

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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|----------------------------------|---|---------------|
| Doug and Geri Boyer, |) | |
| |) | |
| Complainants, |) | |
| |) | PCB #22-9 |
| v. |) | |
| |) | (Enforcement) |
| MRB Development, LLC d/b/a |) | |
| Copper Fire, Renae Eichholz, and |) | |
| Mark Eichholz |) | |
| |) | |
| Respondents |) | |

ANSWER OF MRB DEVELOPMENT, LLC d/b/a COPPER FIRE

THE PARTIES

1. Respondent MRB Development, LLC (“MRB”) admits the allegations in paragraph 1.

2. MRB admits that MRB Development LLC is an Illinois liability company with its principal office located at 6950 Reinneck Rd., Belleville, IL 62221. MRB denies that Renae Eichholz and Mark Eichholz are proper Respondents in this case. MRB admits that it operates a bar/restaurant called Copper Fire, located next door to the Complainants’ residence. MRB denies that it owns the building at issue.

FACTUAL BACKGROUND

3. MRB admits the allegations in paragraph and further state that Complainants Doug and Jerry Boyer (the “Boyers”) moved into a business district in downtown Belleville with full knowledge of the activity occurring in downtown Belleville.

4. MRB has insufficient information to admit or deny the facts alleged in paragraph 4, and therefore denies the same.

5. MRB admits that the Boyers live in the second floor of 208 East Main Street but has insufficient information to admit or deny the remaining allegations in paragraph 5, and therefore denies the same.

6. MRB admits the allegations in paragraph 6.

7. MRB has insufficient information to admit or deny the allegations in paragraph 7, and therefore denies the same.

8. MRB denies the allegations in paragraph 8.

9. MRB admits that it operates a bar and restaurant and that it tries to maintain an environment filled with laughter and music. MRB denies the remaining allegations in paragraph 9.

10. MRB admits that it hosts live music events at Copper Fire but denies the remaining allegations in paragraph 10.

11. MRB denies the allegations in paragraph 11.

12. MRB denies the allegations in paragraph 12.

13. MRB denies the allegations in paragraph 13. Affirmatively, MRB states that this allegation is example of the problem. It is a gross exaggeration to suggest that the Boyers can hear “each” live music event and/or feel vibrations.

14. MRB denies the allegations in paragraph 14.

15. MRB denies the allegations in paragraph 15.

16. MRB denies the allegations in paragraph 16.

17. MRB admits that it has attempted to address complaints with the Boyers but denies all other allegations in paragraph 17. Affirmatively, MRB states that it has made many changes as a result of the complaints from the Boyers, including, but not limited to, moving the stage,

setting sound standards for the radio, actively working with musicians to keep the master volume down on live events, and even asking one particular band to play an acoustic set as opposed to the regular show.

18. MRB admits the letters attached as Exhibits 1 and 2 were sent and received but denies all other allegations in paragraph 18.

19. MRB admits that its attorney sent the letter attached as Exhibit 3 but denies the remaining allegations in paragraph 19. Affirmatively, MRB suggests Exhibit 3 is an example of the effort it has taken to learn specifics of the complaints raised.

20. MRB denies the allegations contained in paragraph 20.

21. MRB admits the sound study attached as Exhibit 4 to the Complaint was performed but has not been given any information on the procedures followed by Mr. Biffigani and was not allowed to observe the procedures. Therefore, MRB denies the allegations contained in paragraph 21.

22. MRB admits that the Boyers removed drywall in their own apartment to expose the brick wall adjacent to Copper Fire, and that their expert recommended installing a gypsum drywall. MRB denies the remaining allegations in paragraph 22.

23. MRB admits that Exhibits 5 and 6 were sent and received, but denies all other allegations contained in paragraph 23.

24. MRB denies the allegations contained in paragraph 24.

25. MRB denies the allegations contained in paragraph 25 to the extent the Boyers believe the definition of “unreasonably interferes” is subject to what they believe is unreasonable. The rest of 35 Ill. Adm. Code Part 900 et. al. is the objective definition of what constitutes unreasonable interference.

26. MRB denies the allegations contained in paragraph 26 to the extent the Boyers believe noise pollution is a subject definition. The rest of 35 Ill. Adm. Code Part 900 et. al. establishes objective standards to determine noise pollution.

27. MRB denies the allegations contained in paragraph 27, and affirmatively states that the Boyers' own expert admitted the levels in the daytime "did not exceed the daytime criteria." This is essential to understanding the Boyers' complaints. They are not alleging an objective violation of the Illinois Noise Pollution standards. Instead, they are raising a subjective complaint which makes it difficult for MRB to ever satisfy their complaints.

28. MRB denies the allegations contained in paragraph 28.

29. MRB denies the allegations contained in paragraph 29, and affirmatively states that the Boyers' own expert confirmed full compliance with daytime standards.

30. MRB admits that 415 ILCS 5/24 states that the regulations in 35 Ill. Adm. Part 900 et. al. will control what is a violation of the statute.

31. MRB denies the allegations in paragraph 31.

32. MRB denies the allegations in paragraph 32.

33. MRB is moving to strike and/or dismiss paragraph 33.

34. MRB is moving to strike and/or dismiss paragraph 34.

35. MRB is moving to strike and/or dismiss paragraph 35.

36. MRB is moving to strike and/or dismiss paragraph 36.

37. MRB is moving to strike and/or dismiss paragraph 37.

38. MRB is moving to strike and/or dismiss paragraph 38.

REQUEST FOR RELIEF

WHEREFORE, MRB Development, LLC d/b/a Copper Fire respectfully requests this Board to dismiss this complaint, or, alternatively, order that MRB proposed objective standards are sufficient remedial measures to resolve this matter. Further, MRB requests all other relief that is just and proper.

AFFIRMATIVE DEFENSES

1. MRB Development, LLC has affirmatively established through the Boyers own report that it is fully compliant with the objective standards for daytime in the Illinois Noise standards as established by 35 Ill. Adm. Code Part 900.

2. MRB Development, LLC has made changes since the sound testing conducted by the Boyers to address the nighttime noise standards and is currently compliant with all nighttime standards of the Illinois Noise standards as established by 35 Ill. Adm. Code Part 900.

3. The band playing on April 23, 2021, was Steel Creek, and they were playing outside, which was not noted in the noise study and calls into question the results.

4. Steel Creek is a six-person band, which is one of the largest bands to ever perform at Copper Fire. One recommended remedial measure would be a limit on the size of bands that can play inside at Copper Fire, and a limit on electric bass.

5. MRB Development, LLC is willing and has always been willing to take steps to address the Boyers' complaints, but at no point in time have the Boyers ever been willing to establish objective standards. At one point, Geri Boyer sent a text message saying she wanted no sound. MRB Development, LLC cannot meet that standard and the law does not require it.

6. The sounds of Harley Davidson motorcycles, other motorcycles and cars emanating loud music from their stereos are an almost hourly occurrence on main street in the evening in

downtown Belleville, and such sounds must be considered in any noise study conducted in this manner.

7. If not dismissed, the allegations in paragraphs 33 through 38 have already been affirmatively addressed by the police and local government entities and they have informed MRB Development that there is no violation.

8. A subject standard for noise violation is a vague and enforceable standard which cannot be enforced against MRB Development LLC.

Respectfully submitted,

Dated: December 6, 2021

GREENSFELDER, HEMKER & GALE, P.C.



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Attorneys for MRB Development, LLC
d/b/a Copper Fire, Renae Eichholz, and
Mark Eichholz

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served on the date of December 6, 2021 the attached Answer of MRB Development, LLC d/b/a Copper Fire upon the following person by depositing the document in a U.S. Postal Service mailbox by 6:00 p.m., with proper postage prepaid to:

Matthew A. Jacober
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Clayton, MO 63105
*Attorneys for Complainants,
Doug and Geri Boyer*



Paul E. Petruska