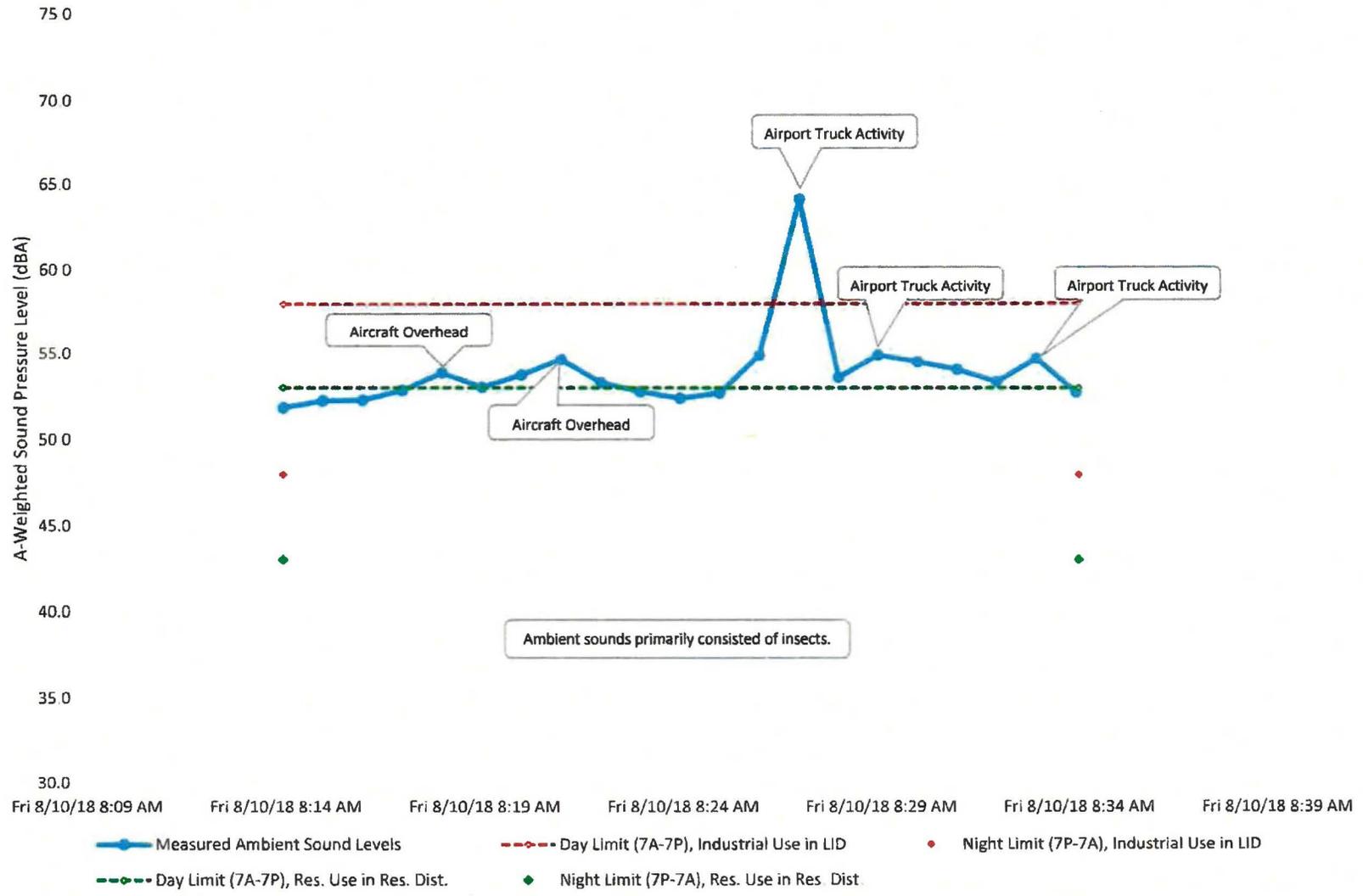
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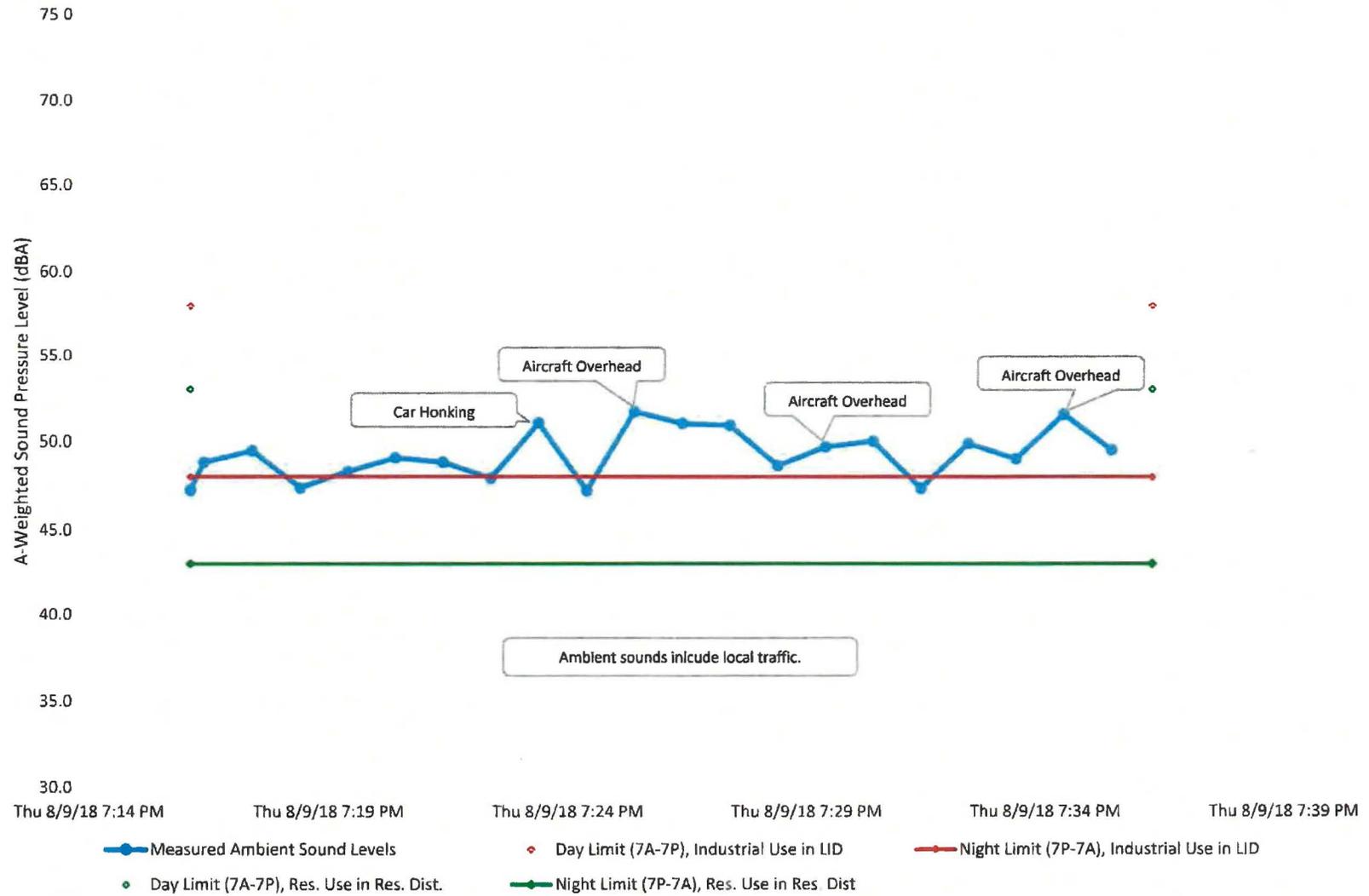
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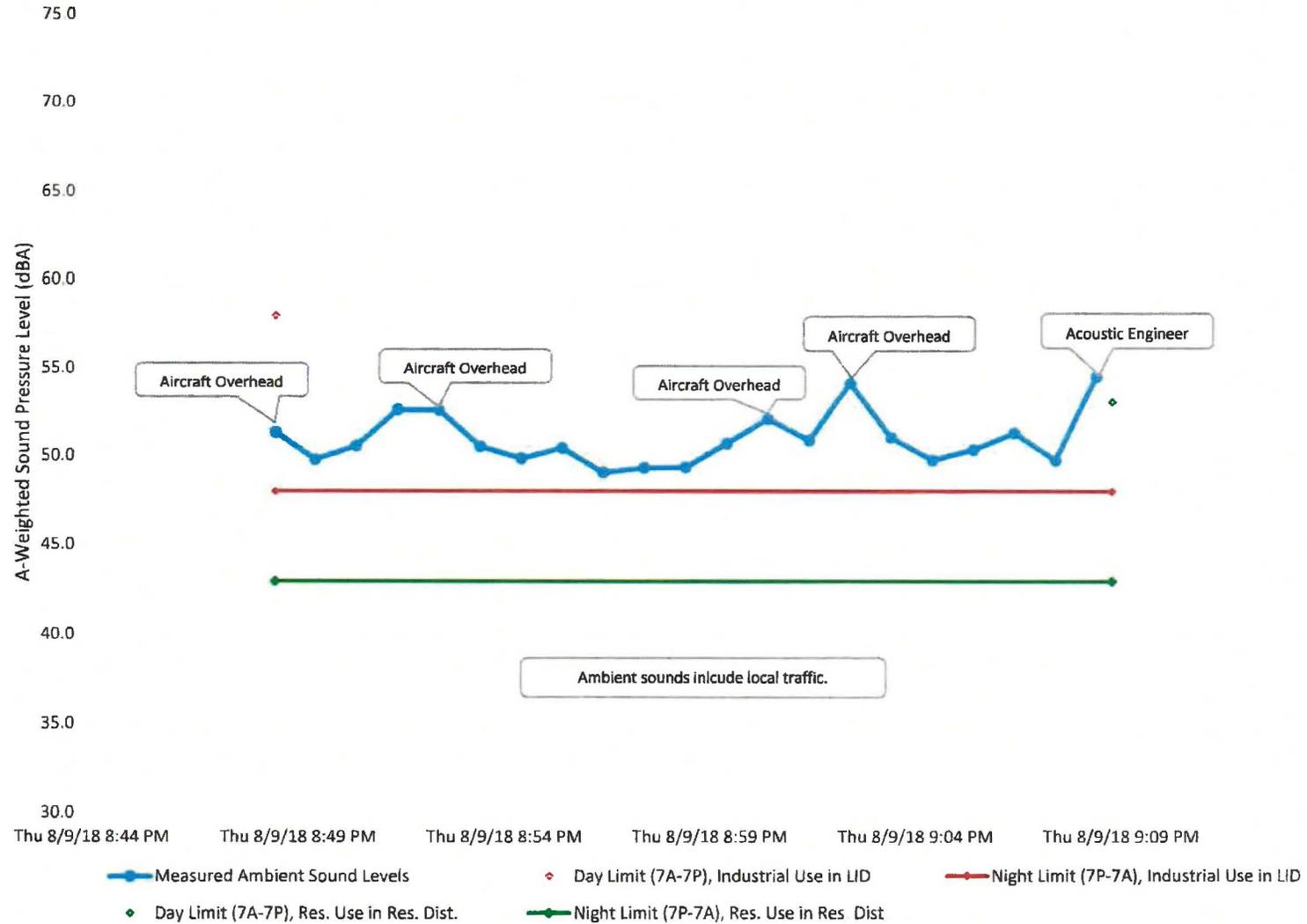
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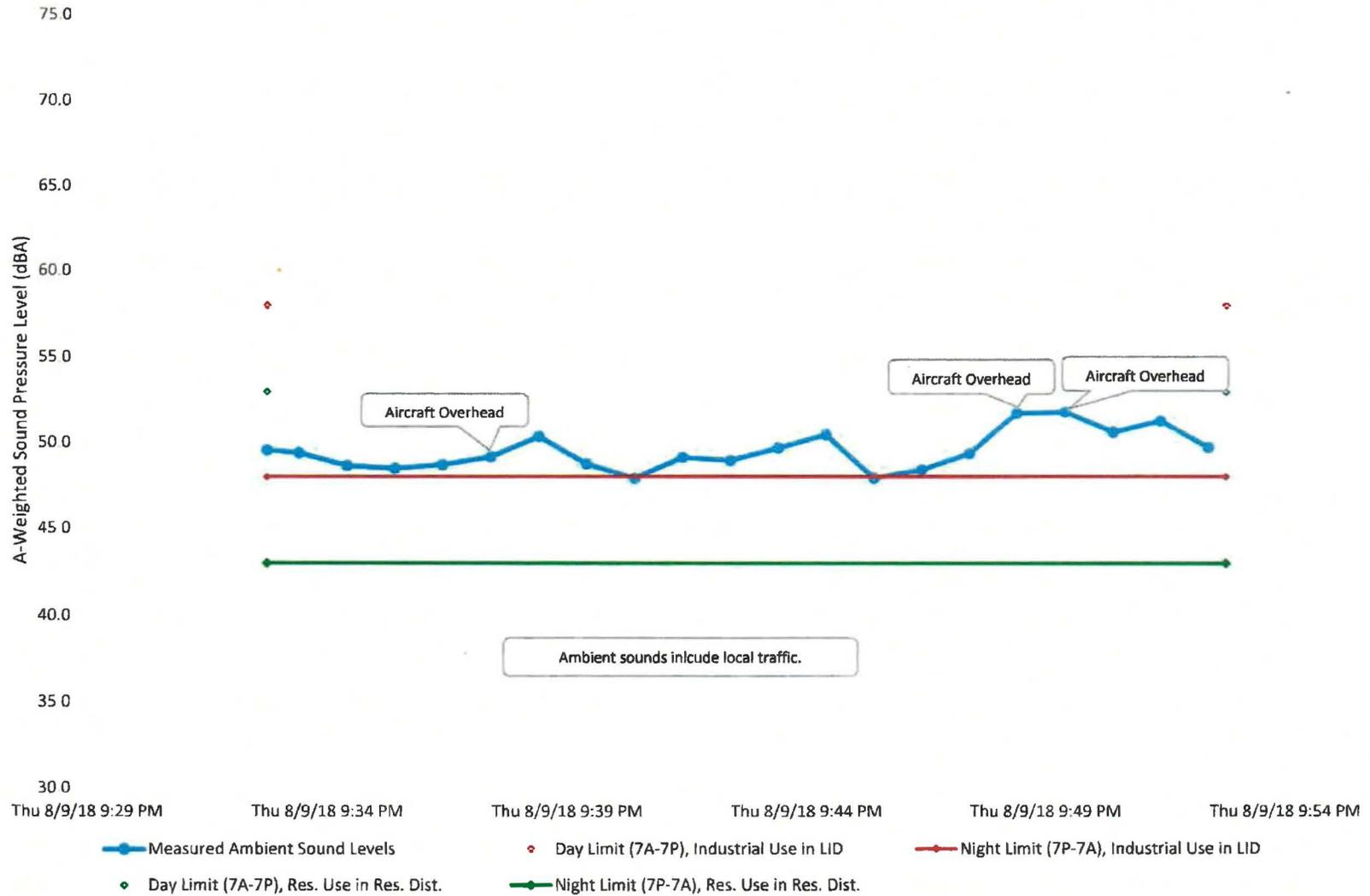
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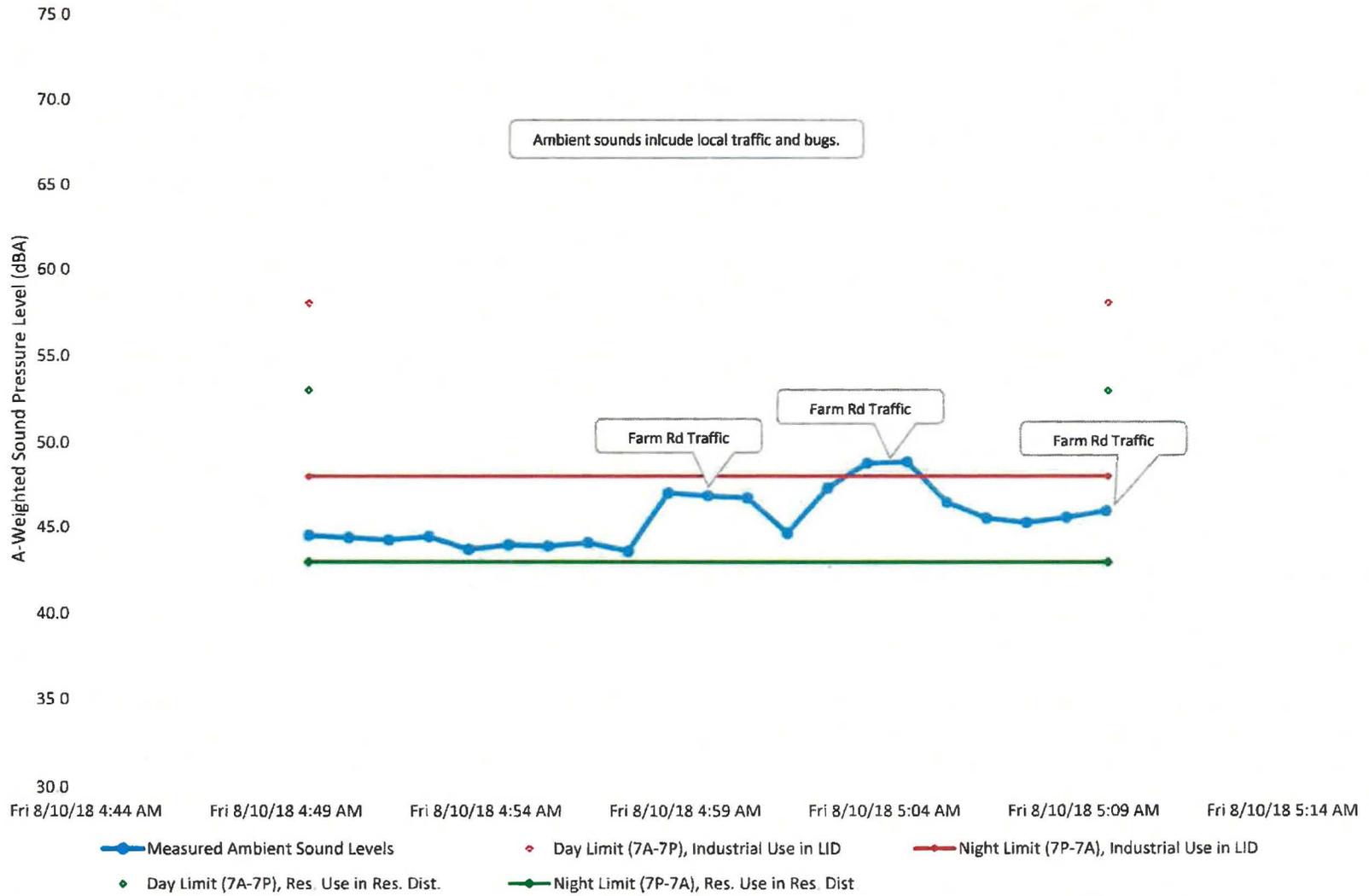
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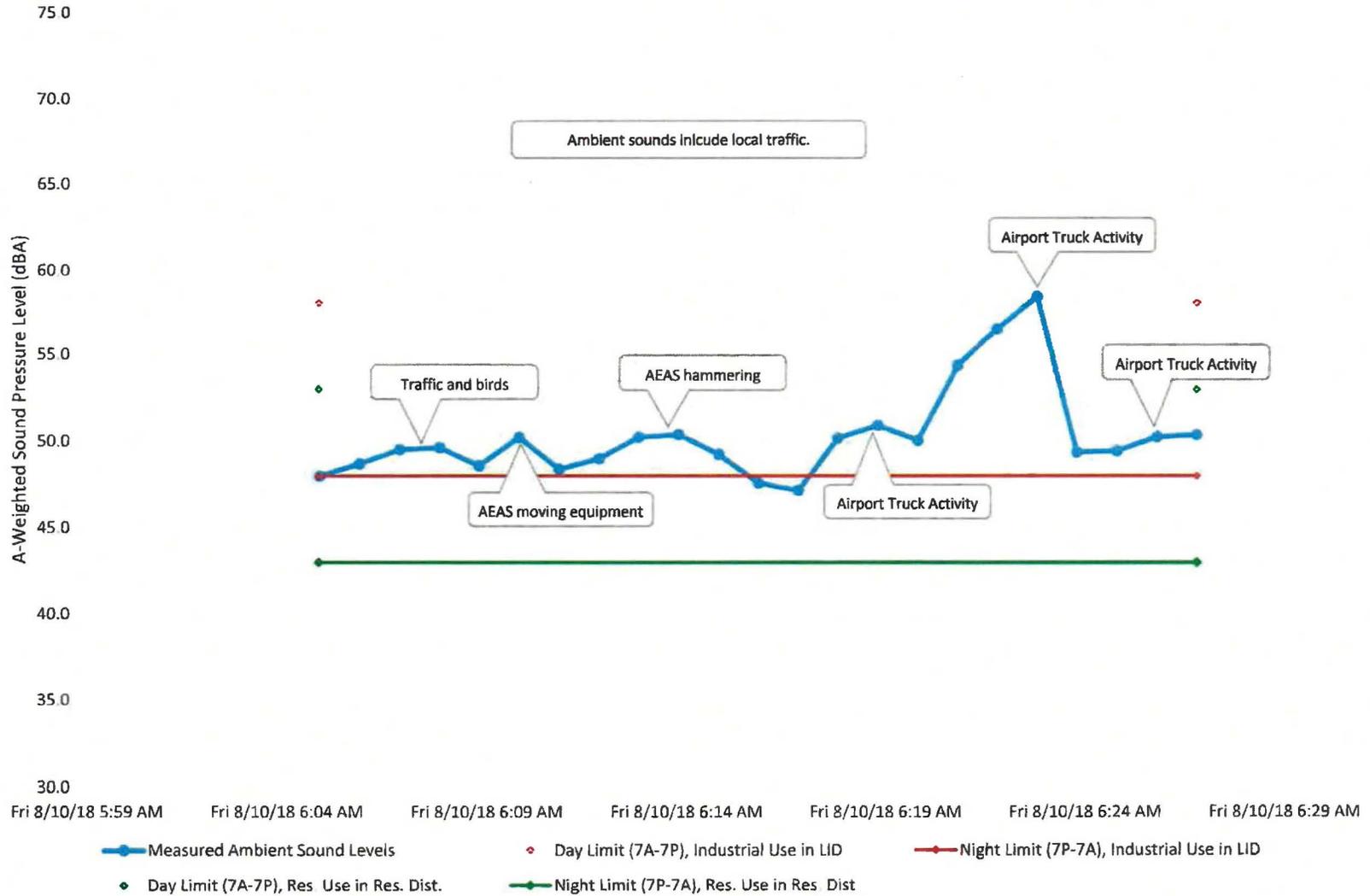
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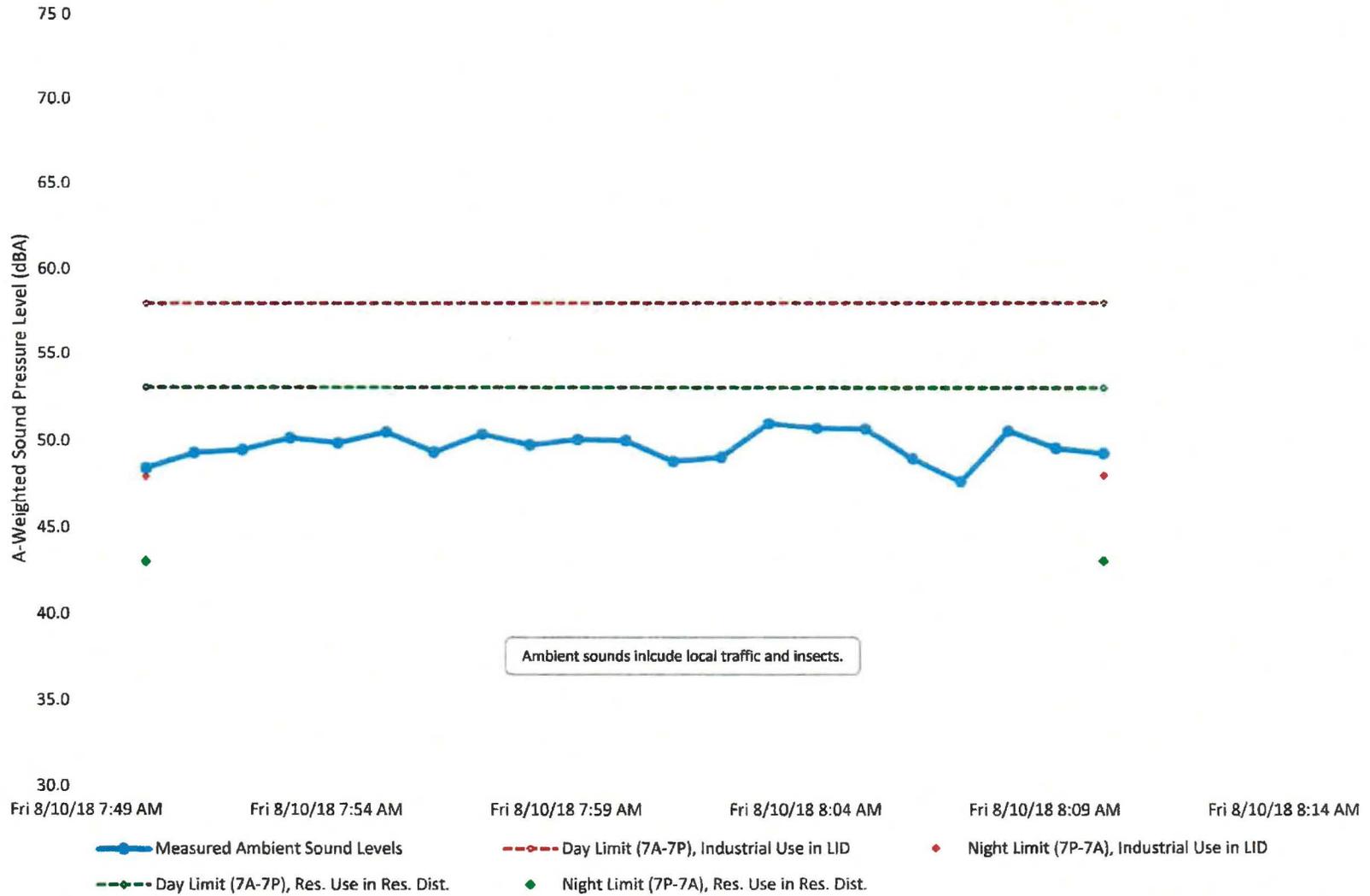
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CAPITAL GROUP

PROPERTIES

September 13, 2018

Mr. Edward J. Clancy
President
Marlborough City Council
City of Marlborough
140 Main Street
Marlborough, MA 01752

RE: Michael Gulbankian – 40 Mt. Vickery Rd, Southborough, MA

During the City Council Urban Affairs Committee meeting on June 5, 2018 a question was asked by Councilor Juaire in regards to the issues surrounding the Vickery Hills 55+ condominium development and the adjoining properties located at 40 Mt. Vickery Road in Southborough owned by Michael & Alice Gulbankian on which he ran several businesses on the premises.

1. On September 26, 2000 the Southborough Board of Appeals issued a Special Permit in regards to an application for a special permit to construct 40, 55+ town homes on land owned by Michael & Alice Gulbankian (see Exhibit "A"). The fully developed project located at 26 Mt. Vickery Road is show on Exhibit "B" while the remaining Gulbankian family property at 40 Mt. Vickery Road is located at the intersection of Rte. 85 and Mt. Vickery Rd. on the aerial photo.
2. On January 30, 2002, Michael & Alice Gulbankian sold the land located at 26 Mt. Vickery Road, Southborough, MA, subject to the special permit to construct 40, 55+ condominiums described in 1. above to Vickery Hills, LLC for \$1,600,000.00 (see Exhibit "C").
3. The first of 40 condominium unit sales was completed on October 11, 2002. Disclosures as to the operating businesses located on the remaining Gulbankian land at 40 Mt. Vickery Rd. was made to each of the Buyers of the Vickery Hills Condominiums as required in the sales agreement with the Gulbankians.
4. On March 28, 2003, Michael & Alice Gulbankian filed an application with the Southborough Zoning Board of Appeals (ZBA) for a special permit for a new pylon sign. On May 13, 2003 the ZBA unanimously granted the special permit to the Gulbankians (Exhibit "D"). Of note on page 2 of the decision; "*No further comments and no objections to the special permit were submitted to the Board of Appeals.*"
5. On December 10, 2003, Michael & Alice Gulbankian filed an application with the Southborough Zoning Board of Appeals (ZBA) for a special permit for an accessory apartment in an existing garage at 25 Mt. Vickery Rd. On January 13, 2004 the ZBA unanimously grants

the special permit to the Gulbankians (Exhibit "E"). Of note on page 2 of the decision; "*No further comment, oral or written, in regard to the application for a Special Permit for an accessory apartment at 25 Mt. Vickery Road was received by the Board of Appeals.*"

6. In June 2006, after 46 years of operation, Michael Gulbankian closed down his Gulbankian Bus Lines business. The primary reason cited in a July 1, 2006 article (Exhibit "F") was the competition from the MBTA commuter rail station which opened a mile from the Gulbankian site. In 1983 the Southborough ZBA had unanimously granted Gulbankian a variance to operate a school and chartered bus business in a Residential A district as they had been operating there since 1965 (see Exhibit "G").

7. On May 24, 2010, almost 8 years after the first condo unit closing at Vickery Hills, Hye Limited Partnership ("Hye"), a Gulbankian owned and controlled entity, filed an application with the Southborough ZBA for a use variance in a Residential A district located at 40 Mt. Vickery Road, to allow the Petitioner to operate a general machine shop specializing in engine rebuilding on the site, a use not allowed in a Residential A district. This was the third use variance sought by the Gulbankians, who had been previously granted variances for two other uses on the site in 1983 & 1988.

Also filed on this date was a request for a Special Permit (the 4th submission to the ZBA by the Gulbankians since selling the land that the condos were built on in 2002), seeking the right to park school buses (owned by a third party) on the site, pursuant to a lease with North Reading Transportation Company and to simultaneously operate a general machine shop, specializing in engine rebuilding, on the site.

The Zoning Board on January 26, 2011 votes 5-0 to GRANT A USE VARIANCE and a SPECIAL PERMIT to Hye Limited Partnership (Exhibit "H") to operate a general machine shop, specializing in engine rebuilding and to park school buses on the site, per the Plans submitted by the Gulbankians showing proposed site improvements including stormwater drainage and filtration, site lighting, site paving and landscaping that were recommended by Gulbankians attorneys and designed by Gulbankians engineers, Cornerstone Engineering. Per the decision site improvements proposed by the Gulbankians were supposed to be substantially completed by September 1, 2011.

8. Within the statutory 20 day appeal period after the decisions were issued by the ZBA, Hye Limited Partnership filed an appeal of the 2011 ZBA decision granting the variance and special permit that Hye Limited Partnership had applied for. On October 2, 2012 the Worcester Superior Court issued a dismissal of the Hye Limited Partnership appeal with prejudice (Exhibit "I") making the ZBA decisions effective as of October 4, 2012. The Court's decision operated to approve and finalize the ZBA's decision.

Despite having lost the Superior Court appeal of the 2011 ZBA decisions and later being subject to a Superior Court Order directing the family not to violate the bylaw by operating the shop without proper permits, Hye continued to conduct the businesses conditionally allowed by the January 26, 2011 variance and special permit decisions **without** constructing the site improvements required therein. Not insignificantly the improvements that Hye was refusing to

comply with were originally proposed and advanced by by Hye as an inducement for the ZBA to grant the variance and special permit requests.

Thereafter, Hye made additional court filings in regards to the January 2011 variance and special permit decisions maintaining that although the subject improvements Hye had been proposed and advanced by Hye and had been incorporated into the ZBA Decisions they were not actually needed and constituted an undue and unnecessary burden on Hye. . In June of 2016, Hye and the Town of Southborough entered into a “Declaration of Restriction on the Use of the Land” that was subject to the January 2011 variance and special permits (Exhibit “J”). The agreement prohibits “bus uses” on the site and essentially validated the 2011 ZBA decision.

In summary, since Michael & Alice Gulbankian sold the land upon which the Vickery Hills condominium development was built to the condominium developer, on January 30, 2002, some 16 years earlier, the Gulbankians requested a total of three special permits and one variance on their adjoining property. All four requests were granted by unanimous votes of the Southborough Zoning Board of Appeals with limited or no comment from the condominium association.

It was only when the Gulbankians sought to expand the uses on their property and applied for additional zoning relief which necessarily included public comment including concerns raised by nearby condominium unit owners, and then refused to comply with the conditions of the requested variance and special permit decisions that addressed legitimate environmental and community concerns, did the Gulbankians experience significant discourse with the Town of Southborough regarding the future use of their remaining property,

The Gulbankian case is not at all parallel to the concerns raised by the commercial property and business owners on Farm Road and should not serve as predicate for evaluating the proposed condominium project or a reason for the City Council to conclude that residential use proximate to existing commercial use is a formula for future discourse. When all parties comply with zoning and other regulatory requirements as well as conditions reasonably imposed within approval decisions which address legitimate community concerns, disputes and discourse are minimized or eliminated.

Very truly yours,
CAPITAL GROUP PROPERTIES, LLC

William A. Depietri

William A. Depietri
Manager



BK25863PG119

OFFICE OF THE TOWN CLERK

17 COMMON STREET
P.O. BOX 9109
SOUTHBOROUGH, MASSACHUSETTS 01772-9109
508-485-0710

Exhibit "A"
3/4/20

HOURS
MONDAY - FRIDAY
9:00 AM - 5:00 PM

21145 BOARD OF APPEALS
CERTIFICATION
(20 DAYS HAVE ELAPSED)

I, Paul J. Berry, Town Clerk of the Town of Southborough, Massachusetts, hereby certify as follows:

- 1. The original Zoning Board of Appeals Application thereof was filed with me as said Town Clerk on May 11, 2000 at 2:10 PM.
2. The Southborough Board of Appeals Decision dated September 26, 2000 relative to a petition of John J. Sullivan, 26 MT, Vickery Road was filed with the Town Clerk on October 16, 2000 at 10:00 AM.
3. Twenty (20) days have elapsed since filing the Zoning Board of Appeals Decision with the Town Clerk; and
4. No appeal therefrom has been filed.

02 JAN 30 PM 3:25

Witness my hand and the Town Seal of Southborough this 20th day of November, 2000 at 9:15 AM.

A True Copy Attest:

Paul J. Berry, Town Clerk

TOWN SEAL

Receipt of the above is hereby acknowledged on November 20, 2000.

Cynthia Krawczyk, Board of Appeals

Joseph J. Ruell, Esq.
Box 431
Needham, MA 02062

BK25863PG114

Exhibit "A"

Received, and filed in the Office of the Town Clerk on October 16, 2000 @ 10:00 AM.

Paul J. Berry

Paul J. Berry, Town Clerk

**Town of Southborough
Board of Appeals
Southborough, Massachusetts 01772
17 Common Street
P.O. Box 9109
Southborough, MA 01772-9109
508-485-0710**

Paul J. Berry
Town Clerk
Town House
Southborough, MA 01772

Book 4582 Page 303

**NOTICE OF DECISION
ON AN
APPLICATION FOR
A SPECIAL PERMIT**

**John J. Sullivan
26 Mount Vickery Road (20-23)
Southborough, Massachusetts 01772**

Sitting as a Board:

Salvatore M. Giorlandino, Chairman²
James Falconi
Thomas M. Starr
Peter Norden
Kenney E. Griffiths

For Petitioner:

Attorney William F. Brewin
277 Main Street, Marlborough, MA 01752

A True Copy
Attest
Paul J. Berry
Town Clerk, Southborough

² Mr. Giorlandino's term as ZBA Chairman expired at the end of August 31, 2000 and prior to completion of the ZBA's hearings on Mr. Sullivan's petition. The ZBA's hearings on Mr. Sullivan's petition were held on July 19, 2000, August 16, 2000 and September 26, 2000. Prior to the ZBA's September 26, 2000 hearing, ZBA member Peter Norden was elected ZBA Chairman for the term of September 1, 2000 to August 31, 2001. To preserve continuity with respect to the ZBA's hearings on Mr. Sullivan's petition, ZBA Chairman Norden authorized Mr. Giorlandino to serve as acting ZBA Chairman (1) for the ZBA's September 26, 2000 hearing on Mr. Sullivan's petition and (2) for the drafting and filing of the ZBA's decision on Mr. Sullivan's petition.

The Commonwealth of Massachusetts
Town of Southborough
Board of Appeals

Date: October 16, 2000

Certificate of Granting of Variance or Special Permit
(General Laws Chapter 40A, Section 11)

The Board of Appeals of the Town of Southborough hereby certifies that a Special Permit has been granted:

To: John J. Sullivan
Address: 26 Mount Vickery Road (20-23)
Town: Southborough, Massachusetts
affecting the rights of the owner with respect to land or buildings at:
26 Mount Vickery Road, Southborough, (20-23)

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said variance - special permit, and that copies of said decision, and of all plans referred to in the decision, have been filed with the Planning Board and the Town Clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take affect until a copy of the decision bearing the certification of the Town Clerk that twenty days have elapsed after the decision has been filed in the Office of the Town Clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.


Salvatore M. Giorlandino
Chairman¹

Town Clerk

¹ Mr. Giorlandino's term as ZBA Chairman expired at the end of August 31, 2000 and prior to completion of the ZBA's hearings on Mr. Sullivan's petition. The ZBA's hearings on Mr. Sullivan's petition were held on July 19, 2000, August 16, 2000 and September 26, 2000. Prior to the ZBA's September 26, 2000 hearing, ZBA member Peter Norden was elected ZBA Chairman for the term of September 1, 2000 to August 31, 2001. To preserve continuity with respect to the ZBA's hearings on Mr. Sullivan's petition, ZBA Chairman Norden authorized Mr. Giorlandino to serve as acting ZBA Chairman (1) for the ZBA's September 26, 2000 hearing on Mr. Sullivan's petition and (2) for the drafting and filing of the ZBA's decision on Mr. Sullivan's petition.

EVIDENCE PRESENTED

1. The Board of Appeals of the Town of Southborough held a public hearing in the hearing room of the Southborough Town House, 17 Common Street on Wednesday, June 14, 2000, with regard to the petition of John Sullivan for a Special Permit as per Southborough Zoning Code, Article III, Section 174-9, Paragraph H, Multifamily Housing for the Elderly. The Petitioner proposes to construct multifamily housing for the elderly in a Residence A District. The public hearing was continued to July 19, 2000, August 16, 2000 and September 26, 2000.
 2. This application is a proposal for 40 senior housing units on 17.5 acres. A previous proposal called for 64 units on 25.8 acres. Deleted from the current proposal is the 8 +/- acre Baldelli site.
 3. The land located off Mount Vickery Road and Route 85 is identified on the Town of Southborough Assessors Map as Map 20, Lot 23 and is owned by Michael and Alice Gulbankian of Southborough, Massachusetts. The Petitioner has entered into a Purchase and Sale Agreement with the Gulbankians.
 4. The Petitioner submitted that the project shall comply with state and federal regulations to guarantee continued and permanent use of the proposed housing for persons 55 years of age or older.
 5. The Petitioner submitted that the proposed development does not exceed an average per site of a maximum of three (3) units per contiguous acre exclusive of wetlands and six (6) bedrooms per contiguous acre exclusive of wetlands. No unit will have more than three (3) bedrooms.
 6. The Petitioner submitted that the proposed development is offering to provide for the needs of Southborough residents of varying economic levels. The average projected cost per unit is \$325,000.00 with the lowest priced unit projected at \$279,900.00. Since Southborough Meadows has addressed housing needs at the lower end of the spectrum and Carriage Hill at the higher end, this proposal should serve the housing needs of local residents at a level midway between other senior housing offerings in Town.
 7. The Petitioner submitted the proposed units have an exterior design that is consistent with the styles of surrounding residential neighborhoods and the Town of Southborough in general.
 8. Pedestrians will be able to walk to local services (i.e. Post Office, convenience store) at the nearby Southborough Town Center. Additionally, residents of the project can walk to and board certain early morning busses leaving for Boston from the Gulbankian Bus Lines' lot on Mount Vickery Road.
 9. The Petitioner submitted that the proposed plan is designed to maximize the preservation of the natural features of the site. Existing vegetation is being retained throughout the
-

site as a natural buffer to adjacent properties. The use of unit clusters and communal sewage disposal will provide a higher percentage of open space and wooded buffers.

*(See attached Exhibit #1: Concept Plan showing no cut zone)
on file in the Town Clerk's office of the Town of Southborough*

10. The proposed number of units when combined with existing and permitted senior housing units does not exceed seven (7%) percent of the total number of one-family houses in Southborough.
 11. The Petitioner has proposed a development that will minimize visual impacts to abutting developed properties. Scenic views from public ways and developed property received considerable attention in the development of the site plan.
 12. The site arrangement minimizes the visibility of parking and service areas from public streets and such areas are screened from abutting properties.
 13. Architectural design is tailored to and provides for breaks in walls and roof planes.
 14. The proposed development is residential only and is consistent with the use of the surrounding properties.
 15. The Petitioner can provide adequate water and drainage to the site without any special public problems.
 16. The site will be able to accommodate the proposal without substantial environmental damage due to wetland loss, habitat disturbance or damage to valuable trees or other natural assets.
 17. The Petitioner submitted that the proposed use and its characteristics are in harmony with the intent and purpose of MGL c. 40A, are not in conflict with public health, safety, convenience and welfare and are not substantially detrimental or offensive to the neighborhood or destructive of property values therein.
 18. At the public hearing on June 14, 2000, Brenda Gaffney of 211 Middle Road spoke and stated that this site was the best area to have senior housing in Southborough.
 19. Bonnie Phaneuf of 179 Middle Road spoke and requested that the needs of the seniors be addressed by the Petitioner.
 20. The Petitioner has proposed a grant to the Council on Aging of \$500.00 per unit. This grant will greatly aid in promoting activities for the seniors in Southborough.
 21. In a letter dated August 10, 2000 Maryanne Cole, as chairperson of the Council on Aging, indicated that the grant of funds from the Petitioner to the Council on Aging would be of great assistance in meeting the needs of Southborough's senior population. Also, she was thrilled to see a developer come to the Council on Aging to discuss the seniors' needs.
-

22. John Rocci of 12 Mount Vickery Road stated that he was concerned about the conservation of mature trees on the site.
23. John Bartolini of 4 Wyeth Circle expressed support for the project, stressing to the Board the importance of maintaining a private drive to enable the developer to create an access road to the units that will not annihilate the hill and enable the developer to save vegetation and trees on the site. Mr. Bartolini stated that the private way is very important to the success of the project because standards for public ways are very different than those for private roads and would hamper much of the planning the petitioner has done to conserve trees and meet drainage requirements.
24. Bonnie Phaneuf of 179 Middle Road asked if the project would include a community center. The petitioner replied in the affirmative.
25. Sandra Kiess of 6 Mount Vickery Road stated concern for the disturbance of trees on the site.
26. Harold Kiess of 6 Mount Vickery Road stated his preference for this project over 10 to 12 single family homes.

FINDINGS

1. The Board finds that the Petitioner has complied with the rules and regulations of the Town of Southborough as they pertain to the application for Special Permit.
 2. The Board finds that the petition meets the criteria for elderly housing set forth in the Southborough Zoning Code, Article II, Section 174-9, Paragraph H, Multifamily Housing for the Elderly:
 - (a) The development does not exceed the average density of three units per acre or six bedrooms per acre and no unit contains more than three bedrooms.
 - (b) Evidence has been provided by the Petitioner to show that, to the greatest extent possible, the development provides for the needs of Southborough residents of varying economic levels.
 - (c) The units have an exterior architectural character that is consistent with the styles of surrounding residential neighborhoods and the Town in general.
 - (d) A pedestrian connection has been provided to local services to lessen the dependency on the automobile.
-

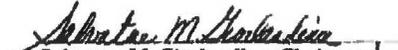
- (e) The plan preserves the natural features of the site to the extent possible through the use of cluster housing and/or creative site planning. Wherever possible, existing vegetation would be retained throughout the site as a natural buffer to adjacent properties. Site construction has been planned to minimize the removal of natural features and contours.
 - (f) The proposed development shall satisfy the criteria of Chapter 174-9 outlined in Paragraph A. Decision considerations. After due consideration of location, activity and mix, visual consequences, access, and development rate, the Board is of the opinion that the proposal's benefits to the Town outweigh any adverse effects for the Town or vicinity.
- 3. The Board finds that the grant proposed by the Petitioner to the Council on Aging will greatly benefit the Town.
 - 4. The Board specifically finds that the grant of the Special Permit is in harmony with the intent and purpose of the zoning by-law. It is not in conflict with the public health, safety, convenience or welfare and is not detrimental or offensive to the neighborhood or destructive of property values therein.

TIHEREFORE, the Board of Appeals, based on the evidence presenting to the hearing, including but not limited to the facts presented above, unanimously voted to:

Grant the Special Permit for the construction of 40 units of multifamily housing for the elderly subject to the following six conditions:

- 1. The Special Permit is subject to final approvals from the Southborough Planning Board, Board of Health and Conservation Commission.
 - 2. Subject to any state or federal laws or regulations to the contrary, the Petitioner shall use his best efforts to market the units to past or present Southborough residents and their families in accordance with the intent and purpose of the zoning by-law of the Town of Southborough.
 - 3. Subject to final review and approval by the Town Counsel, the elderly housing units in this development shall contain "sale covenants" and "resale covenants" which state in substance:
 - a. Sale Covenant. The proposed housing shall be designed to accommodate those past and present Southborough residents and their families who meet the requirements for occupancy of "Housing for the Elderly" (Section 174-2). To the extent permitted by law, VIP previews will be available to past and present Southborough residents and their families.
-

- b. Resale Covenant. Upon the resale of the units, if not transferred to a family member who meets the requirements for occupancy of "Housing for the Elderly" (Section 174-2), the unit shall be offered to a list of prospects maintained by the Condominium Association or the Southborough Elderly Housing Committee. The offering shall be made sixty (60) days prior to the general listing. Prospects on the preferred list shall be past and present Southborough residents and their families.
4. Petitioner covenants that no units will be built on land of Henry Baldelli.
5. Petitioner shall make a grant of \$500.00 per unit to the Council on Aging. Said grant shall be held and administered in accordance with Massachusetts General Laws, Chapter 44, section 53.
6. All roadways in the project shall be private roads. Petitioner shall use his efforts to create access to the units that will least impact the hill and conserve mature trees and vegetation on the site.

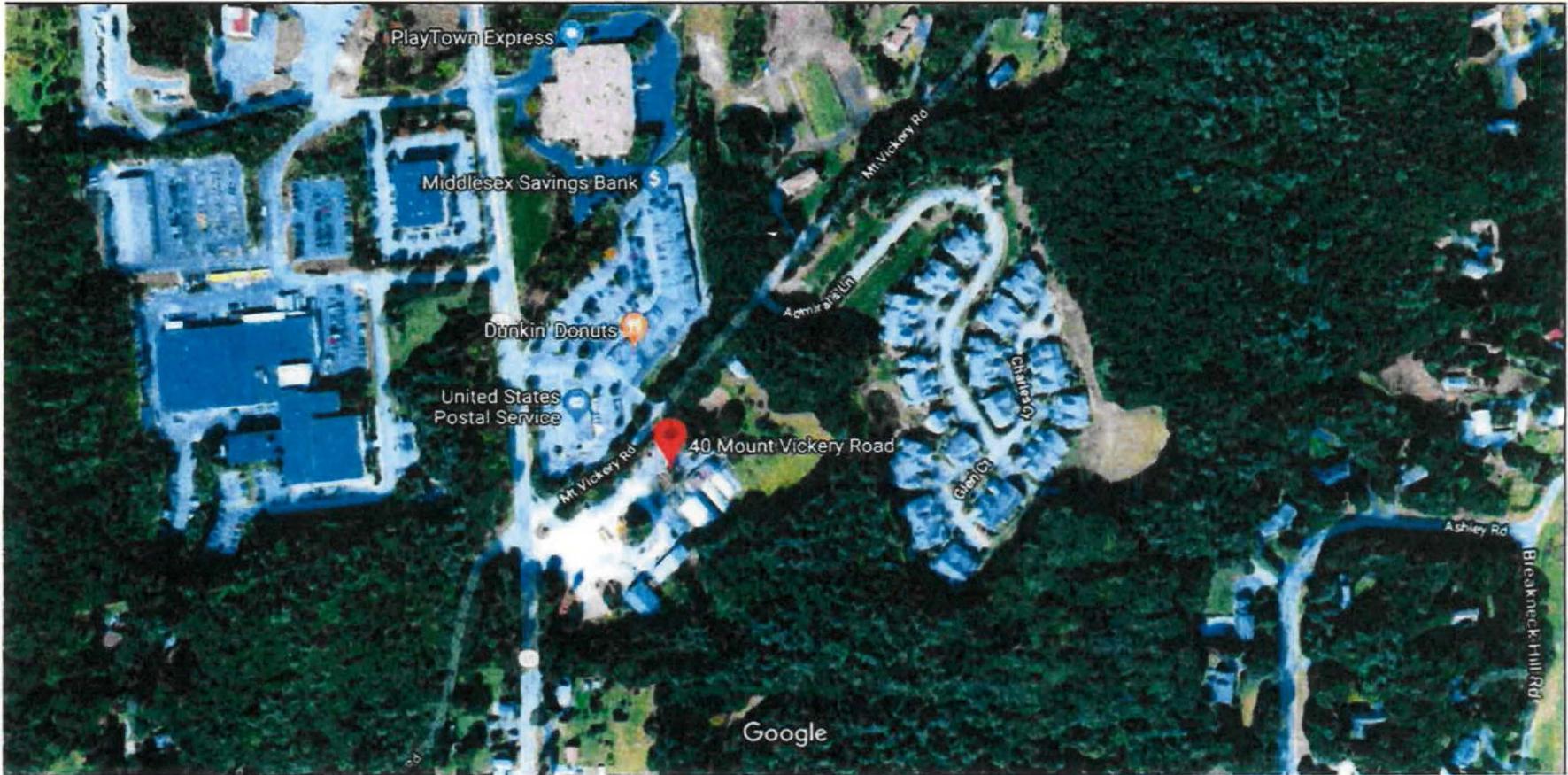

Salvatore M. Giorlandino, Chairman

Notice: Appeals, if any, shall be made pursuant to Massachusetts General Law, Chapter 40A, s.17, and shall be filed within twenty (20) days after the filing of this notice in the Office of the Town Clerk, Town Hall, Southborough, Massachusetts.

³ Mr. Giorlandino's term as ZBA Chairman expired at the end of August 31, 2000 and prior to completion of the ZBA's hearings on Mr. Sullivan's petition. The ZBA's hearings on Mr. Sullivan's petition were held on July 19, 2000, August 16, 2000 and September 26, 2000. Prior to the ZBA's September 26, 2000 hearing, ZBA member Peter Norden was elected ZBA Chairman for the term of September 1, 2000 to August 31, 2001. To preserve continuity with respect to the ZBA's hearings on Mr. Sullivan's petition, ZBA Chairman Norden authorized Mr. Giorlandino to serve as acting ZBA Chairman (1) for the ZBA's September 26, 2000 hearing on Mr. Sullivan's petition and (2) for the drafting and filing of the ZBA's decision on Mr. Sullivan's petition.

ATTEST: WORC. Anthony J. Vigliotti, Register

Google Maps 40 Mt Vickery Rd



Imagery ©2018 Google, Map data ©2018 Google 200 ft

ERH, 6.7 "B"

Joseph J. Rausell, Esq.
Box 421
Needham, MA 02062

BK 25863 PG 110

Exhibit "C"
4/5/20
Jem

QUITCLAIM DEED

21144

We, Michael Gulbankian also known as Michael G. Gulbankian and Alice D. Gulbankian of 40 Mt. Vickery Road, Southborough, Worcester County, Massachusetts for consideration paid and full consideration of \$1,600,000.00, with Quitclaim Covenants

Grant to Vickery Hills, LLC a Massachusetts Limited Liability Company organized according to law with a usual place of business at
259 Temple Road, Southborough, MA

That certain parcel of land situated on Mt. Vickery Road in Southborough, Worcester County, Massachusetts being Lot 5B on a plan of land entitled, "Plan of Land in Southborough, MA prepared for Mr. John Sullivan, Vickery Hills, LLC" dated September 20, 2001, by Bruce Saluk & Associates, Inc. Civil Engineers & Land Surveyors to be recorded herewith and to which reference is made for a more particular description of said parcel (the "Premises") in Plan Book 776, Plan 96 (the "Plan"). Said parcel contains 17.57 acres +/- according to said Plan.

The parcel conveyed being a portion of Lot 3 as described in Deed dated July 20, 1965 conveyed to Grantor by Eva Gulbankian and recorded with the Worcester District Registry of Deeds at Book 4582, Page 303

The Premises are conveyed together with a perpetual easement for the purpose of using the existing drainage system including ditches and structures crossing land of the Grantors on the North side of Mt. Vickery Road to carry the surface water runoff collected upon the Premises hereby including the obligation to improve, maintain, repair, replace and reconstruct the drainage ditch system by removing excess materials (silt, undergrowth, debris, etc) to insure that such system functions in a manner that does not negatively impact the remaining land of the Grantors.

02 JAN 30 PM 3:24

Included in this grant of easement is the right to enter upon the land retained by Grantor so as to permit Grantee access to the easement and drainage ditch system as well as a construction easement, which may be used from time to time for the maintenance, repair, replacement or reconstruction or improvement of the system. The easement is fifteen (15) feet in width on either side of the center line of the existing drainage ditch as presently located on the Grantor's remaining land and a portion of said easement is shown on a plan entitled, "Easement Plan of Land in Southborough, MA", prepared for John Sullivan, prepared by Bruce Saluk & Associates, Inc., dated February 14, 2000 and recorded herewith in Plan Book 176, Plan 97.

By accepting this grant of easement, the Grantees their successors and or assigns acknowledge their obligation to the Grantors, their successors and/or assigns to insure that surface water drainage resulting from the development of the premises conveyed hereby which is deposited into the system existing on land retained by the Grantors located on the northerly side of Mt. Vickery Road as a result of the development of the Premises does not negatively impact in any way the Grantor's remaining land. The grant of the easement herein described is in consideration of Grantee's obligation: (a) to insure that the drainage delivered from the Premises will not negatively impact the presently existing drainage system; (b) that the existing drainage system will, if negatively impacted by actions of the Grantees or those claiming by, through or under them, be improved and maintained by them so as to insure that the drainage collected from the Premises will not flood or otherwise negatively impact the land retained by Grantor; and (c) that the surface water drainage shall flow within the limits of the drainage ditch system as it presently exists, and use reasonable efforts to insure it does not pond and maintains as positive flow.

Executed under seal this 29th day of January, 2002


Michael G. Gulbankian


Alice D. Gulbankian

BN25863PG112

COMMONWEALTH OF MASSACHUSETTS

Worcester, SS:

January 29, 2002

Then personally appeared the above named Michael G. Gulbankian and acknowledged the foregoing instrument to be his free act and deed, before me

[Signature]
Gerald S. Gurnoy, Jr.
Notary Public
My Commission Expires: 04/30/04

Executed under seal this 29th day of January, 2002

ACCEPTANCE

Vickery Hills, LLC the Grantee named in the foregoing deed hereby accepts the terms and conditions set forth in said deed on its behalf and that of all its successors and assigns.

Vickery Hills, LLC
By: *[Signature]*
Its Manager
William Depietri

COMMONWEALTH OF MASSACHUSETTS

Norfolk, SS:

January 30, 2002

Then personally appeared the above named William Depietri Manager, and acknowledged the foregoing instrument to be the free act and deed of Vickery Hills, LLC before me

WORCESTER
DEEDS REG 20
WORCESTER

CANCELLED

01/30/02 3107PH 01
00000 #6286

FEE \$7296.00

CASH \$7296.00

[Signature]
Notary public Glen Marr
My Commission Expires: 6/20/08

ATTEST: WORC. Anthony J. Vigliotti, Register

Joseph J. Russell, Esq.
Box 431
Northwood, MA 02062

BK25863PG107

30/20
EW

AFFIDAVIT
Under M.G.L. c 183 §5(b)

21143

**REGARDING PROPERTY ON
MT. VICKERY ROAD, SOUTHBOROUGH, MA
(Lot 5B Plan Book 776, Plan 96)**

I, MICHAEL GULBANKIAN, of Southborough, Worcester County, Massachusetts, having personal knowledge of the facts herein, stated under oath, say and depose as follows:

1. I own several parcels of land in Southborough. They are located on the north side of Mt. Vickery Road, the south side of Mt. Vickery Road, as well as a small lot west of Cordaville Road, (Route 85), on the south side of Mt. Vickery Road.
2. During the spring of 2000 I cut trees and removed vegetation on the parcel of land situated on the south side of Mt. Vickery Road situated west of Route 85 (Cordaville Road). Said parcel is shown as Lot 10 on Southborough Assessor's Map 20. My actions resulted in an Enforcement Order issued by the Conservation Commission of the Town of Southborough on May 2, 2000. The Order is recorded with the Worcester Registry of Deeds in Book 22958 at page 300.
3. In July, 2001, I conveyed a portion of my land located on the north side of Mt. Vickery to my son, Michael G. Gulbankian, (see Worcester Registry of Deeds Book 24385, Page 164) The land conveyed is shown as Lot 16-2 on a Plan recorded in Plan Book 764, Plan 92.
4. In the fall of 2001 my son commenced the construction of a house on Lot 16-2. During the course of the excavation for the foundation the Southborough Conservation Commission issued an Enforcement Order. This Enforcement Order was directed to my son and his work on Lot 16-2. The Order describes the area of concern as Assessor's Map 28, Lot 16A. Lot 16-2 was created out of a part of the land shown as Lot 16A on Assessor's Map 28.

02 JAN 30 PM 3:24

5. Subsequent to the issuance of the Enforcement Order, my son, Michael G. Gulbankian, filed for and on December 31, 2001 received an Order of Conditions permitting the construction of his house on his lot (16-2) also known as #25 Mt. Vickery Road which was formerly a portion of a parcel shown as Lot 16A on Assessor's Map 28.

6. All of the land shown as Lot 16A, on Assessor's Map 28 is located north of Mt. Vickery Road.

6. I have contracted to sell and executed a Deed conveying a portion of my land, 19.57 acres +/-, located on the south side of Mt. Vickery Road to Vickery Hills, LLC. That land, located entirely on the south side of Mt. Vickery Road, is not included within the land described in the Enforcement Orders set forth above. The Enforcement Orders have nothing to do with the title to the property to be conveyed to Vickery Hills, LLC or the easement to be granted to Vickery Hills, LLC herewith on a portion of my other land located on the North Side of Mt. Vickery Road.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY this 29th day of January, 2002.

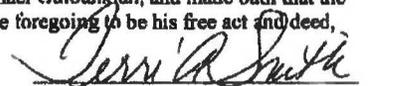

Michael Gulbankian

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS

January 29, 2002

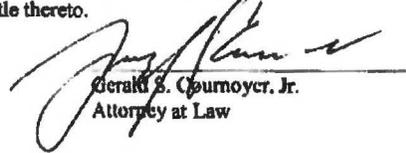
Then personally appeared the above-named Michael Gulbankian, and made oath that the foregoing statement is true and acknowledged the foregoing to be his free act and deed, before me


Terri A. Smith
Notary Public
My Commission Expires: 04/11/08

BK 25863PG109

CERTIFICATE

I, Gerald S. Courmoyer, Jr. hereby certify that I am an Attorney at Law with offices at 321 Boston Post Road, in Sudbury, Massachusetts and the facts stated in the foregoing Affidavit are relevant to the title to the premises therein described and will be of benefit and assistance in clarifying the chain of title thereto.


Gerald S. Courmoyer, Jr.
Attorney at Law

Gulb\Sullivan Sale\Affidavit of MG

ATTEST: WORC. Anthony J. Vigilotti, Register

Exhibit "D"

BK 30559PG297



Bk: 30559Pg: 297 Page: 1 of 5
Recorded: 08/27/2003 11:14 AM

**OFFICE OF THE SOUTHBOROUGH
TOWN CLERK
17 COMMON STREET
SOUTHBOROUGH, MASSACHUSETTS
01772-1662
(508)-485-0710**

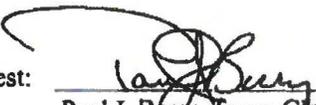
**BOARD OF APPEALS
CERTIFICATION
(20 DAYS HAVE ELAPSED)**

I, Paul J. Berry, Town Clerk of the Town of Southborough, Massachusetts, hereby certify as follows:

1. The original Zoning Board of Appeals Application thereof was filed with me as said Town Clerk on **March 28, 2003 at 2:00 PM.**
2. The Southborough Board of Appeals Decision dated **May 13, 2003** relative to a petition of **Michael & Alice Gulbankian, 40 Mt. Vickery Road**, for a **Special Permit** was filed with the Town Clerk on **May 29, 2003 at 3:00 PM.**
3. **Twenty (20) days have elapsed** since filing the Zoning Board of Appeals Decision with the Town Clerk; and
4. No appeal therefrom has been filed.

Witness my hand and the Town Seal of Southborough this **19th** day of **June 2003** at **9:00 AM.**

A True Copy Attest:


Paul J. Berry, Town Clerk

TOWN SEAL

MAIL TO: Carolyn A. Gulbankian
40 Mt. Vickery Rd.
Southborough, MA 01772

BK 30559PG298

RECEIVED, FILED AND POSTED IN THE OFFICE OF THE TOWN CLERK MAY 29, 2003 AT 3:00 PM



PAUL J. BERRY, TOWN CLERK

**Town of Southborough
Board of Appeals
Southborough, Massachusetts 01772
17 Common Street
P.O. Box 9109
Southborough, MA 01772-9109
508-485-0710**

Paul J. Berry
Town Clerk
Town House
Southborough, MA 01772

Book 4582 Page 303

NOTICE OF DECISION

**APPLICATION FOR
A SPECIAL PERMIT**

**Michael & Alice Gulbankian
40 Mount Vickery Road (20-23)**

The Board of Appeals of the Town of Southborough held a public hearing in the Meeting Room of the Southborough Fire Station, 21 Main Street on Tuesday, May 13, 2003 with regard to the petition of *Michael & Alice Gulbankian* for a *Special Permit* as per the Southborough Zoning Code, *Article III, Section 174-11-14 Agricultural Signs and Section 174-11-D Sign Regulations*. The petitioner is seeking a Special Permit for multiple permitted uses and a Special Permit for a sign which exceeds the maximum area allowed for an Agricultural Sign and a Special Permit for a non-agricultural sign that exceeds the maximum area allowed.

Sitting as a Board: Thomas M. Starr, Chairman
Salvatore M. Giorlandino
Kenney Griffiths
Peter Norden
James Falconi

For Petitioner: Carolyn Gulbankian

Evidence Presented

1. Petitioner submitted that the Special Permit would allow for the replacement of an existing sign for the garden center, florist shop and S&M Machine Shop. The garden and florist center has existed at the location for 40 years. The machine shop has been in existence for 15 years but operated without a sign. The old sign is 10' x 5' – the proposed sign is a little smaller at 8' x 4.'

*Michael & Alice Gulbankian. – Special Permit/Sign
40 Mount Vickery Road – Page 2*

2. Petitioner submitted that the businesses are not visible from the road, and the proposed sign has been downsized a bit in consideration of the new bylaw. Further size reduction would jeopardize the ability of our customers to locate the businesses.
3. Petitioner submitted that the longstanding operation of the business and its signage encouraged the application for a sign similar in size. Landscaping will be included at the base of the sign and existing shrubbery replaced.
4. By memo dated May 6, 2003, the Planning Board recommended approval of the sign permit application with the following conditions:
 - The proposed sign shall not be lit.
 - The proposed sign will be in the same location as the existing sign.
 - The applicant will remove the existing portable sign.
5. Board member James Falconi stated for the record that the sign bylaw committee considered older signs such as the Gulbankian sign when drafting the new bylaw and knew that the new regulations would adversely impact older businesses from time to time, thus including the special permit provision.
6. Edward McCarthy of 181 Cordaville Road submitted that he is without objection to the proposed sign.
7. By letter dated March 18, 2003, the Building Inspector informed Petitioner that Section 174-11 of the zoning regulations addresses sign requirements. Subsection C-14 permits agricultural signs with a limitation of the area of the sign to 32 square feet. The submitted plan indicates that the portion of the sign advertising the agricultural use will be 56 square feet in area. The property is located in the RA zoning district. Subsection D of the zoning regulations states that the maximum area of a standing or wall sign in this district is 4 square feet. The portion of the sign identifying "J & M Machine Co." is shown to be 8 square feet in area. Because the machine shop is not an agricultural use, this portion of the sign must conform to limitation of 4 square feet.
8. The Board of Health responded to the Board of Appeals on 5/2/03 that the petition has no bearing on Board of Health rules and regulations.
9. No further comments and no objections to the special permit were submitted to the Board of Appeals.

*Michael & Alice Gulbankian. – Special Permit/Sign
40 Mount Vickery Road – Page 3*

Findings

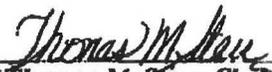
1. Petitioner has complied with all rules and regulations of the Town of Southborough as they pertain to the application for a Special Permit.
2. The Board finds that the grant of the Special Permit does not derogate from the intent and purpose of MGL c.40A and/or the bylaws of the Town of Southborough. The Board further finds that the use sought and its characteristics are in harmony with the intent and purpose of the Southborough zoning bylaw and shall not be in conflict with the public health, safety, convenience and welfare and shall not be substantially detrimental or offensive to the neighborhood or destructive of property values therein.
3. The Board of Appeals received a report from the Southborough Planning Board recommending approval of the Gulbankian Farms Garden Center Sign Permit with conditions.
4. The Board finds that the proposed sign meets the criteria outlined in Section 174-11-E and specifically its proposed size, location, design and illumination (non-illuminated) will not present a safety hazard to vehicular or pedestrian traffic.

Therefore, the Board of Appeals, based on the evidence presented at the hearing, including but not limited to the facts presented above, voted as follows:

Motion made by Peter Norden, seconded by James Falconi, to grant a Special Permit for a sign which exceeds the maximum area allowed for an Agricultural Sign and a Special Permit for a Non-Agricultural Sign that exceeds the maximum area allowed in accordance with the Plan for Gulbankian Farms by Alpha Sign, 158 Grove Street, Franklin, MA 02038 submitted by the Petitioner, attached as Exhibit #1 with the following conditions:

1. *The proposed sign shall not be illuminated;*
2. *The proposed sign shall be located in the same location as the existing sign;*
3. *The Petitioner shall remove the existing portable sign.*

Vote 4-1 (Griffiths Opposed)



Thomas M. Starr, Chairman

Notice: Appeals, if any, shall be made pursuant to Massachusetts General Law, Chapter 40A, s.17, and shall be filed within twenty (20) days after the filing of this notice in the Office of the Town Clerk, Town Hall, Southborough, Massachusetts.

The Commonwealth of Massachusetts
Town of Southborough
Board of Appeals

Date: May 28, 2003

Certificate of Granting of Special Permit and Variance
(General Laws Chapter 40A, Section 11)

The Board of Appeals of the Town of Southborough hereby certifies that a Special Permit has been granted:

To: Michael & Alice Gulbankian

Address: 40 Mount Vickery Road (20-23)

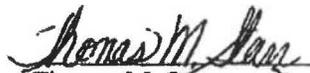
Town: Southborough, MA 01772

affecting the rights of the owner with respect to land or buildings at:

40 Mount Vickery Road, Southborough, MA (20-23)

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said variance - special permit, and that copies of said decision, and of all plans referred to in the decision, have been filed with the Planning Board and the Town Clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty days have elapsed after the decision has been filed in the Office of the Town Clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.



Thomas M. Starr
Chairman

Town Clerk

ATTEST: WORC. Anthony J. Vigliotti, Register

Exhibit "5"



**OFFICE OF THE SOUTHBOROUGH
TOWN CLERK
17 COMMON STREET
SOUTHBOROUGH, MASSACHUSETTS
01772-1662
(508)-485-0710**



Bk: 32881 Pg: 296 Doc: DEON
Page: 1 of 5 02/23/2004 12:12 PM

**BOARD OF APPEALS
CERTIFICATION
(20 DAYS HAVE ELAPSED)**

*Property Address : 25 Mt. Vickery Rd
Southboro, MA 01772*

I, Paul J. Berry, Town Clerk of the Town of Southborough, Massachusetts, hereby certify as follows:

1. The original Zoning Board of Appeals Application thereof was filed with me as said Town Clerk on **December 10, 2003 at 2:30 PM.**
2. The Southborough Board of Appeals Decision dated **January 13, 2004** relative to a petition of **Michael Gulbankian, 25 Mt. Vickery Road**, for a **Special Permit** was filed with the Town Clerk on **January 30, 2004 at 11:00 AM.**
3. **Twenty (20) days have elapsed** since filing the Zoning Board of Appeals Decision with the Town Clerk; and
Decl Ref: Book 24385 Pg 164
4. No appeal therefrom has been filed.

Witness my hand and the Town Seal of Southborough this **20th** day of **February 2004** at **9:00 A.M.**

A True Copy Attest:

[Signature]
Paul J. Berry, Town Clerk

TOWN SEAL

*mail TO:
Michael Gulbankian,
25 Mt. Vickery Rd
Southboro, MA 01772*

**The Commonwealth of Massachusetts
Town of Southborough
Board of Appeals**

Date: January 26, 2004

**Certificate of Granting of Variance or Special Permit
(General Laws Chapter 40A, Section 11)**

The Board of Appeals of the Town of Southborough hereby certifies that a Special Permit has been granted:

To: Michael Gulbankian *owner*

Address: 25 Mt. Vickery Road

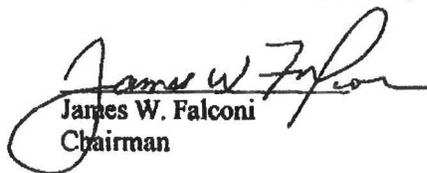
Town: Southborough, Massachusetts

affecting the rights of the owner with respect to land or buildings at:

25 Mt. Vickery Road, Southborough, MA (28-24)

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said variance - special permit, and that copies of said decision, and of all plans referred to in the decision, have been filed with the Planning Board and the Town Clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take affect until a copy of the decision bearing the certification of the Town Clerk that twenty days have elapsed after the decision has been filed in the Office of the Town Clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.


James W. Falconi
Chairman

Town Clerk



Paul J. Berry
Town Clerk

**Town of Southborough
Board of Appeals
Southborough, Massachusetts 01772
17 Common Street
P.O. Box 9109
Southborough, MA 01772-9109
508-485-0710**

Paul J. Berry
Town Clerk
Town House
Southborough, MA 01772

Book 26563 Page 37

NOTICE OF DECISION

**APPLICATION FOR
A SPECIAL PERMIT**

**Michael Gulbankian
25 Mt. Vickery Road (28-24)**

The Board of Appeals of the Town of Southborough held a public hearing in the Southborough Town House, 17 Common Street on Tuesday, January 13, 2004 with regard to the petition of *Michael Gulbankian* for a *Special Permit* as per the Southborough Zoning Code, Article III, Section 174-8.2-B-1 Uses by Special Permit. The petitioner is seeking a Special Permit for an accessory apartment.

Sitting as a Board: James W. Falconi, Chairman
Salvatore M. Giorlandino
Thomas M. Starr
Peter C. Norden
Fred Scott

For Petitioner: Pro se

Evidence Presented

1. The petitioner is seeking a special permit to complete an accessory apartment at 25 Mt. Vickery Road in the existing garage. The accessory apartment will be occupied by the petitioner's mother-in-law who will come from Armenia to assist with child care.
2. The petitioner submitted that the accessory apartment will not change the appearance of the property.
3. At its meeting of January 5, 2004, the Southborough Planning Board voted unanimously (3-0) to recommend approval of the application for an accessory apartment at 25 Mt. Vickery Road.

Michael Gulbankian – Page 2
Special Permit/Accessory Apartment
25 Mt. Vickery Road

4. The petitioner meets the requirements of the Southborough Zoning Code for the issuance of a special permit for an accessory apartment:
 - (1) The habitable floor area of the accessory unit shall not exceed 25 percent of the habitable floor area of the entire dwelling plus that of the accessory building used for the accessory dwelling.
 - (2) There is no other apartment on the lot on which the accessory apartment is proposed.
 - (3) Not more than the required minimum exterior alterations will be made to the accessory building. The accessory apartment will not change the appearance of the existing property. The accessory apartment will be located above the garage as shown in original house plans.
 - (4) The total cumulative number of accessory apartments permitted by the Board of Appeals since January 1979 does not exceed five percent of the total number of one-family houses in Southborough at the beginning of the year in which the application was filed.
5. The Board of Appeals noted that there was no response from the Board of Health in the file.
6. The Building Inspector stated that the garage meets the carrier requirements to house the accessory apartment as requested.
7. The petitioner submitted that the accessory apartment will include a kitchenette and bath facilities.
8. No further comment, oral or written, in regard to the application for a Special Permit for an accessory apartment at 25 Mt. Vickery Road was received by the Board of Appeals. The Public Hearing was adjourned at 7:50 p.m.

Findings

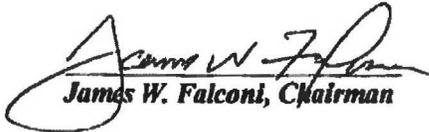
1. The petitioner has complied with all rules and regulations of the Town of Southborough as they pertain to the application for special permit.
2. No town officials, town boards or commissions opposed the special permit.
3. The Planning Board voted to recommend approval of the application for an accessory apartment at 25 Mt. Vickery Road.
4. The Board finds that the habitable floor area of the accessory apartment will not exceed twenty-five percent of the habitable floor area of the entire dwelling plus that of the accessory apartment. {Zoning Code s.174-9 (B)(1)}.

Michael Gulbankian – Page 3
Special Permit/Accessory Apartment
25 Mt. Vickery Road

5. The Board finds that there is no other accessory apartment on the lot on which the accessory apartment is proposed {Zoning Code s.174-9 (B)(2)}.
6. The Board finds that no more than the required minimum exterior alterations will be made to accommodate the accessory apartment as it will be located in the existing garage on the site and will not change the appearance of the property {Zoning Code s.174-9 (B)(3)}.
7. The Board finds that the number of accessory apartments permitted by the Board of Appeals since January 1979 does not exceed five percent of the total number of one-family homes in Southborough at the beginning of 2003, based on Assessors' records {Zoning Code s.174-9 (B)(4)}.
8. The Board finds that the grant of the special permit does not derogate from the intent and purpose of MGL c.40A and/or the by-laws of the Town of Southborough.

The Board specifically finds that the proposed accessory apartment and its characteristics are in harmony with the by-laws and the proposed accessory apartment is not in conflict with the public health, safety, convenience or welfare and is not substantially detrimental or offensive to the neighborhood or destructive of property values. The proposal's benefits outweigh any adverse affects for the Town and the neighborhood. Although not a significant impact, the proposed accessory apartment is consistent with the Town's Housing Policy to promote housing to satisfy the diverse needs of the residents of the Town of Southborough.

Therefore, the Board of Appeals, based on the evidence presented at the hearing, including but not limited to the facts presented above, voted unanimously to Grant the Special Permit with stipulation that the Board of Health shall submit written certification to the adequacy of the septic system prior to the issuance of a building permit for the completion of the accessory apartment.


James W. Falconi, Chairman

Notice

Appeals, if any, shall be made pursuant to Massachusetts General Law, Chapter 40A, s.17, and shall be filed within twenty (20) days after the filing of this notice in the Office of the Town Clerk, Town Hall, Southborough, Massachusetts.

ATTEST: WORC. Anthony J. Vigliotti, Register

exhibit "F"[Print](#) | [Close Window](#)

(Off Topic) Charter Bus Company Closes after 46 yrs

Printed from: School Bus Fleet Magazine Forums

Topic URL: http://www.schoolbusfleet.com/forum/topic.asp?TOPIC_ID=13939

Printed on: 06/06/2018

Topic:

Topic author: 80-RE4

Subject: (Off Topic) Charter Bus Company Closes after 46 yrs

Posted on: 07/23/2006 07:56:02 AM

Message:

Years of losses catch up with Gulbankian

By Crystal Bozek/ Daily News Staff

Saturday, July 1, 2006 - Updated: 01:04 AM EST

<http://www.metrowestdailynews.com/localRegional/view.bg?articleid=134320&format=&page=2>

SOUTHBOROUGH, MASSACHUSETTS -- Even as Michael Gulbankian began to pull the plug on his 46-year-old bus company last night, he was still left wondering who, if anyone, would pick up his routes.

He worried how 28 or so die-hard riders would get to work come Monday.

(photo)

Michael Gulbankian, who ran Gulbankian Bus Lines in Southborough for 46 years, closed his company after running at a loss for three years. (Marshall Wolff photo)



"This is like a funeral to me. It's a sad, sad day. But don't think I'm not looking out for my customers," he said. "I'd bend over backward for them. I've learned that's what matters."

Gulbankian decided to close shop this month after operating at a loss for almost three years. He just couldn't compete with his neighbor, the Massachusetts Bay Transportation Authority.

Now it's a mystery to many, including state Rep. Stephen LeDuc, whether customers of Gulbankian Bus Lines will have another carrier or will have to go elsewhere for their commute.

Gulbankian said Peter Pan Bus Lines and Cavalier Coach Corp., of Boston, will take over. LeDuc, D-Marlborough, said he was told another small company would take the routes.

"I was told the gentleman had driven on the route earlier in the week and was doing an evaluation. Customers were even informed," LeDuc said.

Gulbankian said that deal fell through.

A representative at Cavalier Coach tells inquiring customers that the two companies are looking at acquiring the routes but have made no decisions.

Cavalier will honor Gulbankian's bus tickets, but at their own stops in Marlborough and Westborough.

Gulbankian, 76, closed his Vickery Road business -- which included a commuter bus to Boston and charter buses for school field trips -- with a crushed spirit. After pouring money into his business over and over again, hoping things would pick up, they just got worse.

He only saw 13 or so people on his 55-seat buses since the MBTA opened a Southborough commuter rail station.

Then gas prices rose from 97 cents a gallon to \$2.97 in just two years, and he now pays more than \$1,100 in toll fees every month.

He dropped bus schedules on people's windshields, held prices to \$4.50 a round trip and even gave free parking at his garage.

"How do you compete with the MBTA? They are big," Gulbankian said. "The subsidy the state was giving me to run the bus was not enough. I kept thinking it would turn around."

Most of his 18 employees have found other jobs. He will sell his buses this month.

Gulbankian said he doesn't know what to do with himself. He's a man who didn't get to leave his business on his own terms.

"I don't understand. You have your awards from the Better Business Bureau, the Chamber of Commerce....I never received one complaint," he said. "Yet, this is how it ends for me."

He wonders why he didn't see this coming.

Gulbankian formerly sold produce at farmers' markets and to smaller, family-owned stores. But with big chains like Stop & Shop taking over, he lost his customers.

"It's always this way. The big keep getting bigger and bigger. They kick out the small ones," he said.

Both the Peter Pan and Cavalier bus lines said they should have more information on any route acquisitions in the next week.

Replies:

Reply author: DJBUSMARK

Replied on: 07/27/2006 7:10:43 PM

Message:

Gulbankian did have 5 or 6 school buses in his fleet used for charters only, I don't believe he ever had any regular school transportation contracts.

While not meaning to stray off topic, this article does remind me that here in MA there are still some family run school bus companies hanging in there. The one I drive for is one such company, in business since 1960, with 3 generations of the family involved in daily operations. In a circle from the bus yard, the next town (Billerica) has 2 family run companies yards, along with Atlantic Express, Chelmsford has First Student, Lowell and Dracut has North Reading Transportation, with over 100 buses here and elsewhere in the state. Also in Dracut, Trombly Bus (d/b/a Trombly Motor Coach) has their main office, close to 100 buses. First Student is the most dominant large contractor in the state, Laidlaw has lost a good chunk of what they once had, Atlantic Express did lose at least one decent size contract to North Reading Trans., and Durham has some presence with the Worcester contract. But in between these larger companies, you'll still find smaller operations succeeding and serving their areas, some for many years. With fuel, insurance and other costs continuing to rise, hopefully most of them if not all will survive for years to come.

Mark

School Bus Fleet Magazine Forums : <http://www.schoolbusfleet.com/forum/>

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[Close Window](#)

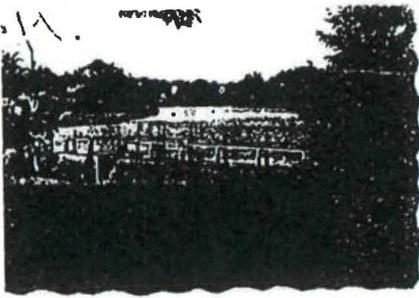


Exhibit "G"

20-23

Town of Southborough

BOARD OF APPEALS

SOUTHBOROUGH, MASSACHUSETTS 01772

Received posted and filed in the office of the town clerk on July 6, 1983 at 1:14 p.m.

Book 4582 Page 303

Paul J. Berry
Paul J. Berry, Town Clerk

APPLICATION FOR A VARIANCE

MICHAEL G. GULBANKIAN
MT. VICKERY & CORDAVILLE ROADS (20-23)

FIND OF FACTS AND DECISION

The Board of Appeals of the Town of Southborough held a Public Hearing in the Hearing Room on the second floor of the Southborough Town House, 17 Common Street on Wednesday, June 22, 1983 at 8:15 p.m. on the petition of Michael Gulbankian, 40 Mt. Vickery Road. The Petitioner seeks a variance for the purpose of conducting a commercial and school busing business and garaging of same, in a Residential A District, under Section IV, subsection 1, paragraph (g) i-vii and subsection 10. The property in question is located at the corner of Mt. Vickery Road and Cordaville Road (Assessors' Map 20 Lot 23).

Sitting as a Board were: Chairman Joseph F. Prior; Members Peter H. Roche, James J. Colleary, Donna L. McDaniel and Alternate John C. Tupper.

The Petitioner spoke in behalf of himself.

EVIDENCE PRESENTED

1. The property in question is located at the corner of Mt. Vickery and Cordaville Roads in a Residential A District.
2. On the site is the petitioners home and a florist business.
3. The Petitioner operates a school and chartered bus business from this site and buses Southborough's bused school children to their respective schools.
4. The Petitioner owns and houses thirty-five (35) different

20-23

6/22/83 - Mt. Vickery/Cordaville Roads (20-23)

Page 2

types of buses.

5. On the opposite corner of Mt. Vickery, south of the property in question, there is a trucking company. To the southwest side of Cordaville Road is the Commonwealth Gas Co., and the Southborough Highway Department and Transfer Station.

6. The business employs two (2) full-time people and drivers for the buses. The numerous drivers vary according to the requests for buses.

7. This Petitioner has been operating his busing business at the present property since 1965.

8. There were several abutters present who supported the Petitioner and who spoke in favor of the variance. There were no objections.

FINDING OF FACTS

1. The Petitioner, Michael Gulbankian, operates a school and chartered bus business in a Residential A District. The Petitioner transports all of Southborough's bused school children to their respective schools.

2. He employs only two (2) full-time people and bus drivers according to the demand of the buses.

3. The business has been in this location since 1965 and has presented no problems.

4. There are several commercial businesses adjacent to or abutting upon the Petitioner site.

5. The business is well established and the Petitioner would be substantially injured, financial and otherwise, if he was not allowed to run this type of business at this location.

6. The Board found that the business had not caused any problems and several abutters present spoke in favor of the business. There were no objections.

7. The Petitioner also agreed to cleanup the area to the rear of the property and remove some of the old trucks and machinery.

8. The Board of Appeals, based upon the evidence presented at the hearing, including but not limited to the facts presented above, voted UNANIMOUSLY to

GRANT

20-23

6/22/83 - Mt. Vickery/Cordaville Roads (20-23)
Page 3

the variance. The Board felt there would be a hardship, financial and otherwise, if the variance was not granted. The business has been there close to twenty years and is well established. The Petitioner, if he were able to find another site, would have an enormous financial problem if he were to have to store his buses elsewhere. There is sufficient off-street parking for the employees and granting the variance does not derogate from the neighborhood.

Joseph F. Prior, Jr., Chairman

Joseph F. Prior Jr.

from the desk of
A. JEAN McCAW

It was determined by the Zoning Administrator
and Town Counsel that a Special Permit is not
necessary as long as his business vehicles are
not part of the building.

[Handwritten signature]

ATTEST: WARD. Anthony J. Vigliotti, Register



OFFICE OF THE
TOWN CLERK
SOUTHBOROUGH, MASSACHUSETTS 01772
485-0710 Ext 4-7

DUJRS
MON 11 FRI 900 500
TUE 8V 7 10 R30



Bk: 45831 Pg: 186
Page: 1 of 6 05/26/2010 11:07 AM

Property Address: 40 Mt. Vickery Road, Southborough, MA

I, Paul J. Berry, Town Clerk of the Town of Southborough,
Massachusetts, hereby certify as follows:

1. The attached is a true copy of the Southborough Board of Appeals decision dated June 22, 1983, at 8:15 P.M. relative to a petition of Michael G. Gulbankian
2. The original thereof was filed with me as said Clerk on July 6, 1983; at 1:14 P.M.
3. Twenty (20) days have elapsed since said filing; and
4. No appeal therefrom has been filed.

Witness my hand and the Town seal of Southborough this
25th day of July, 1983, at 1:30 P.M.

A true copy:

Paul J. Berry

Attest:

PAUL J. BERRY, TOWN CLERK

(SEAL)

Jew

A True Copy
Attest:
Paul J. Berry
Town Clerk, Southborough

RECORDED
TOWN OF SOUTHBOROUGH

Receipt of the above is hereby acknowledged on 7/26/83 date

Pat. Jean DeC...
signature

TOWN CLERKS OFFICE

Paul J. Berry

RETURN TO:
MURTHA CULLINA, LLP
99 HIGH STREET
BOSTON, MA 02110-2320
ATTN: PAT O'HALLORAN

3

Exhibit "H"



Town of Southborough
Board of Appeals
Southborough, Massachusetts 01772
17 Common Street
P.O. Box 9109
Southborough, MA 01772-9109
508-485-0710

RECEIVED
TOWN CLERK'S OFFICE

2011 FEB 25 A 11:14

SOUTHBOROUGH, MA *JN*

Paul J. Berry
Town Clerk
Town House
Southborough, MA 01772

Book 32556 Page 366

NOTICE OF DECISION

**APPLICATION FOR
A VARIANCE**

**Hye Limited Partnership
40 Mt. Vickery Road
(20-23)**

The Board of Appeals of the Town of Southborough held a series of public hearings, beginning on June 23, 2010 and continued through a series of hearings (July 28, 2010, August 25, 2010, September 22, 2010, October 27, 2010 and December 1, 2010) until January 26, 2011, with regard to the petition from Hye Limited Partnership. The Petitioner is seeking a use Variance from the provisions of the Zoning By-Law for an additional use on the subject property that is not otherwise permitted on the subject property according to Sections 174-8.2-A and B of the Town's Zoning By-Law. The Petitioner intends to operate a general machine shop, specializing in engine rebuilding, on the site.

Sitting as a Board:

Sam R. Stivers, Chairman
Regina McAuliffe
Edward D. Estella
Matthew C. Hurley
Leo F. Bartolini, Jr.

For Petitioner:

Kathleen E. Connolly, Esq.
Murtha Cullina LLP
99 High Street
Boston, MA 02110

2011 FEB 25
Town Clerk, Southborough

Variance – Page 2
Hye Limited Partnership
40 Mt. Vickery Road (20-23)
January 26, 2011

Evidence Presented

1. The Petitioner was previously granted two use Variances for the Residence-A zoned site: (i) a Variance granted on June 22, 1983 "for the purpose of conducting a commercial and school busing business and garaging of same" and (ii) a Variance on November 9, 1988 "to construct a garage to repair and maintain the bus fleet". Together, these prior Variances are referred to as the "Prior Variances".
2. The Petitioner proposes to park school buses on the site, pursuant to a lease with North Reading Transportation Company.
3. The Petitioner proposes to operate a general machine shop, specializing in engine rebuilding, on the site. Sections 174-8.2-A and B of the town's zoning regulations set out the uses allowed in this zoning district, and the proposed machine shop use is not included in the listing of the permitted uses for this zoning district.
4. The Building Inspector, in a letter dated April 7, 2010, required that the Petitioner apply for a use Variance for the operation of a garage and machine shop on the site. A copy of this letter, and all other documents referenced in this decision, are in the permanent file (the "Permanent File") for this matter, which is available at the Town Building Department.
5. As part of the Variance Application, filed on May 24, 2010, the Petitioner provided a statement of the zoning history of the site and the Petitioner's reasons that the Board should grant the Variance as applied for.
6. During the course of the seven hearings held by the Board to consider this application, the Board heard comments from many abutters, Town Boards, Town staff and other interested parties—in addition to comments and communications from the Petitioner and the Petitioner's representatives. These comments are detailed in the meeting minutes and the many communications presented to the Board during the course of the hearings and are available for review in the Permanent File.
7. The public input, including from direct abutters, at the hearings and as described in communications in the Permanent File which was in favor of the granting of the Variance included comments expressing the following opinions:
 - a. the Petitioner's Prior Variances provide sufficient relief for the proposed use;
 - b. the Petitioner has been in business on the site for many years without disturbance to the abutters or to the neighborhood, so this proposed use should also be permitted;
 - c. the abutters in the Vickery Hills condominium development who opposed the proposed use were aware of the bus and garage operations when they

Variance – Page 4
Hye Limited Partnership
40 Mt. Vickery Road (20-23)
January 26, 2011

documents presented by various parties at the hearings (details of which are available in the Permanent File) that:

- a. the abutters' concerns regarding potential traffic related public safety issues associated with the proposed additional use are credible and that these concerns need to be addressed;
 - b. the abutters' concerns regarding potential visual impact on surrounding properties related to the proposed additional use are credible and that these concerns need to be addressed;
 - c. the abutters' concerns regarding potential environmental issues related to the proposed additional use are credible and that these concerns need to be addressed; and
 - d. the abutters' concerns regarding potential noise, dust, light and exhaust fumes issues related to the proposed additional use are credible and that these concerns need to be addressed.
4. The Board finds that the concerns expressed by the abutters and others during the hearings on the Petitioner's application may be reasonably mitigated through imposing certain conditions as part of a grant of the requested Variance.
 5. The Board finds that the requested Variance, with appropriate conditions, will not derogate from the intent and purpose of MGL c.40A and/or the By-Laws of the Town of Southborough and will not be in conflict with the public health, safety, convenience and welfare and will not be substantially detrimental or offensive to the neighborhood or destructive of property values.
 6. The Board finds that owing to the shape of the lot and the placement of the buildings on the lot, especially affecting Petitioner's land and buildings but not affecting generally the zoning district in which they are located, literal enforcement of the By-Laws would involve substantial hardship to the Petitioner and desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the zoning regulations.

Therefore, the Board of Appeals, based on the evidence presented at the hearings, including but not limited to the facts presented above, by a vote of 5-0 on a motion made by Board Member Hurley and seconded by Board Member Bartolini, GRANTS A USE VARIANCE to Hye Limited Partnership to operate a general machine shop, specializing in engine rebuilding, on the site, per the Plans, located in "Existing Garage - 1" as shown on the Plans, and further subject to the following conditions:

- 1) The site improvements as shown on the Plans (labeled as "Proposed Minor Site Plan of Lot 1/3 Mount Vickery Road in Southborough, MA; Sheets 1, 2, 3 and 4 plus one additional colored Sheet 2 marked as "Color Rendering"; prepared by Connorstone Engineering, 10 Southwest Cutoff, Northborough, MA" with a latest

Variance – Page 5
Hye Limited Partnership
40 Mt. Vickery Road (20-23)
January 26, 2011

revision date of January 27, 2011) shall be completed no later than September 1, 2011; provided that any new paving required for the site shall be completed by September 1, 2011 for the binder coat only, and the final paving work shall be fully completed by no later than September 1, 2012.

- 2) Bus parking will be allowed only in the existing bus garage (labeled as "Existing Garage – 2" on the Plans) and on the paved, marked bus parking area as shown on Plans, with bus parking confined to these areas at all times.
- 3) Bus maintenance and repair (excluding emergency repairs) will be conducted only in or adjacent to the existing bus garage building (labeled as "Existing Garage – 2" on the Plans) and such maintenance and repair will be permitted for only those buses permitted to be parked on and operating from the property; this specifically excludes general vehicle (including bus) repair or maintenance for other vehicles, provided that operation of the general machine shop, specializing in engine repair, on the site is permitted subject to the conditions of a separate Special Permit.
- 4) Hours of operation for the general machine shop, specializing in engine repair, located in "Existing Garage – 1" as shown on the Plans, shall be limited to 8:00AM—6:00PM, Monday-Saturday.
- 5) Storage of bulk materials anywhere on the portion of the site designated on the Plans (specifically on Sheet 1 of 4, shown as a hatched area of approximately 3.0± acres) as the "Industrial Use Area" is permitted only in areas as designated on the Plans, in bins or otherwise in a way to keep such materials separated from one another by type. Relative to the storage of bulk materials and other activities conducted in the "Industrial Use Area" as designated on the Plans, the Applicant shall comply with all Town regulations and bylaws applicable to commercial operations.
- 6) Stormwater drainage and filtration systems shall be installed as shown on the Plans, and such stormwater drainage and filtration systems shall be maintained on an ongoing basis by the Petitioner as may be specified from time to time by the Town Engineer.
- 7) Designated parking for bus driver personal vehicles shall be available and used in spaces along Mt. Vickery Road as shown on the Plans.
- 8) Ingress/egress to/from the site by school buses shall occur only at the site access point on Cordaville Road as designated on the Plans, and as may be further modified from time to time by the Town Police Chief to mitigate public safety and traffic concerns.
- 9) Bus parking shall be arranged and managed to provide for minimum practicable bus reverse movement in the mornings (to minimize back up alarm noise in the mornings) and to provide for bus engine fumes to be directed as much as reasonably possible toward Mt. Vickery Road and away from residential areas.
- 10) The hours of operation for the school buses shall be limited to 5:30 AM to 6:00 PM Monday-Friday and 7:00 AM to 5:00 PM on Saturdays—all excepting emergency activities.
- 11) Illumination on the site shall be as shown on the Plans, with the objective of reducing the light and glare visible from neighboring properties.
- 12) Evergreen screening shall be planted on the site as shown on the Plans. Because

Variance – Page 6
Hye Limited Partnership
40 Mt. Vickery Road (20-23)
January 26, 2011

of the Board's concern about the landscaping sufficiency near the southwest corner of the site and the discussion of such landscaping at the hearings, the Board may, at any time up to one year after all landscaping shown on the plans has been planted, review the adequacy of such landscaping near the southwest corner of the site and the Board may determine that up to an additional eight (8) evergreens of similar size to those already in place may be required to be planted by the Petitioner to provide adequate screening. Any landscaping screening planted by the Petitioner pursuant to this decision shall be maintained to at least the initial specifications on an ongoing basis by the Petitioner.

- 13) Only environmentally safe snow/ice removal materials shall be used on the site (for example, Magic Salt™, or equivalent products). There shall be no use of standard salt for snow/ice removal on the site.
- 14) Snow storage on the site shall be limited to only those areas so designated on the Plans.
- 15) As-built plans acceptable to the Building Inspector shall be submitted to the Building Inspector no later than September 1, 2011, by which time the required site work as shown on the Plans must be completed (excepting the final paving work which is not required to be completed until September 1, 2012).

In favor: Stivers, Estella, Hurley, McAuliffe, Bartolini

Opposed: None



Sam R. Stivers, Chairman

Notice: Appeals, if any, shall be made pursuant to MGL, C. 40A, s.17, and shall be filed within twenty (20) days after the filing of this notice in the Office of the Southborough Town Clerk.

Notice: Rights Granted by a Variance: If the rights authorized by a variance are not exercised within one year of the date of grant of such variance, such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period. If the permit granting authority does not grant such extension within thirty days of the date of application therefor, and upon the expiration of the original one year period, such rights may be re-established only after notice and a new hearing pursuant to the provisions of Massachusetts General Laws, Chapter 40A, section 10.



The Commonwealth of Massachusetts
Town of Southborough
Board of Appeals

Date: January 26, 2011

Certificate of Granting of Variance
(General Laws Chapter 40A, Section 11)

The Board of Appeals of the Town of Southborough hereby certifies that a Variance has been granted:

To: Hye Limited Partnership
Address: 40 Mt. Vickery Road (20-23)
Town: Southborough, Massachusetts

affecting the rights of the owner with respect to land or buildings at:

40 Mt. Vickery Road, Southborough, Massachusetts (20-23)

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said Variance and that copies of said decision, and of all plans referred to in the decision, have been filed with the Planning Board and the Town Clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no Variance or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty days have elapsed after the decision has been filed in the Office of the Town Clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

Sam R. Stivers, Chairman

Town Clerk



**OFFICE OF THE SOUTHBOROUGH
TOWN CLERK
17 COMMON STREET
SOUTHBOROUGH, MASSACHUSETTS
01772-1662
(508)-489-0710**

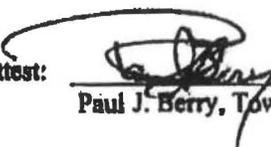
**BOARD OF APPEALS
CERTIFICATION
(20 DAYS HAVE ELAPSED)**

I, Paul J. Berry, Town Clerk of the Town of Southborough, Massachusetts, hereby certify as follows:

1. The original Zoning Board of Appeals Application thereof was filed with me as said Town Clerk on May 24, 2010 at 4:13 PM.
2. The Southborough Board of Appeals Decision dated January 26, 2011 relative to a petition of Hye Limited Partnership, 40 Mt. Vickery Road, for a Variance was filed with the Town Clerk on February 25, 2011 at 11:14 AM.
3. A copy of the original appeal filed with the Clerk of Courts, Worcester County, was received and filed in the office of the Town Clerk on March 16, 2011 at 3:32 PM.

Witness my hand and the Town Seal of Southborough this 18th day of March 2011 at 9:00 AM.

A True Copy Attest:


Paul J. Berry, Town Clerk

TOWN SEAL

Return to:
CATANZARO and ALLEN
Attorneys at Law
100 Waverly Street
Ashland, MA 01721

40 Mt. Vickery Road, Southborough, MA

10

next 10



**OFFICE OF THE SOUTHBOROUGH
TOWN CLERK
17 COMMON STREET
SOUTHBOROUGH, MASSACHUSETTS
01772-1662
(508)-485-0710**

**BOARD OF APPEALS
CERTIFICATION
(20 DAYS HAVE ELAPSED)**

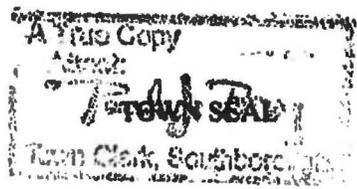
40 Mt. Vickery Road, Southborough, MA

I, Paul J. Berry, Town Clerk of the Town of Southborough, Massachusetts, hereby certify as follows:

1. The original Zoning Board of Appeals Application thereof was filed with me as said Town Clerk on May 24, 2010 at 4:13 PM.
2. The Southborough Board of Appeals Decision dated January 26, 2011 relative to a petition of Hye Limited Partnership, 40 Mt. Vickery Road, for a Special Permit was filed with the Town Clerk on February 25, 2011 at 11:14 AM.
3. A copy of the original appeal filed with the Clerk of Courts, Worcester County, was received and filed in the office of the Town Clerk on March 16, 2011 at 3:32 PM.

Witness my hand and the Town Seal of Southborough this 18th day of March 2011 at 9:00 AM.

A True Copy Attest: 
Paul J. Berry, Town Clerk



Return to:
CATANZARO and ALLEN
Attorneys at Law
100 Waverly Street
Ashland, MA 01721

(2)

sent 10



Town of Southborough
Board of Appeals
Southborough, Massachusetts 01772
17 Common Street
P.O. Box 9109
Southborough, MA 01772-9109
508-483-0710

RECEIVED
TOWN CLERK'S OFFICE

2011 FEB 25 A 11: 14

SOUTHBOROUGH, MA *JH*

Paul J. Berry
Town Clerk
Town House
Southborough, MA 01772

Book 32556 Page 366

NOTICE OF DECISION

**APPLICATION FOR
A SPECIAL PERMIT**

**Hye Limited Partnership
40 Mt. Vickery Road
(20-23)**

The Board of Appeals of the Town of Southborough held a series of public hearings, beginning on June 23, 2010 and continued through a series of hearings (July 28, 2010, August 25, 2010, September 22, 2010, October 27, 2010 and December 1, 2010) until January 26, 2011, with regard to the petition from Hye Limited Partnership. The Petitioner is seeking a Special Permit relative to Section 174-B-C (2) for an additional use on the subject property. The Petitioner intends to operate a general machine shop, specializing in engine rebuilding, on the site.

Sitting as a Board: Sam R. Stivers, Chairman
Regina McAuliffe
Edward D. Estella
Matthew C. Hurley
Leo F. Bartolini, Jr.

For Petitioner: Kathleen E. Connolly, Esq.
Murtha Cullina LLP
99 High Street
Boston, MA 02110

Paul J. Berry
Town Clerk, Southborough

Special Permit—Additional Use—Page 2
Hye Limited Partnership
40 Mt. Vickery Road (20-23)
January 26, 2011

Evidence Presented

1. The Petitioner was previously granted two use Variances for the Residence-A zoned site: (i) a Variance granted on June 22, 1983 “for the purpose of conducting a commercial and school busing business and garaging of same” and (ii) a use Variance on November 9, 1988 “to construct a garage to repair and maintain the bus fleet”. Together, these prior Variances are referred to as the “Prior Variances”.
2. The Petitioner proposes to operate a general machine shop, specializing in engine rebuilding, on the site. Section 174-8-C (2) of the Town’s zoning regulations limit to one the number of principal permitted uses on a site, without a Special Permit from the Board for any additional uses. Sections 174-8.2-A and B of the town’s zoning regulations set out the uses allowed in this zoning district, and the proposed machine shop use is not included in the listing of the permitted uses for this zoning district.
3. The Building Inspector, in a letter dated April 7, 2010, required that the Petitioner apply for a Special Permit for the operation of a machine shop on the site, as he states that this use is not permitted pursuant to the Prior Variances. A copy of this letter from the Building Inspector, and all other documents referenced in this decision, are in the permanent file (the “Permanent File”) for this matter, which is available at the Town Building Department. The Petitioner has applied pursuant to a separate application for a use Variance to allow the machine shop use on the site.
4. As part of the Special Permit Application, filed on May 24, 2010, the Petitioner provided a statement of the zoning history of the site and the Petitioner’s reasons that the Board should grant the Special Permit as applied for.
5. During the course of the seven hearings held by the Board to consider this application, the Board heard comments from many abutters, Town Boards, Town staff and other interested parties—in addition to comments and communications from the Petitioner and the Petitioner’s representatives. These comments are detailed in the meeting minutes and the many communications presented to the Board during the course of the hearings and are available for review in the Permanent File.
6. The public input, including from direct abutters, at the hearings and as described in communications in the Permanent File which was in favor of the granting of the Special Permit included comments expressing the following opinions:
 - a. the Petitioner’s Prior Variances provide sufficient relief for the proposed use;

Special Permit—Additional Use—Page 3
Hye Limited Partnership
40 Mt. Vickery Road (20-23)
January 26, 2011

- b. the Petitioner has been in business on the site for many years without disturbance to the abutters or to the neighborhood, so this proposed use should also be permitted;
 - c. the abutters in the Vickery Hills condominium development who opposed the proposed use were aware of the bus and garage operations when they purchased their properties (as disclosed in the condominium documents);
 - d. the Town should support the operation of small businesses such as the one operated by the Petitioner and should not deny individuals the ability to make a living with such small businesses; and
 - e. the Town's lack of enforcement over the past years relative to the activities on the site creates an obligation on the part of the Town to not now impose the requirements of the Zoning By-Law on the Petitioner.
7. The public input, including from direct abutters, at the hearings and as described in communications in the Permanent File which was opposed to the granting of the Special Permit included comments expressing the following opinions:
 - a. the proposed use would add to traffic moving into and out of the site, thereby creating a possible public safety issue;
 - b. the proposed use would have adverse visual impact on surrounding properties;
 - c. the proposed use would have adverse environmental impact on the site and surrounding properties; and
 - d. the proposed use would create additional noise, dust, light and exhaust fumes, adversely affecting surrounding properties.
8. Based on the discussions at the hearings and at the request of the Board, the Petitioner provided updated site plan drawings (the "Plans") to the Board. The Plans are labeled as "Proposed Minor Site Plan of Lot 1/3 Mount Vickery Road in Southborough, MA; Sheets 1, 2, 3 and 4 plus one additional colored Sheet 2 marked as "Color Rendering"; prepared by Connorstone Engineering, 10 Southwest Cutoff, Northborough, MA" and have a latest revision date of January 27, 2011. The Plans provide site and engineering details proposed by the Petitioner to address the concerns of the Board and those who commented on the Application. The Plans are available in the Permanent File.
9. The Board, having gathered the necessary information relative to the Application and hearing no additional requests to speak to the matter, closed public input to the hearing process at 8:40 PM on January 26, 2011 and began its deliberations at that time.

Special Permit—Additional Use—Page 4
Hye Limited Partnership
40 Mt. Vickery Road (20-23)
January 26, 2011

Findings and Decision

1. The Board finds that the Petitioner has complied with all rules and regulations of the Town of Southborough as they pertain to the applications for a Special Permit.
2. The Board finds that the Petitioner's Prior Variances do not provide relief for the proposed machine shop use.
3. The Board finds that, based on the statements made at the public hearings and the documents presented by various parties at the hearings (details of which are available in the Permanent File) that:
 - a. the abutters' concerns regarding potential traffic related public safety issues associated with the proposed additional use are credible and that these concerns need to be addressed;
 - b. the abutters' concerns regarding potential visual impact on surrounding properties related to the proposed additional use are credible and that these concerns need to be addressed;
 - c. the abutters' concerns regarding potential environmental issues related to the proposed additional use are credible and that these concerns need to be addressed; and
 - d. the abutters' concerns regarding potential noise, dust, light and exhaust fumes issues related to the proposed additional use are credible and that these concerns need to be addressed.
4. The Board finds that the concerns expressed by the abutters and others during the hearings on the Petitioner's application may be reasonably mitigated through imposing certain conditions as part of a grant of the requested Special Permit.
5. The Board finds that the grant of the Special Permit, with appropriate conditions, does not derogate from the intent and purpose of MGL c.40A and/or the bylaws of the Town of Southborough.
6. The Board further finds that the use sought and its characteristics, with appropriate conditions, are in harmony with the intent and purpose of the Southborough Zoning Bylaw and shall not be in conflict with the public health, safety, convenience and welfare and shall not be substantially detrimental or offensive to the neighborhood or destructive of property values therein.

Therefore, the Board of Appeals, based on the evidence presented at the hearings, including but not limited to the facts presented above, by a vote of 5-0 on a motion made by Board Member Hurley and seconded by Board Member Bartolini, **GRANTS A SPECIAL PERMIT** to Hye Limited Partnership for an additional use on the site to operate a general machine shop specializing in engine rebuilding per the Plans, Specifications and Conditions for the proposed use, and that the use is subject to the

Special Permit—Additional Use—Page 5
Hye Limited Partnership
40 Mt. Vickery Road (20-23)
January 26, 2011

following conditions:

- 1) The site improvements as shown on the Plans (labeled as "Proposed Minor Site Plan of Lot 1/3 Mount Vickery Road in Southborough, MA; Sheets 1, 2, 3 and 4 plus one additional colored Sheet 2 marked as "Color Rendering"; prepared by Connorstone Engineering, 10 Southwest Cutoff, Northborough, MA" with a latest revision date of January 27, 2011) shall be completed no later than September 1, 2011; provided that any new paving required for the site shall be completed by September 1, 2011 for the binder coat only, and the final paving work shall be fully completed no later than September 1, 2012.
- 2) Bus parking will be allowed only in the existing bus garage (labeled as "Existing Garage - 2" on the Plans) and on the paved, marked bus parking area as shown on Plans, with bus parking confined to these areas at all times.
- 3) Bus maintenance and repair (excluding emergency repairs) will be conducted only in or adjacent to the existing bus garage building (labeled as "Existing Garage - 2" on the Plans) and such maintenance and repair will be permitted for only those buses permitted to be parked on and operating from the property; this specifically excludes general vehicle (including bus) repair or maintenance for other vehicles, provided that operation of the general machine shop, specializing in engine repair, on the site is permitted subject to the conditions of this Special Permit.
- 4) Hours of operation for the general machine shop, specializing in engine repair, located in "Existing Garage - 1" as shown on the Plans, shall be limited to 8:00AM—6:00PM, Monday-Saturday.
- 5) Storage of bulk materials anywhere on the portion of the site designated on the Plans (specifically on Sheet 1 of 4, shown as a hatched area of approximately 3.0± acres) as the "Industrial Use Area" is permitted only in areas as designated on the Plans, in bins or otherwise in a way to keep such materials separated from one another by type. Relative to the storage of bulk materials and other activities conducted in the "Industrial Use Area" as designated on the Plans, the Applicant shall comply with all Town regulations and bylaws applicable to commercial operations.
- 6) Stormwater drainage and filtration systems shall be installed as shown on the Plans, and such stormwater drainage and filtration systems shall be maintained on an ongoing basis by the Petitioner as may be specified from time to time by the Town Engineer.
- 7) Designated parking for bus driver personal vehicles shall be available and used in spaces along Mt. Vickery Road as shown on the Plans.
- 8) Ingress/egress to/from the site by school buses shall occur only at the site access point on Cordaville Road as designated on the Plans, and as may be further modified from time to time by the Town Police Chief to mitigate public safety and traffic concerns.
- 9) Bus parking shall be arranged and managed to provide for minimum practicable bus reverse movement in the mornings (to minimize back up alarm noise in the mornings) and to provide for bus engine fumes to be directed as much as reasonably possible toward Mt. Vickery Road and away from residential areas.

Special Permit—Additional Use—Page 6
Hye Limited Partnership
40 Mt. Vickery Road (20-23)
January 26, 2011

- 10) The hours of operation for the school buses shall be limited to 5:30 AM to 6:00 PM Monday-Friday and 7:00 AM to 5:00 PM on Saturdays—all excepting emergency activities.
- 11) Illumination on the site shall be as shown on the Plans, with the objective of reducing the light and glare visible from neighboring properties.
- 12) Evergreen screening shall be planted on the site as shown on the Plans. Because of the Board's concern about the landscaping sufficiency near the southwest corner of the site and the discussion of such landscaping at the hearings, the Board may, at any time up to one year after all landscaping shown on the plans has been planted, review the adequacy of such landscaping near the southwest corner of the site and the Board may determine that up to an additional eight (8) evergreens of similar size to those already in place may be required to be planted by the Petitioner to provide adequate screening. Any landscaping screening planted by the Petitioner pursuant to this decision shall be maintained to at least the initial specifications on an ongoing basis by the Petitioner.
- 13) Only environmentally safe snow/ice removal materials shall be used on the site (for example, Magic Salt™, or equivalent products). There shall be no use of standard salt for snow/ice removal on the site.
- 14) Snow storage on the site shall be limited to only those areas so designated on the Plans.
- 15) As-built plans acceptable to the Building Inspector shall be submitted to the Building Inspector no later than September 1, 2011, by which time the required site work as shown on the Plans must be completed (excepting the final paving work which is not required to be completed until September 1, 2012).

In favor: Stivers, Estella, Hurley, McAuliffe, Bartolini

Opposed: None



Sam R. Stivers, Chairman

Notice: Appeals, if any, shall be made pursuant to Massachusetts General Law, Chapter 40A, s.17, and shall be filed within twenty (20) days after the filing of this notice in the Office of the Town Clerk, Town Hall, Southborough, Massachusetts.



The Commonwealth of Massachusetts
Town of Southborough
Board of Appeals

Date: January 26, 2011

Certificate of Granting of Special Permit
(General Laws Chapter 40A, Section 11)

The Board of Appeals of the Town of Southborough hereby certifies that a Special Permit has been granted:

To: Hve Limited Partnership, 40 Mt. Vickery Road

Town: Southborough, MA 01772

affecting the rights of the owner with respect to land or buildings at:

40 Mount Vickery Road, Southborough, MA

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said special permit, and that copies of said decision, and of all plans referred to in the decision, have been filed with the Planning Board and the Town Clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no Special Permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty days have elapsed after the decision has been filed in the Office of the Town Clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

Sam R. Stivers, Chairman

Town Clerk

**Commonwealth of Massachusetts
County of Worcester
The Superior Court**

CIVIL DOCKET#: WOCV2011-00495-E

RE: Hye Limited Partnership v Southborough et al

**TO: Aldo A Cipriano, Esquire
277 Main St Victoria Building
2nd Level Atrium Ste
Marlborough, MA 01752**

RECEIVED
2012 OCT 11 P 3:51

NOTICE OF DOCKET ENTRY

You are hereby notified that on 10/04/2012 the following entry was made on the above referenced docket:

Notice of docket entry received from Appeals Court respect to Stipulation of Dismissal (paper #8) on October 2, 2012 the following Order RE#8: Appeal dismissed with prejudice and without an award of costs or fees to any party. Copies mailed 10-04-2012

Dated at Worcester, Massachusetts this 4th day of October, 2012.

**Dennis P. McManus, Esq.,
Clerk of the Courts**

**BY: Catherine Brennan
Assistant Clerk**

Telephone: 508-831-2356 (Session Clerk) or 508-831-2350

[Faint, illegible stamp or signature]

10/4

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT CLERK'S OFFICE
John Adams Courthouse
One Pemberton Square, Suite 1200
Boston, Massachusetts 02108-1706
(617) 725-8108; mass.gov/courts/appealscourt

RECEIVED
2012 OCT 11 3:31

October 2, 2012

Worcester Superior Court Dept.
Clerk for Civil Business
225 Main Street
Worcester, MA 01608

FILED

OCT 04 2012

ATTEST: *Del. Hahn* CLERK

RE: No. 2012-P-0994
Lower Ct. No.: WOCV2011-00495 E

10/4

**HYE LIMITED PARTNERSHIP vs. TOWN OF SOUTHBOROUGH & others
NOTICE OF DOCKET ENTRY**

Please take note that, with respect to the Stipulation of dismissal pursuant to M.R.A.P. 29(b), filed by Hye Limited Partnership, Town of Southborough, Chairman of Town of Southborough Board of Appeals, & Town of Southborough Board of Appeals. (Paper #8), on October 2, 2012, the following order was entered on the docket:

RE#8: Appeal dismissed with prejudice and without an award of costs or fees to any party, pursuant to M.R.A.P. 29(b). *Notice/Attest.

ELECTRONIC NOTIFICATION. The Clerk's Office requests that all counsel of record and self-represented litigants register to receive electronic (i.e., e-mail) notification of actions, orders, judgments, rescripts, and decisions entered by the Appeals Court, including notices scheduling oral argument, in an appeal in which they are participating .

HOW TO REGISTER. Registration is simple. Visit the e-notification page of the court's website at mass.gov/courts/appealscourt/e-notification.html and click on Consent to Electronic Notification Form. Complete and print a copy of the form, then email it to enoticesignup@apct.state.ma.us.

FILINGS AFTER ASSIGNMENT OF APPEAL TO PANEL. Once an appeal is assigned to a panel for consideration on the merits, with or without oral argument, all further filings in the appeal are required to be filed electronically by e-mailing the document in PDF to emotions@apct.state.ma.us.

FILING OF CONFIDENTIAL OR IMPOUNDED INFORMATION. When filing any document containing confidential, impounded, or sealed material, compliance with Mass.R.App.P. 16(d), 16(m), 18(a), 18(g), and the S.J.C.'s Interim Guidelines for the Protection of Personal Identifying Information is required.

Very truly yours,
The Clerk's Office

ATTEST: WORC. Anthony J. Vigliotti, Registrar

Exhibit "I"

**Commonwealth of Massachusetts
County of Worcester
The Superior Court**

CIVIL DOCKET#: WOCV2011-00495-E

RE: Hye Limited Partnership v Southborough et al

**TO: Aldo A Cipriano, Esquire
277 Main St Victoria Building
2nd Level Atrium Ste
Marlborough, MA 01752**

TOWN RECEIVED
2012 OCT 11 P 3:31

NOTICE OF DOCKET ENTRY

You are hereby notified that on 10/04/2012 the following entry was made on the above referenced docket:

Notice of docket entry received from Appeals Court respect to Stipulation of Dismissal (paper #8) on October 2, 2012 the following Order RE#8: Appeal dismissed with prejudice and without an award of costs or fees to any party. Copies mailed 10-04-2012

Dated at Worcester, Massachusetts this 4th day of October, 2012.

Dennis P. McManus, Esq.,
Clerk of the Courts

BY: Catherine Brennan
Assistant Clerk

Telephone: 508-831-2356 (Session Clerk) or 508-831-2350

A True Copy
Attest:
Paul J. Brennan
Town Clerk, Southborough

10/4

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT CLERK'S OFFICE
John Adams Courthouse
One Pemberton Square, Suite 1200
Boston, Massachusetts 02108-1705
(617) 725-8108; mass.gov/courts/appealscourt

Town RECEIVED
2012 OCT 11 3:01

October 2, 2012

Worcester Superior Court Dept.
Clerk for Civil Business
225 Main Street
Worcester, MA 01608

FILED

OCT 04 2012

ATTEST: *[Signature]* CLERK

RE: No. 2012-P-0994
Lower Ct. No.: WOCV2011-00495 **E**

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Very truly yours,
The Clerk's Office

ATTEST: WORC. Anthony J. Vigliotti, Register

Exhibit "J"

Locus: Cordaville Rd. & Mt. Vickery Rd., Southborough, MA

DECLARATION OF RESTRICTION ON THE USE OF LAND

This Declaration of Restriction on the use of land (this "Declaration") is made as of the 6th day of June, 2016 by The Hye Limited Partnership, a Massachusetts limited partnership with an address of 40-42 Mount Vickery Road, Southborough, Massachusetts ("Declarant") to and for the benefit of the Town of Southborough, a duly organized and existing municipal corporation in the Commonwealth of Massachusetts, its heirs and successors, with an address of Town House, 17 Common Street, Southborough, Massachusetts ("the Town").

WITNESSETH

WHEREAS, Declarant is the owner of an 8.213 +/- acre parcel of land situated at the southeast corner of Cordaville Road (Rte. 85) and Mt. Vickery Road in Southborough, Worcester County, Massachusetts, shown as "Lot 1/3" on a plan entitled "Plan of Land in Southborough, MA", prepared by Connorstone, prepared for Michael G. & Alice D. Gulbankian, dated September 13, 2005, recorded with Worcester District Registry of Deeds as Plan 59 in Plan Book 832, and is more particularly described in Exhibit A attached hereto and incorporated by reference herein (the "Subject Parcel"); and

WHEREAS, in settlement of previous civil actions, Declarant and the Town have agreed to cooperate in good faith to replace the current bus facility on the Subject Parcel and to impose a land use restriction that prohibits future bus use of the Subject Parcel.

NOW, THEREFORE, Declarant hereby declares, grants, agrees and covenants that the Subject Parcel shall be held, conveyed, encumbered, leased, used or occupied subject to the following terms and provisions of this Declaration:

1. Restriction Against Bus Uses. Effective July 1, 2016, and from and after such date, the Subject Parcel shall not be used, occupied, leased or licensed for the parking, maintenance, storage and/or repair of buses, ("Bus Uses"). The foregoing restrictions on the Subject Parcel are granted and declared pursuant to the provisions of M.G.L. c. 184, §26-30, as amended.

2. Declarant Reservation of Rights. No right of entry to or other property interest in the Subject Parcel is granted under this Declaration. The Declarant reserves the right to use the Subject Parcel for all purposes (other than Bus Uses) as permitted by applicable law.

3. Rights of Enforcement. The restrictions on the Subject Parcel as established herein (the "Restrictions") are granted, declared and imposed for the benefit of the Town being referred to herein as the "Benefitted Party". The Declarant hereby posits that the Restrictions prohibiting bus use are of actual and substantial benefit to the Town, it being

understood that the Town will reasonably accommodate use of the Subject Parcel for other (non-bus) commercial and industrial purposes in a manner that is of actual and substantial benefit to the Declarant.

The Restrictions shall be enforceable solely by the Benefitted Party, and, without limitation of any other remedy at law or in equity, any violation or threatened violation of any of the Restrictions set forth in this Declaration shall be grounds for an action for injunctive relief against any such violation or threatened violation, and related declaratory relief. Unless otherwise provided under applicable law, this Declaration of Restriction on the use of land may not be amended, modified, limited or terminated without the written agreement of the Town of Southborough (as the Benefitted Party) and the Declarant (or then-current record owner of Subject Parcel).

The Restrictions established under this Declaration are subject to the Town's agreement that it will cooperate in good faith with Declarant's replacement of the Bus Uses on the Subject Parcel. In the event the Town fails to cooperate in good faith with respect to Declarant's replacement of the Bus Uses on the Subject Parcel, such failure shall constitute a defense to any effort by the Town to enforce this Declaration.

4. Covenants Run With the Land. The terms, covenants, restrictions and encumbrances set forth in this Declaration shall run with the land of the Subject Parcel, and shall be binding on Declarant, their heirs, devisees, successors and assigns, and any and all other persons and entities from time to time having any rights, title or interest in the Subject Parcel.

5. Cooperation. The Declarant has entered this Declaration and imposed these Restrictions in reliance on the Town's prior agreement to cooperate in good faith with Declarant's replacement of the Bus Uses on the Subject Parcel by taking all appropriate action, including, without limitation, action on applications for zoning permits and approvals as identified in the parties' Settlement Agreement. In the event of any disagreement concerning the permits and approvals associated with such bus replacement use, the parties will use best efforts to resolve such disagreement consistent with the objectives of their Settlement Agreement.

6. Applicable Law. This Declaration shall be interpreted, construed and enforced in accordance with and subject to the laws of the Commonwealth of Massachusetts.

7. Authority. The Declarant hereby represents and warrants to the Town that it is duly authorized to enter into this Declaration and bind the Declarant and the Subject Parcel to the terms, covenants and restrictions set forth herein, and that that the persons executing this Declaration on its behalf are duly authorized to enter into this Declaration.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the day and year first above written.

Declarant

THE HYE LIMITED
PARTNERSHIP a Massachusetts
limited partnership

By: Michael G. Gulbankian
Michael G. Gulbankian
General Partner
Hereunto duly authorized

By: Alice D. Gulbankian
Alice D. Gulbankian
General Partner
Hereunto duly authorized

Commonwealth of Massachusetts

Worcester, ss.

On this 6 day of June, 2016, before me, the undersigned notary public, personally appeared Michael G. Gulbankian and Alice D. Gulbankian, as General Partners of The Hye Limited Partnership, proved to me through satisfactory evidence of identification, namely photographic identification with signature issued by a federal or state governmental agency, to be the persons whose names are signed on the preceding document, and acknowledged to me that they signed it voluntarily for its stated purpose, and that it was their free act and deed as General Partners of the Hye Limited Partnership and of said Partnership.

David J. Birri
Name: David J. Birri
My Commission Expires: September 3, 2021

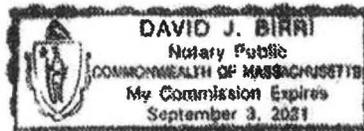


EXHIBIT A

Legal Description of Subject Parcel

Lots 1/3 shown on Plan entitled "Plan of Land in Southborough, MA" prepared by Connorstone Engineering for Michael G. and Alice D. Gulbankian dated September 13, 2005 and recorded with the Worcester Registry of Deeds as Plan 59 in Plan Book 832. Also, as described in a deed dated December 29, 2003 and recorded in Book 32556, Page 366 of the Worcester Registry of Deeds and shown as Assessor's Map 20 Parcel 23 on the Southborough Assessor's Maps.

A1155210.RTF;3