

STATE OF ILLINOIS
POLLUTION CONTROL BOARD
JAMES R. THOMPSON CENTER
100 W. RANDOLPH STREET – SUITE 11-500
CHICAGO, IL 60601

JAMES FISER)	
842 South Jackson Street)	
Mt. Carroll, IL 61053)	
Complainant,)	
)	
VS.)	PCB 2018-084
)	
)	
HENRY DOUBLE K, LLC, and)	
JAMES L. MEADOR)	
834 South Jackson Street)	
Mt. Carroll, IL 61053)	
)	
Respondent.)	

POST-TRIAL BRIEF

NOW COMES the Complainant by and through his attorney, Craig A. Brown, and for his post-trial brief in support of his Complaint, states as follows:

STATEMENT OF FACTS

Complainant primary residence is the first developed lot immediately south of Respondent’s bar and restaurant, though is sits more than 300 feet away separated by a vacant piece of land. Respondent primarily runs a bar and restaurant, but also hosts live music approximately once a week. Nearly all of the live music is performed inside of Respondent’s establishment, though live music is played outside once or twice per year. Complainant can clearly hear all of the music played at Respondent’s business from inside Complainant’s house with all windows and doors shut. The live music is played as late as 1 a.m. in the morning.

1. A full hearing was conducted in this matter on March 11, 2020 at the Community Hall in Mt. Carroll, Illinois.
2. The Complainant testified along with his wife and some neighbors. Sound recordings were introduced along with a zoning map of the City of Mt. Carroll. Respondent also testified on his own behalf. He, too, offered some testimony of neighbors. The public was then offered the opportunity to speak, and several residents of Mt. Carroll took the opportunity to do so.

3. The evidence presented by both parties, for the most part, was not directly contradicted by the evidence from the other party. Complainant put on a few witnesses to testified to the level of sound coming from Respondent's business during live music performances as heard from Complainant's residence south of Respondent's business. Complainant also played recordings that were taken from the window sill of his bedroom inside the screen but outside the window. The window sits more than 330 feet from Respondent's business. The Respondent countered with a few witnesses with residences closer to Respondent's business, but north of Respondent's business. Both parties made their point. The music is really loud south of Henry's Double K, and it is not very loud north of Henry's Double K.

4. There was a dispute of fact regarding zoning. It was not very clear whether Complainant's residence is part of the commercial zoning that includes a nearby grocery store, or part of the residential zoning that occupies all of the land immediately south of Henry's Double K. What is clear through testimony is that the Fisers purchased a normal home intended only as a residence believing that was the applicable zoning. Equally clear is that Respondent purchased a commercial property clearly surrounded by residential zoning.

5. Noise pollution is defined in Illinois as "the emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity." Complainant and his wife both testified that it was very difficult to sleep in their house when the music was playing, and basic life activities like watching television were problematic while live music was playing primarily because of the drums and bass guitar.

6. Respondent did not testify to nor offer any evidence of any effort to mitigate the noise experienced by the Fisers. There was no suggestion that the hours for live music were limited, that the volume of the music is turned down or that any sound dampening measures had been taken by Respondent.

ARGUMENT

This case is nearly identical to Manarchy v. JJJ Associates case (PCB95-73). The Board's opinion in the Manarchy case can almost be used verbatim as the brief for this case. In an effort to keep it simple, here is a list of the consistencies between the current case and the Manarchy case:

- The alleged violation of both the Illinois Environmental Protection Act and the Administrative Code (Section 35) promulgated from the Act are the same.
- The complainant and his wife both testified to an inability to sleep while the music was playing, and interference with routine household activities like watching television.
- The Respondent in each action made no effort to turn down the music, limit the hours the music is played, erect a sound barrier to mitigate the noise or any other actions to relieve the situation.
- The complainants in both cases kept a diary of the specific dates when the noise was most unbearable.

- The social and economic impact of the pollution source mirror each other. In both cases, the impact of an ongoing small business leads to a presumption of some contribution to the local economy, but no direct evidence was submitted on this point.

- The zoning in both cases is somewhat ambiguous, but there is no question that the complainant in each case was residing in a dwelling intended for residential use with zoning that allowed residential use.

Each of these parallels is a component to the analysis required by the Board in accordance with the case law cited in Manarchy. The only significant difference in the cases is that, in the Manarchy case, the music was played four days per week versus about once per week in this case. The basic issue is identical in both cases: Did Respondent allow "the emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity."

COMPLAINANT'S REQUEST

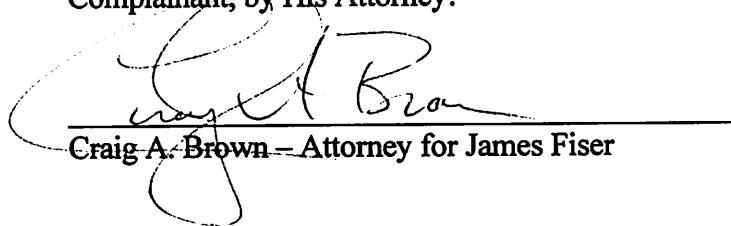
Complainant would respectfully ask the Board to make a finding and order identical to the Manarchy case as follows:

A. The Board finds that the Respondents, Henry's Double K, LLC and James L. Meador are in violation of Section 24 of the Environmental Protection Act and 35 Ill. Adm. Code 900.102.

B. Henry's Double K, LLC and James L. Meador shall immediately cease and desist from violations of Section 24 of the Environmental Protection Act and 35 Ill. Adm. Code 900.102.

Complainant, by His Attorney:

Drafted by:
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