

**APPROVED
SPRINGETTSBURY TOWNSHIP
ZONING HEARING BOARD
OCTOBER 1, 2015**

MEMBERS IN

ATTENDANCE: Dale Achenbach, Chairman
Sande Cunningham
John Schmitt
David Seiler

ALSO IN

ATTENDANCE: Trisha Lang, Director of Community Development
Gavin Markey, Solicitor
Charles Rausch, Solicitor
Christopher King, Solicitor
John Luciani, First Capital Engineering
Sue Sipe, Stenographer

NOT PRESENT: James Deitch
Michael Papa

1. CALL TO ORDER:

A. Pledge of Allegiance

Vice Chairman Schmitt called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance. He introduced the members of the Board. (Chairman Achenbach arrived late.)

2. ACTION ON THE MINUTES

A. SEPTEMBER 3, 2015

MOTION MADE BY MS.CUNNINGHAM TO APPROVE THE MINUTES OF SEPTEMBER 3, 2015 AS PRESENTED. MR. SCHMITT SECONDED. MOTION UNANIMOUSLY PASSED.

Vice Chairman Schmitt asked Ms. Lang if the case was properly advertised. She responded that notification had been made.

3. OLD BUSINESS – None

4. NEW BUSINESS

A. Case Z-15-10 Darrah's Motor Sports

All witnesses were sworn in.

Harry J. Darrah, Property Owner
Jerry Stahlman, Engineer
John Luciani, Township Engineer

Attorney Rausch indicated the applicant's appeal regarding §312.45 is incorrect since the zoning officer

never gave a determination under 312.45. It was under §325-193 which is the zoning ordinance section on non-conforming use. He noted that §312.45 is a separate ordinance which pertains to towing guidelines for the Township's towing call list. Although the applicant states in his application he will be applying for that, Attorney Rausch pointed out only the Board of Supervisors has jurisdiction as to who gets approval to be on the towing list. He noted if the applicant is using §312-45 as the basis for his ability to meet the non-conforming use standards, the Zoning Hearing Board cannot provide an advisory opinion. This would be speculation because the applicant does not have the approval under §312-45 at this point in time, and it is unknown if the applicant would ever be subject to those requirements.

Attorney Rausch stated the Township is willing to move ahead with the determination with the understanding the only issue before the Zoning Hearing Board would be whether or not a commercial towing operation is equal or more restrictive than a private race car hobby which is the current non-conforming use.

Attorney John Ogden, Counsel for the applicant, handed out exhibits. He noted the first document Applicant's Exhibit 1 is a letter from his office to the Township dated July 23. Attorney Ogden indicated the procedure they were advised to follow before coming to the Zoning Hearing Board was to apply to the Township for approval of this change of use. The letter indicates it is in the Open Space district and currently being used for a race car operation. He noted they are referring to Ordinance 325-193 citing the use of the building and /or land may be changed to a use of equal or more restrictive classification. Attorney Ogden stated they are not asking the Zoning Hearing Board to rule on whether or not Mr. Darrah gets on the towing list, but indicating they meet the requirements of 312-45 which defines towing operation. Attorney Ogden also referred to Applicant's Exhibit #4 relating to the Towing Storage Facilities Standards Act, noting they would be required to meet that criteria and demonstrate that it is a more restrictive use.

Attorney Markey stated the Zoning Hearing Board is charged with the interpretation and application of the zoning ordinance. It was his legal opinion the Board should not hear evidence and testimony on §312-45 of the Springettsbury Township ordinance dealing with tow truck facilities. He agreed with Attorney Rausch that if the Board delved into looking at those criteria and receiving evidence and testimony they would be making an advisory opinion. To avoid the possibility of an advisory opinion and to not step beyond the Board's jurisdictional bounds they should not delve into §312-45 and suggested the Board sustain Attorney Rausch's objection and ask Attorney Ogden to move forward without future reference to §312-45.

Attorney Ogden agreed to make arguments about the restriction of use without referring to §312-45 and producing other factors, observations or characteristics to help the Zoning Hearing Board make that decision even without knowledge of the objection prior to this meeting.

MS. CUNNINGHAM MADE A MOTION TO SUSTAIN THE TOWNSHIP'S OBJECTION TO THE JURISDICTIONAL REVIEW OF §312-45 AND THE STATE STATUTE, AND EXCLUDE ALL EVIDENCE AND TESTIMONY RELATING TO BOTH. SECONDED BY MR. SEILER. MOTION UNANIMOUSLY PASSED.

Attorney Ogden referred to Applicant's Comprehensive (AC) Exhibit #1 as the letter dated July 23 to the Township asking for the change of use included under §325-193. He noted the letter is accompanied by the application for business certificate and use of occupancy as well as the diagram. AC Exhibit #2 is the denial letter dated August 6, 2015 from the Township and there are 5 reasons listed. All of the reasons focused on outside storage. AC Exhibit #3 is the applicant's current application. Applicant's Exhibits #4 and 5 refer to the ordinances.

Attorney Markey noted the majority of that information is contained already in the case summary for the Zoning Board, but will be entered into the record.

Attorney Ogden noted the second packet is a series of pictures and drawings consist of 10 pages labeled Applicants Comprehensive Exhibit #2.

Jerry Stahlman, PE

Mr. Stahlman confirmed that he is a professional state licensed engineer of 40 years. Attorney Ogden requested the Township affirm he is qualified as a professional engineer. Attorney Rausch confirmed.

Through testimony conducted by Attorney Ogden, Mr. Stahlman confirmed and provided the following information:

- Exhibit #2 is a basic floor plan of the structure that exists on the site and shows the overall dimensions and the access to the interior.
- There are vehicles shown to drawing scale.
- There are two buildings that are co-joined. The one on the west end is approximately 65 ft. long and 41 ft. deep.
- There is a building on the east end which is a part of the same building - 40 ft. wide and 47 ft. deep.
- Mr. Stahlman noted he has been in and around the building and the purpose of the photographs is to show the board the entire circumference of the site.
- The address of the site is 1190 Graham Street.
- The location of this building is in an Open Space zone to the south of Graham Street which is a dead-end street. AC Exhibit #3 is an overhead drawing of the location. The parcel is two separate lots. He described the view to the south looking north from Eberts Lane and the access. He noted it is a secured site with a locked gate across the entire access. Behind the site is Mill creek which flows westward. A portion on the west side is maintained as lawn and everything on the east side is existing vegetation.
- Graham Street is a Township road.
- The use shown on the eastern side is Baughman's Salvage Yard.
- There are no residential uses within 500 feet.
- The building is masonry concrete. The smaller building on the east side which is joined to the masonry building is a steel structure. The building is enclosed and the photographs show there is no activity outside, it all takes place inside of the building out of view. There are photos of the inside showing awards, trophies and equipment used in the racing operation.
- The parcel is 8.4 acres. This is the only building on the parcel even though it is two buildings joined together as one.
- Surrounding the building is adequate space for trucks such as wreckers to bring cars in and put them in the building and leave. There is adequate distance with stabilized road surface for tractor trailers to drive around the building.
- Exhibit #2.1 shows the building. There is an office in the building. The van door entrance is considered the main entrance. To the left is a man door to gain entrance to the building and office. As the applicant wishes to use this as a towing storage facility, the drawing is illustrated with different colored cars of graphic size and there is adequate space for 12 vehicles in the building. There is adequate entrance with overhead garage doors shown to the south or rear to this exhibit. There is an overhead garage door on the smaller building which is 47 ft. by 40 ft. wide. There is a 12 ft. door to the south and existing concrete drives to approach that door. Immediately to the west there is a second 12 ft. overhead garage door to gain entrance to the larger area and further west to the last blue car is another 12 ft. overhead garage to gain entrance. The two buildings are interconnected by an additional 12 ft. overhead garage door on the interior. As shown on the aerial drawing there is an access drive adequate in the front and the side with access to the rear to the overhead garage doors. It was noted the bottom of the exhibit is the location of Route 83 on the north side at Graham Street. The right side is Eberts Lane on the west side. The top behind it would be Baughman's site. All cars would be put in or taken out from the back of the property away from site. These cars are to

scale that would be showing a 10x20 parking space standard size.

- The facility has a steel roof.
- There are windows on the front but they are placed high above – 8 ft. high
- Exhibit 2.2 is a set of 10 photos taken in the past week which depict the current property. The top photo is showing an existing open area with a concrete retaining wall 6 ft. high and approximately 2 ft. thick. There are locked gates with two 12 ft. swing gates with locked privacy panels. There is also a 44 ft. long security gate at Graham Street at the access to this building. Photo #2 shows the front of the building and the access path from Graham Street around the front of the building to the back.
- Exhibit 2.3 – This is the same photo only further away to show how that space is in relation to the immediate front access to the building. The bottom photo is showing the door a customer could use to enter to get his car. There are two ornamental arms on the concrete slab. There is a locked man door which can be used to gain entrance into the office, and there is a 12 ft. overhead door.
- Exhibit 2.4 – The top photo shows an additional view of the front and there is a grilled section to the left of the drawing. There is a false wall on the back side of the interior and this was part of the original building. It also shows in the front the windows identified previously which are up approximately 7-8 feet. The bottom photo shows the west end of the building and also shows the road coming around the front and going around the west end continuing around to the back, which is stabilized gravel. There are concrete slabs in the rear.
- Exhibit 2.5 - This is the rear of the building with a concrete slab over to the perpendicular section of the building. There is another door on the perpendicular and a third door on the back wall just past the window. Beyond the perpendicular section there is a 4th door which lines up to those vehicles shown on the first exhibit. Photo #8 is looking at the back of the building with a dark area showing an open door.
- Exhibit 2.6 – Shows similar views further back in the grass and shows a more extensive area of stabilized gravel.
- Exhibit 2.7 - Photo 11 is at the back of the building towards the eastern end. This is the back of the retaining wall. The bottom photo is looking west over to Eberts lane which is maintained in lawn. There is an ornamental tree planting there. The vehicle showing there is not part of the operation.
- Exhibit 2.8 -This is the bottom drawing on #14 showing the gravel with the entrance driveway and the locked security gate that rolls on a structural track which completely blocks the locked entrance gate. There is a black post to the right of the utility pole at the extreme end of the gate. A pipe flows underneath this gate and there is a swale that completely blocks any access to the site.
- Exhibit 2.9 – Photo #15 shows the office. The plan view drawing shows it is about 7 ft. wide and approximately 12 ft. long in the right rear corner of the building. Photo #16 is one of these storied areas including the 12 ft. door in the back and one of Mr. Darrah's personal cars. Also a small tow-behind trailer with sports craft is shown.
- Exhibit 2-10 – This is in the west end of the building and is on the north side. There is available parking in this section of the building. On the first photo #17 there are helmets above the flag and on the left section up above those are trophies stored there. Photo #18 is the reverse side looking east on the west end of the building.
- Exhibit #2-11 – Photo #19 shows some of the applicant's personal vehicles. It also shows additional storage in the east end. One car is parked perpendicular to the others to illustrate there is significant parking area. Photo #20 is also in the west end, looking out one of the garage doors to the south.

On cross examination for Mr. Stahlman, Attorney Rausch pointed out Baughman's Salvage Yard noting it is not in Springettsbury Township. Mr. Stahlman agreed noting the creek is the line.

Joe Darrah, Applicant and Owner Darrah's Motor Sports, 1190 Graham Street

Through testimony by Attorney Ogden Mr. Darrah indicated he has been in the towing business since 1978. He reviewed the history of his business, noting he has a business on Prospect Street and owns 12 trucks. He stated he does towing work for York City Police and other departments and also tows for State

Police for the area from Leader's Heights to Mt. Rose Avenue. He also has a business J&K located at 1099 Kings Mill Road which is a towing operation and a scrap operation.

Through testimony by Attorney Ogden, Mr. Darrah provided the following information:

- The site at 1190 Graham Street would be changed to a towing storage operation. Cars are towed in for various reasons, i.e., DUI, insurance or totaled and are kept for 15 days. After 15 days they go through the process with the state as a licensed salver which includes paperwork. If the car is not picked up they obtain a junk certificate and the car would get parted out before it would come back to J&K and get shredded.
- If the requested use was approved at this location a car typically would be stored inside the garage for no longer than 15 days. In a DUI situation the car typically would be released within a day or so. They have an in-house rule that they do not release the car to the driver for eight hours for liability reasons. They also do hauling for insurance companies and insurance auto auction which is IAAA.
- All trucks are licensed and insured and meet the requirements for laws that require tow trucks.
- The current use on the site at 1190 Graham Street, purchased in 2008 is for Mr. Darrah's son's race car operation. This entails storage, maintenance and repair on the race cars. There are two tractor trailers - one to haul the race rig and the other to maintain and operate a T-shirt trailer.
- Mr. Darrah has no plans to maintain outside storage at the site. There would be no wreckers or tow trucks sitting outside.
- Mr. Darrah explained the tow truck operation, noting they have GPS unit on all trucks which is approximately 80 trucks. The system is called Next Track which lets them know which truck is the closest one when the trucks is radio dispatched to a call.
- At the end of the day the drivers of four of the trucks take the trucks to their homes.
- It was noted the drawing shows 12 vehicles would fit in the building. Mr. Darrah noted if there were more than 12, they would be taken to J&K and put in the impound.
- A question was raised as to the rationale to have this business located on the east side of town. Mr. Darrah explained he is looking to expand his contract with the state police from Mt. Rose Avenue to Route 30.
- A question was raised as to how someone would pick up their car late at night or early morning. Mr. Darrah stated the business is maned for 40 hours. After closing the customer would call and an employee would meet them at the business. He noted his response time to the County is 10-15 minutes. All fees including storage would be posted at the business.
- Mr. Darrah confirmed that other than that court order stipulating that only two trailers could be stored outside, there were no other restrictions on the race car operation.
- Mr. Darrah confirmed extra parts and engines interchangeable for the cars were stored in the building. Also that fans would come to that location to see the cars.
- For the proposed use, Mr. Darrah stated the race car operation would be moved out of that location completely and taken to another location outside of the Township. This site would be solely dedicated to the temporary towing storage of vehicles.
- Vehicles would not be there more than 15 days otherwise they would be moved to J&K.
- Work would not be done on the public's vehicles at this location. No services would be done to cars other than bringing them in and taking them out.
- There would not be any other business conducted at that location.

Attorney Rausch distributed the Township's exhibits for cross examination of Mr. Darrah. He referred to Township Exhibit # as a deed dated July 31, 2007 to Darrah's Motorsports LLC.

Through cross examining by Attorney Rausch, the following information was revealed:

- Darrah's Motorsports purchased the property on July 31, 2007.
- Mr. Darrah confirmed that prior to purchasing the property his attorney inquired to the Township as to what uses he could do on the property.

- Township Exhibit #2 – Attorney Rausch noted this is a letter dated May 22, 2007 from Harish Rao, Zoning Officer to Attorney Robert Katherman, the applicant’s attorney. The letter states the Township is indicating the property is in the Open Space within the Mill Creek flood zone. Mr. Darrah concurred.
- The property will be used as a place to work on race cars only.

Attorney Rausch point out additional restrictions as noted on the letter:

- no additional impervious cover
- no car work outside
- no car parts, tires or any related items will be outside
- no empty or full trailers are permitted on the property
- no public will be permitted to visit
- Mr. Darrah indicated that through additional letters this was changed.
- Attorney Rausch indicated that Exhibit #3 is a letter from Attorney Katherman, the applicant’s attorney dated July 5, 2007 to Mr. Rao, Zoning Officer. The second paragraph indicates “if Mr. Darrah buys this property, he will use it for the following purposes only. Inside the existing structure his son will work on his race car(s). This will be a private operation. There will be no employees, there will be no advertising signage. There will be no work on any vehicles other than those owned by the Darrahs.”
- Mr. Darrah stated they went to the Township before purchasing the property to determine its use. After purchasing the property he indicated the Township contacted him regarding requirements for ADA compliance.
- Mr. Darrah confirmed that public individuals came to the property since 2007. He stated at that time it was a hobby but it became a business for his son Cody and it still is a business today.

Attorney Ogden stated his opinion was that the restrictions placed on the property were part of an on-going negotiation that to his understanding lasted until 2011. The requirements for a non-conforming use kept changing.

Attorney Rausch referred to the 2009 court order on a permanent injunction that involved the outside storage of trailers. He noted there was never any appeal from the zoning officer’s determination of what the non-conforming use was. The record shows the Zoning Hearing Board never heard an appeal. The Township record shows that current non-conforming use.

Mr. Darrah stated he would have employees on this site. This would include one employee to release vehicles and handle the cash transactions when people come to get their cars. Also employees to bring trucks into the site and take them out. He also noted he has 12 tow trucks, but they would not necessarily come to the Graham Street location.

Attorney Rausch asked Mr. Darrah if this property is subject to flooding to which Mr. Darrah said yes. He confirmed there was flooding around the building but not in the building from Tropical Storm Lee in 2011.

Attorney Rausch referred to Exhibit #T-8 and confirmed with Mr. Darrah that it was a photo of 1190 Graham Street after Tropical Storm Lee. Mr. Darrah indicated that what happened was the creek going underneath Market Street was clogged and backed up onto Memorial Hospital. When Springettsbury pulled the clogging out of Market Street a rush of water came down through. Mr. Darrah indicated he did not sustain property damage and confirmed he has flood insurance.

Attorney Rausch referred to Exhibit T-7 dated 9/1/2011 as a photo of 1190 Graham Street. He confirmed with Mr. Darrah the trucks showing in the photograph and identified a blue pole building which Mr. Darrah indicated is a shed.

Attorney Rausch referred to Exhibit T-13 dated September 7, 2011 and asked Mr. Darrah if that was his pole building/shed shown crushed by flood waters. Mr. Darrah confirmed it was his shed.

The following are Mr. Darrah's responses to further questions from Attorney Ogden:

- Attorney Ogden referred to the photos presented by Attorney Rausch showing the flooded areas and asked Mr. Darrah if there was any damage inside the building. Mr. Darrah said no. He also responded that no vehicles or race cars were damaged.
- Attorney Ogden asked Mr. Darrah how many race cars and related parts of race cars did he have in that building when it was fully up and running. Mr. Darrah responded there were quite a few race cars in the building and he had it insured for \$150,000.
- Mr. Darrah indicated that if a flood occurred inside the building there is no other way for the cars to get out of building other than if the door was open. He noted the building is made of concrete and no flooding or water damage ever occurred to the roof or the sides of the building

Mr. Darrah provided the following testimony:

- If the change of use is approved there would be no outside storage. The two trailers with number 89 on them would be moved.
- Other than the business sign to identify the site there would be nothing else on the outside of the building.
- The building can hold 10-12 cars.
- Tow trucks will be delivering the cars but in most cases then the customer will to pick it up.
- Cars abandoned and left more than 15 days would be taken to J&K for processing where Mr. Darrah has a salvage license. He anticipated that to be approximately two or three a month.
- If the insurance company determined a vehicle was totaled, it would be towed to the IAA auction.
- The frequency of cars or tow trucks coming to the site would be approximately one a day.
- The operation at this location would be used as a satellite yard to expand his business with the state police. None of those cars towed would be taken to this facility. The only vehicles stored at this location would be cars towed from Springettsbury Township.
- Mr. Darrah stated currently there are two towing companies in Springettsbury Township.
- The number of cars he anticipated towing to this facility would be one or two a week.
- There are no residential homes in and around the site that would be disturbed by tow trucks coming in late at night.
- Mr. Darrah described the area indicating trucks heading north on Graham street at Eberts Lane, turning left would go into the city and turning right would go out on Route 30.
- Mr. Darrah stated he believed the towing business operation would be less intense than the use currently as race car operation.
- Mr. Darrah further clarified that by having this location it would enable him to obtain a contract with the state police to tow cars for the area between Mt. Rose Avenue to Route 30 and Route 83. Those cars would be towed to J&K.

Chairman Achenbach asked how towed cars that are rendered immobile and inoperative are moved inside the building. Mr. Darrah indicated his tow trucks have a "go jack" which enables the cars to become mobile and moved into the building.

Mr. Darrah confirmed that the tow trucks fit in to the building through the existing garage doors. He also has two large wreckers and two large land trailers to handle larger vehicles.

Chairman Achenbach asked how Mr. Darrah would handle a situation where there were more cars towed to the site than could be put in the building and possibly would be sitting outside the building for a period of time. Mr. Darrah stated he did not foresee that occurring since he is only requesting a maximum of 5 cars at one time being in the building.

Attorney Markey asked Mr. Darrah if he would be willing to stipulate that there be no more than 5

vehicles inside the facility. Mr. Darrah agreed.

Attorney Markey asked Attorney Rausch the intent of the Township in questioning the representations that were made in the exchange of letters in 2007 at the time when Attorney Katherman and the Township reached an agreement regarding the use of the property. Attorney Markey stated he was led to understand the intent was to demonstrate the credibility of Mr. Darrah as to his future intentions. Attorney Rausch stated the intention was to establish the existing non-conforming use, since that was the basis on which the applicant received approval to operate a private race car hobby. The credibility of the witness was not with the letters in question.

Attorney Rausch referred to Township Exhibit #4 – Certificate of Use and Occupancy for 1190 Graham Street, dated 2011 which described the use as a private garage for a race car hobby. Attorney Rausch asked Mr. Darrah if he appealed that use and occupancy. Attorney Ogden objected to the question noting there was no reason to appeal it since that is what Mr. Darrah requested.

Mr. Darrah stated he was required to install handicapped parking and follow ADA requirements for the building. He questioned why he would need to comply since the garage was for private use. He felt the Township was imposing requirements that would turn it into a commercial operation. Attorney Rausch pointed out the code regulation resulted because the building was not up to code in 2011.

Attorney Rausch stated in September 8, 2009 the Board issued an injunction on this property. The court order indicated that among other things the defendant shall refrain from any outside storage on the property, trailers or otherwise. Mr. Darrah concurred.

- Attorney Ogden objected stating it was irrelevant since the applicant was not asking for outside storage.
- Attorney Rausch indicated he was questioning Mr. Darrah on his credibility.
- Attorney Ogden objected again citing irrelevancy.
- Attorney Rausch stated it was relevant due to the photos showing outside storage on the property.
- Attorney Rausch referred to the court order of November 18th, 2010 when the court issued an order in regards to violation of the previously order in 2009 for keeping specific items on the property.
- Attorney Rausch stated Township Exhibit #19 is the permanent injunction. He noted it was not in the packet since he was not intending to present it, but felt it necessary due to Mr. Darrah's testimony.
- Attorney Rausch referred to a letter sent to Mr. Darrah from the Township in July, 2015 relating to continued outside storage on the property consisting of a boat and additional trailers.
- Mr. Darrah stated the boat was allowed.

Attorney Markey asked Attorney Rausch if the remainder of the exhibits he did not address with Mr. Darrah would be used with respect to case testimony in the future. Attorney Rausch concurred.

Attorney Markey restated for record keeping purposes, the permanent injunction by the Court of Common Pleas of York County received by the prothonotary on 9/8/2009 offered by Richard K Ren, President Judge as marked as T-19, In addition to a previous issue docketed November 19, 2010 also by Richard K. Ren President Judge marked as Township Exhibit #20. Attorney Rausch affirmed he was introducing them as exhibits.

Chairman Achenbach asked to clarify an aspect of the proceedings relating to correspondence that was undertaken and issued by various parties in 2007, which established the expectation for this property before Mr. Darrah purchased it. Chairman Achenbach asked if those negotiations were used to facilitate his decision as to whether or not he would purchase the property. He noted there seemed to be inferences at certain times that additional allowances were made. He felt the Board needed to have a clear understanding of what the current use is. He further noted if there is a current use that has been expanded beyond the cited letters, the Board would need to be informed, however, there is no clear testimony on

that aspect of the record. Attorney Markey agreed.

Chairman Achenbach referred to the letter of August 6, 2015 on page two in the second to last paragraph, "The outside storage of automobiles is not a non-conforming use of equal or more restrictive classification than the use of a private garage for a race car hobby under the provision §325-193E." He asked if there was any foundation for that statement in this letter.

Attorney Rausch indicated that the first letter sent was August 5, 2015. He explained the original application dated July 23rd related to §312-45. The only part of that request the zoning officer could address was the last sentence on the second page "use of the property as a towing company would have no adverse impact on the Township and would in fact, be a benefit to the Township to have a facility to take and store impounded cars and cars involved in accidents or which have been abandoned." He stated that was the only information the zoning officer was given concerning the change of use. The original letter went out on August 5 from the zoning officer and is in the packet. The first letter did not include the right to appeal. There was also concern with the language and understanding the content. From the Township's perspective they wanted to make sure the applicant was aware outside storage was not permitted, since there was no indication in his original application what he was going to do.

Attorney Ogden stated neither he nor Mr. Darrah ever saw the August 5 letter. He stated he did receive the August 6 letter and every reason for denial was on outside storage which was never requested.

Discussion was held as to how to enforce the number of cars on the property assuming the Board decided to impose a limit.

Chairman Achenbach asked if there was anyone in attendance who wished to speak for or against the applicant. There were no comments made.

Attorney Rausch stated they had no further questions for the applicant.

Attorney Ogden asked for an offer of proof from the Township. Attorney Rausch stated the offer of proof would be in the applicant's appeal where it was stated there would be no adverse impact if allowed a commercial towing operation. Attorney Rausch stated it was the Township's intent to present evidence that there would be an adverse effect.

Attorney Ogden indicated he would object to any testimony of an adverse impact because the ordinance only requires it be of an equal or more restrictive classification.

Attorney Markey posed the question of the appropriateness to move forward at this time with the Township's case, or continuing it until the next Zoning Hearing Board meeting. Attorney Markey recommended that there be legal memorandums submitted by both parties with proposed findings of fact for the Board to consider in advance of the meeting where a decision would be made.

Chairman Achenbach indicated one reason for continuing the case would be for the Board to see if any additional writings have taken place which would provide substance to the present use. He cited the other reason would be in order for the Township to present their case

Attorney Rausch stated he would share whatever documents are in the file with the applicant. If there are additional writings he will introduce them to their witness who is the assistant zoning officer. He also noted he would not have any objection to providing Attorney Ogden with any correspondence he may have.

Attorney Markey recommended that the applicant have an opportunity at the next meeting to present any

additional evidence and testimony regarding the circumference of the existing use, since additional issues were opened and discussed after Attorney Ogden rested.

Attorney Rausch and Attorney Ogden were in agreement to continue the hearings until the next regular scheduled meeting of the Zoning Hearing Board.

MR. SEILER MADE A MOTION TO PROCEED WITH THE HEARING ON THE CASE OF Z-15-10 AT THE NEXT REGULARLY SCHEDULED MEETING. SECONDED BY MR. SCHMITT. MOTION UNANIMOUSLY PASSED.

7. ADJOURNMENT

CHAIRMAN ACHENBACH ADJOURNED THE MEETING AT 8:30 P.M.

Respectfully submitted,

Secretary

ses