

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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 RESPONDENTS RENAE EICHHOLZ AND MARK EICHHOLZ

THE PARTIES

1. Respondents Renae Eichholz and Mark Eichholz (“Renae and Mark Eichholz”) admit the allegations in paragraph 1.
2. Renae and Mark Eichholz admit all of the allegations of paragraph 2, except they deny that MRB Development, LLC owns the building at issue.

FACTUAL BACKGROUND

3. Renae and Mark Eichholz admit the allegations in paragraph 3 and further state that Complainants Doug and Geri Boyer (the “Boyers”) moved into a business district in downtown Belleville with full knowledge of the activity occurring in downtown Belleville.
4. Renae and Mark Eichholz have insufficient information to admit or deny the facts alleged in paragraph 4, and therefore deny the same.
5. Renae and Mark Eichholz admit that the Boyers live in the second floor of 208 East Main Street but have insufficient information to admit or deny the remaining allegations in paragraph 5, and therefore deny the same.
6. Renae and Mark Eichholz admit the allegations in paragraph 6.

7. Renae and Mark Eichholz have insufficient information to admit or deny the allegations in paragraph 7, and therefore deny the same.

8. Renae and Mark Eichholz deny the allegations in paragraph 8.

9. There are no allegations directed at Renae and Mark Eichholz in paragraph 9. To the extent any of the allegations are directed at Renae and Mark Eichholz individually they deny the allegations.

10. There are no allegations directed at Renae and Mark Eichholz in paragraph 10. To the extent any of the allegations are directed at Renae and Mark Eichholz individually they deny the allegations.

11. Renae and Mark Eichholz deny the allegations in paragraph 11.

12. Renae and Mark Eichholz deny the allegations in paragraph 12.

13. Renae and Mark Eichholz deny the allegations in paragraph 13. Affirmatively, Renae and Mark Eichholz state that this allegation is an 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. Renae and Mark Eichholz deny the allegations in paragraph 14.

15. Renae and Mark Eichholz deny the allegations in paragraph 15.

16. Renae and Mark Eichholz deny the allegations in paragraph 16.

17. Renae and Mark Eichholz admit that they have attempted to address complaints with the Boyers but deny all other allegations in paragraph 17. Affirmatively, Renae and Mark Eichholz state that Respondent, MRB Development, LLC, 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. Renae and Mark Eichholz admit the letters attached as Exhibits 1 and 2 were sent and received but deny all other allegations in paragraph 18.

19. Renae and Mark Eichholz admit that an attorney for MRB Development sent the letter attached as Exhibit 3 but deny the remaining allegations in paragraph 19. Affirmatively, Renae and Mark Eichholz suggest Exhibit 3 is an example of the effort taken to learn specifics of the complaints raised.

20. Renae and Mark Eichholz deny the allegations contained in paragraph 20.

21. Renae and Mark Eichholz admit the sound study attached as Exhibit 4 to the Complaint was performed but have not been given any information on the procedures followed by Mr. Biffigani and were not allowed to observe the procedures. Therefore, Renae and Mark Eichholz deny the allegations contained in paragraph 21.

22. Renae and Mark Eichholz admit 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. Renae and Mark Eichholz deny the remaining allegations in paragraph 22.

23. Renae and Mark Eichholz admit that Exhibits 5 and 6 were sent and received but deny all other allegations contained in paragraph 23.

24. Renae and Mark Eichholz deny the allegations contained in paragraph 24.

25. Renae and Mark Eichholz deny 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. Renae and Mark Eichholz deny the allegations contained in paragraph 26 to the extent the Boyers believe noise pollution is a subjective definition. The rest of 35 Ill. Adm. Code Part 900 et. al. establishes objective standards to determine noise pollution.

27. Renae and Mark Eichholz deny the allegations contained in paragraph 27, and affirmatively state 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 any Respondent to ever satisfy their complaints.

28. Renae and Mark Eichholz deny the allegations contained in paragraph 28.

29. Renae and Mark Eichholz deny the allegations contained in paragraph 29, and affirmatively state that the Boyers' own expert confirmed full compliance with daytime standards.

30. Renae and Mark Eichholz admit 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. Renae and Mark Eichholz deny the allegations in paragraph 31.

32. Renae and Mark Eichholz deny the allegations in paragraph 32.

33-38. These paragraphs were struck by the order dated March 3, 2022.

REQUEST FOR RELIEF

WHEREFORE, Renae and Mark Eichholz respectfully request this Board to dismiss this complaint, or, alternatively, order that the proposed objective standards are sufficient remedial measures to resolve this matter. Further, Renae and Mark Eichholz request all other relief that is just and proper.

AFFIRMATIVE DEFENSES

1. Renae and Mark Eichholz have done nothing individually to cause or contribute to cause the alleged noise violations. They are protected from individual liability as managers of MRB Development, LLC, for any actions taken as managers.

2. Renae and Mark Eichholz have 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.

3. Without admitting any violation of the nighttime Illinois Noise standards, MRB Development, LLC made changes after the sound testing conducted by the Boyers in a good faith effort to be responsive to anything, even highly questionable results. Based on those changes, Renae and Mark Eichholz believe they are currently compliant with all nighttime standards of the Illinois Noise standards as established by 35 Ill. Adm. Code Part 900.

4. Moreover, Renae and Mark Eichholz have repeatedly requested the opportunity to do their own sound testing in the Boyer's apartment, and every request has been denied. Affirmatively, Renae and Mark Eichholz state that any claim of ongoing violations should be rejected on the basis that Renae and Mark Eichholz have not been given an opportunity to determine if there is an actual violation of the Illinois Noise standards.

5. 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.

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

7. 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.

8. 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.

9. A subjective standard for noise violation is a vague and unenforceable standard which would be unconstitutional if applied to MRB Development LLC, Renae Eichholz or Mark Eichholz.

Respectfully submitted,

Dated: March 25, 2022

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 March 25, 2022 the attached Answer of Renae and Mark Eichholz 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:

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*Attorneys for Complainants,
Doug and Geri Boyer*



Paul E. Petruska