

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)	

RESPONDENTS JOINT MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Summary Judgement must be granted in this case because the undisputed expert evidence shows Respondents have complied with 35 Ill. Adm. Code Section 901.102 (hereinafter “901.102”). Complainant Geri Boyer (“Geri Boyer”), an engineer, elected to file this enforcement action with the Illinois Pollution Control Board. She plead that Respondents violated the standards of 901.102. Once discovery proved that Respondents are in full compliance with 901.102, Complainants changed their theory and are now asking this Board to “normalize” the standards of 901.102. In real terms, normalize means lower. This Board cannot lower the standards of its own regulation in this enforcement action, without violating all norms for notice that are standard with administrative regulations. Moreover, if compliance with a regulation is not sufficient to defend an enforcement action, then the regulation needs to be changed. Complainants did not ask this Board to change the regulation. Instead, they are seeking to force Respondents to comply with a standard that is not published in Illinois and applies to no other business in the state of Illinois. Summary Judgment must be granted for Respondents when the undisputed facts show compliance with the 901.102 standards.

Respondents argue that the analysis should stop once compliance with 901.102 is proven because this Board should not find compliant sound levels to be noise pollution. However, Respondents expect Complainants to argue that past decisions of this Board should be twisted to suggest that an analysis of 415 ILCS § 5/33 (c) (“Section 33 (c)”) factors can prove noise pollution, even with compliant sound levels. In anticipation of this argument, Respondents argue that Summary Judgment should still be granted after an analysis of Section 33 (c) factors. The undisputed facts show that the sound level in the Complainants’ loft is between 33 dBA and 39 dBA. Therefore, the degree of injury is minimal to non-existent. Additionally, live music in downtown Belleville is important to the redevelopment of the downtown area which shows a social and economic value to Copper Fire’s live music. Copper Fire is perfectly suited on Main Street in downtown Belleville. For factor 4, Geri Boyer’s proposed solution is not technically possible and certainly not economically reasonable. Finally, Copper Fire has taken extensive actions to try to address the complaints in this matter. Under the facts of this case and the Section 33(c) factors, this Board must find 34 dBA to 39 dBA in a downtown urban environment does not meet the definition of noise pollution. For all these reasons, this Board should grant Respondents’ Motion for Summary Judgment.

UNDISPUTED FACTS

1. On September 30, 2021, Complainants Doug and Geri Boyer filed the Complaint with 38 paragraphs and one prayer for relief. (See Complaint attached hereto as Exhibit A).
2. On March 3, 2022, this Board struck, as frivolous, paragraphs 33 through 38, because this Board has no authority to hear the alleged violations of local rules such as the Belleville City Code and the St. Clair County Zoning Code.

3. Complainant Geri Boyer agrees that she lives in a vibrant downtown. (See transcript of Geri Boyer attached hereto as Exhibit B, p. 5, lines 23 to 24).
4. Complainant Geri Boyer moved downtown because she wanted to be part of the redevelopment. (Exhibit B, p. 6, lines 14-17).
5. Complainant Geri Boyer moved into the area with the full understanding that there were bars and restaurants in the area. (Exhibit B, p. 7, lines 10-13).
6. Respondent MRB Development, LLC owns Copper Fire restaurant. (See Affidavit of Renae Eichholz attached hereto as Exhibit C).
7. Copper Fire is located at 200 E. Main Street, Belleville, Illinois 62220. (Exhibit C)
8. Within two blocks to the east and west of Copper Fire are the following bars/restaurants: Bennie's Pizza Pub, Margaritas Mexican, The Quarter Restaurant and Bar, the Cornerstone Bistro, Tavern on Main, Big Daddy's 618, and Seven Shichi Sushi Bar. (Exhibit C).
9. Copper Fire participates in group called Live Music Row www.livemusicrow.com which promotes live music on Main Street in downtown Belleville. (Exhibit C).
10. Live Music Row helps the redevelopment of downtown Belleville, and is strongly supported by the Greater Belleville Chamber of Commerce. (Exhibit C).
11. Discovery has proceeded in this case, including depositions of experts.
12. At a hearing in this case on March 7, 2023, all parties agreed that written discovery is complete and depositions are complete.
13. Geri Boyer plead in the Complaint (¶ 26) and admitted at her deposition that she believes 901.102 is the regulation Copper Fire is violating in this lawsuit. (Exhibit B, p. 26, lines 1 to 6).

14. Complainants' expert, Mike Biffignani, conducted sound testing in Complainants' loft. (Report of Mike Biffignani attached hereto as Exhibit D).

15. Respondents' expert, Gary Brown, conducted sound testing inside Copper Fire, inside Complainants' loft and outside of Copper Fire. (See the report of Gary Brown attached hereto as Exhibit E).

16. Mike Biffignani compared his testing results to the standards in 901.102. (Exhibit D).

17. Mike Biffignani offered an opinion in his report that the nighttime standards of 901.102 were violated because the peak decibels violated the standard.

18. In his deposition, Mike Biffignani admitted that 35 Ill. Adm. Code § 910.100 requires the use of Leq measurements (not peak) when determining whether a noise is compliant with 901.102. (See the transcript of Mike Biffignani attached hereto as Exhibit F, p. 22-23 lines 22-24 and lines 5.)

19. Exhibit G shows the results of Mike Biffignani's octave band measurements on April 23, 2021. (Exhibit G is attached hereto).

20. The blue column in Exhibit G represents the Leq measurements for the entire time period that Mr. Biffignani tested on that evening. (Exhibit F, p. 48-49 lines 22-24, 1-4).

21. The red line shows the Leq measurement for the time period 10:12 to 10:17, which Mr. Biffignani called a snapshot in time. (Exhibit F, p. 49, lines 5-23).

22. The black line (may look purple on the exhibit), shows the peak one-second sound level. (Exhibit F, p. 50, lines 2 through 18).

23. The blue columns and red lines on Exhibit G are lower than the 901.102 (b) standard at each frequency. (Exhibit G).

24. Exhibit H marked at the deposition of Mike Biffignani shows the results of his octave band measurements on April 24, 2021. (Exhibit F, p. 51 and Exhibit H)

25. The blue column is the Leq from the entire time period. (Exhibit F, p. 51, lines 10-13).

26. The red line is the Leq for the time period shown at the bottom which is 9:48 to 10:37 for Octave 32 Hz and 9:59 through 11:02 for the other frequencies. (Exhibit F, p. 51, lines 14-17).

27. The black line shows the peak one-second sound level. (Exhibit F, p. 52, lines 2 through 5).

28. The blue columns and red lines on Exhibit H are lower than the 901.102 (b) standard at each frequency.

29. Exhibit I marked at the deposition of Mike Biffignani shows the results of his octave band measurements on November 21, 2021. (Exhibit F, p. 52 and Exhibit I).

30. The blue column is the Leq from the entire time period. (Exhibit F, p. 52, lines 11-13).

31. The red line is the Leq for the time period shown at the bottom which is 5:05 through 5:07. (Exhibit F, p. 52, lines 14-18).

32. The black line shows the peak one-second sound level. (Exhibit D, p. 53, lines 14-18).

33. The blue columns and red lines on Exhibit I are lower than the 901.102(b) standard at each frequency. (Exhibit I).

34. Mr. Biffignani wants to “normalize” these results under the World Health Organization’s inside noise standard. (Exhibit F, p. 34 through 36).

35. Mr. Biffignani found the average daytime ambient sound level inside the loft was 30 dBA. (Exhibit D).

36. Mr. Biffignani found the average nighttime ambient sound level inside the loft was 29 dBA. (Exhibit D).

37. During his testing on April 23, 2021, with music playing at Copper Fire, Mr. Biffignani found the evening Leq inside the loft to be 38 dBA during a time period from 10:26 to 11:00 p.m. (Exhibit D).

38. During his testing on April 24, 2021, with music playing at Copper Fire, Mr. Biffignani found the evening Leq inside the loft to be 39 dBA from 10:00 p.m. to 11:25 p.m. (Exhibit D).

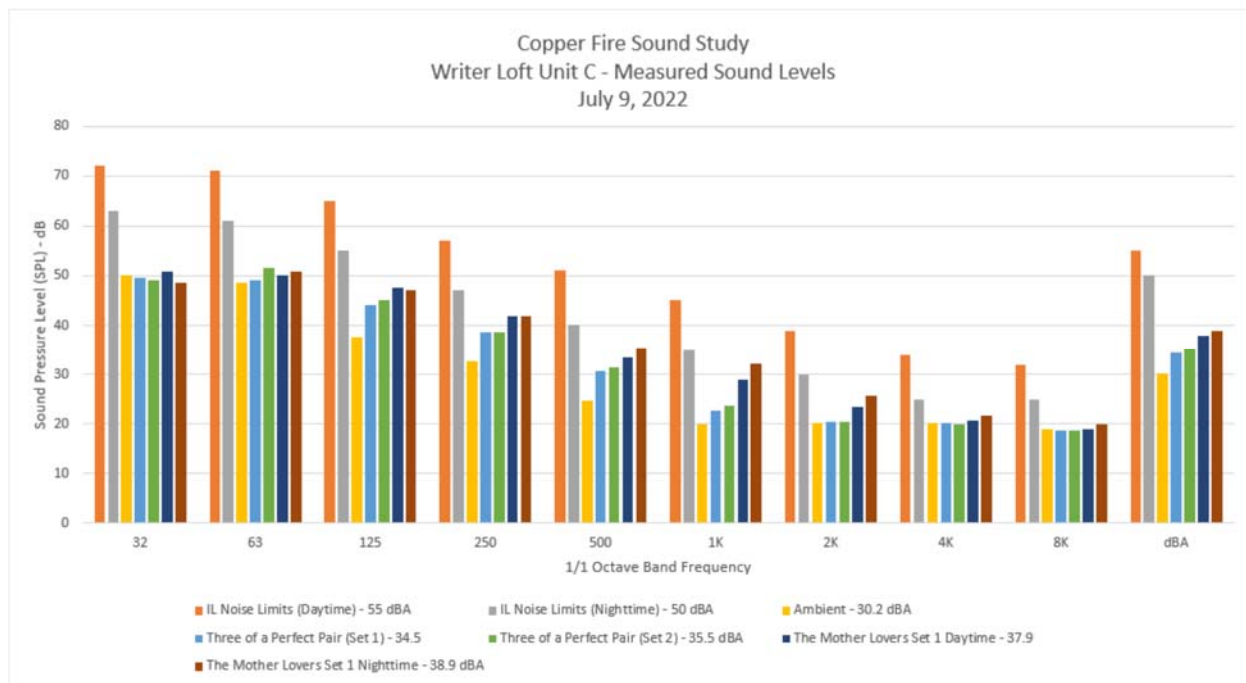
39. During his testing on November 21, 2021, with music playing at Copper Fire, Mr. Biffignani found the daytime Leq inside the loft to be between 33 dBA and 37 dBA. (See the report of Mike Biffignani attached hereto as Exhibit J).

40. Respondent's expert, Gary Brown, found the average background noise inside the loft was 30.2 dBA. (Exhibit E).

41. Mr. Brown found the average sound pressure level inside the loft during an afternoon band was 34.5 dBA to 35.5 dBA. (Exhibit E).

42. Mr. Brown found the average sound level inside the loft during the evening band was 38 dBA to 39 dBA. (Exhibit E).

43. Mr. Brown's results by frequency are shown in Figure 1 below:



44. Mr. Brown will offer an opinion that the sound level inside Complainants’ loft is below the Illinois laws and regulations at all frequencies. (See transcript of Gary Brown attached hereto as Exhibit K).

45. The objective results from both experts are remarkably similar.

46. From May 2021 through the present, Respondents have taken numerous remedial measures in a good faith effort to be responsive to the Boyer’s complaints. (See Respondent’s Answers to Complainants’ Interrogatories attached hereto as Exhibit L, response to interrogatory 6).

47. Respondents downloaded the NIOSH Sound Level meter to monitor noise inside Copper Fire. (Exhibit L).

48. Respondents tried a three-week trial period of working with the Boyers to address noise complaints. (Exhibit L).

49. Respondents tried moving the band inside the restaurant. (Exhibit L).

50. Respondent Renae Eichholz has consulted with musicians and other sound experts to get advice. (Exhibit L).

51. Respondents adopted a noise level sound level policy and enforce this policy with all bands that play inside the restaurant. (Exhibit L).

52. Respondents tell all bands before they are booked about the noise policy and the fact that they will enforce the policy. (Exhibit L).

52. Respondents also have a sign inside the restaurant for all bands to see asking them to comply with the policy. (Exhibit L).

53. Respondents ask all bands to stop playing live music at 11:00 p.m., even though the bar is open until 1:00 a.m.

ADDITIONAL NON-DISPOSTIVE FACTS

54. During the three-week trial period mentioned in paragraph 48, Renae Eichholz was allowed into the Boyer's business office and the 2nd floor loft. (Exhibit C).

55. Renae Eichholz turned the house music stereo in Copper Fire to full volume to see if the house music could be heard. (Exhibit C).

56. The house music could not be heard inside the Boyer's business office. (Exhibit C).

57. The house music also could not be heard inside the Boyer's loft. (Exhibit C).

58. There was at least one occasion during the Covid shutdown where Geri Boyer complained to Renae and Mark Eichholz that she could hear music late in the evening, and the only music playing inside Copper Fire was the house music. (Exhibit C).

59. In her deposition, Geri Boyer admitted that "I will say that when the stereo is playing at Copper Fire, for the most part we can't hear that." (Exhibit B, p. 47 lines 1 to 3).

60. Mike Biffignani and Gary Brown will offer an opinion that the live music in Copper Fire does not violate the daytime standards in 901.102. (Exhibit F, p. 61, lines 7-11, and p. 73, lines 9-20).

61. Nevertheless, Geri Boyer has complained often about the noise level during the daytime hours. (See text messages between Geri Boyer and Copper Fire attached hereto as Exhibit M).

62. Geri Boyer has even admitted in a text message, "We aren't going for loud. We are going for not hearing your music." (Exhibit M, page 4).

63. Geri Boyer also admitted in her deposition that she is unconcerned if the sound actually violates the law:

Q Does it not matter to you whether the sound is violating the law?

A It matters to me that I am living with noise. That's what matters to me.

That's disturbing my life.

(Exhibit B, p. 35-36, lines 23-24, 1-3).

64. Notwithstanding the above testimony, Geri Boyer also testified:

Q And so in that case, what have you done inside your apartment to address that noise that's bothering you so much?

A. I'm not the source.

Q. Okay. Again, what have you done –

A. I haven't done anything.

(Exhibit B, p. 36, lines 4-9).

65. In paragraph 12 of the Complaint, the Boyer's allege "this dividing wall consists of brick on both sides, with air space between the walls. No additional plaster or other sound dampening material is on the brick wall."

66. Mike Biffignani was told the wall inside Copper Fire is an exposed brick wall. (Exhibit D).

67. The wall inside Copper Fire that is adjacent to the Boyers is and has been since its opening, a brick wall covered by drywall. (Exhibit C).

68. The wall inside Geri Boyer's loft is exposed brick. (Exhibit C).

69. The exposed brick wall inside the Boyer's apartment has multiple holes in the mortar, of unknown depth. (Exhibit C).

70. In paragraph 13 of the Complaint, the Boyer's allege that the music is so loud that vibrations can be felt throughout the Boyer's home and office space. (Exhibit C).

71. There is no evidence to support the allegation in paragraph 13, and Mike Biffignani admitted he could have tested for it, but was not asked to test vibration. (Exhibit F, p. 103, lines 18-21).

72. Gary Brown will testify that no vibration can be felt in the Boyer loft.

73. There are multiple annual city-wide celebrations that take place on Main Street near Geri Boyer's apartment where thousands of people crowd the streets, such as the Belleville Chili cookoff and Art of the Square. (Exhibit C).

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is proper when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005 (c)

(2020), *Gauthier v. Westfall*, 639 N.E.2d. 994, 999 (Ill.App.2nd 1994), *Adames v. Sheahan*, 233 Ill.2d 276, 295 (2009); *Dowd & Dowd Ltd. V. Gleason*, 181 Ill.2d 460, 483 (1998). This Board has also recognized a shifting burden when addressing summary judgment motions. The original burden of proof is on the moving party, but the burden of production may shift during the course of the proceedings. *Kruk v. New Trier High School District No. 20*, PCB 20-10, April 7, 2022, Opinion and Order. If a movant can affirmatively disprove the plaintiff's case, then it has met its burden of proof and production. *Id.* The burden then shifts to the non-movant to "present some factual basis that would arguably entitle him to a judgment under the applicable law." *Id.*, citing *Williams v. Covenant Medical Center*, 316 Ill.App. 3d 682, 689 (4th Dist. 2000). While the evidence should be strictly construed against the movant, "if what is contained in the papers on file would constitute all of the evidence before a court and would be insufficient to go to a jury but would require a court to direct a verdict, summary judgment should be entered." *Id.* citing, *Pyne v. Witmer*, 129 Ill.2d 351 (1989).

ARGUMENT

I. RESPONDENTS ARE COMPLIANT WITH 35 ILL. ADM. CODE SECTION 901.102, THIS IS UNDISPUTED, AND RESPONDENTS ARE ENTITLED TO SUMMARY JUDGMENT.

It should not go unnoticed that Respondents included Complainants' expert's finding before they introduced their expert's finding. Mike Biffignani was hired by Complainants. His objective findings are set forth clearly in the record in Exhibits G, H and I. Those objective numbers of Complainants' expert prove compliance with 901.102. Before addressing the objective numbers of this case, Respondents will show why the objective numbers are legally significant and require Summary Judgment.

Regulations flow from statutes, so a discussion of the law must start with the statutes. 415 ILCS 5/24 (2020) states “No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any business activity, so as to violate any regulating or standard adopted by the Board under this Act.” 415 ILCS 5/25 (2020) allows this Board to create regulations that “categorize the types and sources of noise emissions that unreasonably interfere with the enjoyment of life, or with any lawful business, or activity and **shall prescribe for each such category the maximum permissible limits on such noise emissions.**” Regulations created under 415 ILCS 5/25 (2020) set maximum permissible limits, which means compliance with those numbers are necessarily permissible.

Section 901.101 defines the different classes of land. All parties agree that Copper Fire is Class B under 901.101 and that Complainants’ loft is Class A land. All parties should agree that this Board considered sleep and sleep standards in the different class of property given that it included the following definition of Residential Dwelling Unit – “all land used as specified by the Land-Based Classification Standards (LBCS) Codes 1100 through 1340 and those portion of land as specified by LBCS code 6222 **used for sleeping.**” 35 Ill. Adm. Code § 900.101. Section 901.102 establishes the maximum permissible sound that can be emitted from Class B to Class A land during daytime hours and nighttime hours. The nighttime maximum permissible sound levels are set forth in the following table:

Octave Band Center Frequency (Hertz)	Allowable Octave Band Sound Pressure Levels (dB) of Sound Emitted to any Receiving Class A Land from		
	Class C Land	Class B Land	Class A Land
31.5	69	63	63
63	67	61	61
125	62	55	55
250	54	47	47
500	47	40	40
1000	41	35	35
2000	36	30	30

4000	32	25	25
8000	32	25	25

In the abundance of caution, Respondents note that this Board has acknowledged that the standards in 901.102 “provided maximum allowable octave band sound pressure levels.” *Zivoli v. Prospect Dive and Sport Shop, Ltd.*, 89-205 (December 20, 1989).

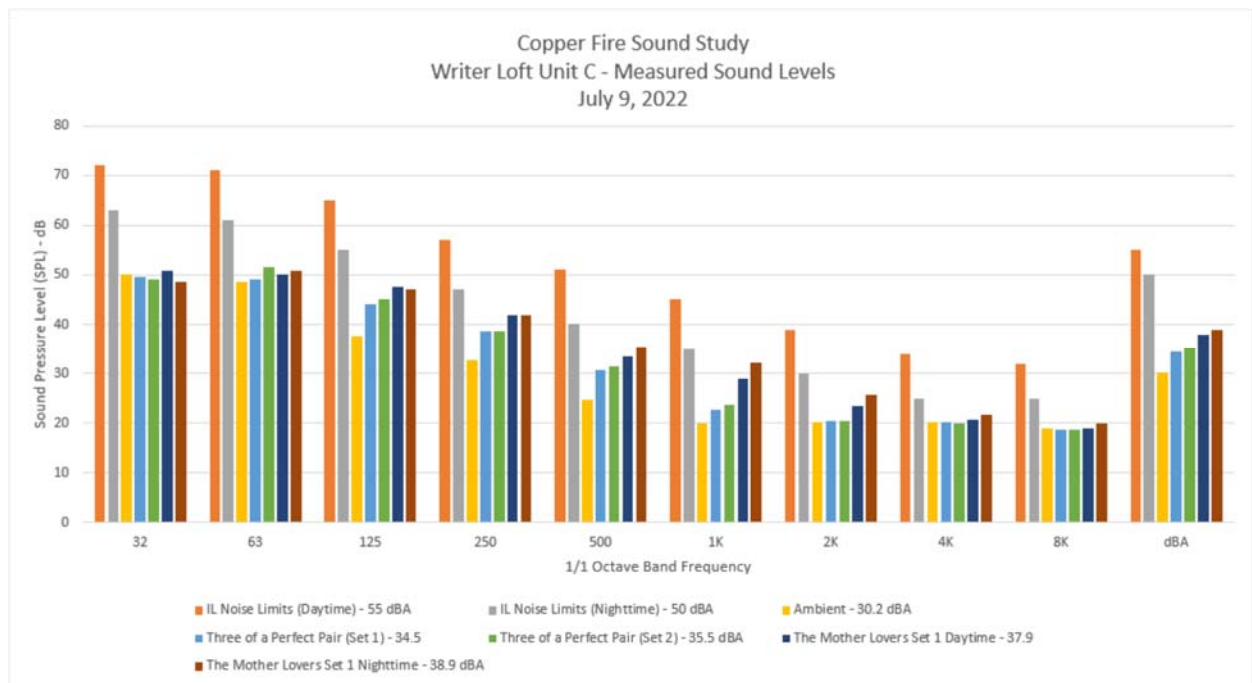
There can be no dispute that the levels set forth in the table are one-hour Leq measurements, not peak measurements. See *Zivoli v. Prospect Drive and Sport Shop, Ltd.* 89-205 (December 20, 1989). More specifically, 35 Ill. Adm. Code §900.103 (b) provides:

- (b) Procedures Applicable only to 35 Ill. Adm. Code 901
 - (1) All measurement and all measurement procedures to determine whether emissions of sound comply with 35 Ill. Adm. Code 901 shall, with the exception of measurement to determine whether emissions of sound comply with 35 Ill. Adm. Code 901.109, be based on Leq averaging, as defined in 35 Ill. Adm. Code 900.101, using a reference time as follows:
 - (A) Except as specified in (b)(1)(B) for steady sound, a reference time of at least 1 hour shall be used for all sound measurements and measurement procedures.
 - (B) For steady sound as defined in Section 101 of this Part, the reference time shall be at least 10 minutes.

Complainants hired Mike Biffignani who conducted sound testing in Complainants’ loft. Mike Biffignani compared his testing results to the standards in 901.102. Exhibit G shows the results of Mike Biffignani’s octave band measurements on April 23, 2021. (Exhibit G is attached hereto). Exhibit H shows the results of Mike Biffignani’s octave band measurements on April 24, 2021. (Exhibit H is attached hereto). Exhibit I shows the results of Mike Biffignani’s octave band measurements on November 21, 2021. (Exhibit I is attached hereto). The blue column in Exhibits G, H and I represents the Leq measurements for the entire time period that Mr. Biffignani tested on that evening. (See Exhibit F, pages 48-52). The red line shown on Exhibits G, H and I represents the time-weighted average that Mr. Biffignani also called an Leq

measurement. The blue columns and red lines on Exhibits G, H and I are lower than the 901.102 (b) standard at each frequency.

Complainants' own expert proves the sound level escaping Copper Fire is within the maximum permissible sound limits. However, the analysis does not end there. Respondents retained Gary Brown, who also conducted sound testing inside Copper Fire, inside Complainants' loft and outside of Copper Fire. (See the report of Gary Brown attached hereto as Exhibit E). Mr. Brown conducted sound testing in three areas in order to control the source of sound. Mr. Brown's results were:



The objective numbers in this case, from two different experts on four different days, confirm that Respondents are in compliance with the maximum permissible sound limits in 901.102. The analysis must stop here. This Board was given the power to establish regulations setting a maximum permissible sound limit to control noise pollution. Noise pollution is something that interferes with the enjoyment of life. By establishing maximum permissible sound limit in 901.102, this Board necessarily found that sound within those limits cannot

interfere with the enjoyment of life. A finding that the compliant sound from Copper Fire escaping to Complainants' loft constitutes noise pollution would be akin to finding a person guilty of speeding when they were at maximum speed limit.

It must be noted that Mr. Biffignani tacitly accepted the fact that compliant test results lead to one result, because he is asking this Board to "normalize" the Leq standards at each frequency of 901.102. He is suggesting multiple ways to "normalize" the standard, but he chose to suggest this board use peak dBA numbers. In other words, Mr. Biffignani wants this board to ignore 35 Ill. Adm. Code § 900.103. A one-second peak number does not come close to complying with 35 Ill. Adm. Code 901. Further, a one-second peak number is not a time-average sound pressure level. The definition of Leq under 35 Ill. Adm. Code 900.101 includes "The greater the variation in indicated sound level, the longer must be the observation for a given expected precision of the measurement." Simply stated, Mr. Biffignani's one-second peak numbers are not the proper way to measure compliance with 901.102.

To whatever extent, Complainants attempt to argue that Mr. Biffignani's "normalization" process creates an issue of fact, it must be noted that it is not a fact issue. Legally, this Board cannot accept Mr. Biffignani's "normalization" argument because it requires the Board to ignore the procedures and definitions set forth in the laws and regulations of Illinois. "In cases alleging violation of the numeric sound limits, the Board requires strict adherence to applicable measurement procedures." *Charter Hall Homeowners's Association v. Overland Transportation System, Inc.*, PCB 98-81, October 1, 1998 slip opinion, *citing, Discovery South Group, Ltd. v. Pollution Control Board*, 275 Ill. App. 3d, 547, 559 (1st Dist. 1995). Mr. Biffignani's recommendation that the Board ignore the Leq requirement of 35 Ill. Adm Code § 901.103 and

instead look at the peak numbers of his testing, is not permissible due to the strict compliance requirement.

Respondents are entitled to summary judgment because Respondents have evidence that the sound escaping to Complainants' loft is within the maximum permissible sound limits. This evidence comes from Respondents' expert and Complainants' expert. Respondents have affirmatively disproven Complainants' case and Respondent's Motion for Summary Judgment must be granted.

II. RESPONDENTS ARE ENTITLED TO SUMMARY JUDGMENT, EVEN IF THE SECTION 33 (C) FACTORS ARE ANALYZED.

There has never been an enforcement action in front of this Board where the Respondent proved compliance with 901.102 and this Board then moved on to determine if the sound level sound was noise pollution. It simply makes no sense. How can sound within the maximum permissible limits be considered noise pollution? However, this section of the Brief is submitted in the abundance of caution to show why Summary Judgment is still appropriate even under a nuisance noise analysis.

Notwithstanding the fact that Complainants plead the applicability of 901.102, admitted to its applicability in Geri Boyer's deposition, and hired an expert who conducted sound testing to compare against 901.102, Respondents expect Complainants to suggest 901.102 is irrelevant because they are proceeding under a nuisance noise standard. A nuisance noise analysis follows a two-step inquiry to determine whether a sound emission rises to the level of noise pollution. The first step is considering whether the sound at issue causes an interference with the enjoyment of life. *Charter Hall Homeowner's Association v. Overland Transportation System, Inc.*, PCB 98-81(October 1, 1998), *See also, James Fiser v. Henry's Double K, LLC.*, PCB 18-084, (January 21, 2021). "Sounds from a source must objectively affect enjoyment of life to

constitute an interference.” *Charter Hall Homeowner’s Association v. Overland Transportation System, Inc.* PCB 98-81 (October 1, 1998).

Respondents are focusing on the second step of the nuisance noise analysis. Assuming step 1 is met, step 2 involves a consideration of the factors set forth 415 ILCS § 5/33 (c) (2020) (“Section 33 (c)”) to determine if the noise rises to the level of noise pollution. Section 33 (c) provides:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source, and
5. any subsequent compliance.

Under the Section 33 (c) factors, Respondents are entitled to Summary Judgment. With respect to the character and degree characteristic, Respondents note their compliance with 901.102 and both experts have confirmed the sound level in Complainants’ loft to be 33 to 39 dB, while live music is playing at Copper Fire. These sound levels are far below the noise levels of most appliances found in homes, and below the average ambient noise level in an urban environment. The character and degree of any injury is minimal. This factor supports Respondents.

The 2nd and 3rd factors of Section 33 (c) are strongly in favor of Respondents. Geri Boyer has admitted that the City of Belleville has been attempting to redevelop the downtown area, and Main Street is a focus. Complainant Geri Boyer agrees that she lives in a vibrant downtown. (See transcript of Geri Boyer attached hereto as Exhibit B, p. 5, lines 23 to 24). Complainant Geri Boyer moved downtown because she wanted to be part of the redevelopment. (Exhibit B, p. 6, lines 14-17). Live music at bars and restaurants is part of this redevelopment. Copper Fire participates in a group called Live Music Row www.livemusicrow.com which promotes live music on Main Street in downtown Belleville. (Exhibit C). Live Music Row helps the redevelopment of downtown Belleville, and is strongly supported by the Greater Belleville Chamber of Commerce. (Exhibit C). Further Geri Boyer moved into the area with the full understanding that there were bars and restaurants in the area. (Exhibit B, p. 7, lines 10-13). Within two blocks to the east and west of Copper Fire are the following bars/restaurants: Bennie's Pizza Pub, Margaritas Mexican, The Quarter Restaurant and Bar, the Cornerstone Bistro, Tavern on Main, Big Daddy's 618, and Seven Shichi Sushi Bar. (Exhibit C). All of these facts establish that Copper Fire is well-situated in downtown Belleville on Main Street

With respect to the technical practicability or reducing or eliminating the sound, Respondents have taken multiple significant steps to lower the sound in Copper Fire and escaping Copper Fire. (Exhibit L). Complainants have admitted they want zero sound escaping. This is not practical, given the Boyer's refusal to do anything. If their wall is the problem, then nothing Respondents do will lower the sound level. The facts show that the Boyers' have an exposed brick wall in their loft, and it has holes in it. Finally, the sound level in the Boyer's apartment is already below 40 dB. If this is not acceptable, then what level of reduction will the Boyer's accept?

Finally, with respect to the subsequent compliance factor, Respondents have been in compliance since measurements have been taken. Nevertheless, Respondents have continued to take steps to lower the sound. Exhibit L. This factor strongly supports Respondents.

With all five factors in favor of Respondents, this board must find 34 dBA to 39 dBA in a downtown urban environment does not meet the definition of noise pollution. This Board knows how quiet this sound level is. This Board knows that sound levels below 40 dB cannot interfere with someone's enjoyment of life. Finding this level of sound to be noise pollution will allow any person in the state of Illinois to bully their neighbor into taking some action to resolve a subjective complaint. In this case, Geri Boyer knows that the sound level from Copper Fire is fully compliant with the daytime standards, yet she constantly complains during the daytime hour. See Exhibit M. Geri Boyer's "I can't sleep" statement must be supported by some objective evidence. *Charter Hall Homeowner's Association v. Overland Transportation System, Inc.* PCB 98-81 (October 1, 1998). In this case, there is none. The Boyers complain, do nothing to address their issues, and demand that their neighbor do everything. Meanwhile, Respondents have taken multiple actions to address the Boyers' complaints, even though they are already compliant with this Board's regulations. It would be a miscarriage of justice to reward the Boyers.

WHEREFORE, for each of the foregoing reasons, Respondents are entitled to summary judgment in their favor and against Complainants, and for any other relief this Board deems just and proper.

Respectfully submitted,

Dated: April 11, 2023

GREENSFELDER, HEMKER & GALE, P.C.



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Mark Eichholz

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served on the date of April 11, 2023 Respondents' Joint Memorandum in Support of their Motion for Summary Judgment upon the following persons by depositing the document in a U.S. Postal Service mailbox by 6:00 p.m., with proper postage prepaid to:

Matthew A. Jacober
Brooke Robbins
Lathrop GPM LLP
7701 Forsyth Boulevard
Suite 500
Clayton, MO 63105
*Attorneys for Complainants,
Doug and Geri Boyer*



Paul E. Petruska

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Doug and Geri Boyer,

Complainants,

v.

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

Respondents.

PCB _____

(Enforcement)

THE PARTIES

1. Complainants Doug and Geri Boyer (“the Boyers”) are a married couple who live and work at 208 East Main Street, Belleville, St. Clair County, Illinois 62220.
2. Respondent MRB Development, LLC is an Illinois limited liability company with its principal office address at 6950 Reinneck Road, Belleville, Illinois 62221. Respondents Renae and Mark Eichholz are both managers of MRB Development, LLC. Respondents own and operate a bar/restaurant called Copper Fire, located next door to the Boyers’ residence at 200 East Main Street, Belleville, St. Clair County, Illinois 62220.

FACTUAL BACKGROUND

3. 208 East Main Street is a historic, three-story brick building in downtown Belleville. The Boyers purchased and moved into the building more than a decade ago, in 2010.
4. Since then, the Boyers have leased the first floor of 208 East Main Street to Kaskaskia Engineering Group, LLC (“KEG”)—a full-service civil engineering, environmental, and contracting firm founded, owned, and managed by Geri Boyer.

5. The upper floors of 208 East Main Street contain eight residential lofts. The Boyers live in one of the second-story lofts, and rent out the remaining units.
6. As shown in the Google Maps Street View screenshot below, 208 East Main Street is directly adjacent to 200 East Main Street, with the properties sharing a wall along their eastern and westernmost edges, respectively:



7. Since the Boyers moved into their home in 2010, numerous different businesses have occupied 200 East Main Street, including a sandwich shop and a coffee shop. None of those businesses interfered with the Boyers' ability to live and work at their home.
8. However, that changed when Respondents began using the property at 200 East Main Street to operate a bar/restaurant in 2016.
9. Copper Fire is a bar and restaurant whose website touts an "environment filled with laughter and music." The restaurant has gone from taking orders and delivering to tables to order and pick up at the bar. Over the past two years, it has regularly hosted live music

events, with a variety of musical acts performing both indoors and outside using an adjacent street closure permit.

10. The live music events at Copper Fire are frequent, and take place on weeknights as well as weekends. For example, Copper Fire hosted live music events on 20/30 days in June 2021 and 21/31 days in July 2021. The events take place at varied times, usually beginning in the late afternoon on weeknights and continuing until the restaurant closes, often past midnight. On weekends, the events can begin in the morning and last all day.
11. In order to use the property at 200 East Main Street as a bar/restaurant, Respondents were required to obtain a Special Use Permit from the Belleville Zoning Board. Once this permit was granted, Respondents performed extensive renovations to prepare the building for this special use. However, despite the fact that the restaurant would be regularly hosting live music performances, Respondents did not install any sound mitigating equipment to attempt to prevent this noise from disturbing neighboring properties.
12. Making matters worse, the indoor stage that Respondents provide for their musical guests is directly in front of the wall the restaurant shares with the Boyer residence. This dividing wall consists of brick on both sides, with an air space between the walls. No additional plaster or other sound dampening material is on the brick wall. This wall does not do enough to attenuate the sound of live music being played directly in front of it.
13. As a result, each time Copper Fire hosts a live music event, the Boyers can both hear and feel the noise from within their home. The live music events at Copper Fire not only subject the Boyers to frequent, unpredictable noise, but also cause vibrations that can be felt throughout the Boyers' home and office space.

14. This noise pollution materially and unreasonably interferes with the Boyers' use and enjoyment of their home. For example, the loud sounds coming from Copper Fire drown out other sounds, making it impossible for the Boyers to watch television, listen to their own music, or engage in conversation with each other. Even silent activities, such as reading, are impracticable as the vibrations in addition to the loud music make it difficult to concentrate.
15. Likewise, the noise emanating from Copper Fire often starts by late afternoon and continues well past midnight, making it difficult for the Boyers to fall asleep at a reasonable hour and stay asleep throughout the night. This inability to establish regular sleep schedules and get sufficient sleep is detrimental to the Boyers' physical health and well-being. On top of this, the Boyers have had to refrain from inviting their grandchildren for overnight visits, since the loud, unpredictable sounds emanating from Copper Fire interfere with the children's ability to fall and stay asleep. Being unable to enjoy this time with their grandchildren causes additional mental distress on top of the physical effects.
16. Respondents' noise pollution also materially and unreasonably interferes with the Boyers' ability to operate their engineering business from its first-floor offices. Geri Boyer and the other KEG employees are unable to work from their offices in the afternoons and evenings once the music begins at Copper Fire because the noise impedes their ability to concentrate on their highly technical engineering work, which requires careful attention to detail. Moreover, the noise from Copper Fire makes it difficult to talk with clients and colleagues, either in person or over the phone. As a consulting firm, this inability to provide a professional environment for effective client communication is highly detrimental.

17. The Boyers have attempted to discuss their concerns with Respondents numerous times, in the hopes that the parties might be able to find a mutually acceptable solution to this problem. However, even when Respondents have agreed to turn down the music, they have failed to follow through on their promise. They have refused to engage in meaningful discussions with the Boyers, and have failed and refused to change their behavior in any way.
18. After these attempts to discuss the matter with Respondents proved unsuccessful, the Boyers sent a cease-and-desist letter to Respondents on March 19, 2021, requesting that they temporarily delay future live music events until sound mitigation equipment could be installed. A true and correct copy of this letter is attached as **Exhibit 1**. When Respondents failed to respond, and continued scheduling and hosting live music events, the Boyers followed up on March 26, 2021 with a second letter making the same request. A true and correct copy of this letter is attached as **Exhibit 2**.
19. Respondents finally responded on March 29, but denied the existence of any problem and refused to make any changes to their behavior. A true and correct copy of this letter is attached as **Exhibit 3**. Respondents continued to host live music events without any effort to mitigate the detrimental effects on their neighbors. For example, Copper Fire hosted such events on 16/30 days in April 2021.
20. In fact, Respondents made it clear that they did not take the Boyers' concerns seriously and had no intention of even attempting to amicably resolve the situation when they posted the sign below in their window on approximately April 15, 2021:



21. In April 2021, the Boyers engaged the services of acoustics expert Mark Biffignani of Sondare Acoustics to measure the amount of unwanted noise from Copper Fire that could be heard in the Boyers' second-story apartment (the "Sound Study"). The Sound Study conformed to the measurement techniques required by Illinois Pollution Control Board regulations and confirmed what the Boyers have been experiencing since Copper Fire moved in—that Respondents allow considerable noise to emanate beyond their property

line into the Boyers' home. A copy of Mr. Biffignani's report and analysis is attached as **Exhibit 4**.

22. Notably, the Sound Study also concluded that this noise pollution could be prevented by installing sound mitigation material, such as a layer of gypsum drywall. This underscores the unreasonableness of Respondents' refusal to take action to prevent this unnecessary interference with the Boyers' lives.
23. The Boyers sent a copy of the Sound Study to Respondents on May 10, 2021, again hoping that they might be able to encourage Respondents to engage in discussions toward finding a mutually acceptable solution to the problem. A true and correct copy of this letter is attached as **Exhibit 5**. However, Respondents continued to deny the magnitude of the problem and failed and refused to engage in any meaningful negotiations. A true and correct copy of Respondents' May 11, 2021 response is attached as **Exhibit 6**.
24. By operating their business in a way that causes such substantial, unreasonable and unnecessary interference with the Boyers' use and enjoyment of their home, Respondents have violated and continue to violate numerous state and local statutes, ordinances, and regulations implemented to protect residents from noise pollution.

VIOLATION OF ILLINOIS POLLUTION CONTROL BOARD NOISE REGULATIONS

25. 35 Ill. Adm. Code § 900.101 defines "noise pollution" as "the emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity."
26. Illinois Pollution Control Board ("IPCB") regulations strictly prohibit such behavior. 35 Ill. Adm. Code § 900.102 provides:

A person must not cause or allow the emission of sound beyond the boundaries of that person's property, as defined in Section 25 of the Environmental Protection Act, that causes noise pollution in Illinois or violates any provision of this Chapter.

27. The measurements taken during the Sound Study confirm that “unwanted sound, noise, is being created across the business property line” between Copper Fire and the Boyer residence. (*See* Exhibit 4 p. 5).
28. This noise constitutes noise pollution because, as described above, it unreasonably interferes with the Boyers’ enjoyment of life by depriving them of their right to the quiet enjoyment of their home, preventing them from establishing a regular sleep schedule and getting sufficient sleep, and causing both physical and emotional distress. This noise also interferes with the Boyers’ ability to operate their lawful engineering business by disturbing employees and interfering with their ability to concentrate, and by impeding their ability to provide effective customer service by creating a noisy, unpredictable environment.
29. In addition, the noise emanating from Copper Fire exceeds the acceptable levels established by 35 Ill. Adm. Code § 901.102(b). Pursuant to 35 Ill. Adm. Code § 901.101, the Boyer residence and KEG offices are categorized as “Class A Land,” while Respondents’ bar/restaurant is categorized as “Class B Land.” 35 Ill. Adm. Code § 901.102(b) establishes the maximum allowable octave band sound pressure levels for sound emanating from Class B land onto Class A land. As shown by the chart below, the Sound Study demonstrated that the noise emitted from Respondents’ property exceeds these limits:

Octave band center frequency	Maximum decibel level allowed by IPCB regulations	Decibel level recorded at Boyers' home after 10pm on April 23, 2021 ¹	Decibel level recorded at Boyers' home after 10 pm on April 24, 2021
32	63	68	67
63	61	64	52
125	55	49	53
250	47	45	46
500	40	38	45
1000	35	34	42
2000	30	27	39
4000	25	22	34
8000	25	18	30

VIOLATION OF 415 ILCS 5/24

30. 415 ILCS 5/24 provides:

No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the [Illinois Pollution Control] Board under this Act.

31. As detailed above, Respondents emit noise beyond the boundaries of their property that exceeds the levels allowed under IPCB regulations.

32. In addition, as detailed above, this noise unreasonably interferes with the Boyers' enjoyment of life, as well as with their lawful business activities.

VIOLATION OF BELLEVILLE CODE OF ORDINANCES § 110.31

33. Section 110.31(A) of the Belleville, Illinois Code of Ordinance provides:

No business, trade or occupation shall be carried on in any manner which will create a public or private nuisance, nor shall such operation be carried on in a manner which will produce noise, odor, or other physical disturbances beyond the property line of the premises at which such operations take place, or otherwise threaten the public health, safety, morale, or welfare.

¹ In his report, the acoustics expert noted that he chose the more conservative of two options for measuring the decibel level in the Boyers' home on both April 23 and April 24. His report states that the actual decibel levels may be 3-5 decibels higher.

34. As detailed above, Respondents operate their business in a manner which produces noise beyond their property line.

35. Moreover, this noise constitutes a private nuisance because it unreasonably interferes with the Boyers' enjoyment of life and use of their property.

VIOLATION OF ST. CLAIR COUNTY ZONING CODE §§ 40-8-1 AND 40-8-2

36. Section 40-8-1 of the St. Clair County, Illinois Zoning Code provides:

Hereafter, it shall be unlawful: to erect, use, occupy, enlarge, alter, relocate, or reconstruct any structure or part thereof; to create any lot; or to use, occupy, or develop any lot or part thereof except in conformity with the provisions of this Code.

37. Section 40-8-2(B) of the St. Clair County, Illinois Zoning Code provides:

Noise emanating from any use shall not be of such volume or frequency as to be unreasonably offensive at or beyond the property lines. Unreasonably offensive noises, due to intermittence, beat frequency, or shrillness shall be muffled so as not to become a nuisance to adjacent uses.

38. Respondents are in violation of Section 40-8-1 because their use of their property causes noise to emanate beyond their property line at such volume and frequency as to be unreasonably offensive, and Respondents have failed to muffle that noise so as to avoid causing a nuisance, thereby failing to conform with the provisions of Section 40-8-2.

REQUEST FOR RELIEF

WHEREFORE, Complainants respectfully request that the Illinois Pollution Control Board enter an Order:

1. Temporarily enjoining Respondents from hosting live music events or engaging in other behavior in violation of state and local noise laws and regulations pending resolution of this enforcement action;

2. Permanently enjoining Respondents from hosting live music events or engaging in similar noise-producing behavior unless and until sound mitigation equipment is installed or measures are implemented that reduce the noise emanating from their property to non-nuisance levels; and
3. Providing such other and further relief that the Board deems just and equitable.

Dated: September 30, 2021 **LATHROP GPM LLP**



Matthew Jacober (IL #6256140)
7701 Forsyth Boulevard
Suite 500
Clayton, MO 63105
(314) 613-2845
Matthew.Jacober@LathropGPM.com

**ATTORNEYS FOR COMPLAINANTS
DOUG AND GERI BOYER**

CERTIFICATION

On oath or affirmation, I state that I have read the foregoing and it is accurate to the best of my knowledge.



Doug Boyer



Geri Boyer



Date



Date

COMPLAINANT

COMPLAINANT

EXHIBIT 1

STEVEN E. KATZMAN
CHRISTINA M. SUGDEN
DANIEL C. KATZMAN

KATZMAN & SUGDEN, LLC
ATTORNEYS AT LAW
300 SOUTH CHARLES STREET TELEPHONE: (618) 235-2110
BELLEVILLE, ILLINOIS 62220 FACSIMILE: (618) 235-2117

Licensed in Illinois and Missouri

EMAIL: dkatzman@katzmanlaw.net

--- IMMEDIATE DEMAND TO CEASE AND DESIST ---

March 19, 2021

PERSONAL AND CONFIDENTIAL

Renaë Eichholz
Copper Fire Bar and Eatery
200 E. Main St.
Belleville, IL 62220

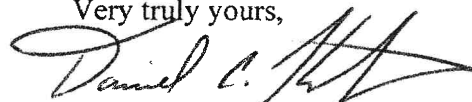
RE: Geri Boyer v. MRB Development, LLC d/b/a Copper Fire

Dear Ms. Eichholz:

Please be advised that I have been retained to represent the interests of Geri Boyer related to her excessive noise complaints against Copper Fire Bar and Eatery. As you are aware, my client both lives and works next door to your establishment. The excessive noise emanating from Copper Fire endangers my client's physical and emotional health and well-being; interferes with legitimate business and recreational activities; depresses property values; offends the senses; creates a public nuisance; and reduces the overall quality of the area, which we believe to be in violation of local ordinances and Illinois law. My client has attempted to amicably resolve this matter with you on numerous occasions with no success. **As such, we are hereby demanding that you IMMEDIATELY cease and desist playing all music, including but not limited to live and recorded, inside the premises of Copper Fire Bar and Eatery located at 200 E. Main St. in Belleville, until proper sound mitigation equipment is installed.**

Should you fail to immediately cease and desist playing such music in violation of this letter, my client has authorized me to pursue any and all legal recourse on her behalf. Please consider this our good faith effort to amicably resolve this matter without the need for law enforcement and/or court intervention. If you have any questions, please do not hesitate to contact me. On behalf of my client, thank you for your courtesy and prompt attention to this matter.

Very truly yours,



Daniel C. Katzman

DCK:dk

cc: Mayor Mark Eckert (via email only)
Chief Col. William G. Clay III (via hand-delivery)
Assistant Chief Lt. Col. Matthew Eiskant (via hand-delivery)
Belleville City Attorney Garrett Hoerner (via email only)
Belleville Assistant City Attorney Brian Flynn (via email only)
Mark Eichholz (via regular mail)

EXHIBIT 2

STEVEN E. KATZMAN
CHRISTINA M. SUGDEN
DANIEL C. KATZMAN

KATZMAN & SUGDEN, LLC

ATTORNEYS AT LAW
300 SOUTH CHARLES STREET TELEPHONE: (618) 235-2110
BELLEVILLE, ILLINOIS 62220 FACSIMILE: (618) 235-2117

Licensed in Illinois and Missouri

EMAIL: dkatzman@katzmanlaw.net

--- FINAL DEMAND TO CEASE AND DESIST ---

March 26, 2021

PERSONAL AND CONFIDENTIAL

Renaë Eichholz
Copper Fire Bar and Eatery
200 E. Main St.
Belleville, IL 62220

RE: Geri Boyer v. MRB Development, LLC d/b/a Copper Fire

Dear Ms. Eichholz:

As I believe you are aware, my office has been retained to represent Geri Boyer related to her excessive noise complaints against Copper Fire Bar and Eatery. We previously served you with a Cease and Desist Letter on March 19, 2021. However, you intentionally failed to comply with the terms of our demand. It is our understanding that you are planning to have music again this weekend in direct violation of our previous letter. We are hereby reiterating our demand that you cease and desist playing all music, including but not limited to live and recorded music, inside the premises of Copper Fire until proper sound mitigation equipment is installed.

It is also our position that operating your business as advertised, without a functioning kitchen, is in direct violation of both your liquor and video gaming licenses from the City of Belleville. For your information, a copy of this letter is also being sent to Mayor Mark Eckert.

The excessive noise emanating from Copper Fire endangers my client's physical and emotional health and well-being; interferes with legitimate business and recreational activities; depresses property values; offends the senses; creates a public nuisance; and reduces the overall quality of the area. My client has attempted to amicably resolve this matter with you on numerous occasions with no success. As such, we are, once again, hereby demanding that you IMMEDIATELY cease and desist playing all music, including but not limited to live and recorded, inside the premises of Copper Fire Bar and Eatery located at 200 E. Main St. in Belleville, until proper sound mitigation equipment is installed.

Should you once again fail to immediately cease and desist playing such music in violation of this letter, I will be filing a lawsuit on my client's behalf at the St. Clair County Courthouse. Please consider this our final good faith effort to amicably resolve this matter without the need for law enforcement and/or court intervention. If you have any questions, please do not hesitate to

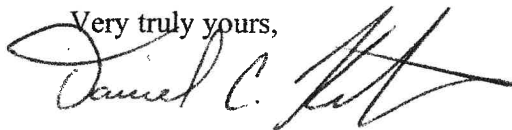
Ms. Renae Eichholz

Page 2 of 2

March 26, 2021

contact me. On behalf of my client, thank you for your courtesy and prompt attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Daniel C. Katzman". The signature is fluid and cursive, with a large initial "D" and "K".

Daniel C. Katzman

DCK:dk

cc: Mayor Mark Eckert (via email only)

EXHIBIT 3



Paul E. Petruska
E-mail: ppetruska@greensfelder.com
Direct Dial: (618) 239-3607

March 29, 2021

Daniel C. Katzman
Katzman & Sugden, LLC
300 South Charles Street
Belleville, IL 62220

Re: Geri Boyer v. MRB Development, LLC d/b/a Copper Fire

Dear Mr. Katzman:

I am the attorney for MRB Development, LLC d/b/a Copper Fire. I am acknowledging receipt of your March 19 and March 26 letters. My client is well aware that Mrs. Boyer has complaints, but your client has offered no clarity to the extent of the problem. My client has been asked to cease all music while your client has not provided any evidence there are any noise violations. If you want compliance with a specific ordinance, please identify with specificity which noise or gaming ordinance you believe my client is violating.

Your client serves on a commission dedicated to inviting business to downtown generally, and main street specifically. That committee approved my client's business three years ago. My client has had live music the entire time. Your client's decision to pursue her complaints now is questionable. My client, who spent a year fighting to survive under COVID-19 restrictions, and then suffered a property casualty when the restrictions eased, now has the additional trauma of dealing with your client's threats and accusations of depressing property values, creating a public nuisance and reducing the overall quality of the area with absolutely no facts.

My client is well aware of your client's special relationship with the Mayor. This is the Mayor that also serves at the Liquor and Gaming Commissioner. The fact that you carbon copied the Mayor on both letters cannot be interpreted in any way other than an intimidation tactic. If my client's liquor license is threatened in any way by the Mayor, we will know why.

If you want to talk about the exact ordinances my client is violating and present any facts your client may have, then I am willing to discuss a possible resolution to this dispute. Thank you.

Sincerely,

GREENSFELDER, HEMKER & GALE, P.C.

A handwritten signature in black ink, appearing to read 'Paul E. Petruska', with a long horizontal flourish extending to the right.

Paul E. Petruska

PEP/tlc
#92471

Chicago Office:
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Clayton Office:
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Southern Illinois Office:
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Belleville, IL 62226
T: 618-257-7308 F: 618-257-7353

St. Louis Office:
10 South Broadway, Ste. 2000
St. Louis, MO 63102
T: 314-241-9090 F: 314-241-8624

EXHIBIT 4

Sondare Acoustics

May 5, 2021
Rev A- May 21, 2021

Geri Boyer
President
Kaskaskia Engineering Group

Reference: Sound Study

Geri,

This report was revised on May 21, 2021 to update information from the Belleville Code of Ordinances and St Clair County Code.

Per the estimate dated April 14, 2021, a sound study was performed to assess a perceived noise annoyance created by Copper Fire restaurant at 200 E Main St, Belleville, IL. The sound study included sound level measurements in the second story loft adjacent to the restaurant on Friday April 23, 2021 from 3:55-4:00pm and 7:30pm to Saturday 2:33am and on Saturday April 24 from 10:51am to Sunday 1:51am.

To characterize the measured sound levels, the following is a list of and type of music performed during the measurement period;

Friday April 23 night- Steel Creek- 6 member acoustic country band

Saturday April 24 Day, 11:00 am- Billy Barnett- solo acoustic guitarist;

3:00pm Moonbuzz Acoustic- two person acoustic band

Saturday April 24 night – DJ - 80s playlist

General Information-

The dividing wall between the restaurant and the loft is a brick wall consisting of brick on both sides with an airspace of 10-12 in. Neither side is plastered. It is estimated that this wall has an STC= 55 and a field or ASTC=48. Although the STC rating of a partition is to estimate blocking of speech, it can be used to estimate the sound blocking of music.

In order to ensure that sounds created for various purposes don't become noise annoyances for the community, ordinances and guidelines are in place that provide specific limits for daytime and nighttime sound levels. Ordinances can be in place at the local, regional or state level. Guidelines are provided by the World Health Organization (WHO), federal agencies, the Acoustical Society of America, the Institute of Noise Control Engineering and others.

Terms:

Noise – unwanted sound

SPL-Sound Pressure Level - This is usually stated as un-weighted unless specified.

SPL (A) – The A-weighted sound pressure level. This is the SPL with a weighting applied which corresponds with human hearing.

Leq, T – The equivalent sound level measured over the measurement period, T.

Leq, A, T- The A weighted sound level measured over the measurement period T.

LA, max – The A weighted max sound level.

Ordinances-

1. The City of Belleville, IL. Code of Ordinances includes a restriction on noise under Title XI: Business Regulations, Chapter 110 General Licensing Provisions § 110.31 PROHIBITION AGAINST NUISANCES.

(A) No business, trade or occupation shall be carried on in any manner which will create a public or private nuisance, nor shall such operation be carried on in a manner which will produce noise, odor or other physical disturbances beyond the property line of the premises at which such operations take place, or otherwise threaten the public health, safety, morale or welfare.

2. The St Clair County Code, Chapter 40 – Zoning Code, also addresses noise annoyance in Article VIII (p.170), General Requirements and Standards, Section 40-8-2

(B) Noise emanating from any use shall not be of such volume or frequency as to be unreasonably offensive at or beyond the property lines. Unreasonably offensive noises, due to intermittence, beat frequency, or shrillness shall be muffled so as not to become a nuisance to adjacent uses.

3. The State of Illinois provides a regulation governed by the Illinois EPA referred to as:
Noise Free Regulation
Title 35: Environmental Protection
Subtitle H: Noise
Chapter 1: Pollution Control Board Part 900
General Provisions Part 901: Sound Emission Standard and Limitation for Property Line Noise Sources.

The regulation limits sound received in a Class A Land (residential) emitted by a Class B Land (restaurant/bar). The allowable un-weighted octave band frequency sound pressure levels (dB) are provided for daytime 7am to 10pm and nighttime 10pm to 7am as summarized in Fig. 1 below.

SPL (dB) Limits measured in Land Use A, Emitted by Land Use B		
Octave Band center frequency(Hz)	SPL (dB) Daytime	SPL (dB) Nighttime
32	72	63
63	71	61
125	65	55
250	57	47
500	51	40
1000	45	35
2000	39	30
4000	34	25
8000	32	25

Fig. 1

Community Guidelines

The WHO provides guidelines for acceptable sound levels including for understanding speech and for sleep. The guideline provided for nighttime is an equivalent A-weighted sound level $Leq A = 30\text{dBA}$ and a max sound level $L_{Amax} = 45\text{dBA}$ in order to provide a good environment for sleep.

In addition, Noise Criteria (NC) is provided as guidelines for different living spaces. The NC values are determined by comparing un-weighted measured octave band sound levels in a space and comparing them to a set of NC curves. For a bedroom, the NC rating should be between 25-35 and for a general living space between 30-40.

Sound Level Measurements of the Boyer Second Story Loft

The measurements were conducted over the time periods stated above capturing sound levels covering both daytime and nighttime hours. Although the equivalent sound level for the entire measurement period was measured, the sound level for any given time was also measured. In addition sound levels were measured by octave band for the entire measurement periods, and were also captured for a specific time period. This allowed for analysis of measurements for the daytime and nighttime periods of time.

In addition, per the EPA regulation the measurement microphone can be placed anywhere in the receiving room as long as it is no less than 25ft from the sound source. Due to the sound in the restaurant being spatially distributed, it was difficult to determine the actual 25ft distance from the source. It was assumed that the band or DJ was located on a stage on the outside glass wall adjacent to the brick dividing wall on the first floor. The distance from a source sound 3ft in front of the stage to the second story microphone placed 6 ft from the wall was estimated to be about 30ft. **It should be noted that if the microphone was placed 3ft from the wall and still within 25 ft from the sound source, the measured sound levels would be expected to be 3-5 dB higher.**

The Daytime ambient level measured Friday afternoon was about SPL (A) =30dBA.

The Nighttime ambient level measured both Friday and Saturday night at 1:00 am was SPL (A) =29dBA.

In order to determine if sound levels in the loft exceeded the levels shown in Fig 1, the measurements were separated between the daytime and nighttime hours. Although music was played during daytime hours on both Friday and Saturday, they did not exceed the daytime criteria. The measured levels during the nighttime, after 10pm, were captured and compared to the criteria as shown in Fig.2. The nighttime measurement periods were for 1 hour or more. The octave band sound levels shown occurred one or more times during the measurement period and were adjusted for octave band ambient levels.

Octave Band Frequency (Hz)	EPA REG Nighttime not to exceed dB level	Loft -Friday night after 10pm (dB)	Loft- Saturday night after 10pm (dB)
32	63	68	67
63	61	64	52
125	55	49	53
250	47	45	46
500	40	38	45
1000	35	34	42
2000	30	27	39
4000	25	22	34
8000	25	18	30

Fig. 2

The average sound levels during the 10pm – 11:30pm time periods on both Friday and Saturday are shown in Fig.3 below

WHO Recommended sound level for sleep	Loft- Friday	Loft Saturday
LeqA=30dBA	10:26-11:00pm(band on break 10-10:26) LeqA (.5hr)=38 dBA	10:00pm-11:25pm LeqA(1.5hr)=39dBA

Fig. 3

Analysis-

1. Unwanted sound, noise, is being created across the business property line, which does not meet both the Belleville or St.Clair County referenced codes.
2. As shown in Figure 2, the octave band sound level measurements exceed the Illinois EPA Noise Regulation.

An example of the measured octave band levels for a specific time is shown in Appendix A. (As noted, if the microphone is moved closer to the property line, but still within 25ft from the source, the levels would increase resulting in several more octave bands not meeting the criteria.)

3. Although the daytime measured sound levels did not exceed the EPA limits, given that they were continuous for a long duration, they can be perceived as a noise annoyance.
4. As shown in Fig.3, the average nighttime sound levels do not meet the WHO guidelines.

Given that the WHO recommendation for sleep in a quiet environment is LeqA=30dBA and L_{Amax}=45, the measured LeqA=39dBA and L_{Amax}=48 would not provide a good environment for sleep. For reference the sound level at 1am was about LeqA=28dBA.

5. The NC rating of 45 does not meet the recommended NC ratings for a bedroom and for a living space.

6. The daytime and nighttime ambient sound levels are very low at 28-30dBA indicating that in general the loft is a very quiet living space when music is not being played in the restaurant.
7. A general estimate of the sound level in the loft from music in the restaurant can be calculated as follows. Live music or a DJ can create a sound level of about 94dBA. Assuming the sound is spatially distributed in the room, but may also decrease with distance, and the brick wall provides about 48dB of sound blocking, the expected sound level in the loft would be $94 - 9$ (for distance) $- 48$ (wall) = 37dBA. This correlates with the measured average sound level of $LeqA=39$ dBA.
8. In order to reduce the sound levels in the loft and meet the local, county and state regulations, it is recommended that the sound levels in the restaurant be reduced by 10dB or more and managed to provide less of a noise annoyance during the daytime and provide a quiet environment for sleep during nighttime hours.

In addition sound blocking provided by the brick wall could be increased by adding mass to the inside of the restaurant brick wall. This could be a layer of gypsum drywall over the brick wall. An analysis would be needed to estimate the thickness of the drywall and the resulting transmission loss and field ASTC.

9. It should be noted that the measured sound levels corresponded with the types of music played during the measurement period.

The sound levels were-

Lowest during the Saturday morning and afternoon time periods when 1-2 person acoustic music was played.

Higher Friday night with an acoustic band.

Highest Saturday night with a DJ.

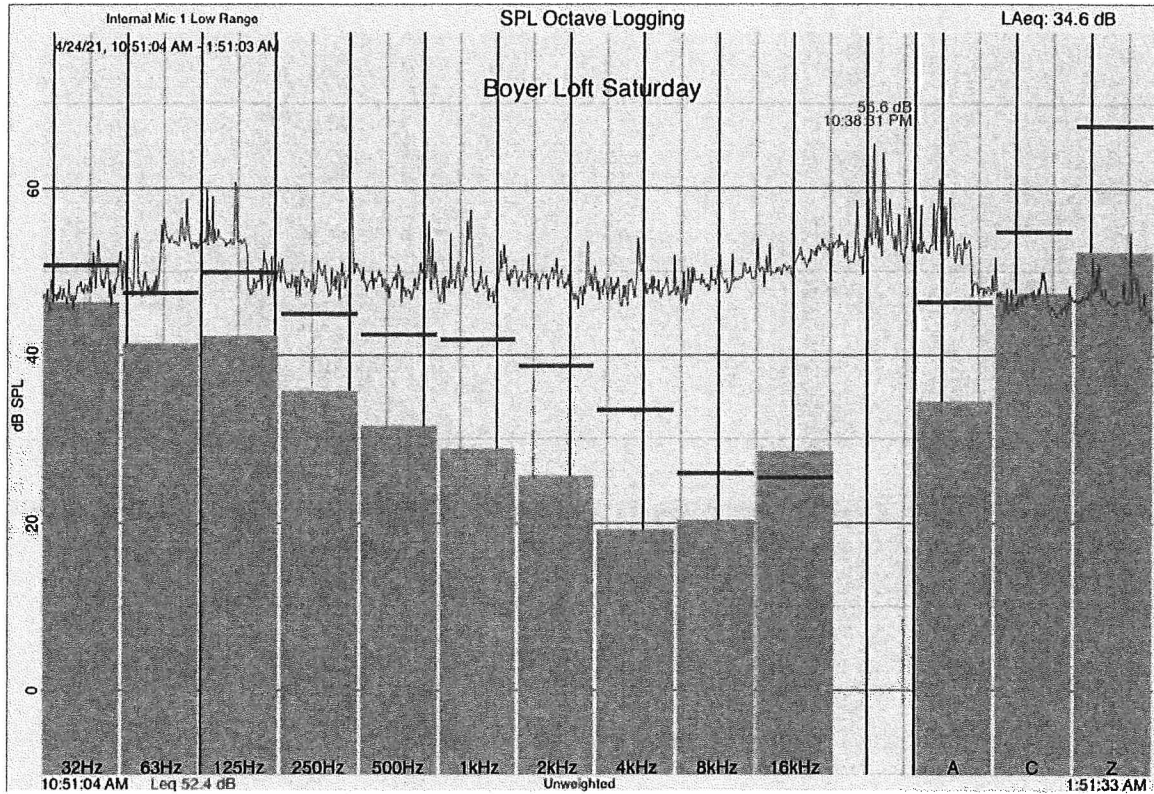
It is expected that when a larger member, amplified rock band plays in the restaurant, the measured sound levels in the loft would be much greater than those measured during this measurement period.

Please let me know if you have any questions about the above.

Thanks

Mike Biffignani
President Sondare Acoustics
3145688042

Appendix A



Notes;

1. The solid red line is the un-weighted sound level measured over the time period. The sound level starts to increase at about 8pm and until about 11:25pm. There is also an increased sound level earlier in the day for about an hour.
2. The solid, wide blue bars are the average un-weighted sound levels for each octave band over the entire time period.
3. The black lines are the un-weighted octave band levels for the specific time selected by the cursor. In this example the cursor is at 10:38pm Saturday. The octave band levels are considerably higher at this time when the music is being played.

Electronic Filing: Received, Clerk's Office 04/11/2023

EXHIBIT 5

KATZMAN & SUGDEN, LLC

STEVEN E. KATZMAN
CHRISTINA M. SUGDEN
DANIEL C. KATZMAN

ATTORNEYS AT LAW
300 SOUTH CHARLES STREET TELEPHONE: (618) 235-2110
BELLEVILLE, ILLINOIS 62220 FACSIMILE: (618) 235-2117

Licensed in Illinois and Missouri

EMAIL: dkatzman@katzmanlaw.net

May 10, 2021

VIA EMAIL ONLY: ppetruska@greensfelder.com

Paul Petruska
Attorney at Law
12 Wolf Creek Dr.
Suite 100
Belleville, IL 62226

RE: Geri Boyer v. MRB Development, LLC d/b/a Copper Fire

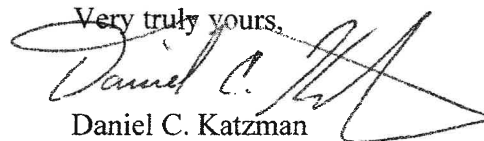
Dear Mr. Petruska:

Hope this letter finds you well. As I am sure you are aware, not only have your clients failed to cease and desist from playing loud music, they have actually increased the excessiveness of the noise. This was made obvious by the sign inside Copper Fire stating “[m]y neighbors are listening to great music whether they like it or not.” My client recently retained the services of an acoustic engineer to test the noise levels inside her loft, which is attached to this letter. As you will note, the sound level measurements exceed the Illinois EPA Noise Regulations, the World Health Organization Guidelines, and the Noise Criteria for different living spaces.

The expert report states that it “is expected that when a larger member, amplified rock band plays in the restaurant, the measured sound levels in the loft would be much greater.” This was indeed the case over this past weekend. As evidenced by the attached photograph, at 11:35 p.m. on May 8, 2021, my client’s loft was reading 55.1 dBA for a continuous period of time, in violation of the governing excessive noise laws. It is my understanding that another Belleville Main Street restaurant owner came into my client’s loft and was in disbelief by the excessive noise level. My client’s tenants, who live in the building, have threatened to move out if the situation with Copper Fire is not remedied. The blatant disregard for the governing law has created a nuisance, which has had and will continue to have a devastating effect on my client, mentally, physically, and monetarily.

With that being said, my client would still like to reach an amicable resolution with Copper Fire. However, given your client’s conscious disregard of our complaints and my client’s well-being, we are prepared to pursue action either through the Illinois EPA or St. Clair County Circuit Court. A copy of the sound study was provided by my client to the Belleville Police Department, which is currently investigating the situation. If your client wishes to discuss an amicable resolution, please do not hesitate to contact me. Thank you for your courtesy.

Very truly yours,



Daniel C. Katzman

DCK:dk
Attachments

EXHIBIT 6



Paul E. Petruska
E-mail: ppetruska@greensfelder.com
Direct Dial: (618) 239-3607

May 11, 2021

Daniel C. Katzman
Katzman & Sugden, LLC
300 South Charles Street
Belleville, IL 62220

Re: Geri Boyer v. MRB Development, LLC d/b/a Copper Fire

Dear Mr. Katzman:

This will acknowledge receipt of your letter and sound engineering report. I wish this whole situation would have started in this manner. The engineering report is helpful in many ways. In my very first letter to you, I asked what noise ordinances we were allegedly violated. Yesterday, was the first time I received a response to that question. I was unaware of any local ordinance my client could possibly be violating, and it is helpful to know there is no local ordinance at issue. With respect to the Illinois EPA standards, I am willing to discuss compliance issues with respect to those standards.

The report also indicates, but does not directly state, that your client wishes to put the full burden on my client to make your client's apartment perfect for sleep. This is not the law, and you know it. In the end, this goes back to my original question of what your client is willing to do. Even the Illinois EPA standard (which defines noise pollution) does not require my client to keep noise at 30 dBA with a maximum of 45 dBA. It actually isn't even close. Your client has some responsibility here also.

In a good faith effort to resolve this dispute, I would like to sit down with you to see if there is a path to some resolution. Normally, I would recommend we include our clients in that discussion, but I think it has to be the next step. If you and I establish a possible pathway to a resolution, I think we can get our clients to sit down to discuss the details.

Sincerely,

GREENSFELDER, HEMKER & GALE, P.C.

A handwritten signature in black ink, appearing to read 'Paul E. Petruska', with a long horizontal flourish extending to the right.

Paul E. Petruska

PEP/tlc

Chicago Office:
200 West Madison, Ste. 3300
Chicago, IL 60606
T: 312-419-9090 F: 312-419-1930

Clayton Office:
8000 Maryland Ave., Ste. 1250
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T: 618-257-7308 F: 618-257-7353

St. Louis Office:
10 South Broadway, Ste. 2000
St. Louis, MO 63102
T: 314-241-9090 F: 314-241-8624



Deposition of
Geri Boyer

Date: February 28, 2023

Case: DOUG and GERI BOYER v. MRB DEVELOPMENT, LLC
d/b/a COPPER FIRE, RENAE EICHHOLZ, and MARK EICHHOLZ

No. 22-9

Court Reporter: Dianna C. Hark, RPR, MO-CCR, IL-CSR

Paszkiewicz Court Reporting

Phone: 618-307-9320

Toll-Free: 855-595-3577

Fax: 618-855-9513

www.spreporting.com

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1 INDEX OF EXAMINATION
2 DIRECT BY MR. PETRUSKA4
3
4 INDEX OF EXHIBITS
5 Exhibit G SPL Octave Logging, 4/23/2133
6 Exhibit H SPL Octave Logging, 4/24/2133
7 Exhibit I SPL Octave Logging, 11/21/2133
8 Exhibit Z Citizens' Guide to the IPCB28
9 Exhibit AA Complaint9
10 Exhibit BB Text Messages44
11 Exhibit CC Email From Ms. Boyer Dated51
12 5/6/22, 3:51 pm
13 Exhibit DD Respondents' Joint Answers to17
14 Complainants' First Set of
15 Interrogatories
16 Exhibit EE Copper Fire Noise & Tabs Document76
17 Exhibit GG Cease and Desist Letter Dated39
18 3/19/21
19
20
21
22
23 (Exhibits are attached to the transcript.)
24

Page 3

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
2
3 DOUG and GERI BOYER,)
4)
5 Complainants,)
6) PCB No. 22-9
7 vs.)
8)
9 MRB DEVELOPMENT, LLC d/b/a)
10 COPPER FIRE, RENAE)
11 EICHHOLZ, and MARK)
12 EICHHOLZ,)
13)
14 Respondents.)
15
16
17 DEPOSITION OF GERI BOYER, produced, sworn,
18 and examined on behalf of the Defendants, on
19 February 28th, 2023, between the hours of 9:10 in the
20 forenoon and 11:00 in the forenoon of that day, at
21 Kaskaskia Engineering Group, LLC, 208 East Main
22 Street, Suite 100, Belleville, IL 62220, before Dianna
23 C. Hark, RPR, MO-CCR, IL-CSR.
24

A P P E A R A N C E S

18 Mr. Paul E. Petruska
19 Greensfelder, Hemker & Gale, P.C.
20 821 West Highway 50, Suite 303
21 O'Fallon, IL 62269
22 Represented: The Respondents.
23 Mr. Matthew A. Jacober
24 Lathrop GPM, LLP
25 7701 Forsyth Boulevard, Suite 500
26 Clayton, MO 63105
27 Represented: The Plaintiffs.
28 Also present: Renae Eichholz

Page 4

1 IT IS HEREBY STIPULATED AND AGREED by and
2 between counsel for the Complainants and counsel for
3 the Respondents, that this deposition may be taken in
4 shorthand by Dianna C. Hark, a Registered Professional
5 Reporter, Certified Shorthand Reporter, and Certified
6 Court Reporter, and afterwards transcribed into
7 typewriting, and the signature of the witness is
8 reserved by agreement of counsel and the witness.
9
10 0-0-0
11 GERI BOYER,
12 of lawful age, being produced, sworn, and examined on
13 the part of the Defendants, and after responding "Yes"
14 to the oath administered by the court reporter,
15 deposes and says:
16 * * * * *
17
18 DIRECT EXAMINATION
19 QUESTIONS BY MR. PETRUSKA:
20 Q Can you state your name for the record?
21 A **Gerri Owen Boyer.**
22 Q And what is your occupation?
23 A **Civil engineer.**
24 Q And we are at Kaskaskia Engineering.
What's your relationship with Kaskaskia?

Page 5

1 **A I own the company.**
2 Q Is anyone else an owner?
3 **A No.**
4 Q Okay. In this same building, there are loft
5 apartments above this; correct?
6 **A Correct.**
7 Q Okay. What year did you move into those
8 loft apartments?
9 **A 2008.**
10 Q Did you own the building at the time?
11 **A No.**
12 Q Who owned it?
13 **A It was an LLC that was owned by Gary**
14 **Karasek. I don't know the LLC's name.**
15 Q It was my understanding you were able to
16 move in before the whole thing was complete; is that
17 correct?
18 **A Correct.**
19 Q Okay. Did you move into downtown because
20 you wanted to be in a place where you could live,
21 work, and play in the downtown area?
22 **A No.**
23 Q Do you agree that it's a vibrant downtown?
24 **A Of course.**

Page 6

1 Q Do you agree that businesses were, even back
2 then, moving -- moving back in empty spaces,
3 restaurants are coming in, and we have three downtown
4 loft developments underway?
5 **A Yes. They are underway.**
6 Q Okay. So I'm looking at an article from
7 2011 where it quotes you saying, I want it to be an
8 example to people that you can live, work, and play
9 all in the downtown area.
10 Do you think you were misquoted in that
11 article?
12 **A No. That is -- was part of it. I wanted to**
13 **be an example. It's not the reason I came here.**
14 Q Okay. And so when you moved in downtown,
15 you wanted to be part of the redevelopment of this
16 area; correct?
17 **A Correct.**
18 Q In fact, at the time, you served on the
19 greater --
20 [The court reporter clarified.]
21 Q (By Mr. Petruska) Greater Belleville Chamber
22 of Commerce Economic Development Committee; correct?
23 **A Yes.**
24 Q And you were the president of the Main

Page 7

1 Street Association.
2 **A Yes.**
3 Q The Main Street Association involved various
4 bars; correct?
5 **A Correct.**
6 Q Restaurants?
7 **A Yes.**
8 Q And retail stores?
9 **A Yes.**
10 Q Okay. So you moved into an area and you
11 fully understood that there were bars and restaurants
12 in this area; correct?
13 **A Yes.**
14 Q And you wanted to be a part of it.
15 **A Yes.**
16 Q It's double-sided print. I'm trying to be
17 nicer.
18 Okay. Before I go into this, I'm going to
19 remind myself that I need to slow down so she can take
20 down everything that I'm saying. But there are some
21 ground rules for depositions.
22 I know you've had your deposition taken
23 before; correct?
24 **A Yes.**

Page 8

1 Q Okay. So I'll go through them; I think you
2 know them. But mainly, most of these are for the
3 court reporter.
4 Number one is, when I'm asking a long-winded
5 question and you know -- you know where I'm going, you
6 have to wait until I'm done with the question before
7 you answer because she can't take down two things at
8 one time. Okay?
9 **A Yes.**
10 Q Okay. Second thing is that you have to give
11 a verbal response of some sort. And I'll remind you
12 if you don't. But an "uh-huh" or a shake of the head
13 doesn't come across on the record.
14 **A Correct.**
15 Q Okay. If I ask you to spell something, it's
16 not a spelling test. We are just trying to get a
17 spelling down because I'll get asked later, like,
18 how -- what was that person's name spelling, whatever?
19 So it doesn't matter whether it's correct or
20 not. Especially if it's someone's name, I may ask you
21 how to spell it. Speaking of which, Karasek. I think
22 I know it, but can you spell Karasek?
23 **A I think it's K-A-R-A-S-E-K.**
24 Q Yeah, that's what I think. It's E-K.

Page 9

1 **A I am not good at spelling though.**
2 Q So, we'll -- we'll agree on the record that
3 any spellings that you or I do are not meant to be
4 accurate. It's just for the court reporter's sake.
5 If I ask you a question that you don't
6 understand, just tell me. I know -- I will rephrase
7 the question. Okay?
8 **A Uh-huh. Yes.**
9 Q If you answer a question that I asked you,
10 I'm going to assume you understood the question that I
11 asked you; is that fair?
12 **A Yes.**
13 Q Okay. So I pulled out as Exhibit AA a
14 document.
15 (Exhibit AA was introduced.)
16 Q (By Mr. Petruska) Do you recognize the
17 document?
18 **A Yes.**
19 Q Is this the complaint you filed in front of
20 the Illinois Pollution Control Board?
21 **A That my attorney filed.**
22 Q Yes. Is that what this is?
23 **A Yes.**
24 Q Okay. We'll see from all the letters, you

Page 10

1 had options as to where to file.
2 Do you have -- do you have any understanding
3 as to why you filed in the Illinois Pollution Control
4 Board?
5 MR. JACOBBER: I'm going to object to the
6 extent it calls for attorney-client privileged
7 information.
8 You don't have to answer anything that was a
9 discussion between you and I on where you would and
10 wouldn't file.
11 Q (By Mr. Petruska) And that's perfectly fair.
12 I'll rephrase and say, other than any conversations
13 you had with your attorney, do you have any -- were
14 you -- do you have any reason for filing in the
15 Illinois Pollution Control Board outside of anything
16 your attorney told you?
17 A No.
18 Q Okay. Can you take a look at paragraph nine
19 of the -- the petition on page two?
20 A Okay.
21 Q You allege, Copper Fire is a bar/restaurant
22 whose website touts an environment filled with
23 laughter and music.
24 Do you -- do you have a problem with a bar

Page 11

1 or restaurant that -- that touts itself as filled with
2 laughter and music?
3 A No.
4 Q Okay. In paragraph 12, you made an
5 allegation that, making matters worse, the indoor
6 stage --
7 [The court reporter clarified.]
8 Q (By Mr. Petruska) -- the indoor stage that
9 Respondents provide for their musical guests is
10 directly in front of the wall the restaurant shares
11 with the Boyer residence.
12 One of the complaints in this case is the
13 location of where the band is stationed in the
14 restaurant; correct?
15 A Correct.
16 Q Okay. Do you understand that they tried --
17 the Copper Fire, at one point, had tried to move the
18 band to the other side?
19 A No.
20 Q Okay. You -- in paragraph 12, you allege
21 that the dividing wall consists of brick on both sides
22 with an air space between the walls.
23 Do you still believe at this time that the
24 wall on Copper Fire is exposed brick?

Page 12

1 A No, I know it's not exposed brick.
2 Q Okay. So when -- when the next sentence
3 says, no additional plaster or sound-dampening
4 materials on the brick wall, would you agree that's
5 not true?
6 A Not on their side.
7 Q Okay. Now, this air space between the
8 walls, I'm curious, how do you know about the air
9 space between the walls?
10 A Because we have -- we have an adjoining
11 wall, of course, and all of these buildings were
12 joining. We own two buildings -- this isn't just one
13 building -- and there's air space between our
14 buildings. Our two buildings.
15 So most common construction at that time
16 was, there was always an air space between the brick
17 walls.
18 Q Okay. So the -- actually, you -- I have
19 some drawings. I don't think I have them with me, but
20 your -- your building itself is two separate buildings
21 put together.
22 A Correct.
23 Q Okay.
24 A It's just faced to look like one building.

Page 13

1 Q Right. And so you have looked at, at some
2 point in time, the -- the walls between the two
3 buildings and your one building and saw there was
4 space.
5 A We cut a hole in them, yeah.
6 Q So how much space was there? Do you know?
7 A Maybe two to four inches.
8 Q Okay.
9 A Maybe more than that. I don't remember.
10 Q Other than that, do you have any reason to
11 believe that there is air space between the two brick
12 walls?
13 A No. Sorry.
14 Q In paragraph 13, you talk about hearing
15 music and feeling vibrations.
16 Is it your allegation in this case that you
17 can feel vibrations from the music in Copper Fire?
18 A Yes.
19 Q You realize that your expert tried to test
20 that; right?
21 A Yes.
22 Q And he couldn't find vibrations.
23 Were you aware of that?
24 A I was not aware of that.

Page 14

1 Q Okay. In paragraph 14, you allege that,
2 loud sounds coming from Copper Fire drown out other
3 sounds, making it impossible for the Boyers to watch
4 television, listen to their own music or engage in
5 conversations with others.
6 Is that an accurate summary of what you're
7 alleging in this case?
8 A Yes.
9 Q You realize one of the audio recordings that
10 you produced in this case shows the TV being on and
11 someone watching the Olympics; right?
12 A Yes.
13 Q Okay. And you can hear that much better
14 than you can hear the music in that one audio
15 recording.
16 A **That's -- in that one audio recording.**
17 Q But you're saying there have been situations
18 where the music at Copper Fire was so loud that you
19 could not even watch television.
20 A **Correct. Yes.**
21 Q Are you aware of the sound levels that both
22 our expert and their expert have determined the
23 decibel levels in your apartment?
24 A Yes.

Page 15

1 Q And based on those decibel levels, are you
2 still going to stick to the fact that you couldn't
3 even watch television?
4 A Yes.
5 Q In paragraph 15, you said that, on top of
6 this, the Boyers have had to refrain from inviting
7 their grandchildren for overnight visits, since the
8 loud, unpredictable sounds emanating from Copper Fire
9 interfere with the children's ability to fall and stay
10 asleep.
11 Is that accurate that you have never invited
12 the grandchildren over?
13 A **No. We have -- it's -- we have -- we didn't**
14 **before, and we've come to a resolution with their**
15 **parents on it. They just stay up later than the --**
16 **until the music ends. The older ones.**
17 Q Okay. So at the time this was made, was it
18 accurate?
19 A Yes.
20 Q But since then, paragraph 15 is no longer --
21 you still have the -- you have the grandchildren
22 coming over for overnight visits.
23 A Yes.
24 Q Okay. On paragraph 16, you said,

Page 16

1 Respondents' noise pollution also materially and
2 unreasonably interferes with the Boyers' ability to
3 operate their engineering business from its
4 first-floor offices.
5 Are you still making that allegation in this
6 case?
7 A **When there is bands going, yes.**
8 Q Have you -- have you hired an expert to test
9 the sound in Kaskaskia Engineering when music is
10 playing in Copper Fire?
11 A **No.**
12 Q One of the allegations you made in this is
13 that, the noise from Copper Fire makes it difficult to
14 talk with clients and colleagues, either in person or
15 over the phone, and this is in paragraph 16.
16 Is that your allegation in this case? That
17 noise from the music at Copper Fire has made it
18 difficult to talk with even clients over the phone?
19 A **Correct.**
20 Q In Kaskaskia Engineering.
21 A **When music is going, yes.**
22 Q In paragraph 17, you allege a variety of
23 things, but basically saying that Respondents have
24 not -- have refused to engage in meaningful

Page 17

1 discussions with the Boyers regarding your complaints.
2 Do you still stick with that allegation?
3 A Yes.
4 Q You agree that we did have a three-week
5 trial period at one point in time to try to see if we
6 could resolve this?
7 A Yes.
8 Q Okay. You agree that there was a long
9 period of time of exchanging text messages between the
10 two parties?
11 A **There was not a long period of time.**
12 Q Have you seen Respondents' answers to
13 interrogatories in this case?
14 A **The -- rephrase that.**
15 Q Have you seen Copper Fire's answers to
16 interrogatories in this case?
17 A No.
18 Q Okay. I'm handing you what's been marked as
19 Exhibit DD.
20 (Exhibit DD was introduced.)
21 Q (By Mr. Petruska) I will represent to you
22 that these are the answers to interrogatories filed by
23 Copper Fire in this case.
24 I'm going to ask you to take a look at

Page 18

1 number -- number six on page three. I'm not -- I'm
2 not going to ask you to read it aloud, but I want you
3 to look through the answer A through J. Just read it
4 to yourself and let me know when you're done.
5 Done?
6 **A Yes.**
7 Q Okay. I'll represent to you that this is --
8 these are Respondents' answers showing all the steps
9 they've taken to address the complaints you've raised
10 in this place.
11 Do you disagree with any of these -- do you
12 have any information that Copper Fire did not take
13 these steps?
14 **A I don't have any information that they did**
15 **or didn't take them.**
16 Q And going back to Exhibit AA, the complaint,
17 I'm on page six now. And I'm just going to ask.
18 There's a picture of the sign on there that -- that's
19 in this case.
20 Do you have any information on the
21 background of this sign? Like, how that even ended up
22 in the restaurant at all?
23 **A No.**
24 Q Do you under -- do you know that for a

Page 19

1 while, Renae was selling -- or Copper Fire was selling
2 miscellaneous trinkets such as, like, KSHE stuff and
3 other trinkets?
4 **A No.**
5 Q Okay. Do you have any information to
6 contest that this is a sign that was being sold inside
7 the restaurant?
8 **A I don't know anything about the sign. I**
9 **just know that the sign was there.**
10 Q In paragraph 21, you made an allegation that
11 you engaged the services of Mike Biffignani; is that
12 correct?
13 **A Correct.**
14 Q Okay. And that the sound study conformed to
15 the measurement techniques required by the Illinois
16 Pollution Control Board regulations.
17 Do you believe that's accurate?
18 **A Accurate according to our expert.**
19 Q Okay. Accurate according to Mike.
20 **A Correct.**
21 Q Okay. And you realize Mike's been deposed
22 in this case; right?
23 **A Yes.**
24 Q Okay. For example, you know for a fact that

Page 20

1 Mike was not there the entire time that he did the
2 study in your apartment; correct?
3 **A Correct.**
4 Q Okay. And you recognize that the Illinois
5 Pollution Control Board require you to be present.
6 **A I did not know that.**
7 Q The Illinois Pollution Control Board
8 requires you -- requires the person doing the study to
9 use LEQ measurements.
10 Do you know what LEQ measurements are?
11 **A No.**
12 Q You also allege in paragraph 21 that the
13 results of Mr. Biffignani's --
14 MR. PETRUSKA: I'm sorry.
15 B-I-F-F-I-G-N-A-N-I.
16 Q (By Mr. Petruska) The results of
17 Mr. Biffignani's studies confirmed what the Boyers
18 have been experiencing since Copper Fire moved in.
19 Do you agree with that statement?
20 **A Yes.**
21 Q Okay. So if the evidence in this case shows
22 that the results in the first test that you were
23 referencing here all comply with the EPA regulations,
24 would you disagree with that?

Page 21

1 **A Restate that.**
2 Q If the -- if the evidence in this case is
3 that the results from Mike's testing in April actually
4 conform to the EPA guidelines, would you disagree with
5 that?
6 MR. JACOBBER: I'm just going to object to
7 form.
8 You can answer it if you can.
9 **A I don't -- I don't understand the question.**
10 Q (By Mr. Petruska) Okay. Do you understand
11 that the -- the Illinois EPA has established a
12 regulation establishing decibel levels based on
13 frequency --
14 **A Yes.**
15 Q -- that is allowable?
16 **A Yes.**
17 Q Okay. And are you aware that Mike
18 Biffignani's results actually prove that Copper Fire's
19 in conformity with those decibel levels?
20 **A I don't agree with that. Not according to**
21 **his report. That's not on his report -- my**
22 **understanding of what his report says.**
23 Q Right. And I'm just asking about the actual
24 raw results.

1 **A I'm not a noise expert.**
2 Q Would you be surprised if his objective
3 numbers proved compliance?
4 MR. JACOBBER: Object to form.
5 You can answer it if you can.
6 **A No. I would be very surprised if it was in**
7 **conformance.**
8 Q (By Mr. Petruska) But at least for purposes
9 of this deposition, you will state on the record that
10 you believe that Mike's studies confirm what you have
11 been experiencing since Copper Fire moved in?
12 **A At that point in time. I mean, the music,**
13 **it always fluctuates. It's louder, it's softer. We**
14 **can always hear it. So it -- for that point in**
15 **history, yes. It was -- it -- it recorded it.**
16 Q So in that answer to interrogatory, if you
17 take a look at number six again, one of the things --
18 **A What are we -- in which one?**
19 Q That's in the -- that is in Exhibit DD.
20 **A DD. Okay.**
21 MR. JACOBBER: Page three.
22 Q (By Mr. Petruska) Answer to interrogatory
23 number six. It shows that Copper Fire started making
24 changes in May of 2021.

1 Do you see that?
2 **A Yes.**
3 Q Okay. Do you remember when Mike gave you
4 the results from his testing?
5 **A I don't have that date.**
6 Q Okay. You know he did his testing in April
7 of 2021; right?
8 **A If that's what --**
9 Q Okay.
10 **A -- if that's what the date is. I don't have**
11 **it with me.**
12 Q We'll show -- we'll show it to you later.
13 Have you noticed any difference since May of
14 2021 in the sound at the Copper Fire?
15 **A I think that -- I think lately the sound is**
16 **actually louder than it was in this time period. So**
17 **there's -- there's always fluctuations in the noise**
18 **level depending on what band is there. I don't**
19 **believe that any of this is being done anymore.**
20 Q So when you say "any of this," you're
21 talking about the steps taken in -- by Copper Fire
22 that are disclosed in interrogatory answer six.
23 **A Correct.**
24 Q Okay. You don't believe that Copper Fire's

1 enforcing those.
2 **A Because of what I can hear, no, I don't.**
3 Q Okay. In paragraph 22, you said, notably,
4 the sound study concluded that this noise pollution
5 could be prevented by installing sound mitigation
6 materials such as a layer of gypsum drywall.
7 Earlier, we confirmed that there is a layer
8 of drywall on the Copper Fire side; right?
9 **A That's what you said.**
10 Q Right. So I guess that means that you would
11 install a layer of gypsum drywall on your side?
12 **A No, I'm not saying -- this is what the**
13 **expert said. So I don't -- and I'm not saying that I**
14 **would install a layer of gypsum drywall on my side.**
15 Q Would you agree that Mike was wrong when he
16 said that there was no gypsum drywall, in his study,
17 on the Copper Fire side?
18 **A Yes.**
19 Q Okay.
20 **A I think he went over there, though.**
21 Q In the second study, yes. We'll get to
22 those.
23 So violation -- under paragraph 26 of your
24 petition on page seven, you allege that -- well, let's

1 start with 25. You cite 35 Illinois Administrative
2 Code, Section 900.101, and its definition of noise
3 pollution.
4 Do you see that?
5 **A Yes.**
6 Q So the definition of noise pollution under
7 that law is, the emission of sound that unreasonably
8 interferes with the enjoyment of life or with any
9 lawful business or activity.
10 Do you agree with that?
11 **A Yes.**
12 Q Okay. So you agree there is a
13 reasonableness standard?
14 **A Yes.**
15 Q Okay. Under paragraph 26, you allege that
16 the Illinois Pollution Control Board strictly
17 prohibits noise pollution. And you cite to Illinois
18 Administrative Code, Section 900.102.
19 Do you still believe that is the applicable
20 regulation at issue in this case?
21 MR. JACOBBER: I'll just object to the extent
22 it calls for a legal conclusion.
23 If you're able to answer, go ahead.
24 Q (By Mr. Petruska) It's been alleged in the

1 complaint, so I just want to know if it's changed.
 2 Is Illinois Administrative Code,
 3 Section 900.102 the applicable regulation to address
 4 the noise complaints in this case?
 5 **A Again, I'm not a noise expert. But reading**
 6 **this, I would agree.**
 7 Q Okay. Are you aware of any other regulation
 8 that you believe controls the noise complaints in this
 9 case?
 10 MR. JACOBBER: Object to the extent it calls
 11 for a legal conclusion.
 12 You can go ahead and answer if you can.
 13 **A I mean, I think the city ordinance should.**
 14 Q (By Mr. Petruska) You think the city
 15 ordinance should apply in this case?
 16 **A Yes.**
 17 Q Okay. So I'll ask, are you aware that the
 18 Illinois Pollution Control Board has already issued an
 19 order in this case striking the allegation that the
 20 Belleville ordinance applies? Are you aware of that?
 21 **A No.**
 22 Q Okay. Again, that's part of the reason I'm
 23 asking why you filed in the Illinois Pollution Control
 24 Board is because you're seeking relief you're not

1 Q Okay. Do you understand that the Illinois
 2 Pollution Control Board is an administrative body in
 3 Illinois?
 4 **A Yes.**
 5 Q Okay. And it was established under the
 6 Illinois EPA law?
 7 **A Yes.**
 8 Q Okay. I'm going to hand you what's been
 9 marked as Exhibit Z as in zoo.
 10 (Exhibit Z was introduced.)
 11 Q (By Mr. Petruska) First, I'm just going to
 12 ask you, do you recognize this document?
 13 **A I don't think I've -- I don't know. I don't**
 14 **remember --**
 15 Q Okay.
 16 **A -- if I recognize it or not.**
 17 Q I'm just going to represent to you that
 18 Exhibit Z is a document you can find on the Illinois
 19 Pollution Control Board website that is for citizens
 20 who want to understand what they do.
 21 Okay. If you look at page one of that
 22 document, it talks about The Board and the Act. It
 23 says the Illinois Pollution Control Board is created
 24 in 1970 by the Environmental Protection Act 415

1 going to be able to get.
 2 Do you know that?
 3 **A No.**
 4 Q Okay. Let me try this. I'm going to ask
 5 some very general statements and see if you agree with
 6 them.
 7 Do you agree that laws are important in
 8 human society to help us interact with each other?
 9 **A Yes.**
 10 Q Laws help determine how we interact. They
 11 tell us what we can and can't do; right?
 12 **A Yes.**
 13 Q Okay. You understand what a regulation is,
 14 don't you?
 15 **A Yes.**
 16 Q Okay. Kaskaskia Engineering is often having
 17 to address regulations in their -- part of their
 18 business.
 19 **A Correct.**
 20 Q Yeah. Regulations are rules created and
 21 enforced by an administrative body under authority
 22 from a law.
 23 Would you agree with that?
 24 **A Yes.**

1 ILCS 5.
 2 Do you have any reason to disagree with
 3 that?
 4 **A No.**
 5 Q Okay. It says, the Board -- I'm skipping
 6 the second sentence. The third sentence. The Board
 7 has two main functions, one of which is adopting
 8 environmental rules for Illinois through rulemaking.
 9 You agree that you're not asking them to
 10 make a rule in this case, are you?
 11 **A Correct.**
 12 Q The second one is deciding environmental
 13 cases through adjudicating, much like a science court.
 14 Do you see that?
 15 **A Yes.**
 16 Q And you understand that you're asking that
 17 science course -- that science court to address your
 18 noise complaint; correct?
 19 **A Yes.**
 20 Q And you understand that an administrative
 21 body, it only has certain powers that its given by
 22 regulations; right?
 23 **A Yes.**
 24 MR. PETRUSKA: Let's take a quick break.

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1 [There was a break in the record.]
2 Q (By Mr. Petruska) So the reason I ask that
3 is, they only have certain power. Mike admitted in
4 his deposition that he doesn't believe that 900.102
5 actually applies in this case.
6 Are you aware of that?
7 A No.
8 Q He thinks it needs to be modified.
9 Are you aware of that?
10 A No.
11 Q Okay. What he -- his exact wording was, the
12 results of his noise study need to be normalized to
13 address indoor noise.
14 Are you aware of that?
15 A No, but it sounds practical.
16 Q Okay. But understanding that the Illinois
17 Pollution Control Board can only enforce that which
18 has been written, why are you asking them to enforce a
19 regulation that doesn't exist?
20 MR. JACOBBER: I'm going to object. It calls
21 for a legal conclusion, and it calls for discussions
22 that were had with counsel.
23 To the extent you have an independent
24 knowledge separate from our conversations, you can

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1 answer.
2 A I don't have any --
3 MR. JACOBBER: -- don't reveal any
4 attorney-client privileged information.
5 Q (By Mr. Petruska) So I will say that you
6 pled in the petition that there -- there have been no
7 reasonable discussions on resolutions.
8 So I'm going to ask you, did we very
9 recently ask to initiate settlement discussion again?
10 A Wait, go back. What did you say before you
11 just asked that question?
12 Q I said, in the petition, you alleged --
13 let's go back to -- the petition is --
14 A What's the date of the petition?
15 Q The date of the petition is September 30th,
16 2021.
17 A Okay. Now ask the question.
18 Q In paragraph 17, you said, the Boyers have
19 attempted to discuss their concerns with Respondents
20 numerous times in hopes that the parties might be able
21 to find a mutually-acceptable solution to this
22 problem.
23 You then said, however, even when
24 Respondents have agreed to turn down the music, they

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1 have failed to follow through on their promises. They
2 have refused to engage in meaningful discussions with
3 the Boyers and have failed and refused to change their
4 behavior in any way.
5 That's an allegation you made; correct?
6 A Correct.
7 Q Okay. Since you've alleged settlement
8 discussions, I'm curious as to whether we recently
9 asked to reinstate settlement discussions?
10 A I mean, you recently asked, like, can we --
11 can we settle? Is there something we can do to
12 settle? You recently have asked that, yes. And I
13 think we recently sent you, yes, this is what you can
14 do.
15 Q Right. And that was -- one of the things
16 you wanted was a reduction of sounds to 84 decibels
17 inside Copper Fire; correct?
18 A Correct.
19 Q Okay. We were attempting to give you one
20 last chance to get out of this, because you're asking
21 the Illinois Pollution Control Board to do something
22 they can't do.
23 Are you aware of that?
24 A No.

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1 Q Okay. If the Illinois Pollution Control
2 Board dismisses your case as frivolous, do you
3 understand we might file a malicious prosecution claim
4 against you?
5 A No, I did not know that. I did not know you
6 were thinking that.
7 Q Okay. My last question on Exhibit AA is on
8 paragraph -- I'm sorry, page eight, paragraph 29. You
9 allege that, the noise emanating from Copper Fire
10 exceeds the acceptable levels established by 35
11 Illinois Administrative Code, Section 901.102(b).
12 And I'll just ask one last time. Do you
13 agree that that is the established regulation that's
14 at issue in this case?
15 A According to my expert at the time, yes.
16 Q Okay. You can -- AA and --
17 A DD?
18 Q -- DD I'm not going to refer to again.
19 I'm going to hand you what's been marked as
20 Exhibits G --
21 A Do you want these back?
22 Q That's fine. G, H, and I.
23 (Exhibits G, H, and I were introduced.)
24 A I don't have G or H.

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1 Q (By Mr. Petruska) They're backwards.
2 MR. JACOBBER: Here's G. I don't have H and
3 I.
4 MR. PETRUSKA: H and I, right here.
5 Q (By Mr. Petruska) Okay. So I'm going to
6 represent -- well, do you -- do you recognize
7 Exhibit G? Let me ask that one.
8 **A I have not seen this -- this printout**
9 **before.**
10 Q This was marked as Exhibit G in Mike's
11 deposition, and he explained that Exhibit G are his
12 actual results from his noise testing at the Boyer
13 loft on Friday night.
14 Do you have any reason to disagree with
15 that?
16 **A Not if Mike said that.**
17 Q Exhibit H. I'll represent to you that we
18 showed Exhibit H to Mike at his deposition and he
19 confirmed that Exhibit H are the actual results from
20 his testing at the Boyer loft on Saturday, April 24th.
21 **A Okay.**
22 Q Do you have any reason to disagree with
23 that?
24 **A If Mike said, no.**

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1 Q And finally, Exhibit I. We asked Mike what
2 it was, and he said it was the actual results of his
3 testing on November 21st, 2021, at the Boyer loft.
4 Do you -- do you have any reason to disagree
5 with that?
6 **A No.**
7 Q When we talked about 900.102(b) of the
8 Illinois Administrative Code, which is one of the
9 things you're alleging is the regulation at issue, you
10 understand it divides the decibel levels between
11 daytime and nighttime?
12 **A Yes, I do understand that.**
13 Q And you understand that the nighttime starts
14 at 10 p.m.?
15 **A I didn't know when nighttime started.**
16 Q Did Mike ever tell you that Copper Fire was
17 violating the daytime regulations?
18 **A You know what? I don't remember.**
19 Q Would you agree that you've complained at
20 various times during the daytime to Copper Fire about
21 the sound?
22 **A Yes.**
23 Q Does it not matter to you whether the sound
24 is violating the law?

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1 **A It matters to me that I am living with**
2 **noise. That's what matters to me. That's disturbing**
3 **my life.**
4 Q And so in that case, what have you done
5 inside your apartment to address that noise that's
6 bothering you so much?
7 **A I'm not the source.**
8 Q Okay. Again, what have you done --
9 **A I haven't done anything.**
10 Q Okay. Okay. We talked a little bit earlier
11 that you moved into this building, The Writer's
12 Loft -- is that what we call it?
13 **A The Writer's Loft, yes.**
14 Q In 2008; correct?
15 **A Correct.**
16 Q And at the time, an LLC owned it, but Gary
17 Karasek was the person that you recognized as the
18 owner.
19 **A Correct.**
20 Q How did you end up owning the building?
21 **A Gary Karasek was having financial**
22 **difficulty -- we were the only -- first of all, we**
23 **were the only finished space in the building. Gary**
24 **Karasek was having financial problems.**

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1 **So my brothers, who are contractors, and I**
2 **ended up buying the second floor -- the rest of the**
3 **second floor. We owned half of the second floor with**
4 **our loft. So we ended up buying the rest of the**
5 **second floor so that he would have some cash to be**
6 **able to finish the building.**
7 **That -- as time went on, he couldn't finish**
8 **the rest of the building even after that. So then we**
9 **ended up -- he ended up filing bankruptcy, and then we**
10 **ended up getting the building.**
11 Q From the bank?
12 **A We bought it from the judge. From the**
13 **bankruptcy judge.**
14 Q With respect to purchasing the second
15 floor -- your brothers were contractors?
16 **A Yes.**
17 Q Okay.
18 **A They are.**
19 Q Do you know who the contractor was that was
20 working on your loft?
21 **A Our loft was built out -- was built at the**
22 **very beginning. It was built out through Gary**
23 **Karasek. I don't remember the contractor's name.**
24 Q Did you ever have any conversations with

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1 that contractor?
2 **A I'm sure I had a conversation or two with**
3 **him because he was building our loft out.**
4 Q Did you -- did you ever ask for certain
5 things in the loft?
6 **A I mean, I asked for finishes in the loft, of**
7 **course.**
8 Q Are you aware that the contractor ended up
9 charging \$100,000 more on your apartment than he
10 suggested he was going to charge?
11 **A I have no idea. I was -- I bought the loft**
12 **from Gary Karasek, completed.**
13 Q At any point in time, did Gary Karasek
14 inform you that he was considering putting a
15 restaurant in the first floor of this building?
16 **A Yes.**
17 Q Okay. And you were aware of that.
18 **A We are aware of that, uh-huh.**
19 Q And you didn't like it.
20 **A I -- I don't know if I liked it or didn't**
21 **like it.**
22 Q Did you ever talk to the owners of that
23 restaurant during the construction project?
24 **A No.**

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1 Q Did you ever encourage the owners of that
2 restaurant to sue Gary Karasek?
3 **A Absolutely not.**
4 Q Are you aware that the restaurant owners
5 sued Gary Karasek for breach of contract?
6 **A No. I don't -- I don't know anything about**
7 **that.**
8 **When I had the building -- when I owned the**
9 **building, I actually showed this space to restaurants**
10 **as well.**
11 Q In the end, though, you ended up putting in
12 your business on the first floor.
13 **A Right. I couldn't get a restaurant to come**
14 **in here because they said this -- it would be a**
15 **nightmare with lofts over on top.**
16 Q Do you understand what is on top of Copper
17 Fire? Do you know?
18 **A I don't know anymore. I knew when I**
19 **moved -- when I bought the building and moved in.**
20 Q Hand you what's been marked -- or what is
21 marked as Exhibit GG.
22 (Exhibit GG was introduced.)
23 Q (By Mr. Petruska) Really, I'm doing this
24 just for dates. So you don't have to look at it

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1 unless you want to. I'll just give you mine for right
2 now.
3 **A Do we need these anymore?**
4 Q No, no. Thank you.
5 You recognize that in March of 2020, COVID
6 hit the United States; right?
7 **A Yes.**
8 Q Okay. And --
9 **A Well aware.**
10 Q Yes. It shut down multiple businesses?
11 **A It shut down a lot of businesses.**
12 Q Restaurants were particularly hard hit by
13 COVID; correct?
14 **A Yes.**
15 Q Your lawyers started sending letters to
16 Copper Fire about the noise when?
17 **A March 2021.**
18 Q Okay. And you're aware that restaurants
19 were just starting to get -- come out of the COVID at
20 the time?
21 **A Yes.**
22 Q And, in fact, were you aware that Copper
23 Fire itself just had a pipe burst shortly before this?
24 **A I -- I was aware of that.**

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1 Q And so you chose, as they're coming out
2 of -- as they're coming out of COVID, and they just
3 had a pipe burst, is the time to start enforcing your
4 noise complaints?
5 **A There was no -- there wasn't noise. The**
6 **bands -- there weren't bands in Copper Fire. I**
7 **don't -- this is my recollection.**
8 **We didn't have a noise complaint -- we**
9 **didn't have any noise problems before COVID really.**
10 **And the first noise problem we had is in, like,**
11 **November of 2020 when you were having some kind of**
12 **inside party during COVID. That's the first time we**
13 **ever really had loud, excessive noise.**
14 **And the bands -- Copper Fire was having**
15 **bands outside which was great, fine. That doesn't**
16 **bother us at all. But it's when those bands moved**
17 **inside.**
18 **It had nothing to do with COVID. It had**
19 **nothing to do with anything that was happening. It**
20 **had everything to do with -- that's when the bands**
21 **inside started.**
22 Q So were -- was there any thought in your
23 mind of taking advantage of Copper Fire when it was
24 down --

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1 **A Absolutely not.**
 2 Q Have you ever considered trying to buy the
 3 building next door?
 4 **A No.**
 5 Q Yeah, I'm going to ask you to take a look at
 6 a few pages in to June 11 -- actually the last page in
 7 it. June 11th.
 8 In that -- that's a letter from me to your
 9 attorney talking about the three-week settlement
 10 situation. When we were trying to get these things
 11 resolved; right?
 12 **A Uh-huh.**
 13 Q Yes?
 14 **A Yes.**
 15 Q Okay. And I confirmed that there were no
 16 complaints during that time frame.
 17 Is that -- is that what that letter says?
 18 **A Ask me the question again.**
 19 Q Does the letter say that there were no
 20 complaints during that time frame?
 21 **A It -- it says that you began a three-week**
 22 **trial period to investigate whether the neighbors**
 23 **could work together to resolve the noise complaints.**
 24 **In the end, there was one complaint. As you will**

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1 **recall, Geri's husband called during our maximum house**
 2 **music test.**
 3 **So that wasn't during the three-week trial**
 4 **period. That was when you were here and we were first**
 5 **establishing the three-week trial period.**
 6 Q Correct.
 7 **A Yeah.**
 8 Q But there were no complaints during the
 9 three-week trial period.
 10 **A During the three-week trial period, Renae**
 11 **and I were conversing. I was saying, yes, I can hear**
 12 **the music. She was saying, okay, we're going to try**
 13 **to turn it down. And I'd say, yes, that's a little**
 14 **bit less.**
 15 **And then I said, hey, we can hear the music**
 16 **today. And she said, that's less than it was before.**
 17 **And I'm, like, I don't know. This isn't**
 18 **perfect science.**
 19 **And then it was, like, no more**
 20 **communication. So the reason there wasn't anymore**
 21 **complaints is because there was -- the communication**
 22 **was cut off.**
 23 Q So I'm going to hand you what's been marked
 24 as Exhibit BB.

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1 (Exhibit BB was introduced.)
 2 **A Oh, good. I have this too.**
 3 Q (By Mr. Petruska) And these are the text
 4 messages that you've produced in this case. And we
 5 produced text messages too.
 6 Can you tell me all of the text messages
 7 between -- during that three-week period showing your
 8 communication with Renae?
 9 **A So June -- June 11th, June 12th, and**
 10 **June 18th, yes.**
 11 Q Okay. So June 11th at 9:41 p.m., there's a
 12 text message; correct?
 13 **A Correct.**
 14 Q Okay. And then the date of the letter that
 15 I sent you was what date?
 16 **A June 11th.**
 17 Q Correct. So after --
 18 **A So this was --**
 19 Q After I sent the letter, you made a
 20 complaint; correct?
 21 **A This letter is June -- I'm sorry. Is**
 22 **June 21st -- or June 11th, was this the first of the**
 23 **three -- was this the first weekend of the three weeks**
 24 **that we were doing this? I don't remember.**

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1 Q It was the last -- it was the end of the
 2 three-week period. That's what the letter is saying.
 3 We made it through three weeks with no complaints.
 4 **A I don't --**
 5 Q Let me ask you. Can you point to any text
 6 messages during the three-week period between yourself
 7 and Renae other than June 11th, 12th and 13th?
 8 **A I don't know if -- I don't know if that's**
 9 **the three-week period. Okay? I don't know. I don't**
 10 **remember what the dates are. But I thought -- and**
 11 **maybe -- I don't -- yeah, I have no idea. I don't**
 12 **know.**
 13 **Because it appears, from what I'm looking**
 14 **at, that it's June 11th, June 12th, and it goes on**
 15 **through additional weeks.**
 16 Q Right. So, in other words, after you got
 17 the letter, complaints start coming out rather
 18 vociferously. June 11th --
 19 **A Well, I mean, the thing is, is that you're**
 20 **saying in this letter that the only complaint was my**
 21 **husband, but this wasn't -- that wasn't during the**
 22 **time period.**
 23 **So I don't think that -- that this is -- I**
 24 **don't believe that this is the last week. I think**

1 **this is the first week.**
 2 Q Let's --
 3 **A I'm not sure.**
 4 Q Let's talk about the husband part. Your --
 5 we were playing Copper Fire's radio, if you want to
 6 call it that, or sound machine --
 7 **A -- yeah.**
 8 Q Okay. And playing it at certain volumes,
 9 and we came over to Kaskaskia first; correct?
 10 **A Correct.**
 11 Q Okay. And would you agree that we couldn't
 12 hear the music?
 13 **A Correct.**
 14 Q Okay. Your husband then called you and said
 15 he heard the music --
 16 **A Because we had him upstairs, set upstairs,**
 17 **yes.**
 18 Q And he said he could hear it.
 19 **A Could hear it.**
 20 Q So we went upstairs and none of us could
 21 hear it; correct?
 22 **A I -- I don't know. I mean, I don't even**
 23 **remember Doug calling me, quite frankly. But I**
 24 **don't -- I don't remember the details of this.**

1 **I will say that when the stereo is playing**
 2 **at Copper Fire, for the most part, we can't hear that.**
 3 **And I think we established that that day.**
 4 MR. PETRUSKA: We've been going for an hour.
 5 Let's take a quick break.
 6 [There was a break in the record.]
 7 Q (By Mr. Petruska) Exhibit GG, in front of
 8 you.
 9 **A Yeah.**
 10 Q The first letter, there are various cc's at
 11 the bottom of that.
 12 Do you see that?
 13 **A Uh-huh.**
 14 Q Did you ask your attorney to cc Mark Eckert?
 15 MR. JACOBBER: Objection. It specifically
 16 calls for attorney-client privileged information,
 17 including instructions to attorneys.
 18 Don't answer the question.
 19 Q (By Mr. Petruska) Outside of your attorney
 20 recommendations, do you have any reason -- do you know
 21 why Mark Eckert was cc'd on the letter?
 22 **A I mean, all the people that are cc'd are in,**
 23 **you know, some kind of leadership in the city, so.**
 24 Q Did you have a good relationship with Mark

1 Eckert?
 2 **A Of course. Uh-huh.**
 3 Q And you very recently appeared in front of
 4 the -- a Belleville committee talking about how you
 5 think you're being punished because of your
 6 relationship with Mark Eckert?
 7 **A Yes.**
 8 Q Did you have any one-on-one meetings with
 9 Mark Eckert to discuss Copper Fire?
 10 **A I don't think we had any one-on-one. Our**
 11 **attorney -- my attorney at the time did send -- when**
 12 **Copper Fire was building out, did send -- we did have**
 13 **a conversation then. He sent a letter to the city**
 14 **attorney and copied Mark Eckert, that we had concerns**
 15 **that -- that the second floor was being taken out.**
 16 **That -- because we have lofts adjacent to that**
 17 **building.**
 18 **So that's the only conversation that I had**
 19 **one-on-one with him and the attorney.**
 20 Q Speaking of early on in the process, it's --
 21 in Copper Fire's deposition, there was a story about
 22 Renae's son banging on the wall, trying to get through
 23 it, and then you coming over and complaining about it.
 24 Do you have any recollection of this?

1 **A The -- the only recollection I have is that**
 2 **they were removing -- I think they were removing --**
 3 **trying to remove the plaster from the wall during**
 4 **working hours, and it was just -- it's so loud that my**
 5 **work -- my office people that work over there was,**
 6 **like, we can't work like this, so. We just went over**
 7 **and said, is there another time that you could do**
 8 **this?**
 9 **I didn't -- I don't know if it was her son**
 10 **or not doing it.**
 11 Q But I guess that's what led you to believe
 12 that there was plaster on the wall at one point.
 13 **A Correct. Because they were taking it off.**
 14 Q After your complaints, have you ever had a
 15 one-on-one conversation with Matt Eiskant?
 16 **A Matt Eiskant and I worked together to write**
 17 **a new ordinance on noise for the downtown.**
 18 Q But have you ever had a conversation with
 19 him about your noise complaints?
 20 **A Yes.**
 21 Q Okay. And did he tell you that your noise
 22 complaints were unfounded?
 23 **A He said, call -- I told him that the -- when**
 24 **I call -- because he said, call the police and have**

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1 the police respond. That's the only way that we're
2 ever going to get to the bottom of this.
3 And I said, when I call the police, they
4 don't want to come up and listen to it.
5 And he said -- and recently, he's, like,
6 they have body cameras now. They have to come up and
7 respond. So keep calling them.
8 I'm -- I'm not going to keep calling the
9 police. It's a total waste of the police's time.
10 Because when they do come up, they're, like, yes, we
11 acknowledge that we can hear this. We will go over
12 and tell them to turn it down.
13 But it doesn't do any good. There's --
14 there's never any resolve in any of this.
15 Q Have you seen the police reports that have
16 been issued regarding your noise complaints?
17 A No, I haven't seen them.
18 Q Do you realize that the -- are you aware,
19 did Matt tell you that they do testing of their own?
20 A They were doing testing before, but they
21 weren't -- they -- they don't test frequency, they
22 just test decibels. And they were just testing
23 outside, which is not the problem. Outside noise
24 doesn't bother us at all.

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1 Q Are you saying you never -- you never hear
2 motorcycles going by?
3 A We do. It's not constant. It's, like, we
4 might hear a noise, and then it -- it diminishes, so.
5 And it's -- it's not that vibration, constant noise.
6 Q What about the cars with their stereos
7 blaring?
8 A I mean, I don't -- I mean, we might hear
9 that now and then, but it's -- again, it's a car goes
10 by. It's a pass -- it's just a passing noise. And
11 it's a lot less loud -- it's less loud than it is
12 Copper Fire. It has to go through these brick walls
13 and glass.
14 Q I'm handing you what's marked as Exhibit CC.
15 (Exhibit CC was introduced.)
16 Q (By Mr. Petruska) I'll represent to you,
17 this is something produced by your attorneys in this
18 case.
19 Do you recognize this document?
20 A I -- I'm sure I've seen it, but I haven't
21 studied it.
22 Q The first page on that is Rebecca Boyer.
23 Is that your daughter?
24 A Yes.

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1 Q She goes by Becca though; is that correct?
2 A Yes.
3 Q Okay. And she -- she made a request for --
4 Freedom Information Act request for noise issues
5 relating to, as it said on here, from Copper Fire;
6 correct?
7 A Correct.
8 Q Okay. And then the second page shows --
9 A I don't think it's noise. I mean, she made
10 a call for service I think. Right?
11 Q Well, the first page says, good afternoon.
12 Per interrogatories and requests for production in
13 lawsuit PCB number 229 before the Illinois Pollution
14 Control Board, please provide records/reports relating
15 to any complaints about noise from Copper Fire --
16 A Okay.
17 Q -- from January 1, 2020, to present.
18 Do you see that?
19 A Yes.
20 Q Okay. And then she lists calls of service
21 that she was aware of and she gave dates.
22 Do you see that?
23 A Uh-huh.
24 Q Yes?

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1 A Yes.
2 Q The next page is from the Department of
3 Police responding; correct?
4 A Correct.
5 Q Okay. Now, the reports -- the third page is
6 a Belleville Police Department Event Report.
7 Do you see that?
8 A Yes.
9 Q It says, caller wants to speak with an
10 officer. She's at 208 East Main.
11 Is that you or Becca?
12 A I don't know who it is.
13 Q Okay. Do you see Persons Involved, name and
14 address, Becca?
15 A Yes.
16 Q Okay. Where does Becca live?
17 A Becca lives in Suite 220. I live in
18 Suite 230.
19 Q So 220 is, there's a hallway between --
20 A Correct. But she's over at our loft a lot.
21 Q Okay. So when Becca is calling, is that
22 presuming that she's in your loft?
23 A Yes.
24 Q Okay.

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1 **A Because I don't want to call the police.**
2 **And she's, like, this is ridiculous. I'm calling the**
3 **police.**
4 Q There's a bunch of notes about police
5 activity.
6 Do you see that on the third page?
7 **A Yes.**
8 Q -- about the -- okay. And then there's an
9 actual report on the fifth page.
10 **A Is this fifth page of the entire document?**
11 Q Yeah.
12 MR. JACOBBER: There are page numbers at the
13 bottom.
14 **A But it says, like, one of one and two of**
15 **two --**
16 Q (By Mr. Petruska) Yeah.
17 **A Yeah.**
18 Q I'll tell you, on the bottom, if you look on
19 the bottom right, with your glasses, Boyer 17.
20 **A Uh-huh.**
21 Q Do you know Officer Taylor, Badge 148? Do
22 you know him?
23 **A No, I don't know him.**
24 Q It says, I responded to Copper Fire equipped

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1 with a decibel meter. Approximately 25 feet away from
2 the building, I received a reading of under
3 63 decibels while the band was playing. According to
4 the Illinois EPA, a Class B property, bars and
5 restaurants, cannot emit more than 63 decibels of
6 noise on a Class A property, residential, after
7 2200 hours.
8 I conducted a reading. I made contact with
9 the female telephone, identified as Rebecca Boyer. I
10 told her about the decibel readings, and I had nothing
11 further to report at this time.
12 Do you see that?
13 **A Yes.**
14 Q Okay. So the police at that point found no
15 violation of the Illinois EPA rules; right?
16 **A Correct.**
17 Q Okay. Page six, which is Boyer 5, is
18 another Event Report from October 15th, 2021.
19 Do you see that?
20 **A Yes.**
21 Q Okay. The name of the person that called is
22 blacked out.
23 Do you know whether or not this was you?
24 **A I do not.**

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1 Q Okay. Do you know of anybody else who has
2 ever called the police?
3 **A I know that Julie Orlet who lives in 330,**
4 **which is the loft above me, has also called the**
5 **police. And I don't know -- I don't know if that was**
6 **this time or not.**
7 Q So I'll just -- if you go back to page one,
8 Becca asked the police for all noise complaints.
9 You see that; right?
10 **A Uh-huh.**
11 Q Okay. Do you -- do you think then this
12 October 15th one is Julie Orlet's?
13 **A I don't know.**
14 Q Okay. Boyer -- if you go three pages
15 deeper, I think Boyer 16 is the police report on this
16 one.
17 **A Okay.**
18 Q Do you see that?
19 **A Yes.**
20 Q Okay. Sergeant Barfield.
21 Do you know Sergeant Barfield?
22 **A I don't know any of the police officers.**
23 Q Okay. That's fine. So I won't ask that one
24 again.

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1 The name of the person is marked out -- was
2 adamant the noise was too loud and wanted to sign a
3 formal complaint. But then it does say, Boyer kept
4 referencing the EPA and the noise regulations.
5 Does that lead you to believe that this was
6 either you or your daughter?
7 **A Or my husband.**
8 Q Okay. Boyer advised officers they were
9 measuring incorrectly and not using the right
10 frequency.
11 What -- do you remember what was said about
12 that?
13 **A I don't.**
14 Q Okay. And in this particular situation, at
15 70 -- Sergeant Barfield said that at 75 feet outside
16 of the bar, they could not even hear noise.
17 Do you see that?
18 **A Yes.**
19 Q Okay. But then they went upstairs; is that
20 correct?
21 **A Yes.**
22 Q Okay.
23 **A I see that.**
24 Q And Sergeant Barfield went inside and took a

1 reading in the bedroom; correct?
 2 **A Yes. Uh-huh.**
 3 Q And measured 43 decibels.
 4 **A Correct.**
 5 Q As an engineer, do you understand what --
 6 what typically 43 decibels is?
 7 **A I do understand decibels. I know it makes a**
 8 **difference of what frequency that decibel is measured**
 9 **at.**
 10 Q But you would agree that's very silent --
 11 **A I don't know that. I don't know that.**
 12 **Obviously it's not very silent if somebody from our**
 13 **loft called the police. It's not -- at night, it's**
 14 **not silent.**
 15 Q But you could turn on a TV and get it easily
 16 above 43 decibels.
 17 **A Probably, yeah. But it would be -- it would**
 18 **be in competition with each other, and it would be**
 19 **maddening.**
 20 Q The next one is October 1 of 2021, and it is
 21 Boyer 19. Kind of skipping over -- you got --
 22 **A -- seven, eight --**
 23 Q It's out of order.
 24 **A Okay.**

1 Q Boyer 19 at the bottom right.
 2 **A Okay. Got it.**
 3 Q In this one, it shows that there was a
 4 complaint about Copper Fire; correct?
 5 **A Correct.**
 6 Q Okay. And then the officer made contact
 7 with someone that's blocked out; correct?
 8 **A Correct.**
 9 Q But it's a she. It says, she informed me
 10 that she wanted --
 11 [The court reporter clarified.]
 12 Q (By Mr. Petruska) She informed me that she
 13 wanted to sign a complaint against Copper Fire for
 14 loud music. She stated that she has been calling the
 15 police for loud music complaints for over a year, and
 16 she stated the business has been warned several times
 17 by the city to lower their volume of music.
 18 Do you know if that was you?
 19 **A I don't.**
 20 Q Okay. You agree that wouldn't be Julie
 21 Orlet, though; right?
 22 **A I don't know. It could be.**
 23 Q You think Julie Orlet has been calling for
 24 years -- for a year?

1 **A Maybe. She's unhappy. You should talk to**
 2 **her.**
 3 Q Are you aware that we have talked to Julie?
 4 **A No, I am not.**
 5 Q Do you have any information that Copper Fire
 6 has been warned several times by the city to lower
 7 their volume of music?
 8 **A I do not.**
 9 Q So you wouldn't make that statement; right?
 10 **A It doesn't sound like something I would say.**
 11 **I overall don't like to -- like to be complaining to**
 12 **the police.**
 13 Q Going to Boyer 18, which is going to be
 14 three more pages in. This is May 8th of 2021. It's a
 15 report.
 16 Do you see it?
 17 **A Uh-huh.**
 18 Q Yes?
 19 **A I do see it.**
 20 Q Okay. This is Alderman Mary Stiehl raising
 21 a complaint.
 22 Do you see that?
 23 **A Yes.**
 24 Q Do you know if you or Becca contacted Mary

1 Stiehl?
 2 **A I contacted Mary Stiehl. She's my alderman.**
 3 **I -- for help one night. It was really loud. Like,**
 4 **way louder than anybody could ever imagine.**
 5 Q Okay. So, and when -- when the music was
 6 louder than anyone could imagine, do you see that the
 7 police took a reading outside?
 8 **A Yeah.**
 9 Q Okay. And the decibel reader fluctuated
 10 between 61.6 and 66.9 decibels.
 11 Do you see that?
 12 **A I see that.**
 13 Q And so the police found no violation of the
 14 Illinois EPA rules; correct?
 15 **A I'm -- yes. Outside across the street or**
 16 **wherever they were. They weren't in my loft.**
 17 Q But they did go up there once.
 18 **A They went up there one time.**
 19 Q And they found it to be 43 decibels.
 20 **A I don't know their -- I mean, that's what**
 21 **their -- I don't even know if they know how to use**
 22 **these machines. Which is what Matt Eiskant said as**
 23 **well.**
 24 Q So, just to make sure I understand, the

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1 police go through all kinds of training, don't they?
2 **A I don't know what training the police go**
3 **through on noise.**
4 Q But you actually worked with Matt Eiskant to
5 work on a new ordinance; correct?
6 **A Correct. Because he saw the flaws in this**
7 **ordinance in what was going on. That he's, like,**
8 **it -- we're not getting good readings. So we need to**
9 **do something.**
10 Q Under the new ordinance, they're still doing
11 decibel readings; correct?
12 **A No. I don't think so. I don't think it has**
13 **anything -- I don't what -- I don't -- I don't know.**
14 Q Okay.
15 **A Because the last time the police -- I did**
16 **call, since Matt told me to call, and they didn't do**
17 **any decibel readings. They were just there to hear if**
18 **it's -- if it's -- would be considered, you know,**
19 **detrimental or annoying.**
20 Q And so the police would have some experience
21 walking up and down Main Street; right?
22 **A I would think so.**
23 Q And they would know what sounds are coming
24 from various bars?

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1 **A Uh-huh.**
2 Q Yes?
3 **A Yes.**
4 Q Have the police ever told you that the sound
5 coming from Copper Fire is no different than the
6 sounds coming from all the other bars?
7 **A No, they never told me that.**
8 Q Have you gone to any of the other bars?
9 **A Yes.**
10 Q Have you ever been to Big Daddy's?
11 **A I don't hang out at Big Daddy's. I was**
12 **there for the CEO event the other night, like, maybe a**
13 **month ago, and couldn't -- none of us could stay. My**
14 **husband was, like, this is making me crazy. It's like**
15 **being in our own loft.**
16 **Julie Orlet was there. She's, like, I got**
17 **to get out of here.**
18 **This is -- I think we all have PTSD, though,**
19 **from the whole thing. So none of us could stay at**
20 **the -- at the event at Big Daddy's. But that is not a**
21 **bar that I would -- that I would frequent.**
22 Q But you're saying it was awfully loud in
23 there.
24 **A It was really loud.**

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1 Q And I know that you recently attended the
2 Belleville Chamber -- you had a table at the
3 Belleville Chamber annual event where they give out
4 awards?
5 **A Of course.**
6 Q Do you remember it being extremely loud in
7 there before they started speaking?
8 **A Are you talking about the one -- what --**
9 **what -- which -- can you refresh my memory?**
10 Q Yeah. About --
11 **A Where was it at? Over here?**
12 Q About a month ago down in downtown
13 Belleville, and they gave away awards for -- it's
14 their annual dinner. The Chamber's annual dinner --
15 **A -- yeah.**
16 Q And it was in a large room, but I can't
17 remember the name of the place.
18 But was it extremely loud in there also?
19 **A We were talking, so I don't -- I wouldn't**
20 **think it was -- I mean, I was talking with people and**
21 **we could hear each other. So, no, it wasn't extremely**
22 **loud.**
23 Q Were you able to --
24 **A There wasn't any music, was there?**

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1 Q No. No, music. That's -- that's my point.
2 Were you able to talk to people across your
3 table?
4 **A Yeah.**
5 Q Is this before they started speaking or
6 when --
7 **A Before. Yeah, I was talking to people the**
8 **whole time.**
9 Q So you had no problem having
10 conversations --
11 **A No, none. But be clear that when people**
12 **are -- when there's no music at Copper Fire and people**
13 **are talking, we don't have any -- we don't hear that.**
14 Q Going back to the police reports on
15 Boyer 11, there's one on March 6 of 2021. And this
16 one -- do you see that?
17 **A Yes.**
18 Q Okay. And this one is Becca again?
19 **A Yep.**
20 Q Okay. And then go about five pages more.
21 It's Boyer 20.
22 **A Okay. Why are some of these blacked out and**
23 **some aren't?**
24 Q That's a good question. So this one is

1 November 7th of 2020.
 2 Do you see that?
 3 **A Yeah. That was the -- that was during**
 4 **COVID.**
 5 Q Okay. And it was referencing loud music
 6 coming from Copper Fire; correct?
 7 **A Correct.**
 8 Q Okay. And so this was during COVID, so it
 9 could not have been a band; is that fair?
 10 **A No, it was not a band.**
 11 Q This had to just be the music; right?
 12 **A Yeah.**
 13 Q And didn't we just agree earlier that the --
 14 the radio/music is not the problem?
 15 **A This was so loud that when I walked -- I**
 16 **went into the restaurant because -- I think they were**
 17 **still doing COVID restrictions. So I was, like, what**
 18 **is going on over there?**
 19 **So I went over, and I walked in, and I**
 20 **actually ended up -- I was trying to get Renae's**
 21 **attention --**
 22 THE WITNESS: Talk to you. I ended up
 23 having to tap you on the shoulder because you couldn't
 24 hear -- you could never have heard anybody talk.

1 **A Yeah, in the -- see, so it was not a**
 2 **normal -- this was not the normal Copper Fire**
 3 **business, yes.**
 4 Q And I was going to ask, has something like
 5 this occurred again?
 6 **A Not with the stereo, no.**
 7 Q In general, would you agree --
 8 **A This is what started, I think, everything,**
 9 **if you want to know the truth.**
 10 Q Well, yeah --
 11 **A I mean, if you read through it, you can see**
 12 **how contentious it was.**
 13 Q The -- prior to November of 2020, had you
 14 ever made any complaints to the police about Copper
 15 Fire?
 16 **A I don't -- I don't think so. I don't**
 17 **remember though. But I don't think so.**
 18 Q Did you ever make a complaint about a foul
 19 smell coming from Copper Fire?
 20 **A I don't think so. I don't remember.**
 21 Q And as you're sitting here, you -- you can't
 22 recall any other police complaints that you made --
 23 **A -- we didn't have any problems with Copper**
 24 **Fire when it was a restaurant. Just a restaurant.**

1 **A It was super loud. Which I was, like,**
 2 **please turn this music down. And then we got into**
 3 **this argument.**
 4 Q (By Mr. Petruska) Were you able to hear it,
 5 though, in your apartment or were you just walking by?
 6 **A No. We could hear it in our apartment. In**
 7 **our loft. So you know that it had to be really loud**
 8 **because you were up there when you had music on that**
 9 **you thought was a good volume at the restaurant.**
 10 Q Yeah. Well, going back to that testing. We
 11 actually did, at one point in time, put it at max, and
 12 we still couldn't hear it.
 13 **A I don't know that. I wasn't with you, so I**
 14 **have no idea what you were --**
 15 Q Your attorney was there, wasn't he?
 16 **A Yeah, but I don't think anybody was over**
 17 **watching you turn anything up. Anyway, yes. We could**
 18 **hear this at the time.**
 19 Q The other thing of interest is on the last
 20 paragraph of that. It says that this was at 00 -- if
 21 you take a look at -- yeah, second page, 0040.
 22 So this was a late night event; correct?
 23 **A Yes. I guess.**
 24 Q Has that --

1 **Besides, like, we had a problem with trash, you know,**
 2 **putting stuff in our dumpster. We -- but that all got**
 3 **resolved easily.**
 4 Q Have you ever asked people not to frequent
 5 or attend events at Copper Fire?
 6 **A No.**
 7 Q Certainly haven't threatened anybody, have
 8 you?
 9 **A No. Matter of fact, the school district who**
 10 **I do a lot of business with was, like, are you okay**
 11 **with us going to Copper Fire to eat? And I said,**
 12 **absolutely.**
 13 Q Have you been speaking badly about Copper
 14 Fire on -- at Main Street events?
 15 **A I don't really go to Main Street events**
 16 **anymore.**
 17 Q Do you know if Becca has been?
 18 **A I have no idea.**
 19 Q Have you ever been an engineer on a
 20 restaurant project?
 21 **A No. I don't -- I don't really do vertical**
 22 **construction. I do do construction oversight, but no.**
 23 **The only restaurant I can think of that I would have**
 24 **been involved in -- it's not really a restaurant -- is**

1 **the kitchen at the high school, the new high school.**
 2 **But that's no restaurant.**
 3 Q Okay. Let's change it to restaurant/bar.
 4 Have you ever been an engineer?
 5 A No.
 6 Q Did you have any involvement in the
 7 Hofbrauhaus?
 8 A **I did the site work outside. I mean, not**
 9 **the building. I did all the parking lots and all of**
 10 **that.**
 11 Q So you had no involvement on the inside
 12 construction.
 13 A **No. I mean, we're civil engineers so we**
 14 **don't do inside construction.**
 15 Q Did you ever have any conversations with
 16 Mike Biffignani about remedies you could make in your
 17 apartment?
 18 A **Mike suggested some remedies, yes.**
 19 Q And did you -- those included some
 20 soundproofing products you could buy?
 21 A **Correct.**
 22 Q In fact, he made a recommendation of a
 23 specific brand?
 24 A **Yes.**

1 A **They -- yeah. I don't think of this as**
 2 **competition. There's -- but, yes, there's other**
 3 **businesses -- I think Big Daddy's is probably the only**
 4 **competition or similar type with bands and things.**
 5 **But they're not a restaurant.**
 6 Q Do you understand that she'd be competitive
 7 disadvantaged by having an 84-decibel limit on her
 8 business?
 9 A **Well, Big Daddy's -- or Bennie's is --**
 10 **serves pizza and -- you know, serves food and has**
 11 **bands, and his bands are -- or has music, and it's all**
 12 **kept under that.**
 13 Q Have you ever gone to Bennie's and done a
 14 decibel reading?
 15 A **No, but I mean, I can -- but he goes to the**
 16 **building next door to make sure that he can't hear**
 17 **anything when he's got music. So, and you can talk --**
 18 **if you're in there, you can talk to people, hear them.**
 19 **It's -- it's not loud.**
 20 Q Okay. So you're not aware of any decibel
 21 readings done at Bennie's --
 22 A **No, no.**
 23 Q Would you be surprised if the decibel
 24 readings at Bennie's are very similar to the decibel

1 Q Okay. And did you follow that advice?
 2 A **No, I'm not interested in that.**
 3 Q So let me ask you, why are you not
 4 interested in that?
 5 A **Because part of the value of the loft that I**
 6 **own and Julie is the brick -- exposed brick wall. And**
 7 **we have -- we have a library on that wall that goes**
 8 **all the way to the ceiling with -- with bookcases all**
 9 **built in. So there's -- all of that would all have to**
 10 **be removed.**
 11 **And so it's -- and I don't know if that's**
 12 **going to be the solution. So I'm not going to**
 13 **diminish the value of my loft and pay for all of this**
 14 **work when I don't know if that's actually going to be**
 15 **a solution.**
 16 **I don't actually think that is going to be a**
 17 **solution. I think the solution has to be made at the**
 18 **source. I think the best solution is just to turn it**
 19 **all down.**
 20 Q Okay. But, again, you -- you've been to
 21 other bars and restaurants on Main Street; correct?
 22 A **Yes. Of course.**
 23 Q This is competition for Copper Fire; right?
 24 Those people run similar businesses.

1 readings at Copper Fire?
 2 A **I would be very surprised.**
 3 Q Have you heard of the Music Row Project on
 4 Main Street?
 5 A **Yes.**
 6 Q Okay. And the Music Row Project is various
 7 businesses seeking to have live music on Main Street;
 8 correct?
 9 A **Correct.**
 10 Q Okay.
 11 A **I like live music. I'm for that. I just**
 12 **don't want it to be too loud.**
 13 Q And you agree that there are festivals on
 14 Main Street often?
 15 A **Of course. I've helped develop that.**
 16 Q So you would agree that Main Street is an
 17 entertainment district?
 18 A **Yes. Entertainment, food, yeah.**
 19 Q Have you asked any of the other business,
 20 restaurants, bars, to lower the decibels in their
 21 restaurants or bars?
 22 A **Why would I do that? It doesn't affect me.**
 23 Q Have any of your residents at your Airbnb
 24 ever complained about another bar in Belleville?

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1 **A I don't really -- so I don't talk to Airbnb.**
 2 **I get reviews from Airbnb. And I've never -- I've**
 3 **just had people say, yes, this bar had great food, or,**
 4 **this -- you know.**
 5 **But no. And they're on -- they're on the**
 6 **same side next to Becca, like you said, across a**
 7 **hallway.**
 8 Q Well, you said it didn't affect you. So I'm
 9 just curious.
 10 Do you -- do you recall having a negative
 11 review from one of your residents at the loft due to
 12 Big Daddy's?
 13 **A No.**
 14 Q You don't recall that?
 15 **A No, of course not.**
 16 Q Did you file a lawsuit against Big Daddy's?
 17 **A No. Why -- no. Scott and I are good**
 18 **friends.**
 19 Q I'm not going to mark this. I'm just going
 20 to ask. There's a document that was produced in this
 21 case with all the reviews from your people staying in
 22 your Airbnb that you've produced.
 23 Would you agree there's not a single
 24 complaint in here about Copper Fire?

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1 **A Absolutely. No.**
 2 Q You would agree?
 3 **A I would agree. They can't -- you can't hear**
 4 **Copper Fire on the other side of the building. It --**
 5 **these -- just for your own information, that would be**
 6 **over this. Over this side of the building.**
 7 Q Right. No, I understand that.
 8 You never raised a complaint in this case
 9 that Copper Fire was actually hurting your Airbnb
 10 business?
 11 **A No. They're not hurting my Airbnb business.**
 12 Q And if -- if such an allegation was made, it
 13 would have been incorrect.
 14 **A Correct.**
 15 Q In fact, you -- you advertise on your Airbnb
 16 that it's right next to a restaurant; correct?
 17 **A Restaurants. Uh-huh. Yeah.**
 18 Q Which includes Copper Fire.
 19 **A Of course.**
 20 **Don't get me wrong, I want Copper Fire to be**
 21 **successful. I want all the restaurants downtown to be**
 22 **successful. I just don't want to hear all that noise**
 23 **in my loft. I want them just to turn the noise down.**
 24 Q And is it fair to say that without a decibel

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1 limit on Copper Fire, you will not be satisfied in
 2 this case?
 3 **A I didn't say that.**
 4 Q Okay. Are you aware of Copper Fire's own
 5 self-imposed decibel level?
 6 **A No, I'm not aware -- we don't -- Renae**
 7 **doesn't discuss that with me. And obviously, I can**
 8 **still hear every word of every song in my loft. So**
 9 **I -- I can't even -- I wouldn't even think that was**
 10 **true.**
 11 Q So, I'll hand you what's -- it's a two-page
 12 document marked as Exhibit 18. Let me change it. I
 13 got to change that. It needs to be a letter. It's
 14 going to be EE.
 15 (Exhibit EE was introduced.)
 16 Q (By Mr. Petruska) Just going to ask if you
 17 have seen this document.
 18 **A I have not.**
 19 Q Okay. Only reason I ask is that -- that's
 20 been produced in this case by Copper Fire showing
 21 their role for bands playing in Copper Fire.
 22 And you're not aware of this?
 23 **A No.**
 24 Q Okay.

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1 **A This is different; right?**
 2 Q Yeah, there's two -- it's two dates. One
 3 was earlier, and then they redid it in 2023.
 4 **A There's -- is there dates on this?**
 5 Q No, that one does not have a date. The
 6 second one does. Second one, I guess, is -- I'll ask
 7 you later. I expect the second one's going to be
 8 modified because it's got some typos and some of the
 9 things are wrong.
 10 But would it surprise you if Copper Fire's
 11 actively working with its bands trying to keep the
 12 noise down?
 13 **A It would surprise me. That would be great,**
 14 **but it would surprise me.**
 15 Q And would you be surprised, Copper Fire has
 16 actually asked a band to stop playing and not come
 17 back?
 18 **A No. I mean, if their customers don't like**
 19 **it I guess.**
 20 Q So based on the documents you reviewed, and
 21 you kind of suggested that November 2020 was kind of
 22 the start of this, and it's now 2023, is there any
 23 reason that you've taken no steps to remedy the sound
 24 complaint?

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1 MR. JACOBBER: Objection. It's been asked
2 and answered.
3 You can go ahead and answer again.
4 **A I think it's -- it's the source. I have**
5 **no -- I could spend all the money in the world, and I**
6 **have no idea if it's going to work or not because I**
7 **can't control -- I don't have any control of that**
8 **situation.**
9 **It's all on the other side of the wall.**
10 **Just want you to turn it down and just control it at**
11 **the source so that we can all live in harmony.**
12 MR. PETRUSKA: I believe I'm done. Let me
13 take a two-minute break.
14 [There was a break in the record.]
15 MR. PETRUSKA: We are completing this
16 deposition. I appreciate your time. Thank you.
17 THE WITNESS: Thank you.
18 MR. JACOBBER: No questions. We'll read and
19 sign.
20 COURT REPORTER: Can I get your orders on
21 the record?
22 MR. PETRUSKA: I would like a PTX and --
23 yeah. I'm going to get an original anyway. So, yeah.
24 MR. JACOBBER: PDF for me, please.

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1 COURT REPORTER: Thank you.
2
3 (Whereupon signature was reserved
4 and the deponent was excused.)
5 (The exhibits were retained by the court reporter.)
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1 COMES NOW THE WITNESS, GERI BOYER, and
2 having read the foregoing transcript of the deposition
3 taken on the 28th day of February, 2023, acknowledges
4 by signature hereto that it is a true and accurate
5 transcript of the testimony given on the date
6 hereinabove mentioned.
7
8 _____
9 [GERI BOYER]
10
11 Subscribed to before me this _____ day
12 of _____, 2023.
13
14 _____
15 [Notary Public]
16
17 My commission expires: _____.
18
19 (GERI BOYER Deposition)
20 Doug and Geri Boyer vs. MRB Development, LLC d/b/a
21 Copper Fire, Renae Eichholz, and Mark Eichholz
22
23 Reporter: Dianna C. Hark, RPR, MO-CCR, IL-CSR
24 Date Taken: February 28th, 2023.

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1 REPORTER CERTIFICATE
2
3
4
5 I, Dianna C. Hark, RPR, MO-CCR, IL-CSR, do
6 hereby certify that there came before me at Kaskaskia
7 Engineering Group, LLC, 208 East Main Street,
8 Suite 100, Belleville, IL 62220,
9 GERI BOYER,
10 who was by me first duly sworn; that the witness was
11 carefully examined, that said examination was reported
12 by myself, translated and proofread using
13 computer-aided transcription, and the above transcript
14 of proceedings is a true and accurate transcript of my
15 notes as taken at the time of the examination of this
16 witness.
17 I further certify that I am neither attorney
18 nor counsel for nor related nor employed by any of the
19 parties to the action in which this examination is
20 taken; further, that I am not a relative or employee
21 of any attorney or counsel employed by the parties
22 hereto or financially interested in this action.
23
24 Dated this 8th day of March, 2023.


DIANNA C. HARK, RPR, MO-CCR, IL-CSR



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AFFIDAVIT OF RENA EICHHOLZ

I, Renae Eichholz, being of lawful age and first sworn upon my oath, do hereby affirm and state as follows:

1. The facts in this Affidavit are based on my personal knowledge.
2. Respondent MRB Development, LLC owns Copper Fire restaurant.
3. Copper Fire is located at 200 E. Main Street, Belleville, Illinois 62220.
4. Within two blocks to the east, west, north and south of Copper Fire are the following bars/restaurants: Bennie's Pizza Pub, Margaritas Mexican, formerly The Quarter Restaurant and Bar, The Cornerstone Bistro, Gruv, Tavern on Main, T2 Tapas, Pour @ 322, Joe and Onie's, Sugar High, Spaces, Shoehorn Brewery, Big Daddy's 618, Office Lounge, Grafted, Seven and Shichi Sushi Bar.
5. Copper Fire participates in a group called Live Music Row www.livemusicrow.com, which promotes live music on Main Street in downtown Belleville.
6. Live Music Row helps the redevelopment of downtown Belleville and is strongly supported by the Greater Belleville Chamber of Commerce.
7. There was a three-week trial period where we tried to work with the Boyer's to address complaints.
8. During the three-week trial period I was allowed into the Boyer's business office and the 2nd floor loft.
9. I turned the house music stereo in Copper Fire to full volume to see if the house music could be heard.
10. The house music could not be heard inside the Boyer's business office.
11. The house music also could not be heard inside the Boyer's loft.

EXHIBIT C

12. There was at least one occasion during the Covid shutdown where Geri Boyer complained that she could hear music late in the evening, and the only music playing inside Copper Fire was the house music.

13. The wall inside Copper Fire that is adjacent to the Boyer's is, and has been since its opening, a brick wall covered by drywall.

14. The wall inside Geri Boyer's loft is exposed brick.

15. The exposed brick wall inside the Boyer's apartment has multiple holes in the mortar, of unknown depth.

16. There are multiple annual city-wide celebrations that take place on Main Street near Geri Boyer's apartment where thousands of people crowd the streets, such as the Belleville Chili Cookoff and Art of the Square.

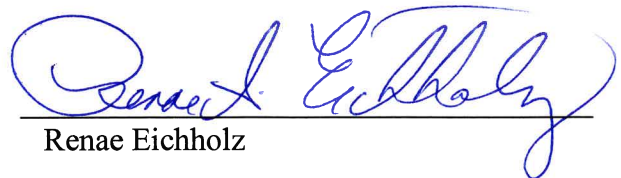
17. I have tried to work with Geri Boyer to address her complaints, but I believe she has ulterior motives to harm my business.

18. Nothing I have done to date has lessened the complaints.

19. I do not believe that any additional efforts on my part alone will resolve Geri Boyer's complaint.

Further Affiant sayeth naught.

By:


Renae Eichholz

Subscribed and sworn to before me, a Notary Public, this 11th day of April, 2023.




Notary Public

Sondare Acoustics

May 5, 2021

Geri Boyer
President
Kaskaskia Engineering Group

Reference: Sound Study

Geri,

Per the estimate dated April 14, 2021, a sound study was performed to assess a perceived noise annoyance created by Copper Fire restaurant at 200 E Main St, Belleville, IL. The sound study included sound level measurements in the second story loft adjacent to the restaurant on Friday April 23, 2021 from 3:55-4:00pm and 7:30pm to Saturday 2:33am and on Saturday April 24 from 10:51am to Sunday 1:51am.

To characterize the measured sound levels, the following is a list of and type of music performed during the measurement period;

Friday April 23 night- Steel Creek- 6 member acoustic country band

Saturday April 24 Day, 11:00 am- Billy Barnett- solo acoustic guitarist;

3:00pm Moonbuzz Acoustic- two person acoustic band

Saturday April 24 night – DJ - 80s playlist

General Information-

The dividing wall between the restaurant and the loft is a brick wall consisting of brick on both sides with a 10-12 inch airspace. Neither side is plastered. It is estimated that this wall has an STC= 55 and a field or ASTC=48. Although the STC rating of a partition is to estimate blocking of speech, it can be used to estimate the sound blocking of music.

In order to ensure that sounds created for various purposes don't become noise annoyances for the community, ordinances and guidelines are in place that provide specific limits for daytime and nighttime sound levels. Ordinances can be in place at the local, regional or state level. Guidelines are provided by the World Health Organization (WHO), federal agencies, the Acoustical Society of America, the Institute of Noise Control Engineering and others.

Terms:

SPL-Sound Pressure Level - This is usually stated as un-weighted unless specified.
 SPL (A) – The A-weighted sound pressure level. This is the SPL with a weighting applied which corresponds with human hearing.
 Leq, T – The equivalent sound level measured over the measurement period, T.
 Leq, A, T- The A weighted sound level measured over the measurement period T.
 LA, max – The A weighted max sound level.

Ordinances- The City of Belleville, IL. and St Clair County do not appear to have formalized noise ordinances but the State of Illinois provides a regulation governed by the Illinois EPA referred to as:

Noise Free Regulation
 Title 35: Environmental Protection
 Subtitle H: Noise
 Chapter 1: Pollution Control Board Part 900
 General Provisions Part 901: Sound Emission Standard and Limitation for Property Line Noise Sources.

The regulation limits sound received in a Class A Land (residential) emitted by a Class B Land (restaurant/bar). The allowable un-weighted octave band frequency sound pressure levels (dB) are provided for daytime 7am to 10pm and nighttime 10pm to 7am as summarized in Fig. 1 below.

SPL (dB) Limits measured in Land Use A, Emitted by Land Use B		
Octave Band center frequency(Hz)	SPL (dB) Daytime	SPL (dB) Nighttime
32	72	63
63	71	61
125	65	55
250	57	47
500	51	40
1000	45	35
2000	39	30
4000	34	25
8000	32	25

Fig. 1

Community Guidelines

The WHO provides guidelines for acceptable sound levels including for understanding speech and for sleep. The guideline provided for nighttime is an equivalent A-weighted sound level $Leq A = 30\text{dB A}$ and a max sound level $L_{Amax} = 45\text{dB A}$ in order to provide a good environment for sleep.

In addition, Noise Criteria (NC) is provided as guidelines for different living spaces. The NC values are determined by comparing un-weighted measured octave band sound levels in a space and comparing them to a set of NC curves. For a bedroom, the NC rating should be between 25-35 and for a general living space between 30-40.

Sound Level Measurements of the Boyer Second Story Loft

The measurements were conducted over the time periods stated above capturing sound levels covering both daytime and nighttime hours. Although the equivalent sound level for the entire measurement period was measured, the sound level for any given time was also measured. In addition sound levels were measured by octave band for the entire measurement periods, and were also captured for a specific time period. This allowed for analysis of measurements for the daytime and nighttime periods of time.

In addition, per the EPA regulation the measurement microphone can be placed anywhere in the receiving room as long as it is no less than 25ft from the sound source. Due to the sound in the restaurant being spatially distributed, it was difficult to determine the actual 25ft distance from the source. It was assumed that the band or DJ was located on a stage on the outside glass wall adjacent to the brick dividing wall on the first floor. The distance from a source sound 3ft in front of the stage to the second story microphone placed 6 ft from the wall was estimated to be about 30ft. **It should be noted that if the microphone was placed 3ft from the wall and still within 25 ft from the sound source, the measured sound levels would be expected to be 3-5 dB higher.**

The Daytime ambient level measured Friday afternoon was about $SPL (A) = 30\text{dB A}$.

The Nighttime ambient level measured both Friday and Saturday night at 1:00 am was $SPL (A) = 29\text{dB A}$.

In order to determine if sound levels in the loft exceeded the levels shown in Fig 1, the measurements were separated between the daytime and nighttime hours. Although music was played during daytime hours on both Friday and Saturday, they did not exceed the daytime criteria. The measured levels during the nighttime, after 10pm, were captured and compared to the criteria as shown in Fig.2. The nighttime measurement periods were for 1 hour or more. The octave band sound levels shown occurred one or more times during the measurement period and were adjusted for octave band ambient levels.

Octave Band Frequency (Hz)	EPA REG Nighttime not to exceed dB level	Loft -Friday night after 10pm (dB)	Loft- Saturday night after 10pm (dB)
32	63	68	67
63	61	64	52
125	55	49	53
250	47	45	46
500	40	38	45
1000	35	34	42
2000	30	27	39
4000	25	22	34
8000	25	18	30

Fig. 2

The average sound levels during the 10pm – 11:30pm time periods on both Friday and Saturday are shown in Fig.3 below

WHO Recommended sound level for sleep	Loft- Friday	Loft Saturday
LeqA=30dBA	10:26-11:00pm(band on break 10-10:26) LeqA (.5hr)=38 dBA	10:00pm-11:25pm LeqA(1.5hr)=39dBA

Fig. 3

Analysis-

1. As shown in Figure 2, the octave band sound level measurements exceed the Illinois EPA Noise Regulation.

An example of the measured octave band levels for a specific time is shown in Appendix A. (As noted, if the microphone is moved closer to the property line, but still within 25ft from the source, the levels would increase resulting in several more octave bands not meeting the criteria.)

2. Although the daytime measured sound levels did not exceed the EPA limits, given that they were continuous for a long duration, they can be perceived as a noise annoyance.
3. As shown in Fig.3, the average nighttime sound levels do not meet the WHO guidelines.

Given that the WHO recommendation for sleep in a quiet environment is $LeqA=30\text{dBA}$ and $L_{Amax}=45$, the measured $LeqA=39\text{dBA}$ and $L_{Amax}=48$ would not provide a good environment for sleep. For reference the sound level at 1am was about $LeqA=28\text{dBA}$.

4. The NC rating of 45 does not meet the recommended NC ratings for a bedroom and for a living space.
5. The daytime and nighttime ambient sound levels are very low at 28-30dBA indicating that in general the loft is a very quiet living space when music is not being played in the restaurant.
6. A general estimate of the sound level in the loft from music in the restaurant can be calculated as follows. Live music or a DJ can create a sound level of about 94dBA. Assuming the sound is spatially distributed in the room, but may also decrease with distance, and the brick wall provides about 48dB of sound blocking, the expected sound level in the loft would be $94-9$ (for distance) - $48(\text{wall}) = 37\text{dBA}$. This correlates with the measured average sound level of $LeqA=39\text{dBA}$.

7. In order to reduce the sound levels in the loft and meet the EPA Sound Regulation, it is recommended that the sound levels in the restaurant be reduced by 10dB or more and managed to provide less of a noise annoyance during the daytime and provide a quiet environment for sleep during nighttime hours.

In addition sound blocking provided by the brick wall could be increased by adding mass to the inside of the restaurant brick wall. This could be a layer of gypsum drywall over the brick wall. An analysis would be needed to estimate the thickness of the drywall and the resulting transmission loss and field ASTC.

8. It should be noted that the measured sound levels corresponded with the types of music played during the measurement period.

The sound levels were-

Lowest during the Saturday morning and afternoon time periods when 1-2 person acoustic music was played.

Higher Friday night with an acoustic band.

Highest Saturday night with a DJ.

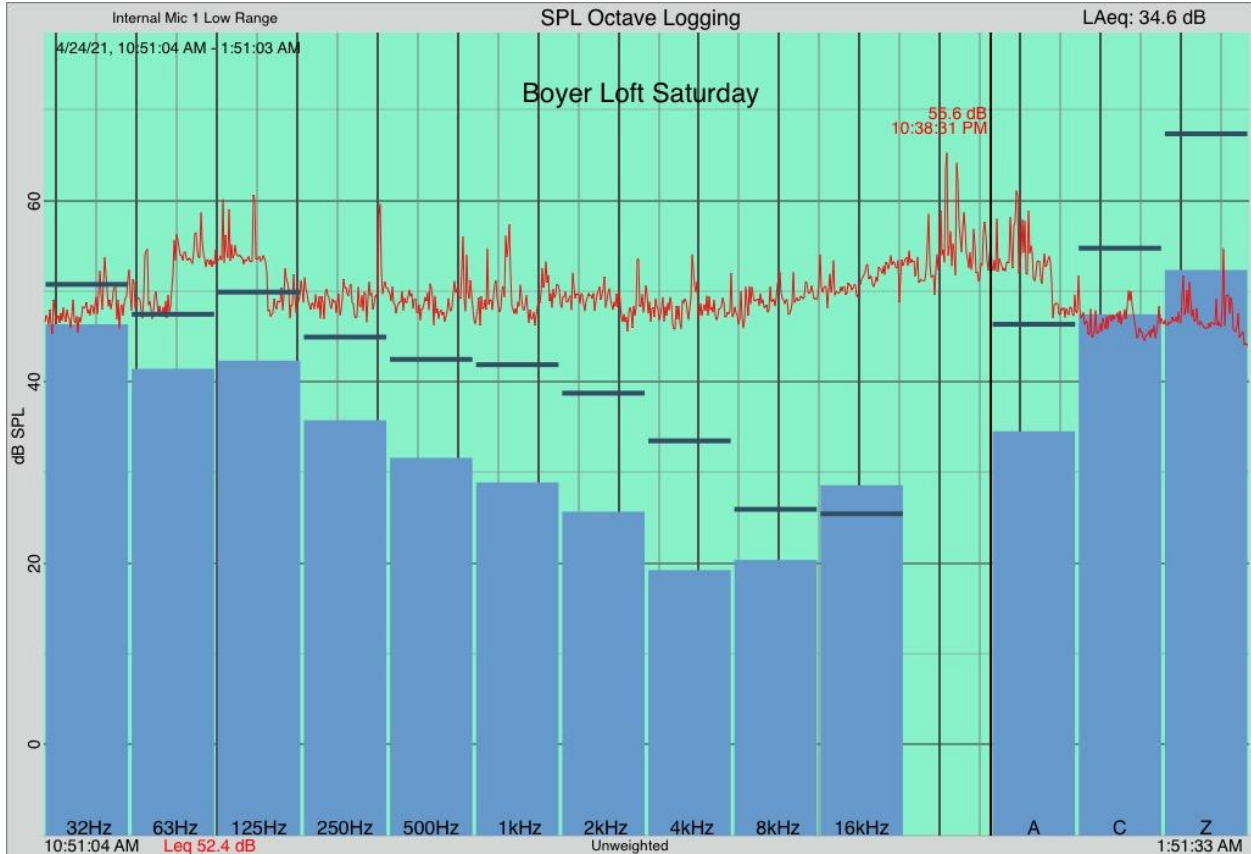
It is expected that when a larger member, amplified rock band plays in the restaurant, the measured sound levels in the loft would be much greater than those measured during this measurement period.

Please let me know if you have any questions about the above.

Thanks

Mike Biffignani
President Sondare Acoustics
3145688042

Appendix A



Notes;

1. The solid red line is the un-weighted sound level measured over the time period. The sound level starts to increase at about 8pm and until about 11:25pm. There is also an increased sound level earlier in the day for about an hour.
2. The solid, wide blue bars are the average un-weighted sound levels for each octave band over the entire time period.
3. The black lines are the un-weighted octave band levels for the specific time selected by the cursor. In this example the cursor is at 10:38pm Saturday. The octave band levels are considerably higher at this time when the music is being played.

McCLURE ENGINEERING

August 29, 2022

Via Email: ppetruska@greensfelder.com

Paul E. Petruska
 Attorney at Law
 Greensfelder, Hemker & Gale, P.C.
 821 W. Highway 50, Suite 303
 O'Fallon IL, 62269

Re: Copper Fire Bar & Eatery -Acoustical Study
 McClure Engineering No. 104268.000

Dear Mr. Petruska,

McClure Engineering has completed an acoustical analysis of our sound measurements and study for Copper Fire Bar and Eatery located at 200 East Main Street, Belleville, Illinois. A summary of our measured sound data findings inside the Boyer's Apartment (208 East Main Street), Unit C is included in this report.

Summary of Results

The sound emitted from Copper Fire Bar and Eatery while a band is playing is the primary focus of this sound study. However, secondary sound sources will be present and a few of these sound sources are represented in the background measurements obtained. The most prevalent sounds have been noted in this report and summarized in **Table 1**.

Table 1: Summary of the Leq Average Sound Pressure Level

Measured Property Line Scenario - Center of Unit C Dinning/Living Area 10* feet from property line wall	Band	SPL dBA
Leq Average Sound Pressure Level (Background)	(1pm to 2pm) No Band	30.2
Leq Average Sound Pressure Level 2pm to 2:45pm (45 mins)	Three of a Perfect Pair (Played 3 sets for 45min. each)	34.5
Leq Average Sound Pressure Level 3pm to 3:30pm (45 mins)		35.5
Leq Average Sound Pressure Level 8pm to 9pm (1 Hour)	The Mother Lovers' (Played 2 sets for 75min. each)	38
Leq Average Sound Pressure Level 10pm to 11pm (1 Hour)		39
Illinois EPA Sound Limit	Daytime (7am to 10pm)	55
	Nighttime (10pm to 7am)	50

*The IL EPA states the measurement should be measured at 25' from the Property Line, Unit C is only 21 feet wide. 10 feet was used so that no reflective surface would influence the readings. The room was reflective.

EXHIBIT E

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To correlate the measured sound levels with the Illinois EPA Sound Limit, the overall sound level at each one-one (1/1) octave band frequencies (32 Hz to 8K Hz) must be compared. This comparison is used to ensure that the sound is below each one-one (1/1) octave band limit and to determine if any pure tones are present in the emitted sound. No pure tone was present. These sound data results are shown in **Figure 1**.

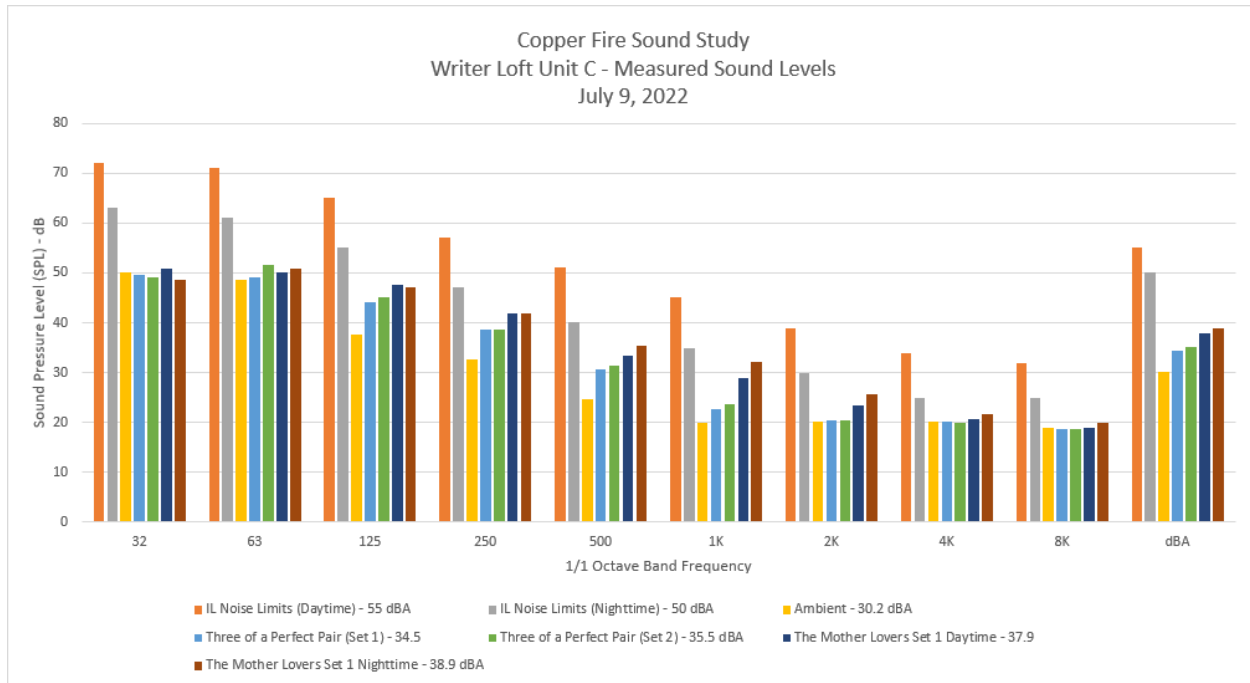


Figure 1 - One-one Octave Band Frequency Sound Level Data

The music can be heard, but the average Leq sound pressure measured over several hours while the band was playing is below both daytime and nighttime limits, at all frequencies, according to the Illinois EPA Noise Regulation, Title 35, Subtitle H, Sections 900, 901, and 910.

Summary of Noise Ordinance, Noise Codes, and Noise Standards

For this sound study to determine acceptable noise levels and standards for inside residential living quarters several guidelines and reference documents were used. The primary source used to determine noise ordinance/code violation for this study is Title 35 of the Illinois Administration Code. However, the following noise codes that pertain to the location of this site were also reviewed and used to determine sound level limits:

- 1) The City of Belleville
- 2) St. Clair County
- 3) Title 35 of the Illinois Administrative Code: Environmental Protection. Subtitle H: Noise

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The City of Belleville and St. Clair County Noise Codes uses a Nuisance code, which means there are no set sound limits. Illinois EPA code uses one-one (1/1) octave band frequency to determine sound level limits. These noise codes are provided in **Appendix A. Figure 1** is a summary of the measurement results in Unit C.

The Illinois code Subtitle H was created to determine **Outside** noise issues. Other resource information used as guidelines in this study to determine acceptable indoor sound limits is listed below.

- 1) The Noise Guidebook (HUD)
- 2) World Health Organization (WHO)
- 3) American Society of Heating, Refrigeration and Air Condition Engineers (ASHRAE)
- 4) Institute of Noise Control Engineering (INCE)
- 5) Acoustical Society of American (ASA)

Sound Measurement

A SVAN Model 307¹ (s/n 102955 (Loc 1), 102956 (Loc 2), and 102957(Loc 3)) sound level monitoring system was used for these sound measurements. The SV 307A noise monitoring system is a Class I system with a noise floor at 23 dBA. The instrument was capable of recording and storing the following A-weighted quantities for 1-to-60-minute time increments of the measurement period:

- 1) A-weighted equivalent sound level over time period of measurement [LAeq].
- 2) 1/3 Octave Band Frequency – Hertz (Hz) Data.

All measurements were A-weighted per ANSI S1.4 and are designated as dBA.

Each monitor measured the A-weighted sound levels at three (3) locations (See **Figure 2**) on the site for a period of 11 hours starting 11:15 am and ending at 11 pm.

The land for these buildings (Copper Fire and Kaskaskia Engineering) are zoned Class B, however, the 2nd-floor resident is zoned Class A under code 1100 Household activities. Copper Fire is Class B under code 2200 Restaurant activity.

¹ Data and Specification Sheet https://svantek.com/wp-content/uploads/2020/07/sv307_4g_datasheet.pdf

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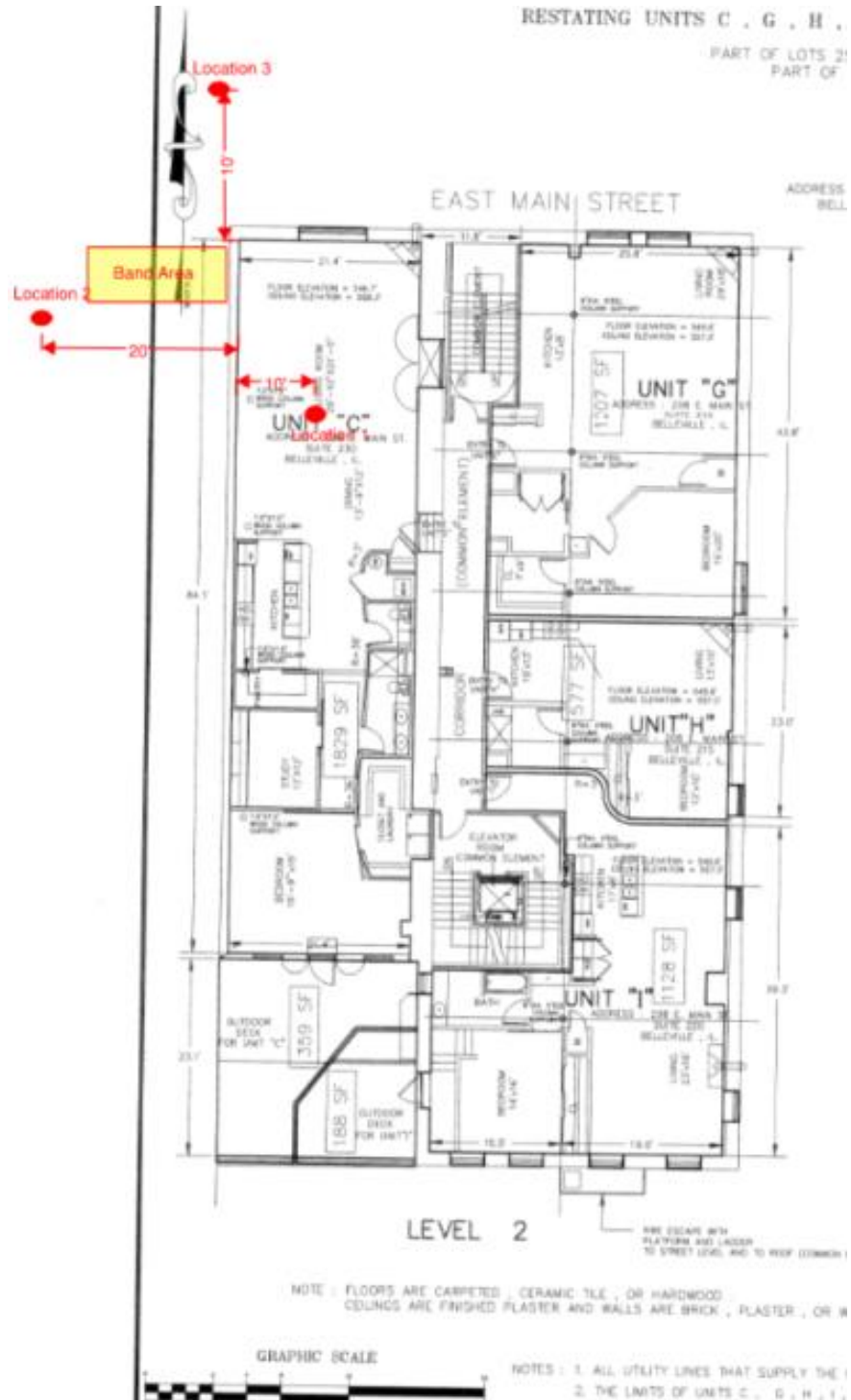


Figure 2 - Monitor Location

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August 29, 2022
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Sound data was collected on July 9, 2022, during the day when the bar was in full operation with two bands scheduled for the day. The first band, an acoustical three-piece band, played from 2 pm to 5 pm. The second band, a five-piece rock band, played from 8 pm to 11 pm. Sound level measurements obtained at the three (3) locations are provided in **Figures 3** (Loc 1) **4** (Loc 2) and **5** (Loc 3). Each monitoring station recorded Leq A-weighted time-history for the entire day from 11:15 am to 11 pm. The outside location was primarily impacted by main street traffic and other activities in the area. The sounds outside fluctuated as much as 30 dB with the low LAeq near 50 dBA and a high near 80 dBA at times.

Using the measured sound produced while the evening band was playing in the bar of 94 dBA with the sound level measured in Unit C at 39 dBA, it was determined that the sound transmission loss between the bar and the apartment is 55 dB. This is an estimate of the Apparent Sound Transmission Class (ASTC) because no ASTC tests were performed on this demising wall.

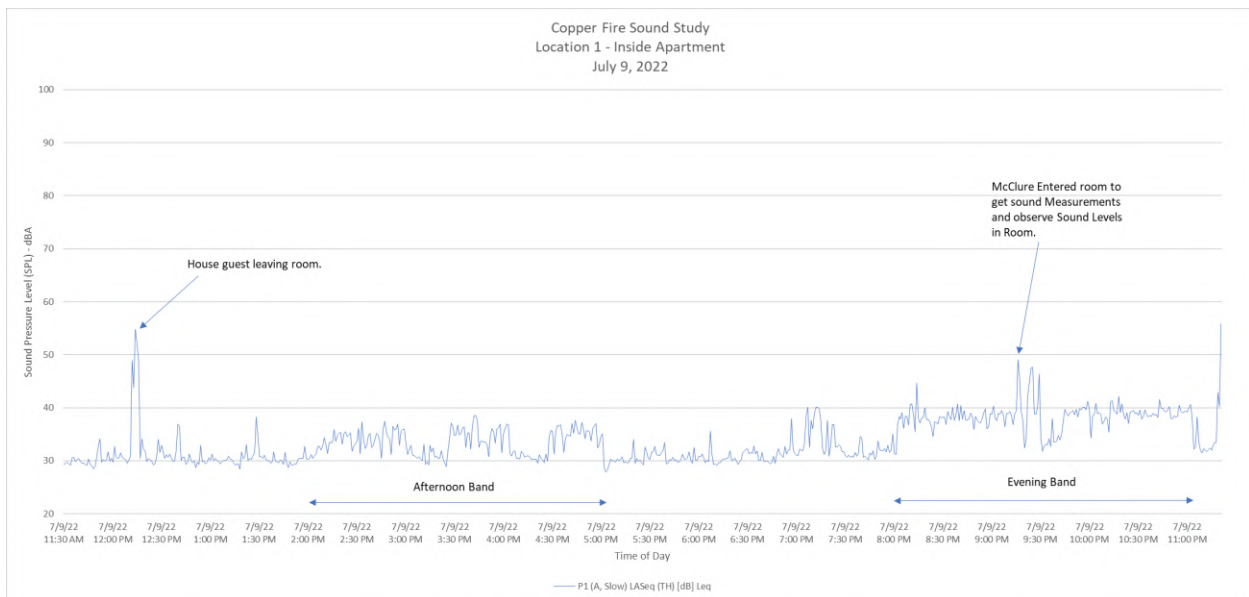


Figure 3 – Property Line Sound Monitor Data- Loc 1 in Unit C (June 2022)

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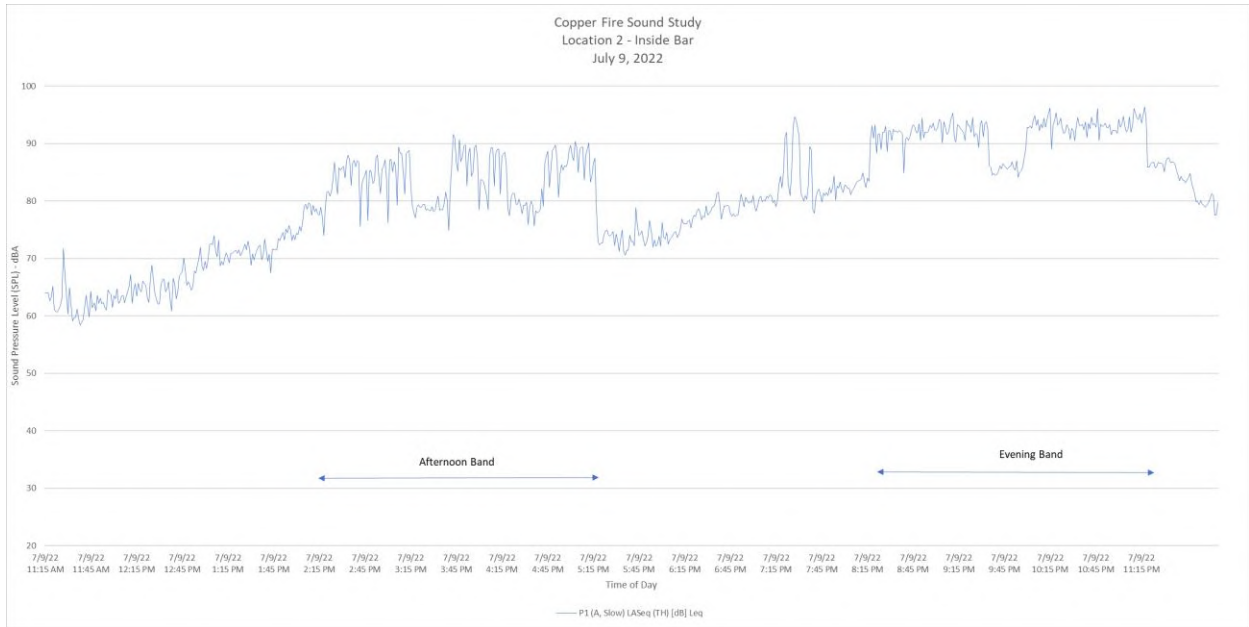


Figure 4 – Property Line Sound Monitor Data- Loc 2 in Bar (June 2022)

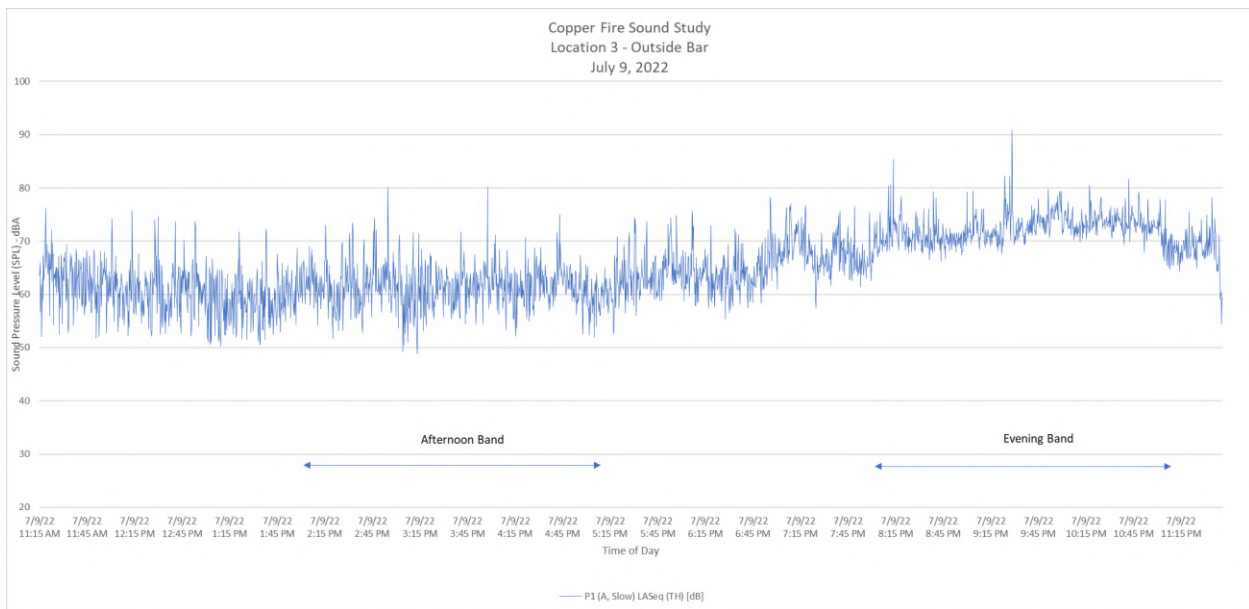


Figure 5 – Property Line Sound Monitor Data- Loc 3 Outside (June 2022)

Mr. Paul Petruska

August 29, 2022

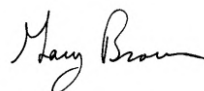
7 | Page

Conclusion

While music can be heard, based on our sound level measurements, the sound level inside the apartment is below the Illinois Title 35 Subtitle H: Noise code sound level limit at all frequencies.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Gary Brown".

Gary Brown

Mr. Paul Petruska
August 29, 2022
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Appendix A

City of Belleville, IL amended Title XI: Business Regulations, Chapter 110 General Licensing
Provision §110.31 PROHIBITION AGAINST NUISANCES

The new ordinance No. 8996-2021 states:

(A) No business, trade or occupation shall be carried on in any manner which will create a public or private nuisance, nor shall such operation be carried on in a manner which will produce unreasonably offensive noise, odor or other physical disturbances at or beyond the property line of the premises at which such operations take place, or otherwise threaten the public health, safety, morale or welfare or quality of life. Unreasonably offensive noise may include noises due to intermittence, beat frequency, volume or shrillness so it does not become a nuisance to adjacent uses

St. Clair County Noise Code, Chapter 40 - Zoning Code (p.170) 40-8-2 NUISANCE,
DETRIMENTAL AND HAZARDOUS CONDITIONS.

(B) Noise emanating from any use shall not be of such volume or frequency as to be unreasonably offensive at or beyond the property lines. Unreasonably offensive noises, due to intermittence, beat frequency, or shrillness shall be muffled so as not to become a nuisance to adjacent uses.

Illinois Administrative Code Title 35 Subtitle H; Noise Part 900, 901 and 910
[Title 35 Procedural and Environmental Rules \(illinois.gov\)](https://www.illinois.gov)



Deposition of
Michael Biffignani

Date: February 8, 2023

Case: DOUG and GERI BOYER v. MRB DEVELOPMENT, LLC,
d/b/a COPPER FIRE, RANAE EICHHOLZ, and MARK EICHHOLZ

No. 22-9

Court Reporter: Kim Bruhn, RPR, CSR (IL), CCR (MO)

Paszkiewicz Court Reporting

Phone: 618-307-9320

Toll-Free: 855-595-3577

Fax: 618-855-9513

www.spreporting.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Doug and Geri Boyer,)
)
Complainants,) PDB #22-9
)
vs.) (Enforcement)
)
MRB Development, LLC, d/b/a)
Copper Fire, Ranae Eichholz,)
and Mark Eichholz,)
)
Respondents.)

DEPOSITION OF MICHAEL BIFFIGNANI

Taken on behalf of the Complainants

February 8, 2023

Kim Bruhn, RPR, CSR (IL), CCR (MO)
Paszkiewicz Court Reporting
26 Ginger Creek Parkway
Glen Carbon, Illinois 62034
(855) 595-3577

Electronic Filing: Received, Clerk's Office 04/11/2023

Michael Biffignani

February 8, 2023

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<p>1 **INDEX OF EXAMINATION**</p> <p>2 Page</p> <p>3 QUESTIONS BY MR. PETRUSKA 7</p> <p>4 QUESTIONS BY MS. ROBBINS 122</p> <p>5 FURTHER QUESTIONS BY MR. PETRUSKA 135</p> <p>6 FURTHER QUESTIONS BY MS. ROBBINS 137</p> <p>7</p> <p>8 *****</p> <p>9 EXHIBITS</p> <p>10 Page</p> <p>11 Deposition Exhibit A 7</p> <p> (Curriculum Vitae)</p> <p>12</p> <p> Deposition Exhibit B 14</p> <p>13 (Invoices)</p> <p>14 Deposition Exhibit C 15</p> <p> (Title 35 Environmental Protection - Part 900)</p> <p>15</p> <p> Deposition Exhibit D 21</p> <p>16 (Title 35 Environmental Protection - Part 901)</p> <p>17 Deposition Exhibit E 22</p> <p> (Title 35 Environmental Protection - Part 910)</p> <p>18</p> <p> Deposition Exhibit F 29</p> <p>19 (IL Noise Related Statutes and Regulations)</p> <p>20 Deposition Exhibit G 31</p> <p> (Graph - Boyer Loft Friday Night)</p> <p>21</p> <p> Deposition Exhibit H 51</p> <p>22 (Graph - Boyer Loft Saturday Night)</p> <p>23 Deposition Exhibit I 51</p> <p> (Graph - Boyer Loft Sunday)</p> <p>24</p>	<p>1 *****</p> <p> EXHIBITS</p> <p> Page</p> <p>2</p> <p>3</p> <p>4 Deposition Exhibit W 103</p> <p> (E-mail)</p> <p>5</p> <p>6 Deposition Exhibit X 104</p> <p>7 (E-mail)</p> <p> (The exhibits were retained by the court reporter</p> <p> and will be attached to Mr. Petruska's transcript.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
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<p>1 *****</p> <p> EXHIBITS</p> <p> Page</p> <p>2</p> <p>3</p> <p>4 Deposition Exhibit J 54</p> <p>5 (Sound Study)</p> <p>6 Deposition Exhibit K 69</p> <p> (Sound Study #2)</p> <p>7</p> <p> Deposition Exhibit L 79</p> <p>8 (E-mail)</p> <p>9 Deposition Exhibit M 79</p> <p> (E-mail)</p> <p>10</p> <p> Deposition Exhibit N 87</p> <p>11 (Handwritten Notes)</p> <p>12 Deposition Exhibit O 88</p> <p> (Handwritten Notes)</p> <p>13</p> <p> Deposition Exhibit P 118</p> <p>14 (Handwritten Notes)</p> <p>15 Deposition Exhibit Q 99</p> <p> (Handwritten Notes)</p> <p>16</p> <p> Deposition Exhibit R 99</p> <p>17 (Guidelines for Community Noise)</p> <p>18 Deposition Exhibit S 99</p> <p> (Information on Levels of Environmental Noise</p> <p>19 Requisite to Protect Public Health and Welfare with</p> <p> Adequate Margin of Safety)</p> <p>20</p> <p> Deposition Exhibit T 100</p> <p>21 (Handwritten Notes)</p> <p>22 Deposition Exhibit U 101</p> <p> (E-mail)</p> <p>23</p> <p> Deposition Exhibit V 101</p> <p>24 (E-mail)</p>	<p>1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD</p> <p>2</p> <p>3 Doug and Geri Boyer,)</p> <p>))</p> <p>4 Complainants,) PDB #22-9</p> <p>))</p> <p>5 vs.) (Enforcement)</p> <p>))</p> <p>6 MRB Development, LLC, d/b/a)</p> <p>7 Copper Fire, Ranae Eichholz,)</p> <p> and Mark Eichholz,)</p> <p>8))</p> <p>9 Respondents.)</p> <p>10</p> <p>11 DEPOSITION OF MICHAEL BIFFIGNANI, produced,</p> <p>12 sworn, and examined on behalf of the Complainants on</p> <p>13 February 8, 2023 between the hours of 1:00 p.m. and</p> <p>14 4:00 p.m. Central Time, at Lathrop GMP, LLP, 7701</p> <p>15 Forsyth Boulevard, Suite #500, Clayton, Missouri</p> <p>16 63105, before Kim Bruhn, RPR, CSR (IL), CCR (MO).</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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1 *** APPEARANCES***

2

3 The Complainants, Doug and Geri Boyer,

4 were represented by Brooke Robbins, 500 IDS Center,

5 80 South 8th Street, Minneapolis, Minnesota 55402.

6 The Respondents, MRB Development, LLC,

7 d/b/a Copper Fire, Renae Eichholz and Mark Eichholz,

8 were represented by Paul Petruska of Greensfelder,

9 Hemker & Gale, PC, 821 West Highway 50, Suite #303,

10 O'Fallon, Illinois 62269.

11

12

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14

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16

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20

21

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24

Page 8

1 Q So it looks like you got your master's

2 in science and technology in 1979; is that correct?

3 A **That's correct.**

4 Q And you got a master's in engineering

5 in August of 2015?

6 A **That's correct.**

7 Q Okay. And then what is this Boeing

8 Executive Development Program? What was that?

9 A **That was an executive development**

10 **program at Boeing.**

11 Q Okay. How long did that last?

12 A **That was a -- maybe a month program,**

13 **on-site at Boeing, Boeing St. Louis.**

14 Q And it looks like you worked at Boeing

15 from 1983 to 1999; is that correct?

16 A **That's correct. That includes**

17 **McDonnell Douglas.**

18 Q Right; okay.

19 A **Right.**

20 Q Thank you.

21 And then what did you do at LMI

22 Aerospace?

23 A **I was the chief (inaudible) officer.**

24 COURT REPORTER: I'm sorry, chief what

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1 *****

2 IT IS HEREBY STIPULATED AND AGREED by and

3 between Counsel for the Complainants and Counsel for

4 the Respondents that this deposition may be taken in

5 shorthand by Kim Bruhn, a Certified Shorthand

6 Reporter, and afterwards transcribed into

7 typewriting, and the signature of the Witness is

8 waived by agreement of Counsel and the Witness.

9 *****

10 MICHAEL BIFFIGNANI,

11 of lawful age, being produced, sworn, and examined

12 on the part of the Complainants, and after

13 responding "I do" to the oath administered by the

14 Court Reporter deposes and says:

15 EXAMINATION

16 QUESTIONS BY MR. PETRUSKA:

17 Q I'm gonna hand you what's been marked

18 as Defendant's Exhibit A and ask if you recognize

19 this document?

20 A **Yes, I do.**

21 **(Deposition Exhibit A was marked for**

22 **identification.)**

23 Q (By Mr. Petruska) And what is this?

24 A **My current resume.**

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1 officer?

2 THE WITNESS: Chief information

3 officer.

4 COURT REPORTER: Thank you.

5 Q (By Mr. Petruska) Okay. And what was

6 LMI Aerospace? What did they do?

7 A **We were a manufacturer of airplane**

8 **components for Boeing, Gulfstream, Lockheed.**

9 Q You've been an adjunct professor at

10 Wash U from 2019 to present; is that correct?

11 A **In Webster.**

12 Q Jeez, Louise. Thank you. Webster,

13 yes.

14 So you're teaching an acoustics course?

15 A **Yes.**

16 Q Okay. And then other than that, you

17 have Sondare Acoustics Group, which I guess you

18 founded in 2016?

19 A **Yes.**

20 Q Okay. Do you have any other employees

21 with Sondare?

22 A **Not full-time.**

23 Q Sondare's, S-o-n-d-a-r-e?

24 A **That's correct.**

Page 10

1 Q And who are the typical clients? What
 2 types of people are hiring or businesses are hiring
 3 Sondare?
 4 A It varies. I've done three customers
 5 where I've done product testing, including Rawlings,
 6 Oasis Sound Booth, and Unico Air-Conditioning.
 7 And I've had a variety of customers who
 8 have sound issues, outside issues, inside issues.
 9 And then I've had some clients who want to improve
 10 the sound of the rooms, including home theater,
 11 music rooms, those kinds of things, so it varies.
 12 Q Okay. Have you ever been retained by a
 13 client or an attorney to testify in front of the
 14 Illinois Pollution Control Board before?
 15 A No.
 16 Q Prior to the case we're here on, have
 17 you ever had a case in Illinois that addresses the
 18 Illinois EPA?
 19 A It referenced the Illinois EPA?
 20 Q Sorry. It referenced the noise
 21 standards and regulations?
 22 A Yes.
 23 Q How many times previously have you
 24 addressed the Illinois EPA Noise Standards?

Page 11

1 A Two.
 2 Q What were those two cases?
 3 A One was a bar who was playing music
 4 outside, and the residents surrounding the area were
 5 complaining about the noise being too loud.
 6 And the other one was a potential
 7 barge/tugboat boarding facility on the river in
 8 northern Illinois and was potentially going to
 9 disrupt residences along the river.
 10 Q With respect to the bar and the music
 11 outside, do you remember where that was?
 12 A Yes, it was Sunset View Restaurant &
 13 Bar on Highway 3, just south of Jefferson Barracks
 14 Bridge.
 15 Q And to your knowledge, was a Complaint
 16 ever filed with the Illinois Pollution Control Board
 17 regarding that bar?
 18 A I don't know.
 19 Q Okay. Did you do some acoustical
 20 testing in that case?
 21 A Yes, I did acoustical testing at one of
 22 the residences at nighttime and turned over the test
 23 results.
 24 Q In that case, did you try to comply

Page 12

1 with the provisions of Title 35, Chapter 900, when
 2 you did your testing?
 3 A No, because it didn't get to that
 4 stage. All I did was take the measurements and let
 5 them know what I was measuring.
 6 And the -- some of the measurements
 7 were low because the band either stopped or they
 8 were alerted that I was taking measurements. It was
 9 not to the level that they thought it was.
 10 Q And just so I understand, are you
 11 saying that while you were doing testing
 12 occasionally the band would stop playing?
 13 A Or it was very low level --
 14 Q Okay.
 15 A -- compared to what they told me to
 16 expect.
 17 Q Okay.
 18 A And it was freezing cold, and it was
 19 night.
 20 Q And then the barge case, was that just
 21 the normal operations of the barge along the river?
 22 A It was described -- I didn't go there.
 23 It was described to me as normal barge, so I did
 24 analysis on what noise a barge would make, or a

Page 13

1 tugboat would make and travel across the water, and
 2 then what level to predict at the front porch of a
 3 residence.
 4 So it was predictive in nature, and I
 5 wrote a letter summarizing that, and they took it to
 6 the local jurisdiction and got it stopped.
 7 Q Okay. What was the local jurisdiction?
 8 A It was Chillicothe, Illinois. I don't
 9 remember if that was the township or not. I'd have
 10 to look it up for you.
 11 Q Okay. So is it fair to say that this
 12 case, being Boyer versus Copper Fire, et al., is the
 13 first time that you've done acoustical testing under
 14 the requirements of Title 35, Chapter 900?
 15 A That's correct.
 16 Q It looks like you're a member of a
 17 professional association; is that correct?
 18 A I founded the local chapter of The
 19 Acoustics Society.
 20 Q Okay. And you're the chair of the St.
 21 Louis Region Chapter for The Acoustics Society?
 22 A That's right.
 23 Q Okay.
 24 A And also I'm a member of the national

Page 14

1 **society.**
2 Q And then are you a professional
3 engineer?
4 **A No.**
5 Q Have you ever tried to become a
6 professional engineer?
7 **A No.**
8 Q I'm handing you what's been marked as
9 Exhibit B. I'll tell you I combined the invoices I
10 received in this case. I just want to know if this
11 is all of the billing? Can you take a look at the
12 three pages?
13 **A Sure. Yes.**
14 **(Deposition Exhibit B was marked for**
15 **identification.)**
16 Q (By Mr. Petruska) Okay. So Exhibit B
17 is three pages.
18 Is this -- does this reflect all of the
19 billing in this case, for your work?
20 **A Yes.**
21 Q Okay.
22 **A Other than any prep for -- following**
23 **prep work for this.**
24 Q I understand.

Page 15

1 I'm handing you what's been marked as
2 Defendant's Exhibit C and ask you if you have
3 reviewed that document?
4 **A Yes.**
5 **(Deposition Exhibit C was marked for**
6 **identification.)**
7 Q (By Mr. Petruska) Okay. So would you
8 agree that there are three sections of Title 35 that
9 apply to this case regarding noise testing?
10 **A If you mean 101, 102, 103, yes.**
11 Q And you notice that Section 900-101 has
12 the definitions applicable for the Environmental
13 Protection Noise Provisions; correct?
14 **A Correct.**
15 Q Okay. If you go to the third page, it
16 has a definition for dB(A); do you see that?
17 **A Yes.**
18 Q Do you agree with that definition?
19 **A Yes.**
20 Q Okay. Three pages past that we're into
21 the I's through M's, you'll find a definition for
22 Leq. Can you review that for me?
23 **A Leq(A)?**
24 Q No, just the Leq first.

Page 16

1 **A Just Leq? Yes, it's the nonweighted**
2 **equivalent sound pressure level.**
3 Q Do you agree with the definition that's
4 set forth in this document?
5 **A Yes.**
6 Q And then the Leq(A), do you agree with
7 that definition?
8 **A Yes.**
9 Q And then the Leq octave band-Hz, do you
10 agree with that definition?
11 **A Yes.**
12 Q Okay. Am I correct that there is a
13 chart regarding the amount of decibels that are
14 allowed at certain frequencies that apply in
15 Illinois; is that correct?
16 **A Certain octave band frequencies.**
17 Q And those octave band frequencies are
18 measured in the Leq; is that correct?
19 **A That's correct.**
20 Q Okay.
21 **A That's my understanding.**
22 Q Okay. If we go another three or four
23 pages past we're on the S's and there's a definition
24 of sound exposure; do you -- can you see that?

Page 17

1 **A Yes.**
2 Q Do you agree with that definition?
3 **A Yes.**
4 Q Do you see the section where it says,
5 the sound exposure of the background noise is a
6 significant contributor to the total sound exposure?
7 **A Yes.**
8 Q Okay. And it's telling you that if
9 that is true, you have to take it into account; is
10 that correct?
11 **A That's correct.**
12 Q Okay. In this case, when you did your
13 testing in April, were you even present for the
14 testing?
15 **A To set it up.**
16 Q Okay. And then while the noise testing
17 was going on, were you there?
18 **A No, I was not.**
19 Q Did you do anything to determine the
20 sound exposure of background noise and whether it
21 was a significant contributing factor?
22 **A Yes.**
23 Q Okay. What did you do?
24 **A I measured the sound level. I -- since**

Page 18

1 **the sound level was recorded after the music or the**
2 **band stopped, I used the sound levels that were**
3 **measured at 2:00 a.m., 1:00 to 2:00 a.m., used the**
4 **background noise.**
5 Q Okay. But -- so that would be
6 background noise.
7 What about during your noise testing
8 whether anything else caused loud noises, did you do
9 anything --
10 A **I noted on some of the graphs where**
11 **footsteps were possible because there was a large**
12 **spike in the sound.**
13 **And during set-up I heard some**
14 **footsteps, and I noted that. And I noted -- I noted**
15 **the specific times where I thought the footsteps**
16 **were apparent.**
17 Q Did you take into account any loud
18 noises from outside the apartment from cars?
19 A **If I recall, there was one note that I**
20 **made about a motorcycle noise going past the room,**
21 **or it appeared as a vehicle noise going past the**
22 **window.**
23 Q And what did you do to ensure -- what
24 did you do to determine if that was a significant

Page 19

1 contributing factor?
2 A **I deleted the noise that I thought --**
3 **at that point in time, from the measurement.**
4 Q And that's the only circumstance where
5 you took into account the outside noise?
6 A **That I recall, those were the only two.**
7 Q Another three pages past is a
8 definition for time-average sound level. Do you
9 agree with that definition?
10 A **Yes.**
11 Q And then turn two more pages, you'll
12 see Section 900.103. It sets forth the measurement
13 procedures; do you see that?
14 A **Yes.**
15 Q It says, all measurements and
16 measurement procedures under Subsection (b)(1)(B) of
17 this section must correct or provide for the
18 correction of sound emissions for the presence of
19 ambient or background noise in compliance with the
20 procedures in 35 Ill. Adm. Code 910.
21 Do you see that?
22 A **Yes.**
23 Q Did you comply with that section?
24 A **Could you repeat that? Is it -- is it**

Page 20

1 **(a) that you referred to?**
2 Q It's -- so it's 900.103 (b)(2). It
3 says, all --
4 A **(b)(2); okay.**
5 Q -- measurements and measurement
6 procedures under Section (b)(1).
7 A **Yes.**
8 Q You believe you complied with that?
9 A **Yes.**
10 Q Okay. Even though you weren't there
11 during the testing?
12 A **But the meter was there during the**
13 **testing.**
14 Q Right. What about noises that came
15 from out in front of the apartment from cars, what
16 did you do to control those?
17 A **You can't do anything to control those.**
18 Q Okay. And what did you do to control
19 the motorcycles that went by?
20 A **You can't control those, but I deleted**
21 **the point that it was assumed to occur from the**
22 **measurement.**
23 Q And when people go by in their cars and
24 have their music blaring, what did you do to control

Page 21

1 for that?
2 A **I don't know that that occurred.**
3 Q Okay. Have you ever been on Main
4 Street --
5 A **Yes.**
6 Q -- other than for this testing?
7 A **Not other than this testing, no.**
8 **While the testing was occurring I**
9 **walked down Main Street and I observed.**
10 Q I'm handing you now what's been marked
11 as Defendant's Exhibit D.
12 (Deposition Exhibit D was marked for
13 identification.)
14 Q (By Mr. Petruska) Do you recognize
15 Exhibit D?
16 A **Yes.**
17 Q This is Title 35, Part 901. Do you
18 agree with that?
19 A **Yes.**
20 Q And this section has tables that apply
21 to Sound Emitted to Class A Land in Section 901.102.
22 Do you agree with that?
23 A **Yes.**
24 Q Okay. And that's octave band center

Page 22

1 frequencies; correct?
2 **A Yes.**
3 Q So that would be the Leq that we talked
4 about previously; right?
5 **A Yes.**
6 Q Okay. And do you agree that 901.102
7 (a) applies in this case for daytime?
8 **A Yes.**
9 Q And that 902 -- I'm sorry, 901.102 (b)
10 applies for nighttime?
11 **A Yes.**
12 Q I'm handing you what's been marked as
13 E, Defendant's Exhibit E.
14 (Deposition Exhibit E was marked for
15 identification.)
16 Q (By Mr. Petruska) Do you recognize that
17 document?
18 **A Yes.**
19 Q This is Title 35, Part 910; do you
20 agree?
21 **A Yes.**
22 Q And it says -- at 910.100 it says, this
23 part provides specifications for sound measurement
24 equipment as well as the specific sound measurement

Page 23

1 techniques to be used when conducting time-averaged
2 Leq measurements to determine whether a noise is
3 compliant with 35 Illinois Adm. Code 900 and 901; do
4 you see that?
5 **A Yes.**
6 Q Do you believe you complied with all
7 the provisions set forth in this chapter?
8 **A Yes.**
9 Q Please take a look at 910.102 -- I'm
10 sorry, 910.105 (c)(7).
11 **A (c)(7).**
12 Q Do you see that section?
13 **A Yes.**
14 Q Okay. It says, while measurements are
15 being taken make visual and aural surveillance of
16 extraneous sound sources.
17 Do you see that?
18 **A Yes.**
19 Q Okay. But you weren't there when you
20 did your testing, were you?
21 **A I was there. I wasn't inside the room.**
22 Q So how were you making visual and aural
23 surveillance as required by the Illinois EPA?
24 **A Well, this says extraneous sound**

Page 24

1 **sources and varying wind conditions, which assumes**
2 **that it's outside, and the measurements were inside,**
3 **so there was no wind conditions inside.**
4 Q Well, I just want to make sure.
5 You're -- you -- you're the one that
6 provided the first report in this case from your
7 April testing; right?
8 **A That's right.**
9 Q And you chose to use Title 35, Section
10 901.102 (a) and (b). You chose to use that as your
11 testing standard, didn't you?
12 **A Yes.**
13 Q So you chose it.
14 So now it says, you must make -- when
15 measurements are being taken, you must make visual
16 and aural surveillance of extraneous sound sources.
17 Tell me how you complied with that?
18 **A From a measurement or just observation?**
19 Q No, sir. Okay, let's make it easy.
20 **A Yeah.**
21 Q If you aren't there, you can't make
22 visual observance, can you?
23 **A I was there.**
24 Q You were there for the entire testing

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1 that you did on Friday and Saturday?
2 **A I walked down streets and I walked**
3 **around the area. I had lunch at Copper Fire. I**
4 **walked to other stores around the area. I walked**
5 **behind in the parking lot. I observed cars. I**
6 **observed traffic. I observed wind conditions**
7 **outside the room.**
8 Q Were you --
9 **A And there was no -- no significant**
10 **traffic.**
11 Q When you did the testing on Friday
12 night, were you present for the entire time of the
13 sound testing?
14 **A On Friday night?**
15 Q Yes.
16 **A No.**
17 Q When you did the sound testing on
18 Saturday, April 24th, were you there for the entire
19 time?
20 **A Not the entire time.**
21 Q When you did sound testing on Sunday
22 the 25th, were you there the entire time?
23 **A In November? November 25th, I was**
24 **there the entire --**

1 Q That was November, yeah. Sorry.
 2 A I was there the entire testing for
 3 November.
 4 Q Okay.
 5 A It was afternoon.
 6 Could -- could I point something out?
 7 Q Sure.
 8 A The EPA standard that I chose that we
 9 looked at here says that -- it first says that if
 10 the person receiving the noise considers it an
 11 annoyance, that's all the further you have to go.
 12 It says you can also use measurements
 13 to corroborate that claim, and the measurements that
 14 you need to use and the guidelines are for outdoors.
 15 Q Well, first, again, you chose this
 16 standard, did you not?
 17 A I chose to use it to corroborate that
 18 it was considered a noise.
 19 Q Okay. And then please tell me which
 20 section of these laws says that if they -- if one
 21 person finds it to be an annoyance that's all you
 22 need to do. Please tell me what section that is.
 23 A I'll have to go to which one of these,
 24 but I have it in my notes.

1 Let's see, Section -- I summarized
 2 notes. So it says -- Page 16 and 59 -- or 59,
 3 Section 900.102, Prohibition of Noise Pollution, no
 4 person shall cause or allow emissions of sound
 5 beyond the boundaries of this property so as to
 6 cause noise pollution in Illinois.
 7 Q So that's the actual standard. That's
 8 what your notes say; correct?
 9 A I took that note from Section 900.102.
 10 Q Okay. So I'm gonna show -- go back to
 11 Exhibit C, please, and find Section 900.102, the
 12 actual language. It's at the top of the page.
 13 A Yeah, okay. I see it at the top of the
 14 page.
 15 Q Do you agree that 900.102 says a person
 16 must not allow -- must not cause or allow the
 17 emission of sound beyond the boundaries of that
 18 person's property as defined in Section 25 of the
 19 Environmental Protection Act that causes noise
 20 pollution in Illinois or violates any provision of
 21 this Chapter.
 22 Do you see that?
 23 A Yes.
 24 Q Okay. Noise pollution in Illinois,

1 what is the standard for noise pollution in
 2 Illinois?
 3 A It also says that in order to
 4 corroborate a person who thinks that the emission
 5 beyond the boundary is causing noise in Illinois,
 6 you can corroborate that with measurements.
 7 Q Well, I'm just going back to -- you
 8 previously told me that 900.102 is where you got the
 9 idea that if it's just annoyance --
 10 A Right.
 11 Q -- one person being annoyed, that's
 12 sufficient. I'm looking at 900.102 and I want to
 13 know how you're getting it from that.
 14 You agree that's not what it says;
 15 right? The word annoyance is not even in Section
 16 900.102.
 17 A It also says on Page 3 of 59, 415 ILCS
 18 (sic.) 5/24, Section 24, no person shall emit beyond
 19 the boundaries of his property any noise that
 20 unreasonably interferes with the enjoyment of life
 21 or as stated by the Board under this Act.
 22 That's page -- these numbers aren't
 23 marked in the document but I have Page 3.
 24 Q Okay. So I'm gonna hand you what's

1 been marked Defendant's Exhibit F, and that's the
 2 source of your note that you're referring to;
 3 correct?
 4 (Deposition Exhibit F was marked for
 5 identification.)
 6 A Let's see, 5/24, Section -- no person
 7 shall emit beyond the boundaries of his property any
 8 noise that unreasonably interferes with the
 9 enjoyment of life or with any lawful business or
 10 activity so as to violate any regulation or standard
 11 adopted by the Board under this Act.
 12 Q Interesting, isn't it? You missed that
 13 little section, didn't you?
 14 A No.
 15 Q So as to violate any regulation or
 16 standard adopted by this Board under this Act.
 17 Do you see that paragraph --
 18 A Yes, sir.
 19 Q -- that sentence?
 20 A I -- I have that in my notes.
 21 Q Okay. So what -- so this only applies
 22 if you're violating a regulation or standard of the
 23 Board.
 24 Which regulation or standard of the

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1 Board is being violated in this case, please?
2 **A It also says -- it also says, SPO**
3 **measurements are not required to establish a**
4 **violation of 35/3 Adm. Code 900.102, Nuisance Noise.**
5 **However, SPO measurements may be**
6 **introduced for corroborating evidence when allegedly**
7 **a violation of the code is determined.**
8 **So --**
9 Q And, in fact, you did measurements, did
10 you not?
11 **A I did.**
12 Q Okay. So that's being admitted in the
13 case. Your own evidence is being admitted in this
14 case.
15 Show me -- so that doesn't say anything
16 about annoyance, does it?
17 **A It says, however the measurements may**
18 **be introduced as corroborating evidence when**
19 **allegedly a violation of the code is determined.**
20 Q Right, violation of the code. So now
21 we're back to the code; okay? 415 ILCS 5/24 says,
22 it must violate any regulation or standard adopted
23 by the Board.
24 Please tell me which regulation or

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1 standard adopted by the Board you're alleging is
2 being violated in this case?
3 **A The measurements that I used to**
4 **corroborate were the measurements in the table**
5 **showing the measurements by octave band, but they're**
6 **for outdoors.**
7 Q That's not the question.
8 I said, what's -- what is your -- what
9 evidence do you have that any regulation or standard
10 adopted by the Board is being violated in this case?
11 MS. ROBBINS: Object, he already
12 answered the question.
13 MR. PETRUSKA: He has not come close.
14 Which standard?
15 MS. ROBBINS: He just told you that he
16 used the table that is in 901.
17 Q (By Mr. Petruska) Do you believe that
18 your measurements show a violation of that table?
19 **A Yes.**
20 Q I'm handing you what's been marked
21 Defendant's Exhibit G.
22 (Deposition Exhibit G was marked for
23 identification.)
24 **A Yes.**

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1 Q (By Mr. Petruska) Can you look through
2 Exhibit G and tell me what this is?
3 **A These are the octave band measurements**
4 **for the period of 10/12 to 10/17 for Friday night by**
5 **octave band 32, 63, 125, 250 all the way up to 8,000**
6 **hertz for Friday night.**
7 Q Okay. And then what's the blue section
8 in there?
9 **A The blue bars?**
10 Q Yeah.
11 **A The blue bars represent the entire**
12 **level by octave band for -- the Leq level for octave**
13 **band for the entire measurement period, which was**
14 **7:30 p.m. to 2:33 a.m.**
15 Q And is there any violation of the
16 daytime or nighttime standards shown on Defendant's
17 Exhibit G?
18 **A It depends what you use to compare it**
19 **to the standard.**
20 Q No, I'm asking, the Leq that you took
21 there, that you show in this exhibit, is there any
22 violation of the standard?
23 **A You can't use the Leq.**
24 Q Didn't you tell me earlier that the Leq

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1 is how you -- how that table works, 901.102?
2 **A You can't use the Leq because it's**
3 **indoor measurement, and the standard is for outdoor.**
4 Q So now we're going back to this again,
5 901.102 --
6 **A I can explain.**
7 Q No, I'm gonna ask you. 902.102, right
8 here --
9 **A I understand. I understand.**
10 Q -- this table, has this table been
11 violated in any way --
12 **A That's Day 5.**
13 Q I know.
14 Has it been violated in any way in this
15 case?
16 **A You can't compare indoor measurements**
17 **of Leq with the outdoor guideline.**
18 Q My question is, is there any part of
19 (a) 901 -- 901.102(a) that is violated by your
20 testing standards?
21 **A Yes.**
22 Q What?
23 **A The max levels, the repetitive nature**
24 **of the max levels which I used in order to normalize**

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1 **the data between outdoor and indoor.**
2 Q Okay. So looking at these numbers
3 right here that are in the standard, are these
4 numbers violated?
5 MS. ROBBINS: Objection, asked and
6 answered.
7 **A You can't use the guideline.**
8 Q (By Mr. Petruska) But you chose this
9 guideline.
10 **A I didn't choose this guideline.**
11 Q Really? Your first report didn't --
12 **A It was --**
13 Q -- quote this table?
14 **A It was the only guideline, other than a**
15 **World Health standard that just gave one number for**
16 **nighttime sleep that quantified in any way that the**
17 **levels were being too high that would cause sleep**
18 **disturbance.**
19 Q So is it your testimony that the
20 Illinois EPA doesn't have a standard that's
21 applicable to this case?
22 **A It's applicable if you normalize the**
23 **outdoor data.**
24 Q Show me where in here it says you can

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1 normalize it.
2 **A I used the World Health Organization**
3 **information to normalize.**
4 Q Okay.
5 **A Because the World Health Organization**
6 **has a paragraph that says many, many standards only**
7 **use outdoor measurements, and if you want to**
8 **normalize and use indoor measurements, here is a way**
9 **to do it.**
10 Q You know who Geri Boyer is; right? You
11 know who she is?
12 **A I'm sorry?**
13 Q Do you know who Geri Boyer is?
14 **A Of course.**
15 Q Okay. You know she's an engineer;
16 correct?
17 **A Yes.**
18 Q You know that she filed this case in
19 the Illinois Pollution Control Board; right?
20 **A Okay.**
21 Q You realize that, don't you?
22 **A Yes.**
23 Q Okay. She's asking the Illinois
24 Pollution Control Board to hear her Compliant.

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1 **A Okay.**
2 Q Why aren't you following their
3 standards? You're applying the WHO? That's what
4 you're applying?
5 MS. ROBBINS: Objection, badgering the
6 witness.
7 Q (By Mr. Petruska) I want to know what
8 standard that is set forth in a regulation or law of
9 Illinois is being violated in this case. That's
10 what I want to know.
11 Please --
12 MS. ROBBINS: Objection, asked and
13 answered.
14 Q (By Mr. Petruska) Please point out that
15 standard.
16 **A You can use an outdoor stand -- in my**
17 **professional opinion, it's very legitimate to use an**
18 **outdoor regulation that's for noise pollution for**
19 **environmental to indoor if you normalize the data.**
20 **I normalized the data two different**
21 **ways. It's not as -- it's not as easy as taking one**
22 **standard. You have to do some analysis in order to**
23 **do it, so you can normalize to use data that you're**
24 **going to measure inside.**

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1 Q Okay. So it's your professional
2 opinion that the data should be normalized; is that
3 your testimony?
4 **A It's the only way to use it.**
5 Q Okay.
6 **A Because it's not an indoor standard.**
7 Q So if the Illinois --
8 **A It can be used.**
9 Q If the Illinois Pollution Control Board
10 disagrees with you, you'll accept that; right?
11 **A I think that they will understand that**
12 **based upon other information from US EPA and other**
13 **information that I researched and used from the**
14 **World Health Organization that clearly says if**
15 **outdoor guidelines are going to be used, you have to**
16 **normalize.**
17 **The World Health Organization says you**
18 **can normalize by taking into account a reduction by**
19 **a closed window, open window, or partially opened**
20 **window.**
21 Q Do you know how long those standards
22 have been around for the World Health Organization?
23 **A It's been around a long time.**
24 Q Okay. Has Illinois adopted it?

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1 **A The Illinois EPA hasn't adopted it**
2 **because they're mainly concerned about environmental**
3 **outside noise.**
4 Q Right. And this is where Geri Boyer
5 filed her claim, so I just want to make sure.
6 **A Okay.**
7 Q Did Illinois adopt the standard that
8 you're asking them to enforce in this case? Have
9 they adopted it?
10 **A I do not know the answer to that. It's**
11 **not stated in the -- in the Illinois document.**
12 Q And furthermore --
13 **A It's not clearly stated in the Illinois**
14 **document, it's for outdoor. But if you read it and**
15 **you study it, I think even the McLure report would**
16 **corroborate that they consider it to be outdoor**
17 **also.**
18 Q I'm not disputing that. I'm just --
19 **A What?**
20 Q I'm not disputing that at all --
21 **A Okay.**
22 Q -- that it's an outdoor standard.
23 The problem here is, Geri filed this
24 with the Illinois Pollution Control Board.

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1 **A Okay.**
2 Q It has limited powers. Are you aware
3 of that? Do you have any idea what they can do?
4 MS. ROBBINS: Objection, calls for a
5 legal conclusion.
6 Q (By Mr. Petruska) I'll tell you, if you
7 take a look at the law that you cited here, it makes
8 it pretty darn clear, 415 ILCS 5/25.
9 If you read this, you'd find out that
10 they have limited power. No person shall emit
11 beyond the boundaries of his property any noise that
12 unreasonably interferes with enjoyment of life or
13 with any lawful business or activity, so as to
14 violate any regulation or standard adopted by the
15 Board under this Act. That's their power.
16 Do you realize what a waste of time
17 this entire case is? You're applying the WHO to the
18 Pollution Control Board? That's what you want to
19 do?
20 **A If you read my report, I didn't just**
21 **use this as a reference for noise annoyance. I**
22 **first cited that the local standards were not**
23 **quantitative and, so, I cited these local Belleville**
24 **and I cited the state -- or I cited the local**

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1 **jurisdiction. They weren't quantitative. They just**
2 **said if it's annoyance, it's annoyance. I started**
3 **there.**
4 Q Okay. Do you want the Illinois EPA to
5 apply the Belleville ordinance?
6 **A The Illinois EPA also has a statement**
7 **that says, you know -- the current web page for the**
8 **Illinois EPA says, you know, we're not gonna deal**
9 **with this anymore. If you want to take this up,**
10 **take it up at your local police department and your**
11 **local ordinances.**
12 Q Okay.
13 **A That's what it says.**
14 Q Do you want them to apply the
15 Belleville ordinance in this case, the Illinois
16 Pollution Control Board?
17 **A I don't know. I don't know if I want**
18 **them to apply it or not.**
19 Q Well, you --
20 **A I said they could.**
21 Q Did you cite it in your report?
22 **A Cite -- I'm sorry.**
23 Q The Belleville ordinance, did you --
24 **A Yes.**

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1 Q Okay. In fact, you modified your
2 report to add the Belleville ordinance, didn't you?
3 **A In the report.**
4 Q Yeah.
5 **A I already had it, but I added it in the**
6 **report.**
7 Q So why would you put it in the report
8 if you don't want them to consider it?
9 **A It's one of many things to consider for**
10 **the annoyance problem.**
11 Q Okay.
12 **A The local, the regional, the state, the**
13 **World Health Organization, the US EPA, there are a**
14 **number of factors that go into quantifying. If**
15 **they're not quantified, there's a number of factors**
16 **you can use to quantify that there's a noise**
17 **annoyance inside.**
18 Q There's already -- there's already an
19 Order in this case from the Illinois Pollution
20 Control Board saying they cannot consider the
21 Belleville limits. They dismissed the claims. Are
22 you aware of that?
23 **A I'm not aware of what the Illinois --**
24 Q Is that something you maybe should have

1 looked at before you started cite -- included it in
 2 your report?
 3 MS. ROBBINS: Objection, it assumes
 4 facts. His report was issued before that Order.
 5 **A I'm not sure I know the question.**
 6 Q (By Mr. Petruska) Are you aware that
 7 the Illinois Pollution Control Board has already
 8 entered an Order saying they cannot consider the
 9 Belleville ordinance?
 10 **A No.**
 11 Q You agree the Illinois EPA has not
 12 adopted the WHO standard; correct?
 13 **A They -- they haven't adopted anything**
 14 **that's -- other than outdoor noise.**
 15 Q Right. And they haven't adopted the
 16 EPA standard that you cite; correct?
 17 **A I don't know that to be true.**
 18 Q Okay. Can you point to me where it
 19 shows that they've adopted the EPA noise -- the EPA
 20 noise standard?
 21 **A Well, the EP -- the US EPA standard is**
 22 **fairly old, like 1970, and I think that it's very**
 23 **open as to what states can apply, but they give**
 24 **general guidelines as to what can be done for**

1 **outside and environmental.**
 2 Q So what I'm asking, has the Illinois
 3 EPA adopted that?
 4 **A I don't know what you mean by adopted.**
 5 **They probably used it as guidance in developing**
 6 **their standard.**
 7 Q Have they set forth a law or regulation
 8 adopting the Illinois EPA -- I'm sorry, adopting the
 9 EPA noise standards?
 10 **A Can you repeat the question?**
 11 Q Has the Illinois EPA adopted a law or
 12 regulation adopting the EPA federal EPA noise
 13 standards?
 14 **A I don't know. They usually use**
 15 **guidelines.**
 16 Q So going back to 415 ILCS 5/24, are you
 17 able to tell me which regulation or standard adopted
 18 by the Illinois EPA has been violated in this case?
 19 MS. ROBBINS: Objection, asked and
 20 answered.
 21 THE WITNESS: Do I still need to
 22 answer?
 23 MS. ROBBINS: Uh-huh.
 24 **A What -- I'm -- could you repeat? Is it**

1 **Section 415 ILSC (sic.)**
 2 Q Yes. 415 ILCS 5/24.
 3 **A And the question was?**
 4 Q Is which regulation or standard adopted
 5 by this -- by the Board, the Illinois EPA, has been
 6 violated in this case. Is it your answer that it's
 7 901.102(a) and (b)?
 8 **A 901(b) for nighttime.**
 9 Q Okay.
 10 **A Normalized to indoor.**
 11 Q And you agree if 901.102(b) is not
 12 normalized, then it is not being violated in this
 13 case? Would you agree with that?
 14 **A If it is not normalized, it can't be**
 15 **used to compare to the measurements that were taken**
 16 **for indoor.**
 17 Q And if it's not normalized, is there
 18 some other regulation that's being violated in this
 19 case?
 20 **A The World Health Organization.**
 21 Q And if the World Health Organization
 22 standard does not apply, is there any other Illinois
 23 EPA regulation or standard being violated in this
 24 case?

1 **A No, because it's for outdoor.**
 2 Q Going back to Defendant's Exhibit E
 3 which is Section 910 --
 4 **A 910?**
 5 Q Uh-huh.
 6 **A Is there a page?**
 7 Q We're gonna go to 910.106.
 8 **A 106.**
 9 Q (a) the raw data collection procedures
 10 to determine equivalent continuous sound pressure,
 11 Leq, are described in this section using as an
 12 example the determination of a one-hour Leq
 13 corrected for ambient.
 14 Do you see that?
 15 **A Yes.**
 16 Q Okay. Did you use a one-hour Leq
 17 measurement in your first report dated May of 2021?
 18 **A Did I use it for what?**
 19 Q For your results.
 20 **A No. It's for indoor.**
 21 Q Right. In fact, you talked about
 22 during different periods of time the maximum sound
 23 was reached; is that correct?
 24 **A In addition to the Leq.**

1 Q So do you think you complied with
2 910.106(a)?
3 A **In my measurement procedure?**
4 Q Yes.
5 A **In my measurement procedure, yes.**
6 Q 910.106(a)(2), take a look. It says
7 Continuous Data Collection, do you see that?
8 A **Yes.**
9 Q Did you follow (2)(a)?
10 A **Yes, I split the -- because the band --**
11 **because the measurement period was overlapping**
12 **daytime/nighttime, I split off the nighttime into**
13 **smaller segments.**
14 Q Did you follow (2)(b)?
15 A **The equivalent on my measurement**
16 **equipment is not a switch. It's the ability to go**
17 **back to the measurement results and -- and delete a**
18 **specific point on the measurement graph.**
19 Q Okay. So you --
20 A **It's not a switch.**
21 Q You did not have a switch; correct?
22 A **I'm sorry?**
23 Q You did not have a switch?
24 A **It doesn't -- the term switch does not**

1 **outside.**
2 Q Okay. So I just want to make sure.
3 Your testimony to the Illinois Pollution Control
4 Board is that Main Street Belleville is a quiet
5 commercial or industrial area?
6 A **Not industrial. Quiet commercial.**
7 **Very few vehicles, but mainly a few people walking**
8 **on the sidewalk.**
9 Q Have you ever been down there for the
10 Chili Cookoff--
11 A **No.**
12 Q -- on Main Street?
13 Have you ever been down there for the
14 Art Fair?
15 A **No.**
16 Q Have you ever been down there for the
17 Margarita Walk?
18 A **No.**
19 Q Have you ever been down there when they
20 have the Music Row going on?
21 A **No.**
22 Q Now, I gave you Exhibit G. I just want
23 to make sure I understand what's shown on there.
24 Exhibit G, the blue columns are the Leq

1 **apply for the current measurement.**
2 Q And it says, data collection is to
3 proceed for one hour. Are all of your results one
4 hour?
5 A **The results are for more than one hour,**
6 **but the nighttime results on Saturday, which I used,**
7 **were for over an hour. From, I think, 10:00 to**
8 **11:15, 11:30.**
9 **There was a period of time during the**
10 **nighttime in order to compare the nighttime**
11 **guideline for when the band was playing.**
12 Q And then 910.106(a)(4).
13 A **(a)(4); okay.**
14 Q It talks about correcting for long-term
15 background ambient sound?
16 A **Right.**
17 Q Did you correct for that?
18 A **Yes.**
19 Q And then if we go to 910.106(6)(e), I
20 want you to read through that.
21 A **Okay.**
22 Q Which category is downtown Belleville?
23 A **It would be between Category 3 and 4,**
24 **from my observation during the test periods walking**

1 for the entire time measurement period?
2 A **That's correct.**
3 Q Okay. And that's per band?
4 A **Per octave band.**
5 Q All right. And then what's the red
6 line on there?
7 A **The red line is the Leq for the time**
8 **period shown on the graph, and the red bars are the**
9 **actual measurements.**
10 Q Okay. So on Exhibit G, I just want to
11 make sure.
12 A **Yeah.**
13 Q These red bars here --
14 A **Yes, sir.**
15 Q -- what are those?
16 A **The Leq --**
17 Q Okay.
18 A **-- for the time period shown on the --**
19 **on the graph.**
20 **So the red bars are the Leq from 10:12**
21 **to 10:17 --**
22 Q Okay.
23 A **-- a snapshot in time.**
24 Q And now what's -- what color is this?

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1 **A Black.**
2 Q Yeah, black line, what's the black
3 line?
4 **A The black line corresponds to the Leq**
5 **of the time period --**
6 Q Okay.
7 **A -- so you can move the black line**
8 **around and the black lines change.**
9 Q Okay. And that Leq is -- how long is
10 that period, for black?
11 **A It was set at .1 -- or set at one**
12 **second interval time. These bars -- these -- the**
13 **red line is one second.**
14 Q Okay. So the black -- so the black
15 line is --
16 **A The time period.**
17 Q -- a one-second Leq?
18 **A That's right.**
19 Q Okay.
20 **A At the time it's set at --**
21 Q Okay.
22 **A -- as I move the cursor around.**
23 Q And then the red line going through is?
24 **A The actual measurement of 32 hertz, and**

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1 **each one is the hertz measurement.**
2 Q I'm gonna hand you what's been marked
3 as H and I, but let's just focus on H for right now.
4 (Deposition Exhibits H and I were
5 marked for identification.)
6 **A Okay. Okay.**
7 MR. PETRUSKA: That's H, and this is I.
8 Q (By Mr. Petruska) Okay. Is H Saturday?
9 **A H is Saturday.**
10 Q Okay. Same questions. The blue bar is
11 the -- the blue column is the Leq for the entire
12 time period?
13 **A That's correct.**
14 Q Okay. The red line, the red dash,
15 whatever you want to call it, is the Leq for the
16 time period noted at the bottom?
17 **A That's correct.**
18 Q Okay. So just as an example, it's
19 9:59:15 through 11:02:13? No, that's wrong. That's
20 wrong.
21 **A H is 9:48 to 10:37. 9:48 is close to**
22 **the 10:00 nighttime period --**
23 Q Okay.
24 **A -- which the band started playing, so I**

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1 **captured a few minutes earlier.**
2 Q And then the black line is a one-second
3 Leq?
4 **A It's the black lines or the Leq at**
5 **10:05 where the cursor's at.**
6 Q Okay. Then I?
7 **A Yes.**
8 Q This is November 21st, 2021 testing; is
9 that correct?
10 **A That's correct.**
11 Q And the blue column is, again, the Leq
12 for the entire testing period?
13 **A That's correct.**
14 Q The red line, or the red dash, whatever
15 you want to call it, is the --
16 **A Is the Leq.**
17 Q For the time period shown below?
18 **A That's right.**
19 Q Which I guess, is it 5:05 --
20 **A Yes.**
21 Q -- through 5:07?
22 **A This is a very short time period of**
23 **when the band was playing at the end, the last song.**
24 **I have the others.**

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1 Q You've got them?
2 **A Uh-huh.**
3 Q Have you produced them?
4 **A I did not.**
5 Q Okay. I'd like to get those, if I
6 could?
7 **A Okay.**
8 Q So this is a little over a two-minute
9 time period; collect?
10 **A That's correct.**
11 Q Okay.
12 **A The total time period was 2:00 in the**
13 **afternoon until somewhere after 5:00, I guess 5:07.**
14 Q And then the black line, again, is --
15 the black line is showing a specific time period,
16 one second?
17 **A The black line is at 5:05:51 p.m. shown**
18 **by the bar.**
19 Q Okay. Now, from these -- from the
20 testing shown in Exhibits G, H & I, you -- well, G
21 and H, you prepared a report in May; is that
22 correct?
23 **A G and H were the April testing and May**
24 **report.**

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1 Q Let me -- I'll address G and then
2 we'll -- J and we'll take a break, if we can.
3 A Okay.
4 Q Exhibit J, I'm handing you.
5 A Yes.
6 (Deposition Exhibit J was marked for
7 identification.)
8 A Okay.
9 Q (By Mr. Petruska) Okay. So J is your
10 May 5th, 2021 report; is that correct?
11 A That's correct.
12 Q I'll cover more of this, but I want to
13 go back to Figure 2 on Page 4 of your report.
14 A Page 4?
15 Q Page 4, Figure 2.
16 A Okay.
17 Q The numbers used for the column that
18 says, Loft Friday Night after 10:00 p.m., are those
19 numbers Leq numbers?
20 A No.
21 Q For the column that says, Loft Saturday
22 Night after 10:00 p.m., are those numbers Leq
23 numbers?
24 A No.

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1 Q What are the numbers in the column that
2 says, Loft Friday Night after 10:00 p.m.? What are
3 those numbers?
4 A Those numbers are indoor maximum
5 numbers that I used to normalize to be able to
6 compare it to the outdoor numbers of the Illinois
7 EPA.
8 It was one method of normalization. I
9 have another method that's not in the report but in
10 my notes for normalization.
11 Q And for this method, what did you do to
12 normalize the numbers?
13 A For this method, I used the
14 measurements that I took and used the -- because
15 it's music and music has a repetitive nature of
16 maximum levels.
17 And the maximum levels were greater
18 than six decibels from the starting position to the
19 max level, and they were repetitive, I chose to use
20 the max levels to normalize to compare to an outdoor
21 guideline.
22 Q Okay. So you found the maximum number
23 that you could find on Friday night after
24 10:00 p.m.?

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1 A That's correct.
2 Q Okay. And are you gonna tell the
3 Illinois Pollution Control Board that this is proper
4 under their regulations?
5 A It's one method that I think could be
6 used to normalize to be able to use their outdoor
7 standard.
8 Q What's the other method?
9 A The other method I used was to take the
10 outdoor guideline by octave band and consider the
11 transmission loss of the brick wall, a transmission
12 loss of a closed window, a transmission loss of a
13 partially opened window, reduce the outdoor
14 guideline by those transmission loss numbers by
15 octave band.
16 So I had to do research on octave band
17 numbers for those types of barriers, and then you
18 reduce the outdoor guideline to what it would be on
19 the other side of the barrier, and then you compare
20 the Leq numbers.
21 When I did that, the outdoor brick is a
22 very good blocker, so the indoor numbers did not
23 meet it at all. The closed window, depending on --
24 I used three different types of windows, so it was

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1 an extensive analysis, that didn't meet the Illinois
2 EPA. So I used a partially opened window, which was
3 recommended by the World Health Organization, and is
4 the lesser because it's partially opened, it's 25%
5 opened, and I expected the indoor numbers would meet
6 it then but they didn't. It didn't meet it for all
7 octave bands.
8 So since that methodology of using
9 transmission loss to do a normalization to use a
10 guideline for what I could measure inside did not
11 work, I used the maximum levels measured to compare
12 to the outdoor guideline in anticipation that that
13 may meet it, and it did meet it better than the
14 other method.
15 And I have all of that analysis in my
16 report, and it's all an attempt to normalize outdoor
17 to indoor, because I did not take outdoor
18 measurements.
19 And if there's a space between the two
20 walls between the bar and the loft, it's impossible
21 to get a microphone or a measurement device in
22 between to get an outdoor measurement on the other
23 side of the wall, so you have to do something to
24 normalize.

1 **And I think, in my professional**
 2 **opinion, that that normalization process is**
 3 **legitimate. But to -- to deviate a little to the**
 4 **McLure report, to compare Leq indoor to -- to an**
 5 **outdoor is not -- it's not legitimate.**
 6 Q If we were in a different venue I could
 7 possibly understand that.
 8 **A If what?**
 9 Q If we were in a different venue I could
 10 understand your argument. I could get it.
 11 **A Different venue?**
 12 Q Yeah. Because right now you're in
 13 front of a board which can only do certain things.
 14 **A Well, there's also --**
 15 Q Why didn't Geri -- why didn't Geri just
 16 file a civil claim if she wants to pursue these
 17 other standards?
 18 MS. ROBBINS: Objection --
 19 Q (By Mr. Petruska) Why did she file
 20 this?
 21 MS. ROBBINS: -- that's beyond the
 22 scope of his expert report.
 23 Q (By Mr. Petruska) Do you think it's in
 24 any way harassing for Geri Boyer to file this claim

1 in the Illinois Pollution Control Board when you
 2 can't find a violation of their standards?
 3 MS. ROBBINS: Objection, outside the
 4 scope of his expert opinion.
 5 THE WITNESS: Do I need to answer?
 6 MS. ROBBINS: Uh-huh.
 7 Q (By Mr. Petruska) Yes.
 8 **A Could you repeat the first question?**
 9 Q Do you find it harassing at all that
 10 Geri Boyer is -- filed this claim, hired you as an
 11 expert, and you can't find a violation of the actual
 12 standards of the Illinois Pollution Control Board?
 13 MS. ROBBINS: Same objection.
 14 **A I can't speak to whether it's harassing**
 15 **or not. I can speak to my professional opinion that**
 16 **you can do analysis to apply the guideline even**
 17 **though it's outdoor environmental noise pollution.**
 18 Q (By Mr. Petruska) Okay. So in other
 19 words -- in other words, if you --
 20 **A I can't judge if it's harassing or not.**
 21 Q If you adjust the numbers, you can find
 22 a violation?
 23 MS. ROBBINS: Objection, misstates his
 24 testimony.

1 **A I don't call it adjusting. I call them**
 2 **normalizing the numbers from outdoor to indoor.**
 3 Q (By Mr. Petruska) Have you ever thought
 4 that if the Illinois EPA actually wanted to govern
 5 indoor noise they would have passed a regulation
 6 about it?
 7 MS. ROBBINS: Objection, asking him --
 8 calls for --
 9 **A I can't --**
 10 MS. ROBBINS: -- speculation.
 11 **A I can't speak for the Illinois EPA.**
 12 **It'd be nice if they did.**
 13 Q (By Mr. Petruska) Right. Geri's an
 14 engineer. She could have proposed such a thing;
 15 correct?
 16 MS. ROBBINS: Objection, outside the
 17 scope of his expert opinion.
 18 **A I can't speak for Geri.**
 19 Q (By Mr. Petruska) Did you tell Geri
 20 that there was no violation of the daytime noise
 21 standards?
 22 **A The daytime?**
 23 Q Yes.
 24 **A Other than my report?**

1 Q I'm just asking, did you tell her at
 2 any point in time, hey, Geri, the only thing I can
 3 find here is a possible violation of the nighttime
 4 standards. Did you ever tell her that?
 5 **A I didn't tell Geri anything other than**
 6 **what I put in my report.**
 7 Q Okay. In your report you told her that
 8 there was no violation of the daytime standards;
 9 correct?
 10 **A Using the assumptions I made in the**
 11 **report.**
 12 Q Okay. Do you have any idea why Geri
 13 Boyer keeps calling during the daytime to ask the
 14 noise to go down?
 15 MS. ROBBINS: Objection, calls for
 16 speculation.
 17 **A I don't know what Geri's doing.**
 18 Q (By Mr. Petruska) Do you know what
 19 Geri's intent is in filing this entire claim?
 20 MS. ROBBINS: Objection, calls for
 21 speculation.
 22 **A I only know what I measured and**
 23 **reported on in April and what I reported on and**
 24 **measured again in November, and that's -- that's all**

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1 **I know.**
2 Q (By Mr. Petruska) Okay. Also, just as
3 a note, on Page 4 of your report which we marked as
4 J, you listed that the nighttime ambient measure --
5 level measure, both Friday and Saturday night, was
6 29 dBA; is that correct?
7 **A That's correct.**
8 Q So if Geri Boyer says she wants 25 dBA,
9 you recognize that's impossible; right?
10 MS. ROBBINS: Objection, calls for
11 insulation.
12 **A I don't know that that's what she -- I**
13 **don't know that's her opinion.**
14 Q (By Mr. Petruska) No, I'm just saying,
15 if Geri Boyer wants 25 dBA, you would agree that is
16 impossible based on your testimony?
17 MS. ROBBINS: Objection, calls for
18 speculation.
19 **A I don't know it's impossible.**
20 Q (By Mr. Petruska) Okay. You took a
21 nighttime ambient measurement at 1:00 a.m. on Friday
22 and Saturday. Would you agree that's probably the
23 quietest time you're gonna find?
24 **A It's the quietest time during my**

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1 **measurement period.**
2 Q And 29 dBA was the -- was the number
3 you found?
4 **A At 1:00 a.m., yes.**
5 Q How would we get it to 25? What would
6 we have to do, take noise away?
7 MS. ROBBINS: Objection, calls for
8 speculation.
9 **A I -- that's not part of my analysis.**
10 Q (By Mr. Petruska) On Friday,
11 April 23rd, you noticed that the -- you mentioned
12 that Steel Creek Band was playing; is that correct?
13 **A I'm sorry, could you --**
14 Q On the first page of Exhibit J --
15 **A Exhibit J --**
16 Q -- you said Steel Creek was playing?
17 **A Steel, yes. That's right.**
18 Q Were they inside or outside?
19 **A These were all inside Copper Fire.**
20 Q Do you know that?
21 **A I'm sorry.**
22 Q Do you know that?
23 **A Yes.**
24 Q You actually went inside Copper Fire at

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1 one point in time, didn't you?
2 **A Not at that -- not at that time.**
3 Q Lunch the next day?
4 **A No. I didn't go to lunch until**
5 **November.**
6 Q Okay. When you were in there, did you
7 notice that it was not an exposed brick wall inside
8 Copper Fire?
9 **A It was partially exposed, to my**
10 **recollection, sitting at the table having lunch.**
11 Q What part of the wall is exposed?
12 **A I -- from the table inside, I remember**
13 **I could see brick, part of a brick wall, but there**
14 **were other pieces of decorative material or -- I**
15 **don't recall. I didn't take a picture of the inside**
16 **of Copper Fire.**
17 **Going inside was for my own edification**
18 **to observe the loudness of the band on Sunday**
19 **afternoon. That was in November.**
20 Q And now in your report marked Exhibit J
21 you said, the dividing wall between the restaurant
22 and the loft is a brick wall consisting of brick on
23 both sides with an air space of 10 to 12 inches.
24 Do you see that?

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1 **A In general information on Page 1?**
2 Q Yes.
3 **A Yes.**
4 Q And then you said, neither side is
5 plaster. Is that your testimony?
6 **A Well, I can verify that since this**
7 **was -- well, I can verify on the Boyer loft side**
8 **it's not plaster.**
9 Q Okay. And as you're sitting here as
10 the expert in this case now as prepared as
11 possible --
12 **A Uh-huh.**
13 Q Is the Copper Fire side drywalled or
14 plastered?
15 MS. ROBBINS: Object to the extent
16 that, you know, according to his report he has not
17 been there since November of 2021, so you're asking
18 him to testify about something outside the scope of
19 his report.
20 Q (By Mr. Petruska) Well, you put it in
21 the report; didn't you? You said, neither side is
22 plaster.
23 **A Yes.**
24 Q Okay. So do you stick by that?

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1 **A Based upon what I saw in November, yes.**
2 Q Is drywall the same thing as plaster?
3 **A No.**
4 Q Okay. As you're sitting here today,
5 based on the November report, do you believe that
6 the wall on the Copper Fire side is drywall?
7 **A Completely drywalled on the entire**
8 **length, no.**
9 Q And that would be your testimony to the
10 Board?
11 **A Yes. And the comment about 10 to 12**
12 **inch air space, that's an observation I made from**
13 **the outside looking towards the two walls, it**
14 **appeared to be an air space between the two.**
15 Q And if there was an air space, does
16 that help reduce noise --
17 **A Yes.**
18 Q -- or does it hurt?
19 **A Yes, helps.**
20 Q So is that something that would be
21 important in your findings?
22 **A If there was an air space?**
23 Q Yeah.
24 **A Only in determining what the blocking**

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1 **of the sound is from the bar through the air space,**
2 **through the two brick walls, to Geri's loft, yes.**
3 Q Looking at Geri's, you were inside
4 Geri's apartment; correct?
5 **A Yes.**
6 Q You saw her brick wall?
7 **A Yes.**
8 Q Did you notice all the holes in it?
9 **A I didn't notice holes. It looked like**
10 **a normal brick wall.**
11 Q Did you -- did you inspect her brick
12 wall at all?
13 **A Did I inspect her brick wall?**
14 Q Inspect it?
15 **A No.**
16 Q Did you check to see if there were any
17 holes that go all the way through?
18 **A No.**
19 Q Did -- is that something that might be
20 important?
21 **A It might be important, because I noted**
22 **that the estimated transmission loss, based upon**
23 **levels of the band and levels measured inside,**
24 **seemed to provide a very good sound blocking of the**

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1 **walls, but it doesn't seem to be true from the**
2 **measurements.**
3 **So I noted in my report, there's a --**
4 **something called flanking that it's not -- it's --**
5 **since it's less than what it appears to be, that the**
6 **sound could be coming through either barrier,**
7 **through other ways to get to the level that it is.**
8 Q Such as holes in the wall?
9 **A Such as holes in the wall.**
10 Q If Geri has holes in the wall, is that
11 something she should be resolving?
12 **A It could be holes in the wall on the**
13 **Copper Fire side too. Flanking could be either side**
14 **of the barrier.**
15 **I didn't do an analysis of flanking,**
16 **other than to say the transmission -- the**
17 **theoretical transmission loss of two brick walls**
18 **should have provided more sound blocking.**
19 Q And isn't it true that you have
20 recommended to Geri that she do something on her
21 side of the wall?
22 **A No.**
23 Q Really?
24 **A No.**

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1 **(Deposition Exhibit K was marked for**
2 **identification.)**
3 Q (By Mr. Petruska) I'm handing you
4 what's been marked as Exhibit --
5 MR. PETRUSKA: Well, do you want to
6 take a break or do you want to keep going?
7 THE WITNESS: I'm fine.
8 MR. PETRUSKA: Okay.
9 Q (By Mr. Petruska) -- K.
10 **A This is --**
11 Q Okay. Exhibit K is your November 26,
12 2021 report; is that correct?
13 **A That's correct.**
14 Q And in this case, you actually went
15 inside and took some measurements with a phone;
16 correct?
17 **A Inside Copper Fire.**
18 Q Yes. Is that correct?
19 **A That's correct.**
20 Q And where are those measurements?
21 **A They -- where are they in the report?**
22 Q Yeah.
23 **A Informal measurements, Page 5.**
24 Q And did you take any pictures of the

1 wall?
 2 **A No.**
 3 Q Again, is that something you think may
 4 have been important?
 5 **A The inside pictures of the Copper Fire**
 6 **wall?**
 7 Q Yeah.
 8 **A Any -- any information about the**
 9 **barrier between Copper Fire and the loft is**
 10 **important.**
 11 Q Because if Geri's telling you that it's
 12 exposed brick, isn't that something you should
 13 check?
 14 **A Determining the barrier was not part of**
 15 **the scope of the effort.**
 16 Q And once again, you cite the Belleville
 17 ordinance on Page 2 of this report; is that correct?
 18 **A Page 2, yes, I repeated the same**
 19 **ordinances.**
 20 Q And it says in there, nor shall such
 21 operation be carried on in a manner which will
 22 produce unreasonably offensive noise, odor, or other
 23 physical disturbance at or beyond the property line
 24 of the premises at which such operation takes place.

1 Do you see that?
 2 **A I'm sorry, where are you reading?**
 3 Q The City of Belleville Prohibition
 4 against New Nuisances.
 5 **A Oh, okay. Okay, (A)?**
 6 Q Yeah. I'll just start from the
 7 beginning. No business, trade, or occupation shall
 8 be carried on in the manner which will create a
 9 public or private nuisance, nor shall such operation
 10 be carried on in a manner which will produce
 11 unreasonably offensive noise, odor, or other
 12 physical disturbance.
 13 Do you see that?
 14 **A Yes.**
 15 Q Okay. So you would agree that the
 16 prohibition there is unreasonably offensive noise;
 17 is that correct?
 18 **A Yes.**
 19 Q Okay. So if Geri Boyer is telling
 20 people it's no noise, no noise can escape, she would
 21 be wrong; is that correct?
 22 **A That's -- if someone would say no**
 23 **noise, I only -- I don't know if I can answer that.**
 24 Q On the sound level measurements from

1 Sunday that you listed on Page 3 in Figure 1, those
 2 are sound level measurements in the loft; is that
 3 correct?
 4 **A That's correct.**
 5 Q And it's for a one-hour period from
 6 2:00 to 3:00 and another one from 4:00 to 5:00;
 7 correct?
 8 **A That's correct.**
 9 Q And then, of course, we have the
 10 two-minute last song played?
 11 **A That's correct.**
 12 Q Okay. You agree this was all daytime;
 13 correct?
 14 **A Yes.**
 15 Q The numbers that you show from 2:00 to
 16 3:00, that's an Leq number; is that correct, from
 17 the loft from 2:00 to 3:00?
 18 **A No.**
 19 Q What is that?
 20 **A The exact same type of maximum numbers**
 21 **that I measured in April, I did the measurements the**
 22 **same way in the November table.**
 23 Q Okay. So those are normalized numbers?
 24 **A I would not call them normalized**

1 **numbers. They're the maximum number levels.**
 2 Q But you can get to the maximum by --
 3 well, what you say is the process of normalizing the
 4 numbers for indoor?
 5 **A No. The analysis to compare to the**
 6 **guideline is normalization. The measurement numbers**
 7 **are not normalized. The measurement numbers are the**
 8 **measurement numbers.**
 9 Q And the numbers you listed from the
 10 loft from -- on 11/21 are the maximum levels
 11 reached?
 12 **A That's correct.**
 13 Q Okay. And you would agree that even
 14 with those maximum numbers it did not violate the
 15 Illinois EPA standards for 901.102(a); would you
 16 agree with that?
 17 **A They did not violate daytime.**
 18 Q And then same thing from 4:00 to 5:00,
 19 it did not violate the daytime standards 901.102(a)?
 20 **A That's correct for daytime.**
 21 Q Same thing for the two-minute sound
 22 period, the last song?
 23 **A Yes. And, again, we're measuring**
 24 **daytime, compared to daytime guidelines.**

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1 Q Now, Figure 2 is slightly different.
 2 Can you tell me what you did in Figure 2 on Page 4?
 3 A Yes. I looked at the Leq numbers.
 4 Q Are these the Leq one-hour numbers?
 5 A I'm sorry?
 6 Q Are these one-hour Leq numbers?
 7 A The Leq numbers for the time period
 8 2:00 to 3:00, 4:00 to 5:00, and the one minute.
 9 Q Okay. And was there any normalization
 10 on these numbers?
 11 A Again, there's no normalization with
 12 measurements. The normalization is to normalize
 13 the -- compare outdoor and indoor in the analysis.
 14 Q On Page 5 you have a Figure 3. What
 15 are you measuring in Figure 3?
 16 A I'm sorry, could you --
 17 Q On Page 5 of this report --
 18 A Yes.
 19 Q -- you have a Figure 3. What are you
 20 measuring there?
 21 A I used a Class 1 meter as reference
 22 data, and I just took spot measurements throughout
 23 the apartment. And I measured the Leq, and I
 24 measured the Leq A to get a comparison between two

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1 different measurement tools.
 2 And what I got from there is the Leq A
 3 from around the apartment is -- other than the
 4 one -- no, the one the coffee table is in is
 5 ambient, so they were all above 30 dB. It was a
 6 reference for myself.
 7 Q Okay. Do you believe those Leq A
 8 numbers are unreasonably offensive?
 9 A If those Leq A numbers were at
 10 nighttime when someone is trying to sleep, they are
 11 greater than 30 dB, which is recommended for sleep,
 12 so, yes, they would be above what's recommended for
 13 sleep.
 14 Q And, again, are you aware of an
 15 Illinois EPA standard for acceptable noise levels
 16 for sleep?
 17 A Implicitly there is a reference in the
 18 Illinois EPA Table that you can calculate, and both
 19 McLure and I calculated it, and that's if you take
 20 the total of the octave band guidelines.
 21 The total of the octave band guidelines
 22 for night is 44 dBA. If you take the 44 dBA for
 23 outdoor and you subtract 15, which the World Health
 24 Organization recommends for partially opened window,

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1 you get 44 minus 15 you get 30.
 2 So the Illinois EPA you could -- or I
 3 could argue, and I think they would agree, that
 4 they -- you could use their outdoor guideline in
 5 total, not by octave band, and you could apply the
 6 15 partially opened window and get 30.
 7 So I think the EPA would agree that 30
 8 is the right number for sleep at night based upon
 9 that, and that's more pointed out in the McLure
 10 report than my report.
 11 I don't think it's a coincidence that
 12 the Illinois EPA total number at nighttime is 30.
 13 Q Do you know who built Geri's apartment?
 14 A No, I do not.
 15 Q As an acoustics expert, would you have
 16 any recommendations to lower the level of sound
 17 inside Geri's apartment on her side?
 18 A I -- I have some recommendations, but I
 19 don't -- and I think I put it in one of the reports,
 20 but I don't recommend that that's the way to reduce
 21 the noise.
 22 I put in the report how I think the
 23 noise should be reduced, in my April report. I made
 24 those recommendations on Page 6 of my report.

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1 Q Comparing the numbers you got in
 2 November to April, would you agree there's been a
 3 reduction in sound from Copper Fire?
 4 A No. No, my overall recommendation is
 5 about the same.
 6 Q Well, let's just talk about the numbers
 7 you got.
 8 A Right.
 9 Q Would you agree the numbers are less?
 10 A No, I do not think they are less.
 11 Q Objectively, or is this some --
 12 A No.
 13 Q -- modification?
 14 A Let's see, no. As a matter of fact, on
 15 my November report, Page 4, Figure 2, the Leq in
 16 April was about 54 and in November 56, 57, 58.
 17 The Leq A numbers were 38, 33, 37, 36
 18 in November, and I pointed out in my report the Leq
 19 A numbers could be because the frequency
 20 variability, the content of the band could have been
 21 less with low frequencies, that's why the A would
 22 show less.
 23 So if you look at just Leq, it's more.
 24 If you look at Leq A it's less, so my report in

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1 **November was -- it's about the same --**
2 Q Okay.
3 **A -- and it was daytime.**
4 Q And do you recall Geri's attorneys
5 contacting you saying things had gotten worse?
6 **A I'm sorry?**
7 Q Do you recall Geri's attorneys
8 contacting you and saying they wanted new testing
9 because things had gotten worse since she filed the
10 Complaint?
11 **A I don't remember who contacted me, but**
12 **it was the basis for doing another analysis in**
13 **November.**
14 Q Was that that things had gotten worse?
15 **A It was perceived that the bands had**
16 **gotten louder.**
17 Q And your testing objectively shows it
18 did not get worse?
19 **A I would say that's correct.**
20 Q Yeah. Because three decibels is barely
21 perceptible?
22 **A Yeah. I put in it's slightly three**
23 **dB's difference. Again, the difference was**
24 **daytime/nighttime, but that's what I had to go on.**

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1 Q I just want to make sure you're gonna
2 stick to you have never recommended to Geri that she
3 make any changes to her apartment?
4 **A Not in my reports.**
5 Q No, that's not what I asked.
6 Have you ever made recommendations to
7 Geri --
8 **A In an e-mail I did.**
9 Q And you're the expert; right? You're
10 the expert she hired?
11 **A That's right.**
12 Q And you've told her to make changes to
13 her apartment?
14 **A No, I did not tell her to make changes.**
15 Q Did you recommend that she could
16 consider making changes?
17 **A No. If you want to show me the actual**
18 **e-mail or I have it. My recommendations were of**
19 **what to do to reduce the noise level in the April**
20 **report.**
21 Q There's L and M.
22 (Deposition Exhibits L and M were
23 marked for identification.)
24 **A Uh-huh. Okay.**

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1 Q In Exhibit L --
2 **A Uh-huh.**
3 Q -- there's an e-mail from you on
4 December 7th, 2021 to Geri Boyer. Do you see that?
5 **A Yes, I do.**
6 Q You said, Hi, Geri. I've been trying
7 to come up with ideas to reduce the noise in your
8 home.
9 Adding drywall or mass loaded vinyl to
10 the inside of your wall would be a good sound
11 blocker but would cover the brick and not look good,
12 but I found a clear mass loaded vinyl product that
13 could be applied to the brick while still seeing the
14 brick.
15 Do you see that?
16 **A Yes, I do.**
17 Q Is that a recommendation to you -- from
18 you to her?
19 **A It's not a recommendation.**
20 Q What would you call that?
21 **A I would call that that I've been**
22 **brainstorming, trying to come up with ideas of how**
23 **to reduce it inside, in addition to what I**
24 **recommended Copper Fire do close to the source.**

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1 **I didn't recommend it. I'm just**
2 **saying, here's some ideas. I was exploring mass**
3 **loaded vinyl to be clear and not aesthetically ruin**
4 **the look of the brick wall, but it's just an idea.**
5 Q Okay. And then after, on December 8th,
6 she responded; right?
7 **A On December 8th, yes.**
8 Q She says, can you send me the product
9 name? The bedrooms are the worst for us. There's a
10 huge bookcase that covers one whole wall.
11 **A Yes.**
12 Q And do you see Exhibit M? Did you send
13 her a product name?
14 **A On M?**
15 Q Yeah.
16 **A I sent her one example that I found,**
17 **clear mlv. I was surprised because I've never seen**
18 **clear mlv before and, so, it was an idea of here's**
19 **clear mlv.**
20 Q Okay. And that was --
21 **A I've never recommended it or used it**
22 **anywhere.**
23 Q Well, that was 2021; correct?
24 **A Yes, sir.**

1 Q Okay. Do you know if Geri has done
 2 that yet?
 3 A I have no idea.
 4 Q Do you have any reason why if Geri's
 5 having such trouble sleeping she won't do a single
 6 thing to her side of the wall to fix it?
 7 MS. ROBBINS: Objection, calls for
 8 speculation.
 9 A I don't know why.
 10 Q (By Mr. Petruska) In your report you
 11 mentioned that if Copper Fire lowered the decibel
 12 levels that they could still have entertaining
 13 music.
 14 A Yes.
 15 Q That's your opinion?
 16 A Yes.
 17 Q Okay. Have you been to any of the
 18 other bars on Main Street?
 19 A No.
 20 Q Have you measured any sound levels at
 21 any of those bars?
 22 A No.
 23 Q Is there some reason that Copper Fire
 24 should be different from all of its neighbors?

1 A I don't know what the neighbors are.
 2 Q Okay. So don't you think you should at
 3 least take into context what's going on on Main
 4 Street before you make that recommendation?
 5 A No.
 6 Q Okay. What's your basis for saying
 7 they could make it lower but still be entertaining?
 8 What's your recommendation for that?
 9 A Well, based on the fact that I've
 10 played music for many, many years in many bands and
 11 I've measured many bands, that you can still be
 12 entertaining at 84 decibels and not 94 decibels or
 13 95 decibels or 106 peak decibels. You can still go
 14 to entertainment places.
 15 As a matter of fact, I prefer, as do a
 16 lot of other people, the lower level so you can have
 17 a conversation. You can't have a conversation at 94
 18 decibels.
 19 Q Okay. So based on your preference,
 20 84 decibels is a reasonable and entertaining level
 21 for a bar?
 22 A No. My -- my notes were if you wanted
 23 to reduce the level that's in the -- in the Boyer
 24 loft, you could simply reduce the level in the bar.

1 Q But you also added that it could still
 2 be entertaining?
 3 A I -- you'd have to show me that. I
 4 don't see where I say it could be entertaining.
 5 Entertaining's subjective, and I don't see where I
 6 said that. Yeah, I didn't say entertaining. I'm
 7 looking at Page 6 of the April report, Item 8.
 8 Q Do you know if any bar on Main Street
 9 in downtown Belleville has an 84 decibel limit?
 10 A I have no idea.
 11 Q Are you aware of any bar in the United
 12 States that has an 84 decibel limit on the inside?
 13 A I have no idea.
 14 I -- I wasn't suggesting an 84 decibel
 15 limit. I was only suggesting a 10 decibel reduction
 16 based upon the current estimate of 94 would reduce
 17 the source, and if you reduce the source, you reduce
 18 the sound that travels outside the source.
 19 Q Right. So basically if the state of
 20 Illinois wants to get involved to make Geri Boyer's
 21 life better, they could recommend an 84 decibel
 22 limit, and that would make Geri Boyer's life better?
 23 MS. ROBBINS: Objection, calls for
 24 speculation.

1 A That's -- they could recommend that
 2 they reduce it 10 dB from what it currently is, and
 3 it currently varies by band, a DJ one time, a rock
 4 band another time, an acoustic band another time.
 5 The acoustic bands that are lower don't cause the
 6 same noise annoyance.
 7 Q Have you taken a look at any of the
 8 steps that Copper Fire has taken to reduce the sound
 9 on its side of the wall?
 10 A No, I have not.
 11 Q Would you agree it'd be a good idea for
 12 Copper Fire to instruct its bands to keep its noise
 13 to at least a maximum level of decibels?
 14 A Could you repeat that again?
 15 Q Would you agree it's a good idea for
 16 Copper Fire to tell its bands that it wants to
 17 control the noise level?
 18 A Yes.
 19 Q Okay. Do you agree that it should tell
 20 bands, if you exceed our noise levels we'll never
 21 invite you back? Would that be a good idea?
 22 A That's a business decision of Copper
 23 Fire.
 24 Q Do you think it's a good idea for

1 Copper Fire to monitor the noise inside their bar?
 2 **A Yes.**
 3 Q At any point in time do you think it
 4 would have been a smart maneuver for Copper Fire to
 5 move bands from one side of the bar to the other
 6 side to get it farther away from Geri's?
 7 **A Yes.**
 8 Q Okay. Do you know whether or not they
 9 tried that?
 10 **A I have no idea. It would increase the**
 11 **distance from the sound source and the speakers to**
 12 **the loft, to the wall.**
 13 Q In your first report in May on Page 3
 14 you said, in addition -- under Community Guidelines
 15 you said, in addition, noise criteria is provided as
 16 a guideline for different living spaces.
 17 The NC values are determined by
 18 comparing unweighted measured octave band sound
 19 levels in a space and comparing them to a set of NC
 20 curves. For a bedroom, the NC ratings should be
 21 between 25 and 35.
 22 Do you see that?
 23 **A Yes.**
 24 Q For a general living space it should be

1 is?
 2 **A It's my notes from measurements on the**
 3 **21st.**
 4 Q You have various tables inside there,
 5 on that page in particular?
 6 **A Yes.**
 7 Q What are those?
 8 **A They were making a table of the data**
 9 **that is shown in the graphs for time periods.**
 10 Q Did you take any other notes that day
 11 other than the notes shown there?
 12 **A No. I took the measurements, took the**
 13 **measurements back, made the notes.**
 14 Q I'm handing you what's been marked as
 15 Exhibit O. Can you tell me what Exhibit O is?
 16 (Deposition Exhibit O was marked for
 17 identification.)
 18 **A Exhibit O is taking notes and making**
 19 **tables to do analysis from the graphs along with**
 20 **notes from the World Health Organization, US EPA,**
 21 **and notes related to normalization to go from**
 22 **outside to inside.**
 23 Q (By Mr. Petruska) How are those -- how
 24 are those notes different, those tables that you

1 30 to 40?
 2 **A Yes.**
 3 Q And how is the NC rating determined?
 4 **A An NC rating is determined by plotting**
 5 **measured levels against a set of NC curves. The NC**
 6 **curves are noise criteria curves that approximate**
 7 **how we hear and, so, they're weighted to allow lower**
 8 **levels to be higher than higher frequency levels.**
 9 **It's another quantitative way of**
 10 **looking at the same 30 decibels for sleep.**
 11 Q Okay. I want to talk to you about some
 12 of your notes. I just want to make sure I
 13 understand what they are.
 14 **A Okay.**
 15 Q I'm handing you what's been marked as
 16 Exhibit N.
 17 (Deposition Exhibit N was marked for
 18 identification.)
 19 Q (By Mr. Petruska) Is that --
 20 **A I've got it. I have N.**
 21 Q Yeah. I'm trying to get another copy.
 22 **A Is this what you're looking for?**
 23 Q Thank you.
 24 Okay. Can you tell me what Exhibit N

1 have in there, different from the table of notes
 2 that you took while you were doing the testing?
 3 **A Between these notes and what notes?**
 4 Q In Exhibit --
 5 **A Same --**
 6 Q -- N, you have tables and Exhibit O you
 7 have tables.
 8 **A Right.**
 9 Q What's the difference?
 10 **A The difference is -- there's no**
 11 **difference in the methodology.**
 12 Q Okay.
 13 **A The difference is in the numbers that**
 14 **were taken from the measurement graphs.**
 15 Q Are those tables all attempts to
 16 normalize, or are they just simply reporting
 17 results?
 18 **A The measurements are not normalized.**
 19 Q Okay.
 20 **A The analysis and normalization**
 21 **methodology is described starting on Page 3 of 14.**
 22 **I started the analysis to be able to normalize from**
 23 **outside to inside using the WHO and the US EPA, US**
 24 **EPA guidelines on Page 4, because the US EPA**

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1 guideline also corresponds to the WHO guideline,
 2 which you can normalize to go from outside to inside
 3 using an open window of 10 decibels or a closed
 4 window of 25. They mention 15 for partially opened,
 5 which corresponds to the WHO.
 6 So I correlated two different
 7 standards, quite different dates of standards saying
 8 the same thing, how you can normalize from outside
 9 to inside, because many guidelines measure outside.
 10 So I went through quite a bit of
 11 analysis on those pages, and that's where I put the
 12 analysis together to say you can normalize using a
 13 closed window on Page 7. You can normalize using a
 14 partially opened window on Page 8.
 15 You can normalize using a four inch
 16 brick wall on Page 9. And if you don't want to
 17 normalize using transmission loss, which is
 18 difficult, you can normalize using maximum indoor
 19 numbers to the outdoor Leq numbers in EPA.
 20 So it's showing quite a bit of analysis
 21 you go through to be able to compare the numbers.
 22 Q And I'm just curious, the idea of
 23 maximizing the numbers in order to compare them to
 24 Leq, what are you basing that on?

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1 A Well, what I'm basing it on is the
 2 World Health Organization, and there are other
 3 guidelines that I didn't cite.
 4 But the World Health Organization says
 5 that if you have a source of sound like music that
 6 has a repetitive nature in total and in octave band,
 7 and the repetitive nature of the sound which is
 8 mainly in the low frequency, so bass drums, bass
 9 guitars, the frequencies are repetitive in nature,
 10 that you can use max -- you should use maximum in
 11 order to quantify the levels that are being
 12 annoying.
 13 So it's another part of the analysis
 14 that says, you know, the type of sound being music
 15 and those low frequencies which you can see in
 16 the -- in the measurements that I have, 32 hertz is
 17 very repetitive, that's indicative of loud thumping
 18 bass.
 19 Sixty-two, sixty-three hertz is also
 20 repetitive, 125 is repetitive. The higher in
 21 frequency it goes, it's less repetitive because you
 22 get into voice and higher frequencies, but the low
 23 frequencies of music is repetitive in nature, and
 24 you can argue that that repetitiveness you can use

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1 maximum levels in comparison.
 2 And as I mentioned, if you go through
 3 my notes, you'll see I put X's by to meet, and the
 4 closed window didn't meet, the brick wall didn't
 5 meet, the partially opened didn't meet.
 6 And, so, that's when I went to using
 7 the normalization method of maximum to the guideline
 8 and one, two, three octave bands did meet, one, two,
 9 three, four, five, six didn't meet. So the closest
 10 that I got to meeting was the methodology to
 11 normalize using max to outdoor.
 12 Q When you say didn't meet, didn't meet
 13 what?
 14 A The measured levels didn't meet the
 15 either normalized standard or the standard max
 16 level. So --
 17 Q Does that mean it showed a violation or
 18 didn't show a violation? If you use --
 19 A Showed a violation.
 20 Q It showed a violation?
 21 A Didn't meet means did not meet the
 22 standard.
 23 Q Okay.
 24 A And in the case of transmission loss

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1 calculation, didn't meet the normalized standard
 2 minus the -- subtracting transmission loss.
 3 I had to look up and do analysis on
 4 what is the transmission loss by octave band for an
 5 eight-inch brick wall, for a closed window. I had
 6 to look up all those transmission loss by octave
 7 band, because they're usually specified for just one
 8 number.
 9 So doing the normalization process was
 10 not an easy process, but I think, my professional
 11 opinion says it has merit in order to quantify more
 12 than just looking at 30 dB for sleep.
 13 Q Do you see any problem with a State
 14 Board enforcing guidelines that are not published
 15 for the public to be aware of?
 16 MS. ROBBINS: Outside the -- objection,
 17 outside of the scope of this expert.
 18 A I'm sorry?
 19 Q (By Mr. Petruska) Well, Copper Fire can
 20 go and look at the Table 901-102(a) and (b); right?
 21 A They can go look at the table for what
 22 purpose?
 23 Q To see what -- what frequency levels
 24 are allowable inside their space.

1 **A Outside.**
2 Q Yeah. They can go look at that; right?
3 **A For outside.**
4 Q Yeah. Where can they go find your
5 normalized standard?
6 **A They can't.**
7 Q They have to hire you to do it; right?
8 **A That's right.**
9 Q So should the Illinois Pollution
10 Control Board be enforcing your opinion as its
11 standard?
12 **A I don't know.**
13 Q Could you at least see a problem if
14 Copper Fire wants to be a good citizen and try to
15 follow the rules, and the only rule they're
16 breaching is your normalization standards? Can you
17 see a problem with that?
18 **A I'm sorry, ask that again or --**
19 Q Well, Copper Fire hired an expert --
20 **A Uh-huh.**
21 Q -- and got numbers, objective numbers.
22 Geri Boyer hired an expert and she also gave
23 objective numbers.
24 **A That's right.**

1 Q And unless those numbers are
2 normalized, Copper Fire is in full compliance with
3 Illinois law --
4 **A No.**
5 Q -- do you agree with that?
6 **A No. Because the McLure report**
7 **compared -- made a conclusion that the measured Leq**
8 **numbers indoor met the Leq numbers outdoor which is**
9 **a false conclusion, so their report to Copper Fire**
10 **is inaccurate.**
11 Q Well, your numbers actually say the
12 same thing, unless they're normalized?
13 **A That's correct.**
14 Q Right. So if we just look at the
15 objective numbers in this case, Copper Fire is in
16 full compliance with the rules as they are stated in
17 Illinois?
18 **A No, because Copper Fire numbers that**
19 **they used, that they hired McLure for compared**
20 **indoor to outdoor measurements which is not -- it's**
21 **not applicable.**
22 Q Well, do you find it interesting that
23 the first -- that you did a report first and used
24 those standards and cited those standards?

1 **A Not without normalization.**
2 Q Right. But you cited those standards
3 as a way to do the process; right?
4 **A That's right.**
5 Q Okay. Then McLure follows that same
6 process but actually uses the objective numbers.
7 **A They didn't use the same process.**
8 Q They used the objective numbers that
9 they got. They didn't modify their numbers to make
10 them somehow noncompliant, did they?
11 **A False analysis and false assumption.**
12 **The McLure report is wrong.**
13 Q Okay. So should the McLure report have
14 just made up its own numbers like you did?
15 **A I didn't make up my own numbers. I did**
16 **analysis to normalize them. And my professional**
17 **opinion says the normalization analysis is valid and**
18 **could be argued to the EPA and that a professional**
19 **acoustician at the EPA would understand the**
20 **normalization process.**
21 **And it even shows that the 44 dBA that**
22 **they show in total follows the US EPA and the WHO**
23 **standard by taking the partially opened transmission**
24 **loss and saying 45 minus 15 is 30. I could argue**

1 **that with the EPA and say your intent is to comply**
2 **with 30 dBA inside for sleep.**
3 Q Okay. So --
4 **A I could argue that.**
5 Q -- don't you --
6 **A McLure could not argue that.**
7 Q Are you saying -- are you saying that
8 the Illinois EPA is just not smart enough to put
9 those standards up?
10 **A No.**
11 Q Okay. Are you saying the Illinois EPA
12 doesn't care to put those standards up?
13 **A No.**
14 Q Has the Illinois EPA put out a rule
15 saying to normalize its numbers?
16 **A No.**
17 Q But you are telling me that's what they
18 should be doing?
19 **A I'm not telling the EPA what they**
20 **should do. I'm telling the EPA in this case where**
21 **we're looking at noise pollution indoors, you can**
22 **use their numbers. You can argue that you can**
23 **normalize in two different ways and determine what**
24 **the level should be indoors. Every case is**

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1 **different, and their intent is environmental outdoor**
2 --
3 Q Exactly. That's what the Illinois EPA
4 is interested, outdoor noise; right?
5 A **I -- in this case the way they've**
6 **written it.**
7 Q No, Geri filed this case.
8 I'm talking what the Illinois EPA's
9 actually concerned about is outdoor noise. That's
10 what you just said. You just said, that's what the
11 Illinois EPA is concerned about is outdoor noise;
12 correct?
13 MS. ROBBINS: Objection, misstates his
14 testimony.
15 A **Concerned about is not -- what they've**
16 **written are a set of guidelines that says, here is**
17 **the way to determine a noise annoyance outdoors.**
18 Q (By Mr. Petruska) Okay.
19 A **I'm not saying they're not concerned**
20 **about indoors --**
21 Q And they haven't. They haven't passed
22 any guidelines or standards saying this is what you
23 should do for indoor noise.
24 A **There's a way to get there.**

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1 Q But they haven't done it.
2 A **Well, I -- I can't speak to what**
3 **they've done or not.**
4 Q So, again, why is Geri Boyer filing
5 this lawsuit in the Illinois Pollution Control
6 Board?
7 MS. ROBBINS: Objection, asked and
8 answered. Badgering the witness. Calls for
9 speculation.
10 Q (By Mr. Petruska) I'm handing you Q and
11 R.
12 (Deposition Exhibits Q and R were
13 marked for identification.)
14 Q What is Exhibit Q?
15 A **Q are my notes from the World Health**
16 **Organization guidelines.**
17 Q And then you produced the actual World
18 Health Organization guidelines; correct?
19 A **That's correct.**
20 **(Deposition Exhibit S was marked for**
21 **identification.)**
22 Q (By Mr. Petruska) Exhibit S?
23 A **Yes.**
24 Q These are the EPA guidelines?

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1 A **Yes.**
2 Q Okay. And Exhibit -- Illinois -- these
3 are the federal EPA guidelines that are not in the
4 Illinois EPA standards; correct?
5 A **It's a separate document from the US**
6 **EPA.**
7 Q I'm handing you what's been marked as
8 T. What is Exhibit T?
9 (Deposition Exhibit T was marked for
10 identification.)
11 A **T is my analysis of transmission loss**
12 **of brick wall and window, a certain type of window.**
13 Q (By Mr. Petruska) What type of window
14 is listed on here?
15 A **The example that I used on this window**
16 **is a window that is four millimeters with 16**
17 **millimeter spacing, then another four millimeters,**
18 **so it's a double -- double window.**
19 Q Does Geri Boyer have a double window
20 inside her loft?
21 A **I don't know. This is an example of TL**
22 **on certain -- one window. I did other windows.**
23 Q I'm handing you what's been marked as
24 Exhibit U.

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1 (Deposition Exhibit U was marked for
2 identification.)
3 Q (By Mr. Petruska) Is this the first
4 e-mail you had in this case from the Boyers?
5 A **Yes.**
6 Q And basically it's just them asking
7 about having you do some testing; correct?
8 A **Yes, can I help.**
9 Q I'm handing you what's been marked as
10 Exhibit V, as in Victor.
11 (Deposition Exhibit V was marked for
12 identification.)
13 Q (By Mr. Petruska) It seems to be a
14 series of e-mails back and forth about how to do the
15 testing?
16 A **Not how to do the testing.**
17 Q But did they ask you to do two
18 simultaneous testings?
19 A **I think -- I don't see in these e-mails**
20 **the reference to simultaneous. Oh, at the bottom.**
21 **The e-mail of April 16th.**
22 Q Yeah. You say, I do not usually test
23 at two locations during the same time period.
24 A **That's correct on April 16th; right.**

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1 Q Okay. So there was some discussion
2 about how to do the testing?
3 A **There was discussion there of can I do**
4 **simultaneous testing and I said, no. I could, but**
5 **I'd have to rent meters because I don't have two of**
6 **the same kind of meters. And she said, I think we**
7 **can skip the office.**
8 Q Yeah. Do you have any idea why she
9 decided to skip the office?
10 A **I assumed it's because I said I**
11 **couldn't do simultaneous, but I don't know that for**
12 **sure.**
13 Q Have you, yourself, ever been inside
14 that office to determine whether or not you can hear
15 anything?
16 A **No, I have not been inside the office.**
17 Q Are you familiar with the fact that
18 indoor lighting can sometimes create noise?
19 A **Sometimes high frequency noise.**
20 Q Yeah. And high -- indoor lighting has
21 been shown to actually exceed 85 decibels in work
22 environments sometimes?
23 A **I don't know that for a fact. I do**
24 **know it's high frequency.**

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1 Q And if there's high frequency noise,
2 can that sometimes mask other sound?
3 A **High frequency sound.**
4 Q I'm handing you what's been marked as
5 Exhibit W.
6 (Deposition Exhibit W was marked for
7 identification.)
8 Q (By Mr. Petruska) In Exhibit W did Geri
9 Boyer tell you that their walls were vibrating?
10 A **Exhibit W does not pertain to the sound**
11 **studies. They were a different topic. I don't**
12 **know. Oh --**
13 Q At the bottom of Page 1.
14 A **(Reading out loud to himself.) Okay.**
15 Q Did Geri Boyer tell you her walls were
16 vibrating?
17 A **She did in this e-mail.**
18 Q Yeah. Have you ever confirmed that the
19 walls were vibrating inside the apartment?
20 A **I did not -- I was not engaged to do**
21 **vibration testing.**
22 Q Do you think if you had any thought
23 that the walls were actually vibrating you would
24 have tested that?

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1 A **If I -- if she would have engaged me to**
2 **do vibration testing, I would have done vibration**
3 **testing. This series of e-mails had to do with**
4 **another topic.**
5 Q Yeah. Were you also trying to sell her
6 some of your old equipment?
7 A **I wasn't trying to sell it to her. I**
8 **was asking her if she needed any because I had a --**
9 **as you can see in the e-mail, I had a friend who**
10 **passed away and I had this equipment for sale.**
11 Q What's the date on that e-mail?
12 A **The date on the e-mail that I --**
13 **May 10th.**
14 Q So five days after you finalize the
15 report?
16 A **What's the date? May 5th. I revised**
17 **it on May 25th, so it was in between the initial**
18 **report and the revision.**
19 Q I'm handing you what's been marked as
20 Exhibit X.
21 (Deposition Exhibit X was marked for
22 identification.)
23 Q (By Mr. Petruska) At that point you
24 were exchanging e-mails with Mr. Jacober and asking

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1 about -- what your deposition would be about; do you
2 see that?
3 A **Yes.**
4 Q And you were asked -- you were asking
5 where you would be asked to defend your report or
6 basically attack the McLure report; right?
7 A **I'm sorry, the question is?**
8 Q You're -- you were asking whether you
9 would be deposed in to order to defend your report
10 or address the McLure report; correct?
11 A **I was seeking knowledge about what the**
12 **deposition would be about.**
13 Q Okay. And am I correct that your
14 complaint about the McLure report is that they
15 applied regulation 901.102(a) and (b) in this case
16 as the standard?
17 A **My complaint about the report?**
18 Q Yeah.
19 A **I have many comments about the report.**
20 Q Do you have a problem with McLure --
21 well, McLure did some sound testing. Do you have
22 any problems with the procedures they used to do the
23 sound testing?
24 A **No. As a matter of fact I was thrilled**

1 that their numbers were almost exactly the same as
 2 my numbers.
 3 Q And then McLure compared their numbers
 4 to 901.102(a) and (b); correct?
 5 A That's correct.
 6 Q Do you believe that's improper?
 7 A That's correct.
 8 Q Okay. Instead you think McLure should
 9 have normalized the numbers; right?
 10 A I think -- I think McLure should have
 11 done more analysis than just a basic conclusion on
 12 indoor Leq and outdoor Leq.
 13 I don't -- if they had another idea to
 14 do it, fine, but the way they did it of comparing
 15 the two and making a conclusion at the end without
 16 any mention or analysis, even though they mentioned
 17 that it was for outdoor, I don't understand why they
 18 did that without talking to people.
 19 Q Well, is it possible because that's the
 20 standard that's published in the state of Illinois?
 21 MS. ROBBINS: Objection, call for
 22 speculation.
 23 A It's not what the standard says.
 24 Q (By Mr. Petruska) No, the standard is

1 A Huh?
 2 Q That's what you think?
 3 A I'm sorry?
 4 Q That's what you think?
 5 A That's what the report said.
 6 Q Okay. They tested indoors at Geri
 7 Boyer's apartment and identified where they put the
 8 testing device; correct?
 9 A That's correct.
 10 Q Okay. They didn't hide that, did they?
 11 A No. I don't agree with it.
 12 Q Right. And then -- well, you did
 13 testing indoors, inside the Geri Boyer apartment
 14 too?
 15 A Yes.
 16 Q Okay. You compared your numbers to the
 17 same standard that they used?
 18 A No.
 19 Q You just changed the standard?
 20 A I didn't change the standard.
 21 Q Did you reference 901.102?
 22 A I normalized the standard in two
 23 different ways.
 24 Q Right. Did you reference 9 -- did you

1 an outdoor standard for noise; correct?
 2 A Uh-huh.
 3 Q And it's published?
 4 A Uh-huh.
 5 Q And they used that standard to compare
 6 their results to?
 7 A No, they used their indoor measurements
 8 to compare themselves to the outdoor standard.
 9 Q Right. They use the indoor -- at any
 10 point in time did they say they did outdoor testing?
 11 A Yes.
 12 Q They said they did outdoor testing?
 13 A Yes, they did. They said Location 3,
 14 and if you look at the graph, they didn't do octave
 15 band, which I'm surprised.
 16 If they would have done octave band
 17 analysis on their outdoor Location 3 measurement, I
 18 think you would have seen -- you could have compared
 19 those numbers to the Illinois standard very easily
 20 and they would have not passed, but they didn't do
 21 it.
 22 Q Really?
 23 A Yeah.
 24 Q That's what you think?

1 reference 901.102(a)?
 2 A Did I reference it where?
 3 Q In your report.
 4 A Yes.
 5 Q And did you reference 901.102(b)?
 6 A Nighttime?
 7 Q Yes.
 8 A Yes.
 9 Q Okay. They referenced it also?
 10 A Yes.
 11 Q Okay. And you're complaining that they
 12 used that standard to determine what's right or
 13 wrong in this case? That's your complaint?
 14 A I'm not complaining --
 15 MS. ROBBINS: Object to your use of the
 16 word complaint.
 17 A I'm not complaining about anything they
 18 did. I cited -- I made notes and I said, here is
 19 what I like that they did, and here is what I don't
 20 like that they did.
 21 And I was -- like I said, I cited two
 22 math errors that I think they made, and I cited that
 23 their measurement numbers were very, very close,
 24 which was outstanding, because I measured twice,

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1 they measured once.
2 **We used different equipment, and their**
3 **measurements were right on, including their 39 dBA**
4 **measurement total, my octave band was exactly**
5 **aligned, and they should have concluded it was**
6 **nine decibels greater than 30 for sleep and they**
7 **didn't.**
8 Q Do you know why McLure tested the
9 outdoor sound?
10 A I don't know if they said why. They
11 said they set up three of the same type of
12 measurement devices, one inside Copper Fire, one
13 outside, and one inside the loft.
14 They didn't go through octave band
15 analysis on location for the outside. But if you
16 look at it, it's very, very high in total. It's in
17 dBA.
18 I don't agree with the comment that it
19 was all traffic and ambient noise, because it was
20 very, very high, around 70, 80 dBA. And I think if
21 they would have done it by octave band, it would
22 have been a good comparison to the -- directly to
23 the Illinois EPA.
24 Q Do you remember when we talked about

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1 Illinois EPA 910.105(7) and we talked about visual
2 observations of other sounds?
3 A Yes.
4 Q Okay. Is it possible that McLure
5 tested the outdoor noise to figure out what other
6 sounds might be affecting Geri Boyer?
7 A It could have been that they did.
8 Q Okay. That would have actually been
9 really smart of you to do too; right? That way you
10 wouldn't have to just guess whether outdoor noise
11 was affecting anything.
12 A As I explained to Geri, I didn't have
13 the capability to test concurrent with the same
14 equipment.
15 Q But you actually then took the highest
16 numbers you could come up with indoor as your
17 standard; correct?
18 A No.
19 Q Your normalization in your report is
20 the black line showing that peak number during your
21 testing period?
22 A As a method of normalizing an indoor
23 measurement to an outdoor standard.
24 Q Right. No concern whatsoever whether

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1 that noise was being created by something outside of
2 Geri's apartment?
3 MS. ROBBINS: Objection to the
4 classification. There's no concern.
5 Q (By Mr. Petruska) How do you know that
6 some car didn't come by blaring Journey at 120
7 decibels? How do you know that?
8 A That would have been shown as one
9 individual peak in the time, and I would have
10 eliminated it from the process.
11 But what is shown is the octave band
12 multiple peaks. Consistent multiple peaks at 32
13 hertz. That's not 10 cars passing very loud, that's
14 music.
15 Q Do you have any idea how many times
16 cars passed by there and motorcycles passed by there
17 blaring sound?
18 A I have no idea.
19 Q So if you wanted to actually control
20 the outdoor noises, you could have done so?
21 A No.
22 Q You could have gotten additional
23 equipment, couldn't you?
24 A I could have gotten additional -- and I

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1 told Geri upfront that I didn't have that
2 capability.
3 Q So you were not concerned about
4 controlling the outdoor noise?
5 A You can't control the outdoor noise.
6 You can measure what it is.
7 Q You could at least have accounted for
8 it?
9 A Right.
10 Q Right.
11 A And if I look at Gary's report, his
12 measurement of outdoor is not from outdoor car
13 traffic, in my opinion, because it corresponds to
14 the time period the band is playing directly on his
15 graphs.
16 Q Did you notice the measurements after
17 he left Geri's apartment, after the band had
18 stopped, and what the noise level was outside on the
19 street?
20 A Yes, it dropped significantly lower.
21 Q It dropped significantly lower?
22 A I'm -- I'd have to look at Gary's
23 report.
24 Q Okay.

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1 **A I could show you. If you have an**
2 **exhibit or Gary's report, I could show you what I'm**
3 **referring to, because I marked it in my notes.**
4 MS. ROBBINS: Do you want a copy of it,
5 Paul?
6 MR. PETRUSKA: No. I asked for all the
7 documents he had and he didn't produce that, so --
8 MS. ROBBINS: Your expert's report?
9 MR. PETRUSKA: Yeah.
10 **A In my opinion, this time band that goes**
11 **between 70 and 80 dBA is not a lot of cars blaring**
12 **music loudly. It's the band, because it corresponds**
13 **directly with the indoor measurement at Copper Fire**
14 **at the same time period of the band.**
15 **He didn't do that in dBA, which would**
16 **have been a great way to do the analysis of outdoor**
17 **measurement directly by octave band to the Illinois**
18 **EPA outdoor, but he didn't do it. He said in his**
19 **report, this is all because of outdoor noise.**
20 Q (By Mr. Petruska) Have you noticed that
21 the band stopped playing at a certain time?
22 **A That was earlier, but he was mainly**
23 **concerned -- this is nighttime.**
24 Q I'm just talking about the band stopped

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1 playing at around 5:00; correct?
2 **A I -- I don't know.**
3 Q Okay. And outdoor noise went up?
4 **A No.**
5 Q Well, let's put it this way. If you
6 really cared about this, you could have tested this;
7 right? If you really cared about controlling this,
8 you would have tested it?
9 **A If I really cared about what?**
10 Q If you really cared about determining
11 whether outdoor noise was a problem, you could have
12 tested it?
13 The only reason you even know about
14 outdoor noise right now is because my expert looked
15 at it and controlled it.
16 **A He didn't control it.**
17 Q Okay.
18 **A He took one measurement and he said**
19 **it's all because of other outdoor noise.**
20 Q He said all the noise inside Geri
21 Boyer's apartment is solely because of the outdoor
22 noise? That's what he said?
23 **A No, that's not what he said.**
24 Q Okay.

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1 **A The outside location was primarily**
2 **impacted by Main Street traffic and other activities**
3 **in the area. The sounds outside fluctuated as much**
4 **as 30 dBA with low Leq near 50 and a high at an 80.**
5 **I -- I would only be speculating that**
6 **this increase in outdoor noise was not from the band**
7 **because it correlates directly with the indoor**
8 **measurement of the band.**
9 Q Okay. And, again, if you --
10 **A Cars would have been a peak or two, if**
11 **such a thing. The car passes by and leaves, and it**
12 **goes down. It only takes a very short period of**
13 **time when the spike would show up.**
14 **This is a continuous 75 to 80 dBA from**
15 **the time period of the band. It even has an arrow**
16 **at the bottom that says evening band.**
17 Q Did the noise go up between the two
18 bands outside?
19 **A Between them?**
20 Q Between the time the first band stopped
21 and the second band started playing.
22 **A Yes.**
23 Q The noise went up outside?
24 **A Yes. If you look at the afternoon**

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1 **band, it went down when they stopped. And it's got**
2 **the time period here of approximately 5:30**
3 **something. It stays low. And then when the band**
4 **starts, it has an arrow of 8:00 something. It**
5 **significantly goes up to 75 or 80, or to 90 on the**
6 **inside. And if you look when the arrow shows a**
7 **band, it goes significantly up outside.**
8 Q Okay. But look -- look at that exactly
9 where you just were --
10 **A Uh-huh.**
11 Q -- from there to there, it's going up.
12 The outdoor noise is going up.
13 **A Gradually.**
14 Q Gradually. It's going up?
15 **A It's got so much noise in it --**
16 Q But it has nothing to do with Copper
17 Fire. Copper Fire's music is not even playing at
18 that time.
19 **A I don't know your point.**
20 Q Outdoor noise is going up when there's
21 no Copper Fire music. You don't consider that
22 relevant?
23 **A No.**
24 Q That's not relevant?

1 **A No, because ambient noise -- if ambient**
2 **noise, any noise of ambient nature is 10 dB less**
3 **than the noise you're measuring, it has no impact.**
4 Q Have you ever walked around downtown
5 Main Street and just measured noise levels out on
6 that street?
7 **A No.**
8 Q Okay.
9 MR. PETRUSKA: I'm gonna take a quick
10 break and we'll see if we're done.
11 (A short break was held off of the
12 record.)
13 Q (By Mr. Petruska) I'm handing you
14 what's been marked as Exhibit P.
15 (Deposition Exhibit P was marked for
16 identification.)
17 Q (By Mr. Petruska) Can you just tell me
18 what that is?
19 **A It looks like just to be general notes.**
20 **The first one is general documents that I did some**
21 **outlining of, make sure I had everything covered.**
22 **General notes of sound measurements. The Page 1 --**
23 **I'm sorry -- Page 1 is a note I left for Geri --**
24 Q Right.

1 **A -- just when I left, just telling her**
2 **what I did. General notes and a sketch of the**
3 **bar -- of the -- not the bar, the loft, the location**
4 **of the source where I consider to be outside in**
5 **between the two buildings. The loft is inside.**
6 **Source and receiver. Then general notes about my**
7 **measurements. General notes about the graphs, so**
8 **just general notes.**
9 Q The 10 to 12-inch space has been
10 discussed --
11 **A Yes.**
12 Q -- as being potentially between the two
13 buildings.
14 If there isn't that space, if the two
15 brick walls are back to back, how would that affect
16 your understanding of the loss of sound, the
17 canceling of sound in the brick wall?
18 **A Yeah, the presence of an air space**
19 **between two barriers tends to have better**
20 **transmission loss than just the barrier itself.**
21 **So in theory, if you wanted to have an**
22 **eight-inch brick wall and if you did two four-inch**
23 **with an air space, you have better transmission**
24 **loss.**

1 Q Better -- muting the sound?
2 **A Transmission loss is --**
3 Q Okay. Transmission loss, yeah.
4 **A Transmission loss is the accurate term**
5 **for the reduction of sound on one side to the other**
6 **side.**
7 Q And then on Page 3 of this, I think it
8 says Page 3 --
9 **A Uh-huh.**
10 Q -- it talks about guidelines?
11 **A Yeah.**
12 Q And you have local and you said
13 Belleville and you have annoyance written down; do
14 you see that?
15 **A Yeah, just general guidelines that I**
16 **was referencing.**
17 Q Right. And then annoyance, below that
18 as a guidance, you said outdoor measurements to
19 corroborate?
20 **A Right.**
21 Q What is that referring to?
22 **A That's referring to the part of the**
23 **Illinois EPA that we reviewed. It said it's an**
24 **annoyance, but if you want to corroborate the noise**

1 **you can do outdoor measurements.**
2 Q Which section are you referring to when
3 it comes to the fact that you do not need
4 measurements?
5 **A Oh, there's a paragraph in the Illinois**
6 **EPA. Let's see if I can find it in my notes.**
7 Q Ah, there we go.
8 So go to Defendant's Exhibit E, if you
9 have it over there.
10 **A I'm sorry, I was just looking at my**
11 **notes.**
12 Q Yeah, it's 9 -- I think it's 910.104.
13 **A This is an Illinois document?**
14 Q Yes. Exhibit E, Chapter 910.
15 **A Let's see. There's three documents.**
16 **What exhibit?**
17 Q 910. It's Exhibit E.
18 **A E, C, D, E.**
19 Q And it's Section 910-10 -- .104. It's
20 on Page 3. Just read that and tell me if that's the
21 one you're relying on?
22 **A Oh, there. Yep.**
23 Q So would you agree the word annoyance
24 is not in there?

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1 **A The word nuisance.**
2 Q Right. And it says it can be
3 established without sound pressure level
4 measurements; correct?
5 **A That's correct.**
6 Q Okay. However, sound pressure
7 measurements may be introduced as corroborating
8 evidence when alleging a violation of 900.102?
9 **A That's correct.**
10 Q If measurements are collected; correct?
11 **A Yes.**
12 Q Okay. So you would agree in this case
13 we do have measurements from multiple sources?
14 **A Yes.**
15 MR. PETRUSKA: That's all the questions
16 I have. Thank you.
17 THE WITNESS: Okay.
18 MS. ROBBINS: I have a few follow-up
19 questions.
20 THE WITNESS: Okay.
21 MS. ROBBINS: Ready?
22 THE WITNESS: Sure.
23 QUESTIONS BY MS. ROBBINS:
24 Q So previously you were testifying about

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1 the ideas that you sent to Geri regarding possible
2 ways to reduce noise inside the loft; correct?
3 **A (Inaudible.)**
4 COURT REPORTER: I'm gonna need you to
5 speak up, sorry, or I'm gonna need to move, one of
6 the two.
7 THE WITNESS: I'm sorry.
8 MS. ROBBINS: How about if I move?
9 COURT REPORTER: Was your answer
10 correct?
11 MS. ROBBINS: I'll just repeat the
12 question. We'll just start over.
13 Q (By Ms. Robbins) So previously you
14 testified about the ideas that you sent to Geri
15 regarding potential options to help reduce sound on
16 her side; correct?
17 **A Correct.**
18 Q And do you know if those -- and you
19 cited potentially using clear mbl; correct?
20 **A Mlv.**
21 Q Mlv.
22 **A Mass loaded vinyl.**
23 Q Correct; right?
24 **A Correct.**

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1 Q And is it positive that if she had put
2 clear mlv on her wall that would work?
3 **A I think I put in the e-mail, I'm not**
4 **sure it would work.**
5 Q Okay. And in your opinion, where would
6 mitigation have to occur for it to be most
7 effective?
8 **A Closest to the source --**
9 Q And why is --
10 **A -- sound.**
11 Q And why is that?
12 **A Either reducing the sound level or --**
13 **well, let me just say, in analysis of source and**
14 **receiving sound as an annoyance or a nuisance,**
15 **there's a source that occurs that produces the**
16 **noise, there's a path that the noise travels, sound**
17 **travels, and there's a receiver.**
18 **So the easiest thing to do to mitigate**
19 **what's received is to reduce the source. So that's**
20 **why in the report I said, here is some things to do**
21 **to reduce the source of it.**
22 **There's also things to do to reduce the**
23 **path that the sound travels. If you can turn the**
24 **source off, the noise nuisance goes away.**

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1 Q Right.
2 **A An extreme case.**
3 Q But in this case you weren't
4 recommending to turn the noise source off --
5 **A No.**
6 Q -- you were recommending to turn the
7 noise source down; correct?
8 **A Or move it.**
9 Q Okay. And earlier you were testifying
10 about Mr. Brown's report; correct?
11 **A Yes.**
12 Q And we never introduced it as an
13 exhibit. If we need to, we can.
14 But you were talking about how he had
15 recorded at three locations at the same time;
16 correct?
17 **A That's correct.**
18 Q And what did his readings tell you
19 about -- his readings outside tell you about the
20 noise from Copper Fire?
21 **A Since he only provided a graph of**
22 **overall sound level dBA, it just showed me that the**
23 **periods of time measured outside when the band was**
24 **playing at night were significantly louder than**

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1 **other periods.**
2 Q And when you conducted your report on
3 November -- in November of 2021, you took a few
4 informal readings; correct?
5 **A Yes.**
6 Q And one of those was inside Copper
7 Fire?
8 **A Yes.**
9 Q And inside Copper Fire, you actually
10 took readings using your phone from multiple
11 locations; correct?
12 **A That's correct.**
13 Q And you, on that day, had sound
14 readings up to 106 --
15 **A That's correct.**
16 Q -- decibels; correct?
17 **A That's correct.**
18 Q And were you able to have conversations
19 with anyone inside of Copper Fire?
20 **A No, it was very difficult to place an**
21 **order with the waitress, and I observed a couple**
22 **sitting at the table next to me struggling to have a**
23 **conversation at the level.**
24 **And I even measured pretty high levels**

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1 **in the restroom at the back of the room, which I was**
2 **surprised they were that high even that far back.**
3 **It was loud.**
4 Q And when you took those readings, no
5 one inside Copper Fire knew you were taking
6 readings; correct?
7 **A No. I just took my phone out, put it**
8 **on the table, and pressed readings.**
9 Q And I believe you noted in your report
10 that since the microphone on an iPhone is limited
11 that that impacts the reading?
12 **A There are three microphones in an**
13 **iPhone and it's all uncalibrated and it's**
14 **integrated. The iPhone integrates three**
15 **microphones. One is in the back, two are in the**
16 **front, one's at the speaker and, so, it's an**
17 **informal reading, which I noted.**
18 Q So it's, in fact, possible the number
19 could have actually been higher?
20 **A Could have been higher.**
21 Q And you've reviewed Mr. Brown's report,
22 and you state that his numbers and his readings are
23 pretty in line with your readings; correct?
24 **A His measurements were -- his**

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1 **measurements inside the loft were very, very close**
2 **to mine.**
3 **And his formal measurements inside**
4 **Boyer's were very close to mine using an informal**
5 **microphone.**
6 Q And he used Leq measurements, or did he
7 convert those in any way?
8 **A He used Leq in his report.**
9 Q But then he didn't -- if you were to
10 take his Leq numbers and apply the four
11 methodologies that you talked about earlier, so I
12 believe it's peak, open window, partially open
13 window, closed window, do you have --
14 **A I -- his report only cited indoor**
15 **measurements in the loft of Leq. He did not**
16 **measure -- or if he did measure, he didn't show**
17 **peak.**
18 Q Okay. So you could only --
19 **A But his Leq measurements and my Leq**
20 **measurements, which are shown on the blue bars, are**
21 **very, very close.**
22 Q So if you were to take his Leq numbers
23 and compare it and try to normalize --
24 **A Yes.**

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1 Q -- them using open window, partially
2 open window or closed window, is it your opinion
3 that they meet the indoor standards for the Illinois
4 EPA?
5 **A They would not meet.**
6 **Since his Leq numbers were the same as**
7 **my Leq numbers, if you were to take those and**
8 **normalize the outdoor, they would be the same**
9 **conclusion as I reached.**
10 Q And are you aware that the Boyer loft
11 was constructed years before Copper Fire went in
12 next door?
13 **A I'm not aware of the age of the -- I've**
14 **heard that, but I'm not aware if that's the case.**
15 Q So if a Quiznos or some offices were
16 next door prior to Copper Fire being next door,
17 would you agree that there's nothing improper with
18 the way the loft is current constructed?
19 **A I didn't do an architectural study or**
20 **an analysis of the loft. Aesthetically it's**
21 **beautiful. It's got a brick wall. I -- it looks**
22 **properly constructed.**
23 **I'm only looking at acoustics, so not**
24 **architectural.**

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1 Q So if a -- if prior to Copper Fire
2 going in there were no noise issues or noise
3 complaints, would you say that the noise issues and
4 noise complaints were caused by Copper Fire or
5 caused by the Boyers?
6 A **The noise issues that I measured were
7 caused by the band being played in Copper Fire. The
8 loud bands.**
9 **If you look at the data, the acoustic
10 bands do not have the same low-frequency content or
11 mid-frequency content. They're less of a noise
12 issue.**
13 Q What's the average noise level of an
14 office space?
15 A **Average noise level of office space?**
16 Q Yeah, maybe an office space --
17 A **In the 40's --**
18 Q Okay.
19 A **-- 45, 50. Conversation is about 65,
20 so it depends on what conversations and how many
21 conversations.**
22 Q So would the noise from an office space
23 have a different impact than noise from a band --
24 A **Absolutely.**

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1 Q -- such as bass or drums?
2 A **There's no low-frequency content in
3 conversations.**
4 Q And in your report, one -- one
5 guideline you looked at to help normalize numbers to
6 determine an indoor -- a proper indoor measure was
7 the WHO guidelines; correct?
8 A **That's correct.**
9 Q And isn't it true that Mr. Brown also
10 recognized and bolded in his report that the
11 Illinois EPA was for outside noise; correct?
12 A **He did say that in the sentence, yes,
13 he did.**
14 Q And then he listed other resources and
15 guidelines that are used to determine indoor sound
16 limits; correct?
17 A **That's correct.**
18 Q And included the WHO?
19 A **He included the WHO.**
20 Q Do ambient noise and noise from a band
21 have the same impact on mental health and welfare
22 and the ability to sleep?
23 A **In -- in the air-conditioning HVAC
24 world, which is standards from INCE, they are**

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1 **concerned about loud air-conditioning airflow noises
2 that can impact sleep that are higher than 30 dBA,
3 which are much different than a band.**
4 Q Does taking a picture of the wall
5 inside Copper Fire impact what level of -- what
6 level your sound readings were in your report?
7 A **Taking a picture?**
8 Q As Mr. Petruska --
9 A **No.**
10 Q -- asked you about earlier?
11 A **No.**
12 Q Would you consider the noise inside
13 Copper Fire when you were there for lunch to be an
14 unreasonably offensive noise?
15 A **Personal opinion?**
16 Q Uh-huh.
17 A **Personal opinion, this is --**
18 Q Yep.
19 A **-- sound from bands, daytime/nighttime
20 personal opinion, to my personal opinion, it was
21 annoying for -- to eat lunch.**
22 Q Earlier Mr. Petruska asked you
23 questions where he said, you know, why should Copper
24 Fire do something different than other bars in

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1 Belleville; correct?
2 A **Yes.**
3 Q But we don't have any measurements from
4 other bars?
5 A **Not part of my engagement.**
6 Q They could be louder? They could be
7 quieter; correct?
8 A **Absolutely.**
9 Q And we don't know if the other bars are
10 directly next to a residential space that's exactly
11 the same --
12 A **We do not know.**
13 Q -- as Copper?
14 Okay. And when you were measuring
15 sound inside the Boyer residence after the bands
16 were done playing in between 1:00 and 2:00 a.m., you
17 noted that it was relatively a quiet space; correct?
18 A **Yes.**
19 Q And that would be good for sleep?
20 A **Yes.**
21 Q I'm just trying to find my notes.
22 Do you remember when you were looking
23 at Sections of 910.106 that listed the categories,
24 potential categories, like industrial, industrial

1 and commercial --
 2 **A Yes.**
 3 Q -- residential?
 4 And at the -- at that time Mr. Petruska
 5 asked you if you'd ever been there on days when
 6 there was some chili cooking event, some other
 7 outdoor festivals and stuff like that; correct?
 8 **A Correct.**
 9 Q But you didn't take your measurements
 10 when those events were listed or happening?
 11 **A No.**
 12 Q So on the day that you took your
 13 measurements, you observed a few cars going by;
 14 correct?
 15 **A Bef -- in April, before and after the**
 16 **measurements, I walked down the street and observed**
 17 **in general what the atmosphere was around the**
 18 **building.**
 19 **On -- in November, for the entire time**
 20 **frame, I walked around the building before, during,**
 21 **lunchtime inside, and afterwards. I walked up and**
 22 **down the street to observe what was going on in the**
 23 **entire measurement period in November.**
 24 Q And it's your opinion that based off of

1 the plaster was removed from -- by Copper Fire from
 2 the wall? Do you remember that?
 3 **A Do you have any --**
 4 Q Yeah, take a look at the e-mail in
 5 front of you. The 14th one that I gave you was the
 6 first contact with Copper Fire.
 7 **A Which --**
 8 Q I'll show you.
 9 **A -- one of the e-mails says that?**
 10 Q This exhibit. That's exhibit -- which
 11 one is it? That's O; is that correct?
 12 **A Oh, this is the first note that she**
 13 **sent to me?**
 14 Q Yes. And did she tell you that the
 15 plaster had been removed by Copper Fire?
 16 **A She did tell me that, but --**
 17 Q Right. So my only question to you is,
 18 wouldn't it have made sense to verify whether that
 19 was true?
 20 **A No, because the engagement was not to**
 21 **determine the transmission loss of the -- of the**
 22 **barrier. That wasn't the engagement.**
 23 Q The engagement was to determine whether
 24 or not Copper Fire's violating the Illinois EPA.

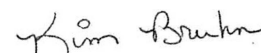
1 what you observed, it would have fit into
 2 Category 3?
 3 **A It was pretty -- it was pretty quiet.**
 4 Q And it's a main street, but the speed
 5 limit isn't like a freeway; correct?
 6 **A No. No, it's not like -- it's a quiet**
 7 **street.**
 8 Q Just give me one second to check my
 9 notes.
 10 And one final question. So in EPA Code
 11 910.104 that you were just talking about with
 12 Mr. Petruska, you were comparing it to your notes;
 13 correct? And in your notes you called it an
 14 annoyance, but in the -- in the actual code it calls
 15 it a nuisance noise?
 16 **A A nuisance, that's correct.**
 17 Q Does a nuisance noise and an annoyance
 18 mean the same thing to you?
 19 **A To me it does.**
 20 MS. ROBBINS: No further questions.
 21 FURTHER QUESTIONS BY MR. PETRUSKA:
 22 Q You were asked about whether you took a
 23 picture of the wall inside Copper Fire.
 24 Do you remember if Geri told you that

1 That's the engagement.
 2 **A No, the engagement was to determine if**
 3 **the sound levels are loud enough to be an annoyance,**
 4 **a nuisance, or be detrimental to sleep. I used**
 5 **multiple references to determine that.**
 6 Q So if I tell the Illinois EPA that you
 7 were hired to determine annoyance, nuisance, and
 8 detriment -- detrimentally to sleep, that's a fair
 9 description of what you were hired for?
 10 **A And that's what I reported on.**
 11 Q Okay.
 12 MS. ROBBINS: No further questions.
 13 THE WITNESS: Is it inappropriate to
 14 make any comments or --
 15 MS. ROBBINS: Yeah, we're done so you
 16 don't need to make any comments.
 17 THE WITNESS: Okay.
 18 COURT REPORTER: No further questions,
 19 Brooke?
 20 MS. ROBBINS: Unless there's something
 21 you need to tell me? We'll go off the record just
 22 for a second.
 23 (A short discussion was held off of the
 24 record.)

1 FURTHER QUESTIONS BY MS. ROBBINS:
 2 Q All right. I just have one quick
 3 question that I think we might have already covered,
 4 but just to have a clear record, why did you feel
 5 the need to normalize the numbers in your report?
 6 A The reason I felt the need to normalize
 7 is because of the EPA not addressing indoor. But
 8 the WHO and the US EPA documents say if guidelines
 9 don't address indoor, there's a way to get there.
 10 And the way to get there is, as I put in my notes --
 11 Q And your notes are Exhibit Q?
 12 A My notes are from Exhibit Q, is a quote
 13 from WHO, many guidelines don't address indoor
 14 measurements but they can be estimated using window
 15 transmission loss, which is the difference between
 16 outside and inside minus 10 dB open window minus 15
 17 dB tilted or half-open window, minus 25 dB closed
 18 window, and I have the same quote from the US EPA.
 19 So it allowed me to connect the dots
 20 and apply a standard or guideline for outdoor to
 21 indoor.
 22 Q And your ultimate conclusion was that
 23 the noise at Copper Fire doesn't meet the WHO
 24 guidelines; correct?

1 A That's correct.
 2 Q And it also doesn't meet the Illinois
 3 EPA guidelines for at night; correct?
 4 A That's correct.
 5 Q And, also, you concluded that there's
 6 un -- that there's unwanted noise that's being
 7 created across the property line; correct?
 8 A That's correct.
 9 MS. ROBBINS: No further questions.
 10 MR. PETRUSKA: I'm done.
 11 COURT REPORTER: Okay. Are we going to
 12 read or waive?
 13 MS. ROBBINS: So in Illinois you have
 14 the choice on whether or not you want to read your
 15 deposition and then --
 16 THE WITNESS: I'm sorry, are we off?
 17 MS. ROBBINS: We're still on the
 18 record. I -- we're just putting this on the record.
 19 THE WITNESS: Okay.
 20 MS. ROBBINS: So in Illinois you have
 21 the choice whether you want to read your deposition
 22 and then sign it and say that you agree that
 23 everything was taken down correctly. Or technically
 24 you can waive your signature and just say, I don't

1 want to read it over.
 2 But I'm gonna ask you to read the
 3 deposition anyway, so do you want to read it before
 4 you sign, or do you want to waive signature? It's
 5 your -- you would just be reviewing to make sure the
 6 court reporter got down what you said correctly,
 7 checking to make sure that the technical terms you
 8 used weren't written improperly.
 9 THE WITNESS: I don't think I need to
 10 read it.
 11 MS. ROBBINS: Okay; we'll waive.
 12 COURT REPORTER: Okay. And then
 13 Brooke, do you want a copy?
 14 MS. ROBBINS: Yes, please.
 15 COURT REPORTER: E-tran?
 16 MS. ROBBINS: Yeah.
 17 COURT REPORTER: Exhibits?
 18 MS. ROBBINS: Yes.
 19 COURT REPORTER: Paul, E-tran?
 20 MR. PETRUSKA: E-tran, yes.
 21 COURT REPORTER: Thank you.
 22 (Whereupon signature was waived, and
 23 the Deponent was excused.)
 24

1 REPORTER CERTIFICATE
 2 I, KIM BRUHN, RPR, CSR (IL), CCR (MO), do
 3 hereby certify that there came before me at Lathrop
 4 GMP, LLP, 7701 Forsyth Boulevard, Suite #500,
 5 Clayton, Missouri 63105:
 6 MICHAEL BIFFIGNANI,
 7 who was by me first duly sworn; that the Witness was
 8 carefully examined; that said examination was
 9 reported by myself; translated and proofread using
 10 computer-aided transcription, and the above
 11 transcript of proceedings is a true and accurate
 12 transcript of my notes as taken at the time of the
 13 examination of this Witness.
 14 I further certify that I am neither Attorney
 15 nor Counsel for nor related nor employed by any of
 16 the parties to the action in which this examination
 17 is taken; further, that I am not a relative or
 18 employee of any Attorney or Counsel employed by the
 19 parties hereto or financially interested in this
 20 action.
 21 Dated this 8th day of February 2023.
 22
 23 
 24 KIM BRUHN, RPR, CSR (IL), CCR (MO)

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900.102 27:3,9 27:11,15 28:8 28:12,16 30:4 122:8 900.103 19:12 20:2 901 2:16 21:17 23:3 31:16 33:19 901-102(a) 93:20 901(b) 44:8 901.102 21:21 22:6,9 24:10 33:1,5 108:21 901.102(a) 33:19 44:7 73:15,19 105:15 106:4 109:1 901.102(b) 44:11 109:5 902 22:9 902.102 33:7 910 2:17 19:20 22:19 45:3,4 121:14,17 910-10 121:19 910.100 22:22 910.102 23:9 910.104 121:12 135:11 910.105 23:10 910.105(7) 111:1 910.106 45:7 133:23 910.106(6)(e) 47:19 910.106(a) 46:2 910.106(a)(2) 46:6 910.106(a)(4) 47:12 94 83:12,17 84:16 95 83:13	99 3:15,16,18			
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Internal Mic 1 High Range

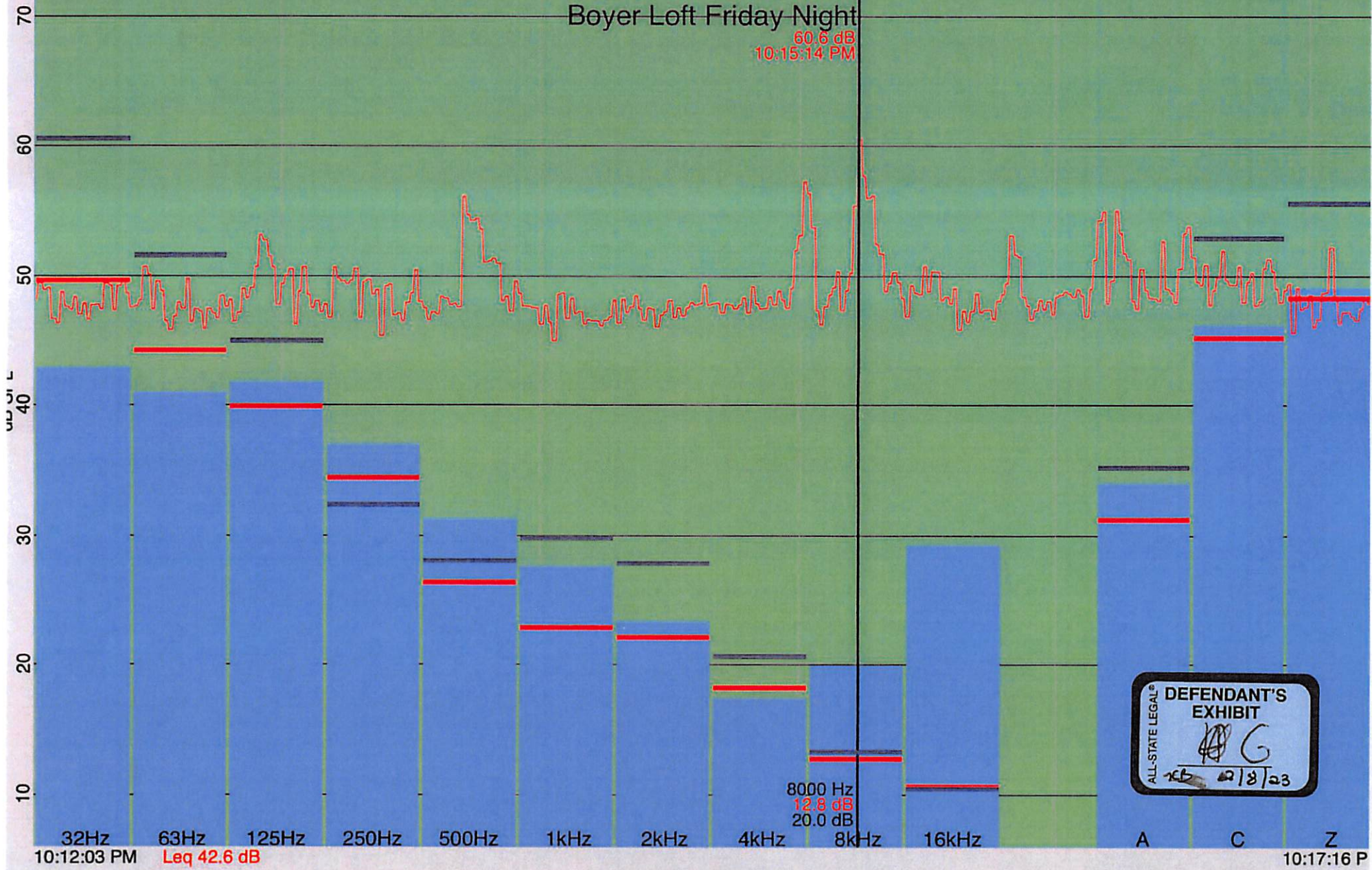
SPL Octave Logging

LZeq: 34.0 dB

4/23/21, 7:33:15 PM - 2:33:14 AM

Boyer Loft Friday Night

60.6 dB
10:15:14 PM



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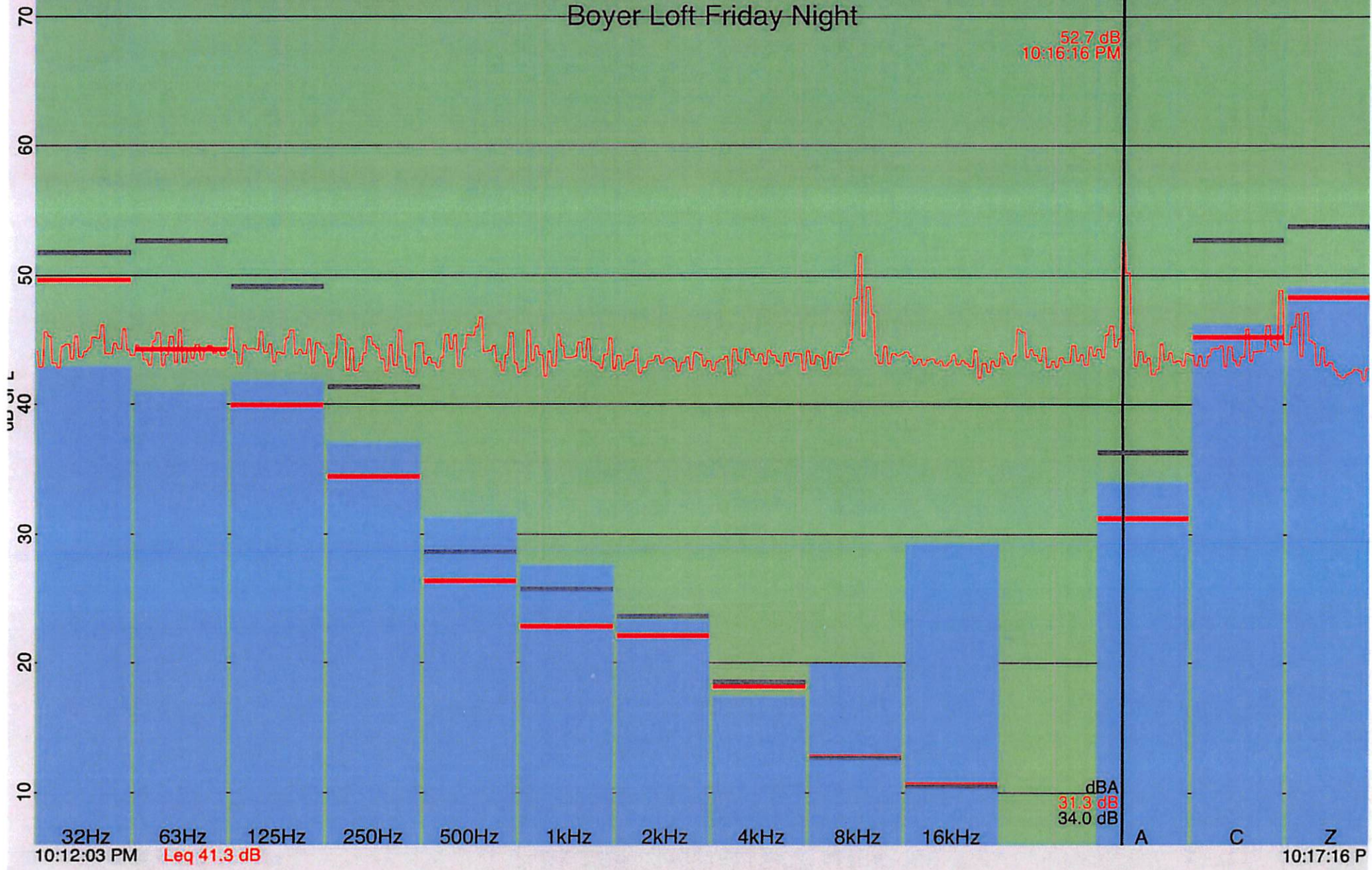
Internal Mic 1 High Range

SPL Octave Logging

LZeq: 34.0 dB

4/23/21, 7:33:15 PM - 2:33:14 AM

Boyer Loft Friday Night



Octave 63 Hz



10:17:16 P

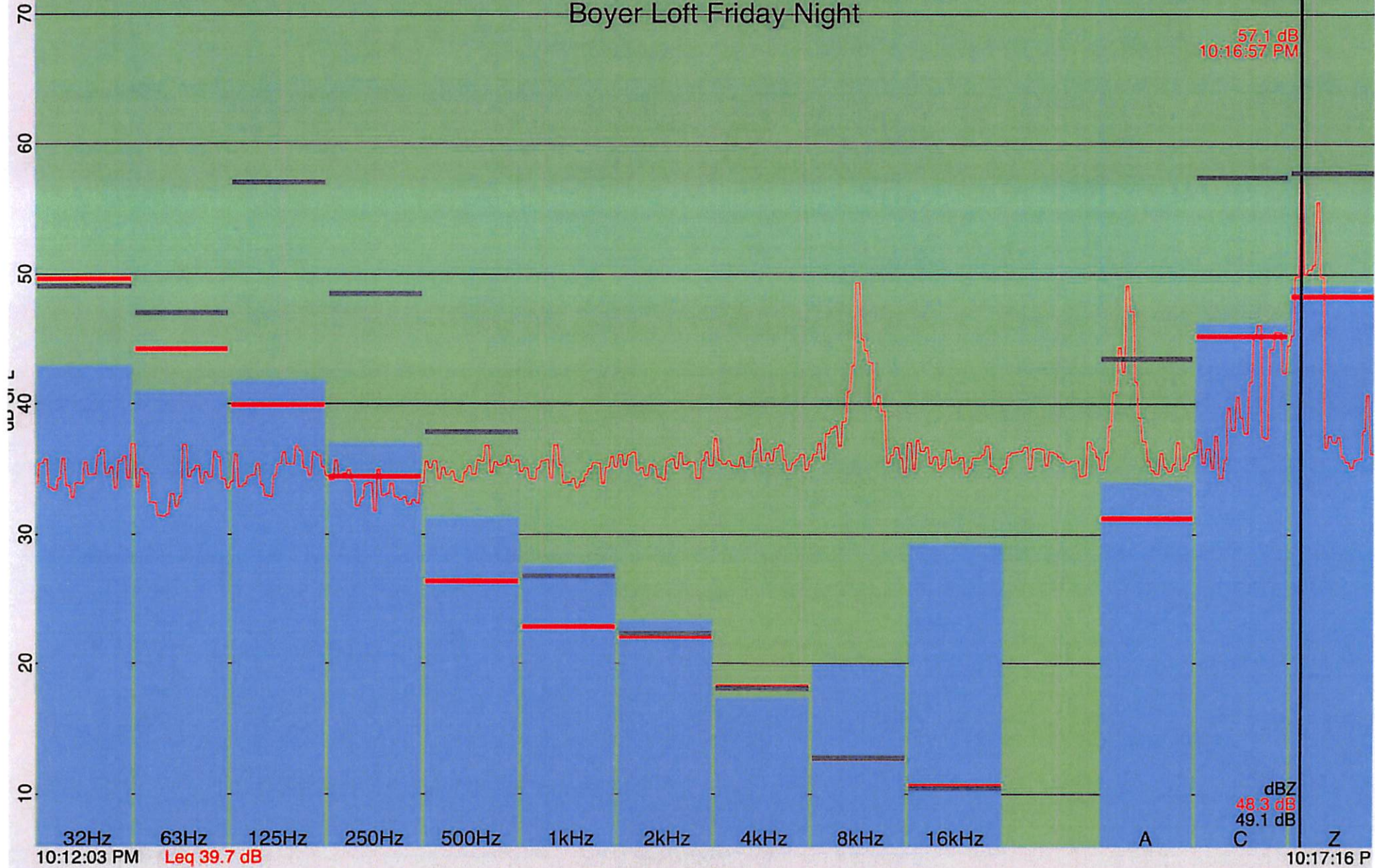
Internal Mic 1 High Range

SPL Octave Logging

LZeq: 34.0 dB

4/23/21, 7:33:15 PM - 2:33:14 AM

Boyer Loft Friday Night



Internal Mic 1 High Range

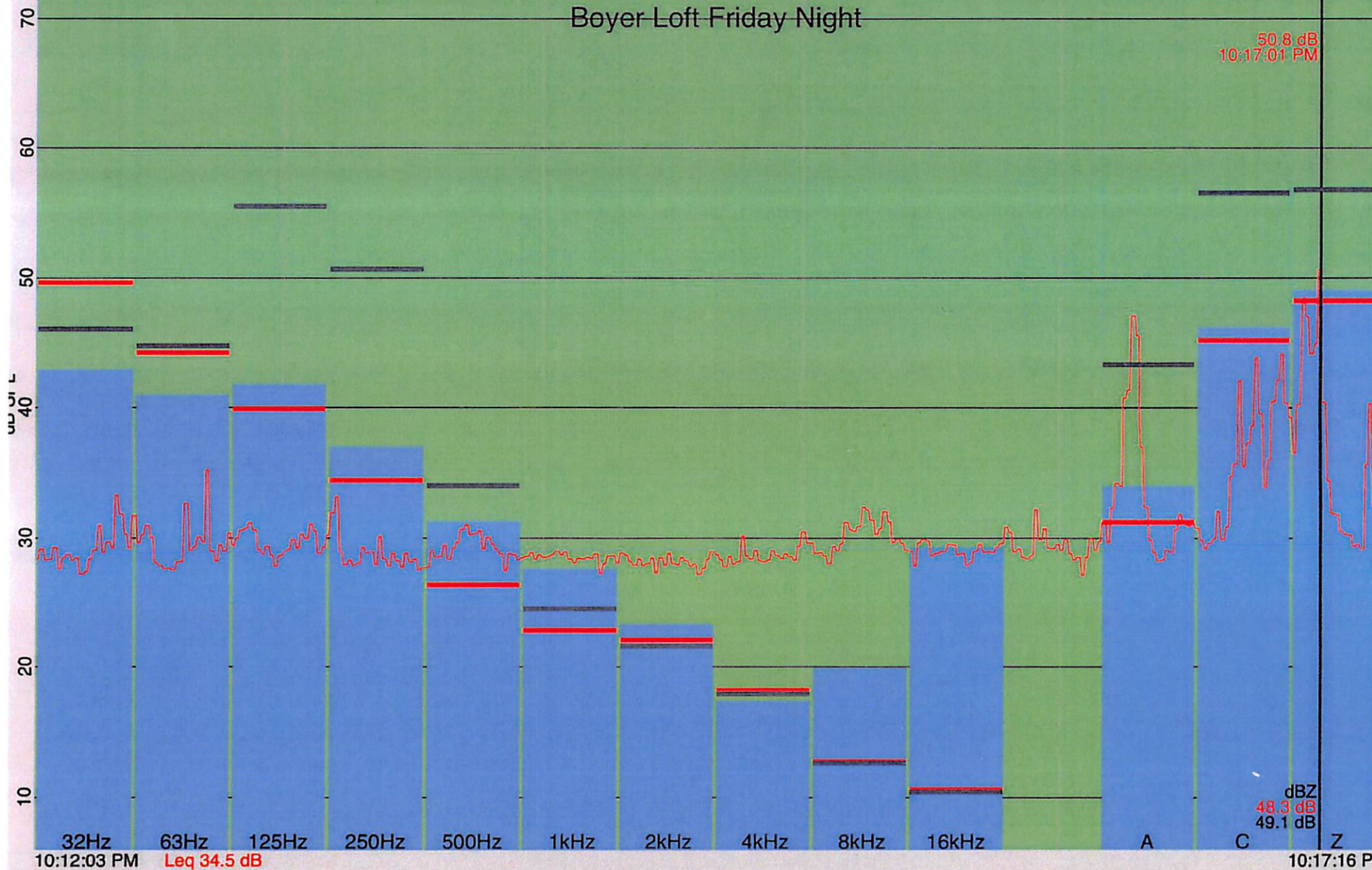
SPL Octave Logging

LZeq: 34.0 dB

4/23/21, 7:33:15 PM - 2:33:14 AM

Boyer Loft Friday Night

50.8 dB
10:17:01 PM



dBZ
48.3 dB
49.1 dB

10:12:03 PM

Leq 34.5 dB

10:17:16 P

Octave 250 Hz



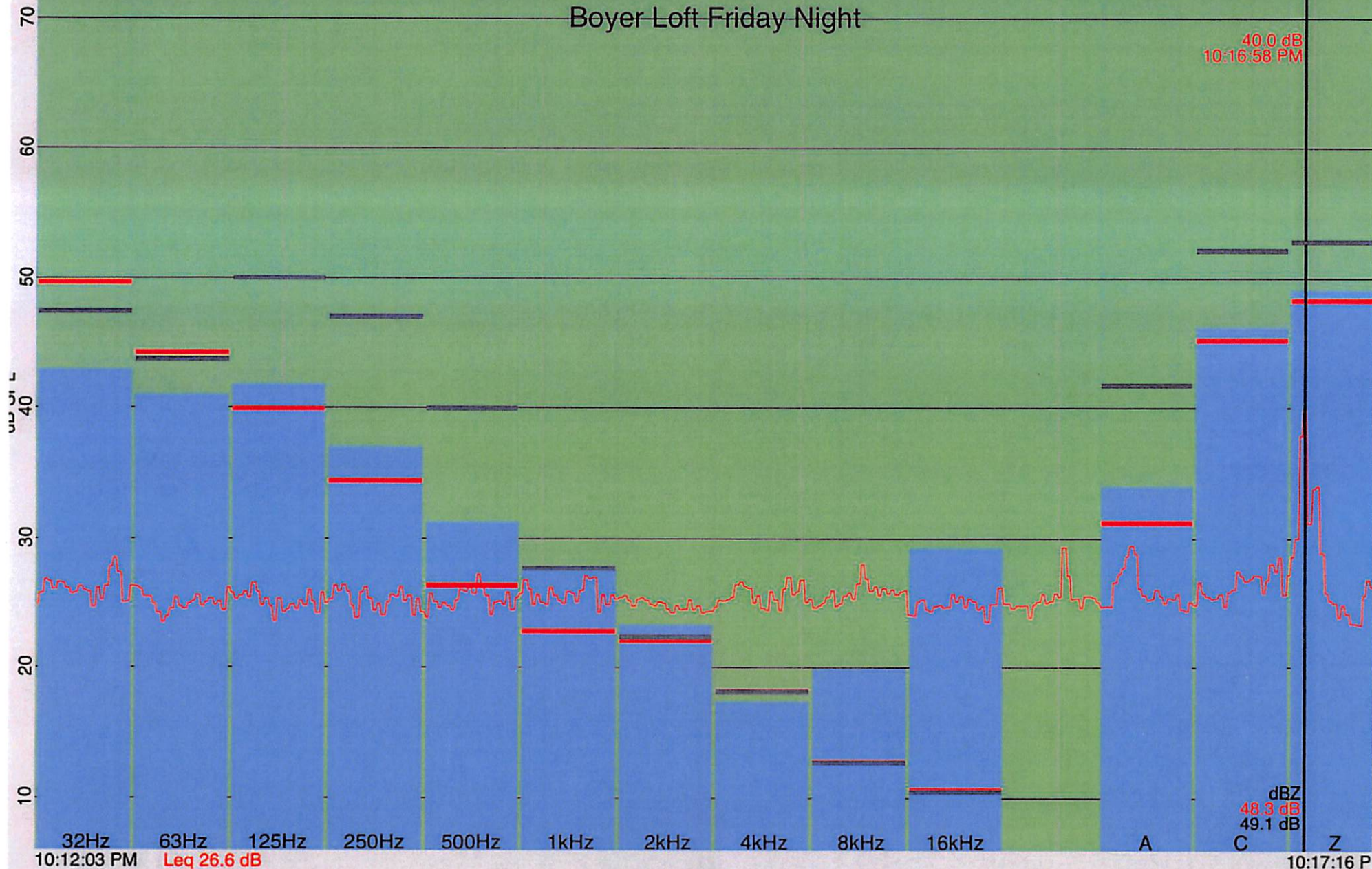
Internal Mic 1 High Range

SPL Octave Logging

LZeq: 34.0 dB

4/23/21, 7:33:15 PM - 2:33:14 AM

Boyer Loft Friday Night



Internal Mic 1 High Range

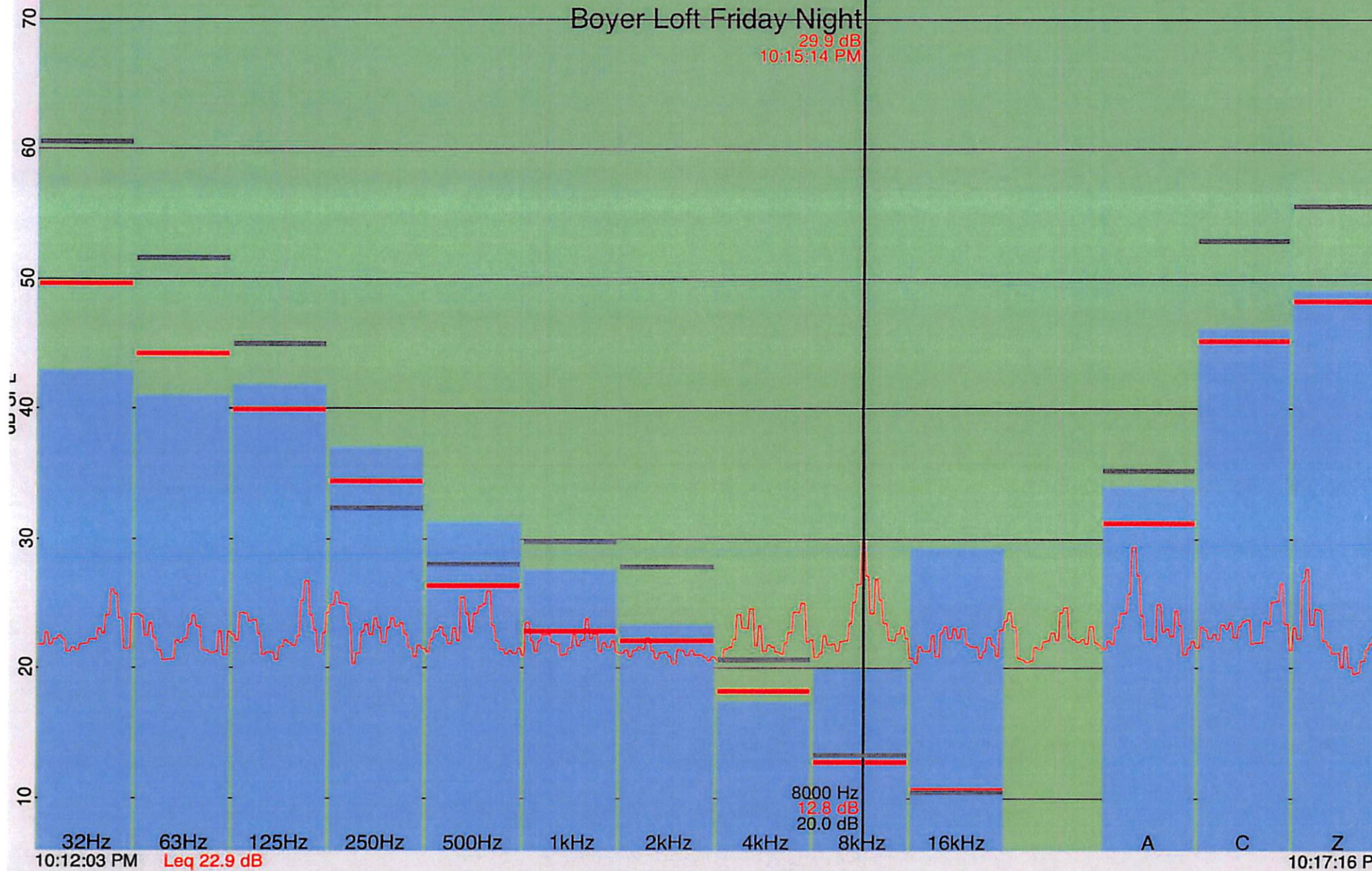
SPL Octave Logging

LZeq: 34.0 dB

4/23/21, 7:33:15 PM - 2:33:14 AM

Boyer Loft Friday Night

29.9 dB
10:15:14 PM



Octave 1 kHz



Internal Mic 1 High Range

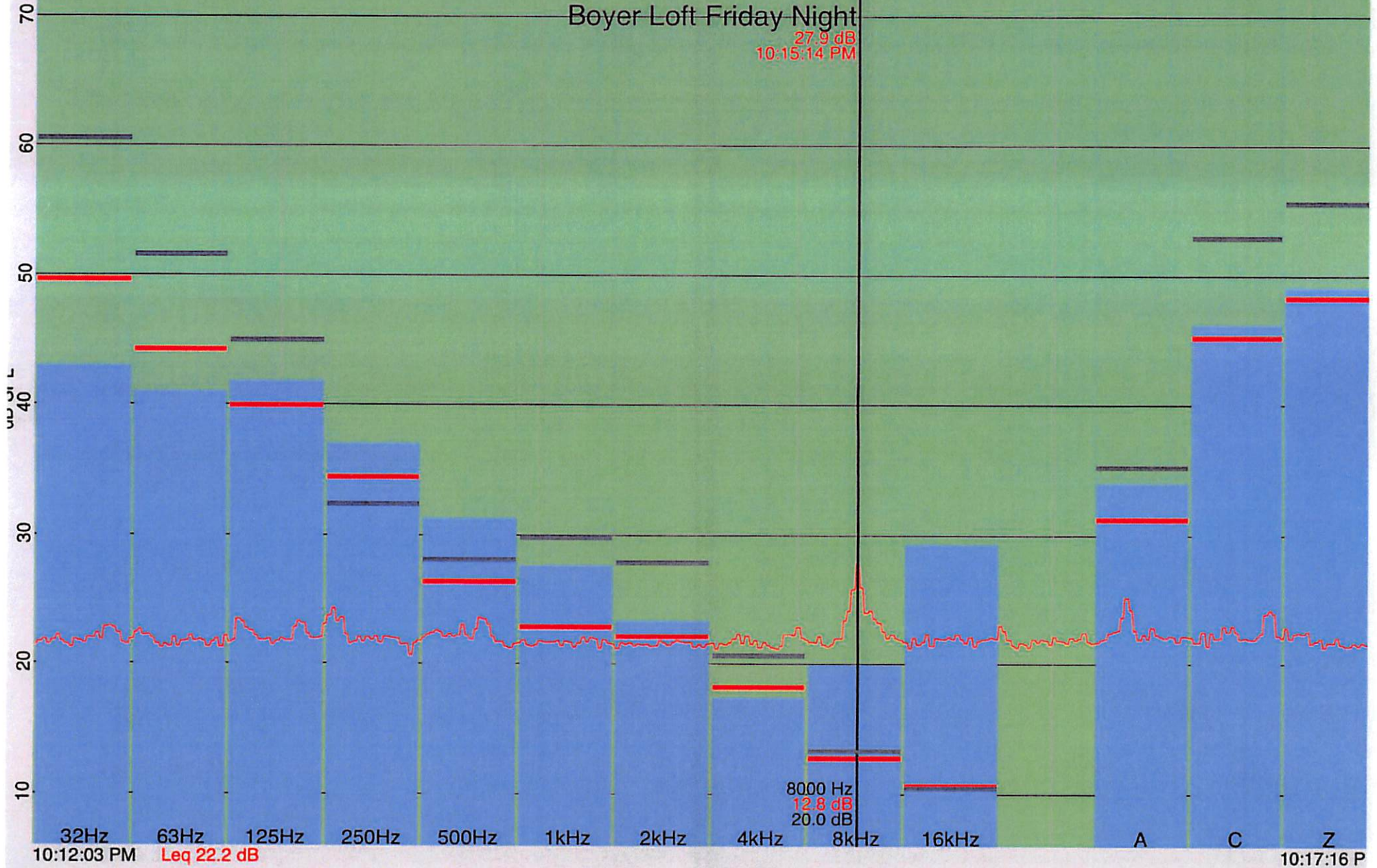
SPL Octave Logging

LZeq: 34.0 dB

4/23/21, 7:33:15 PM - 2:33:14 AM

Boyer Loft Friday Night

27.9 dB
10:15:14 PM



10:12:03 PM Leq 22.2 dB

8000 Hz
12.8 dB
20.0 dB

10:17:16 P



Internal Mic 1 High Range

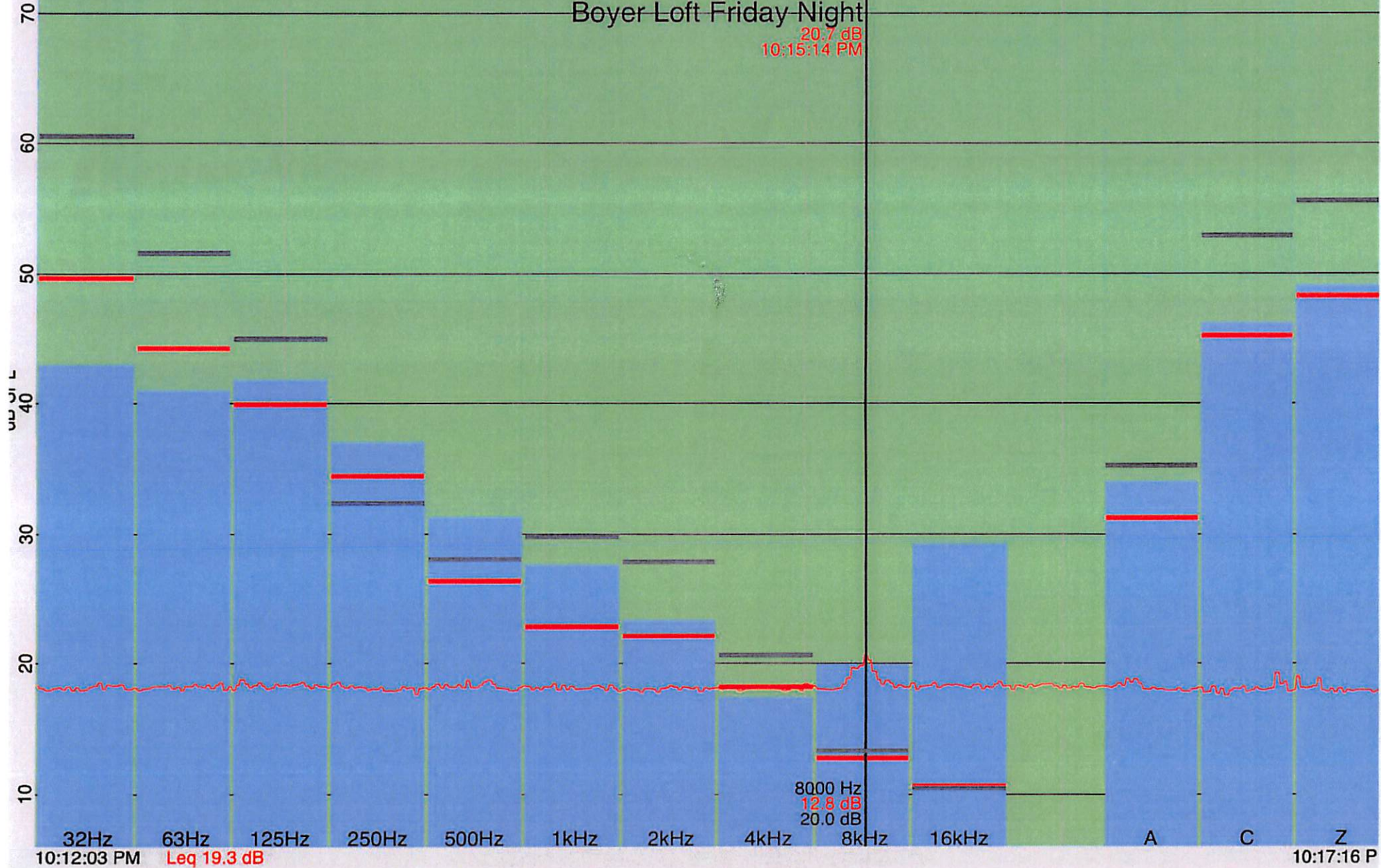
SPL Octave Logging

LZeq: 34.0 dB

4/23/21, 7:33:15 PM - 2:33:14 AM

Boyer Loft Friday Night

20.7 dB
10:15:14 PM



10:12:03 PM Leq 19.3 dB

10:17:16 P

Octave 4 kHz



Internal Mic 1 High Range

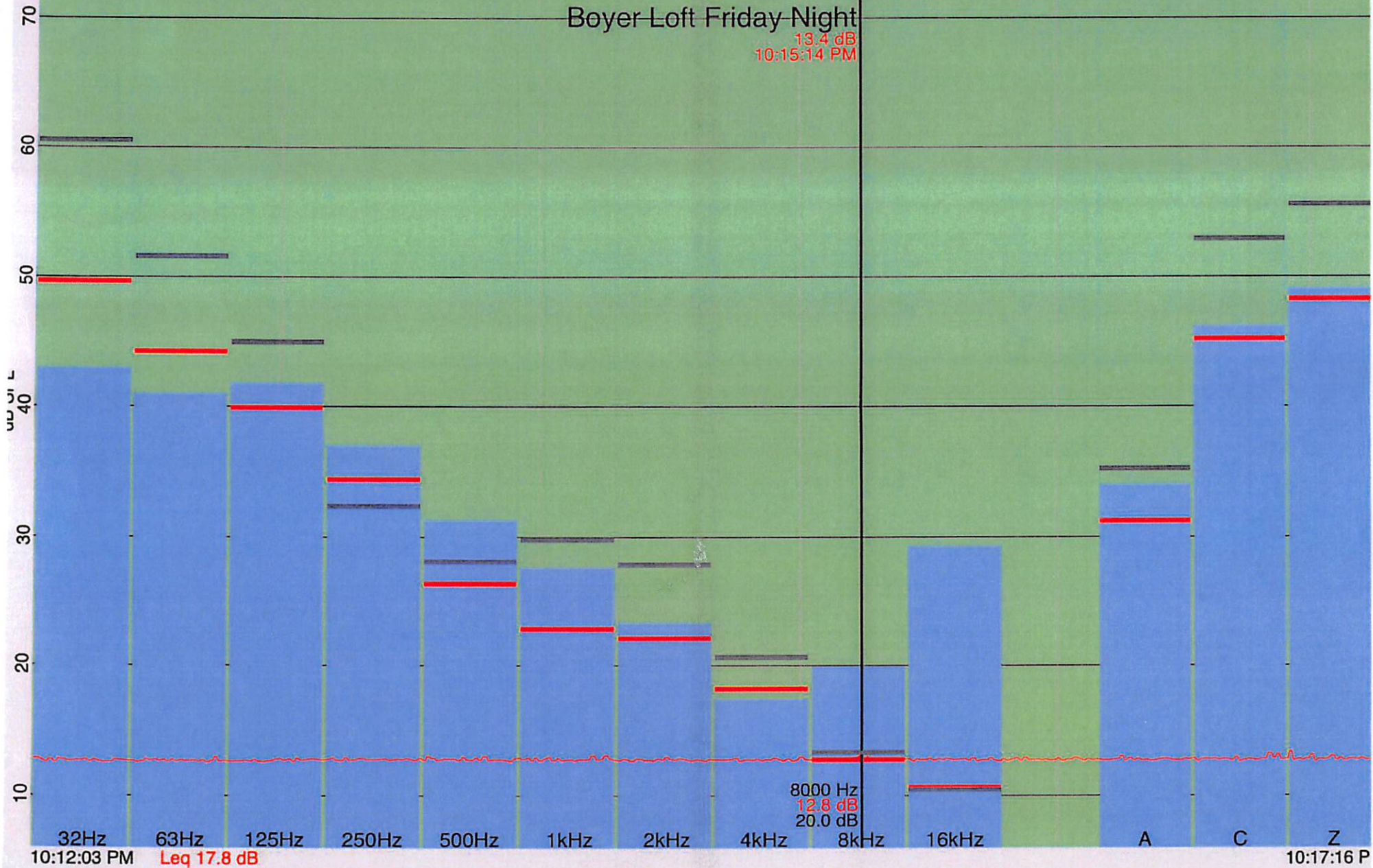
SPL Octave Logging

LZeq: 34.0 dB

4/23/21, 7:33:15 PM - 2:33:14 AM

Boyer Loft Friday Night

13.4 dB
10:15:14 PM



Internal Mic 1 High Range

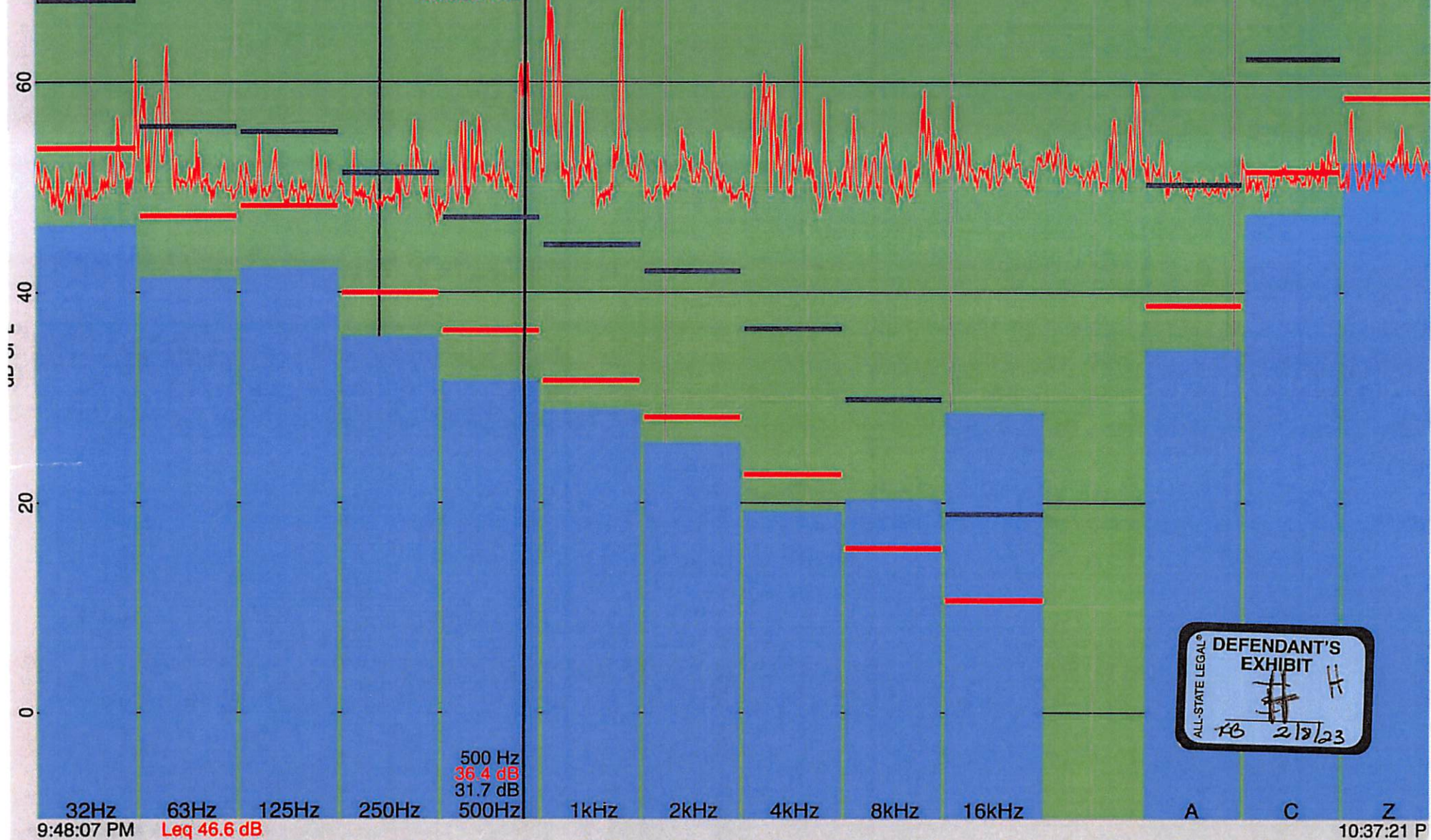
SPL Octave Logging

LZeq: 34.6 dB

4/24/21, 10:51:04 AM - 1:51:03 AM

Boyer Loft Saturday

69.3 dB
10:05:07 PM



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Internal Mic 1 High Range

SPL Octave Logging

LZeq: 34.6 dB

4/24/21, 10:51:04 AM - 1:51:03 AM

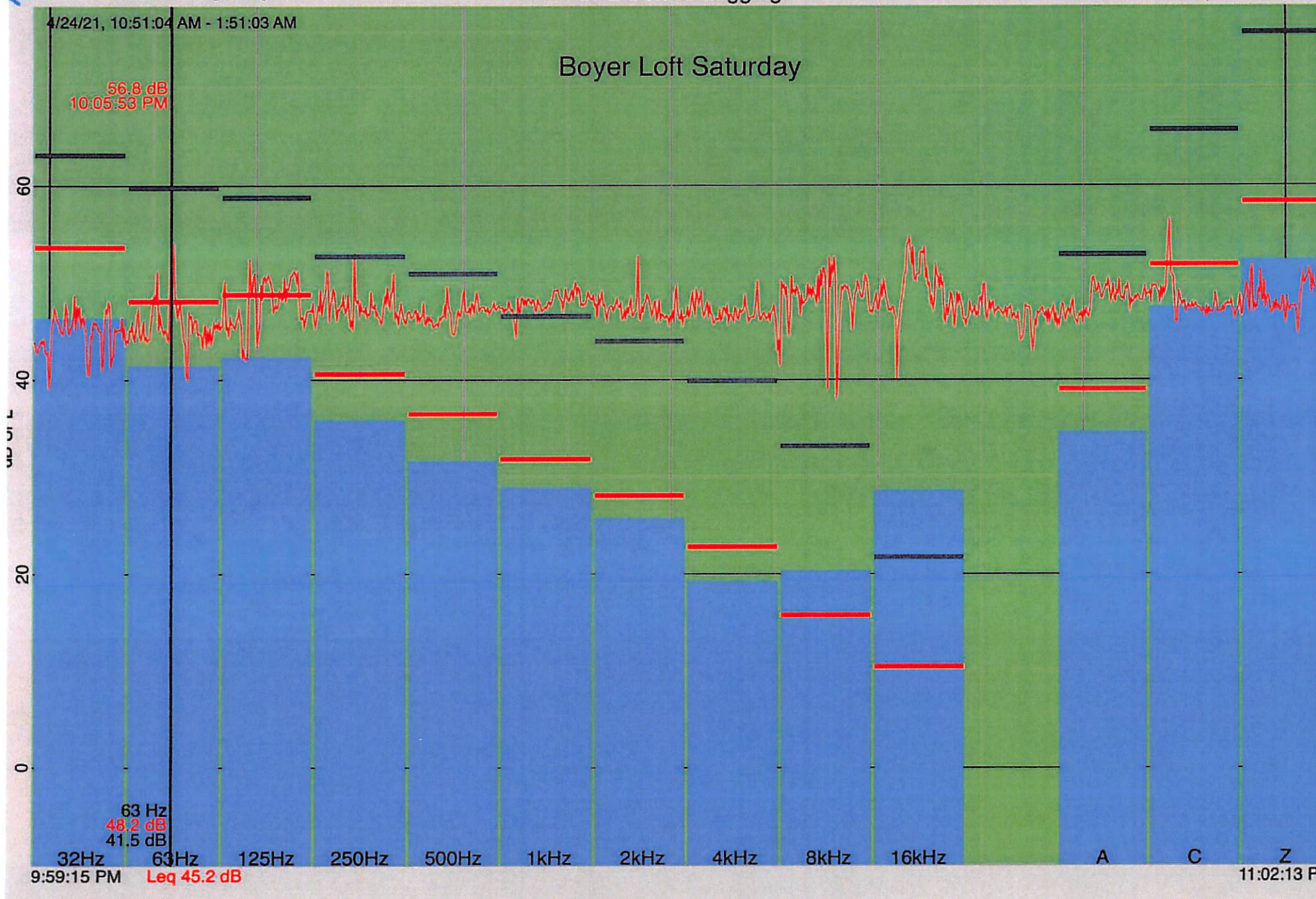
Boyer Loft Saturday

56.8 dB
10:05:53 PM

60
40
20
0

32Hz 63Hz 125Hz 250Hz 500Hz 1kHz 2kHz 4kHz 8kHz 16kHz A C Z
9:59:15 PM Leq 45.2 dB 11:02:13 PM

Octave 63 Hz



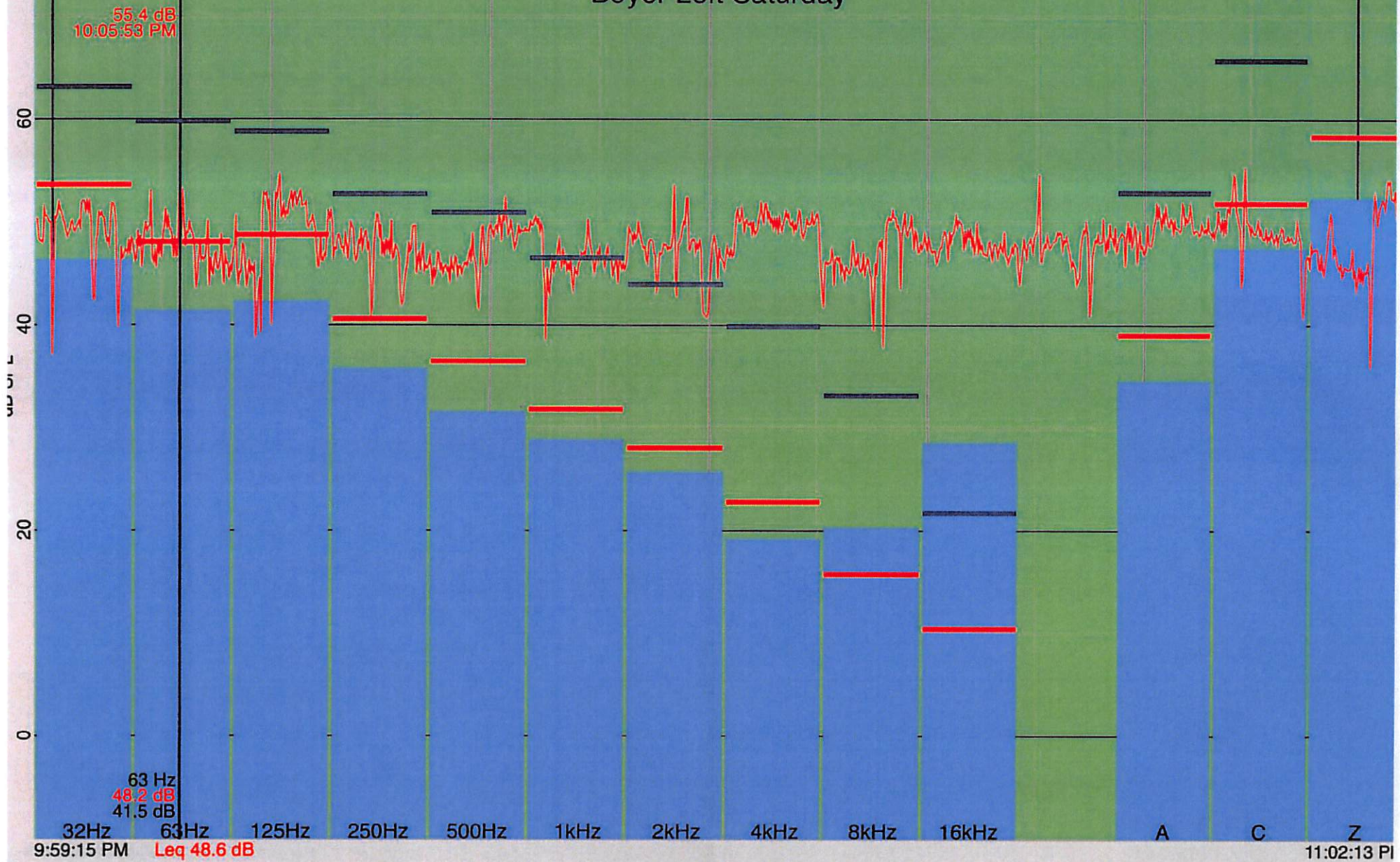
Internal Mic 1 High Range

SPL Octave Logging

LZeq: 34.6 dB

4/24/21, 10:51:04 AM - 1:51:03 AM

Boyer Loft Saturday



Octave 125 Hz



11:02:13 PM

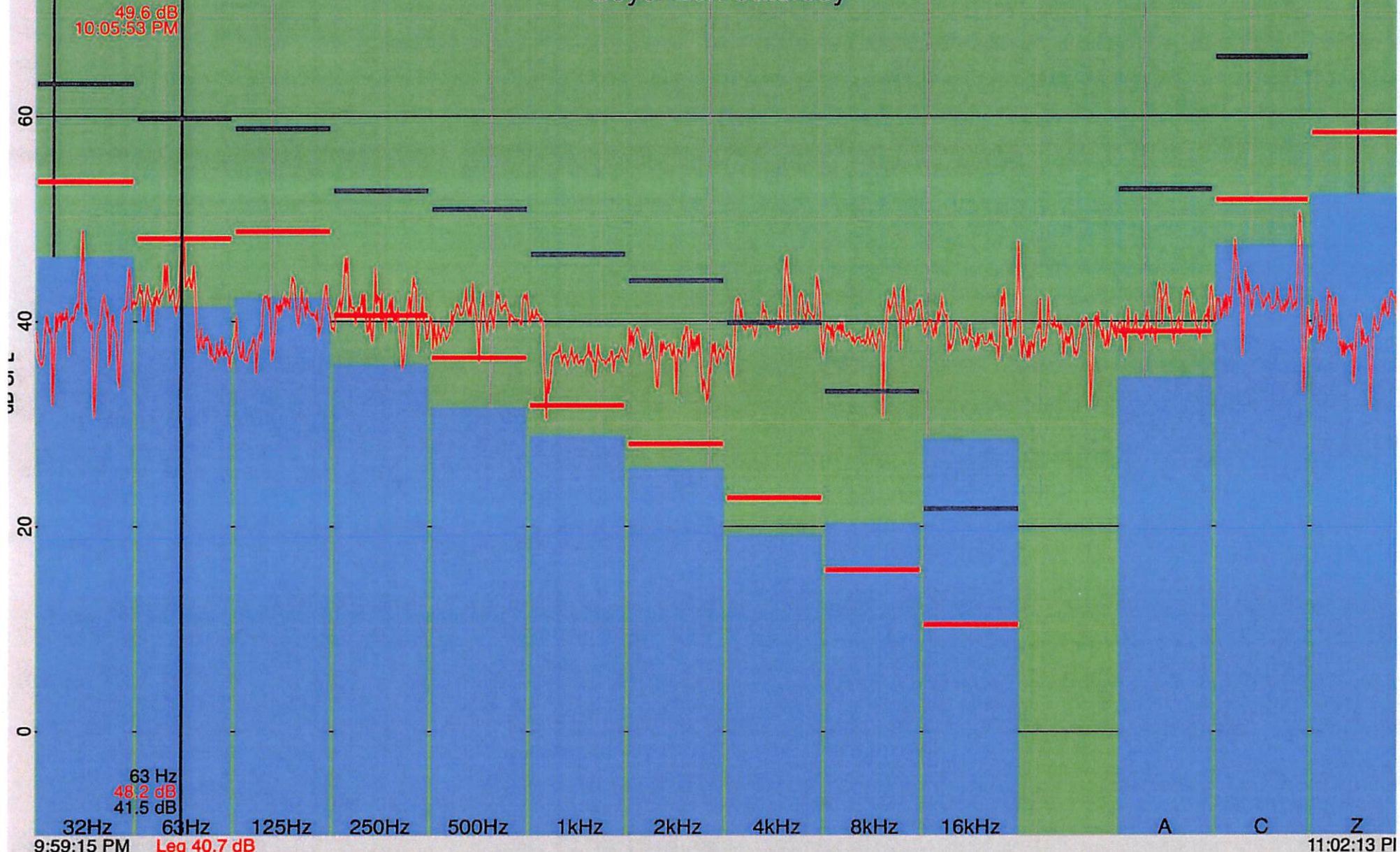
Internal Mic 1 High Range

SPL Octave Logging

LZeq: 34.6 dB

4/24/21, 10:51:04 AM - 1:51:03 AM

Boyer Loft Saturday



Octave 250 Hz



11:02:13 PM

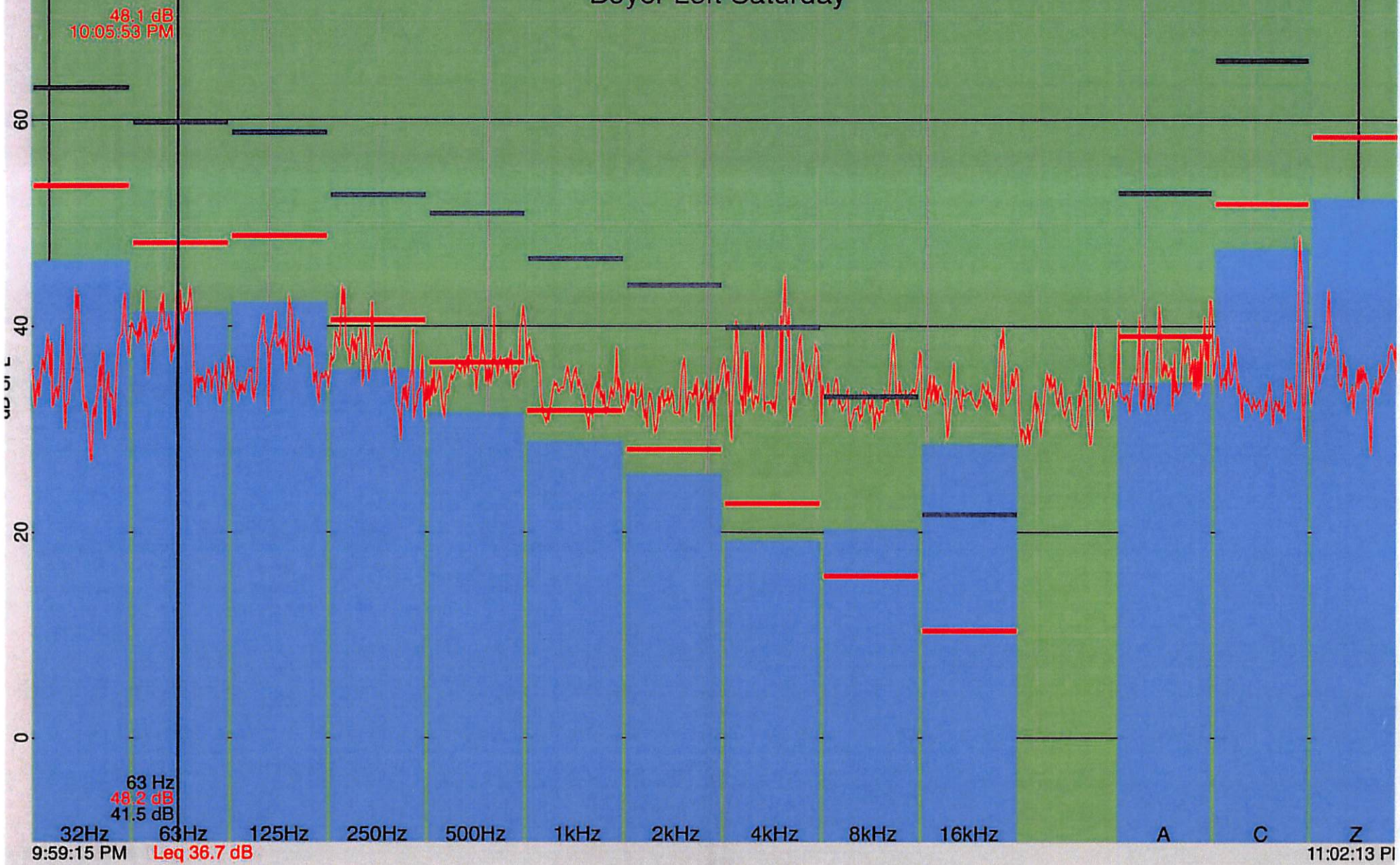
Internal Mic 1 High Range

SPL Octave Logging

LZeq: 34.6 dB

4/24/21, 10:51:04 AM - 1:51:03 AM

Boyer Loft Saturday



9:59:15 PM

11:02:13 PM

Octave 500 Hz



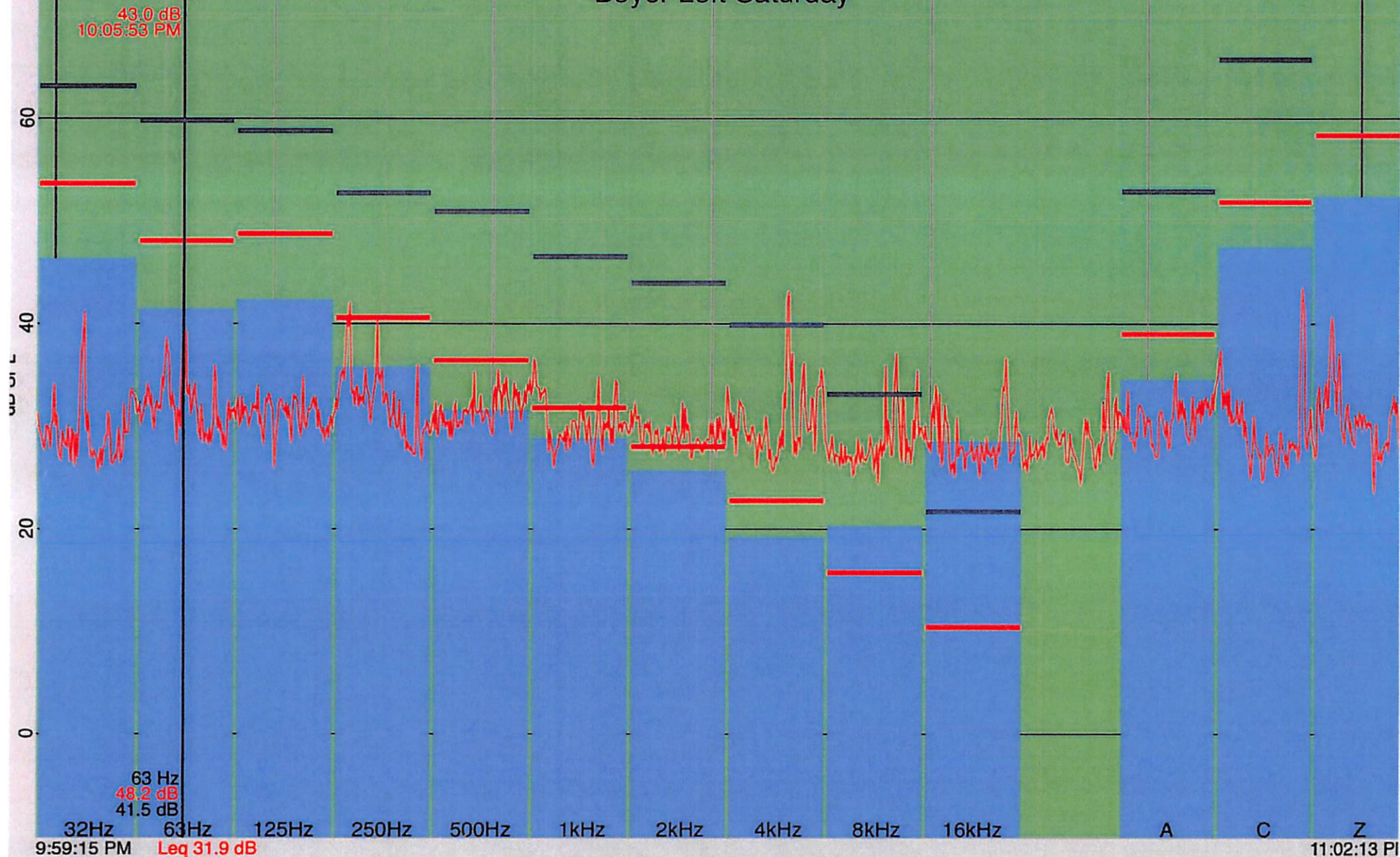
Internal Mic 1 High Range

SPL Octave Logging

LZeq: 34.6 dB

4/24/21, 10:51:04 AM - 1:51:03 AM

Boyer Loft Saturday



Octave 1 kHz



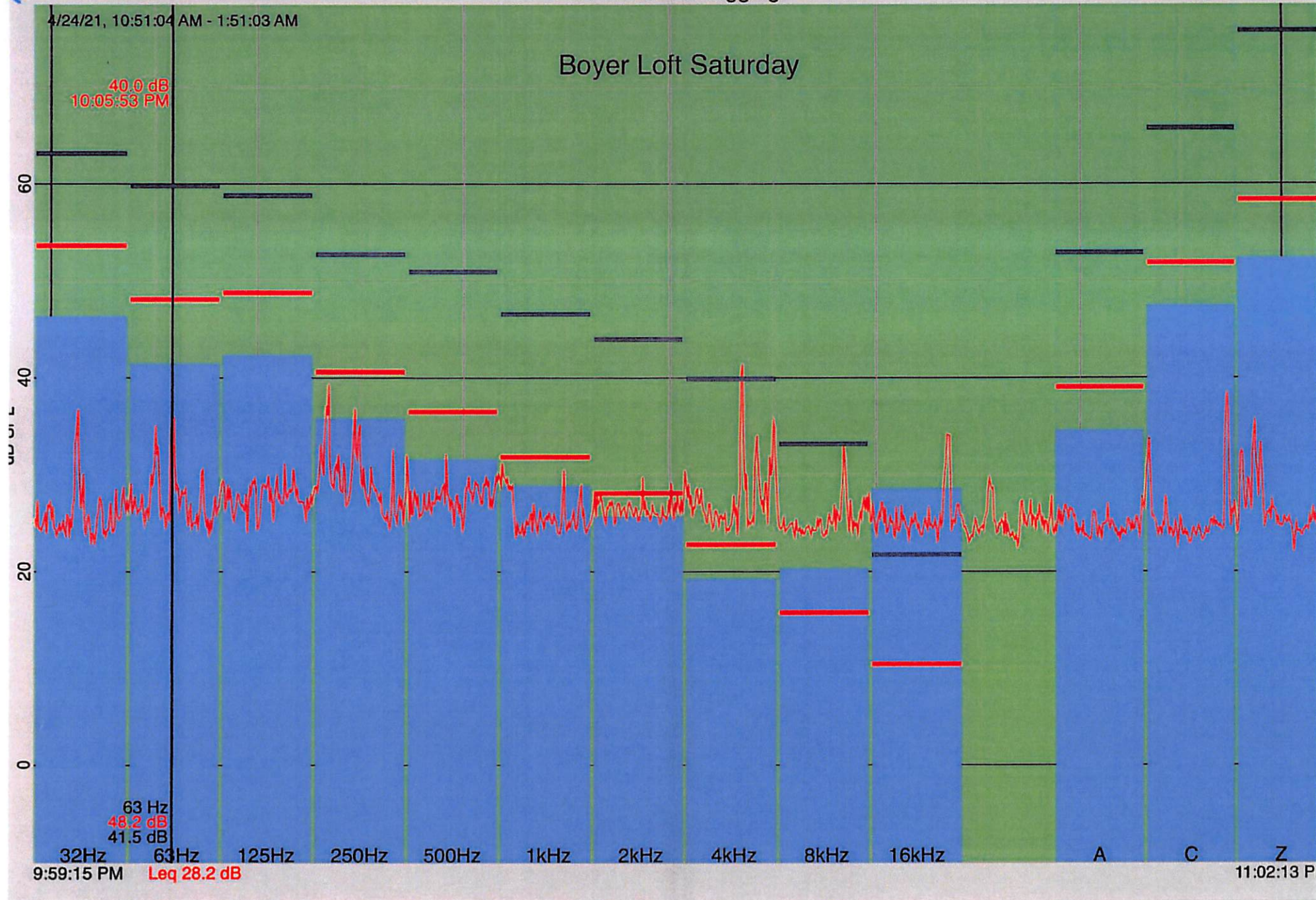
Internal Mic 1 High Range

SPL Octave Logging

LZeq: 34.6 dB

4/24/21, 10:51:04 AM - 1:51:03 AM

Boyer Loft Saturday



Octave 2 kHz



Internal Mic 1 High Range

SPL Octave Logging

LZeq: 34.6 dB

4/24/21, 10:51:04 AM - 1:51:03 AM

Boyer Loft Saturday



Octave 4 kHz



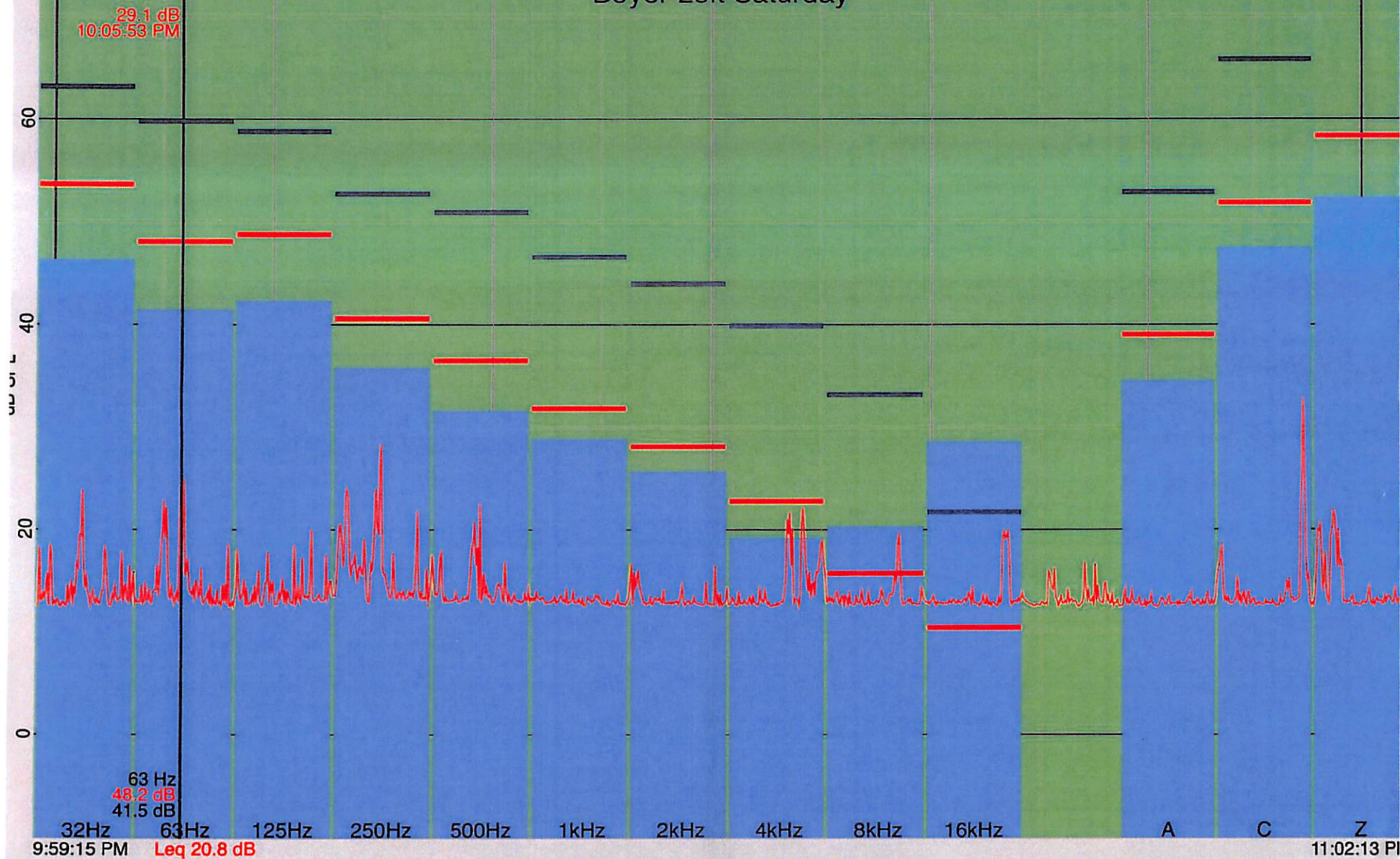
Internal Mic 1 High Range

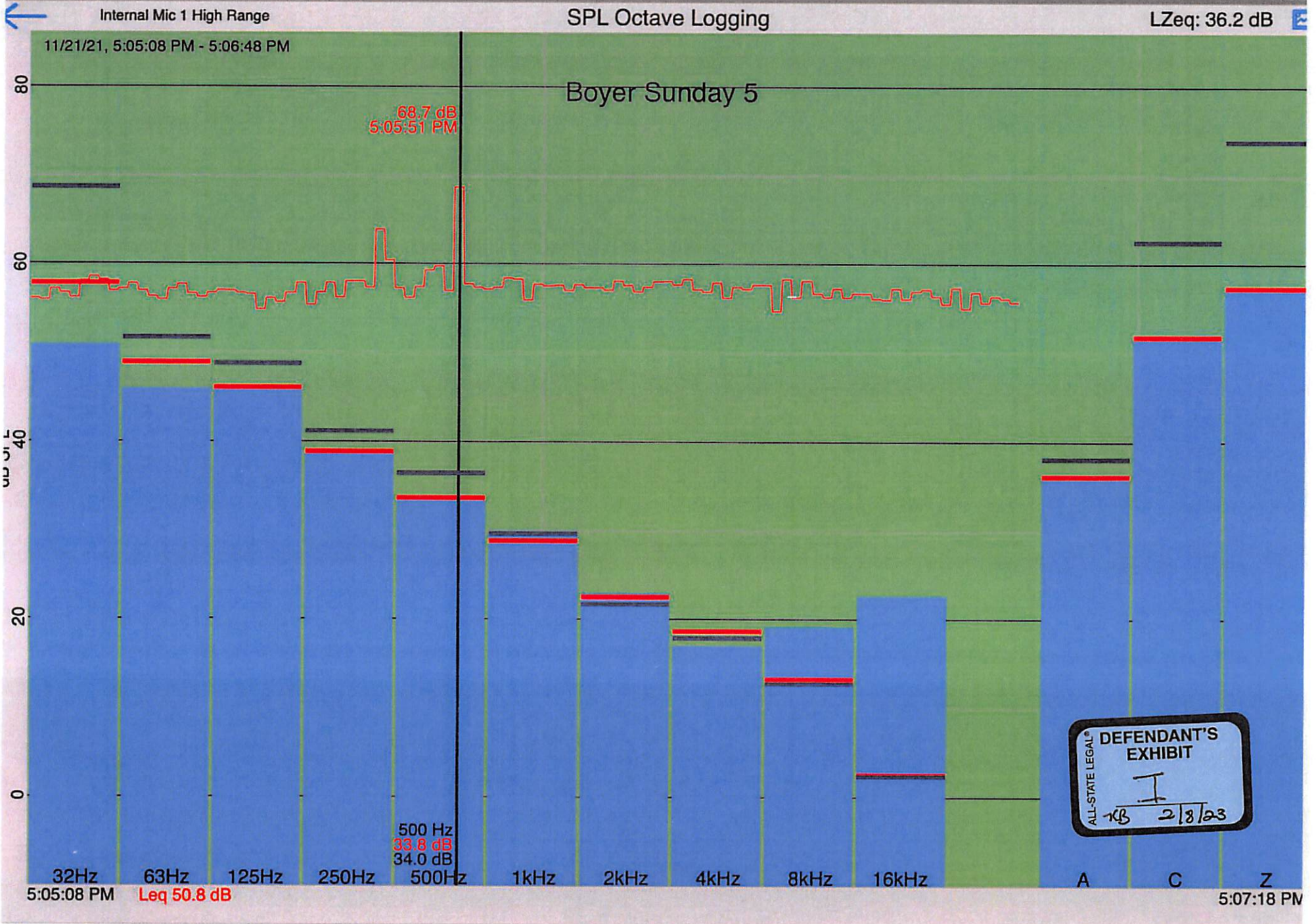
SPL Octave Logging

LZeq: 34.6 dB

4/24/21, 10:51:04 AM - 1:51:03 AM

Boyer Loft Saturday





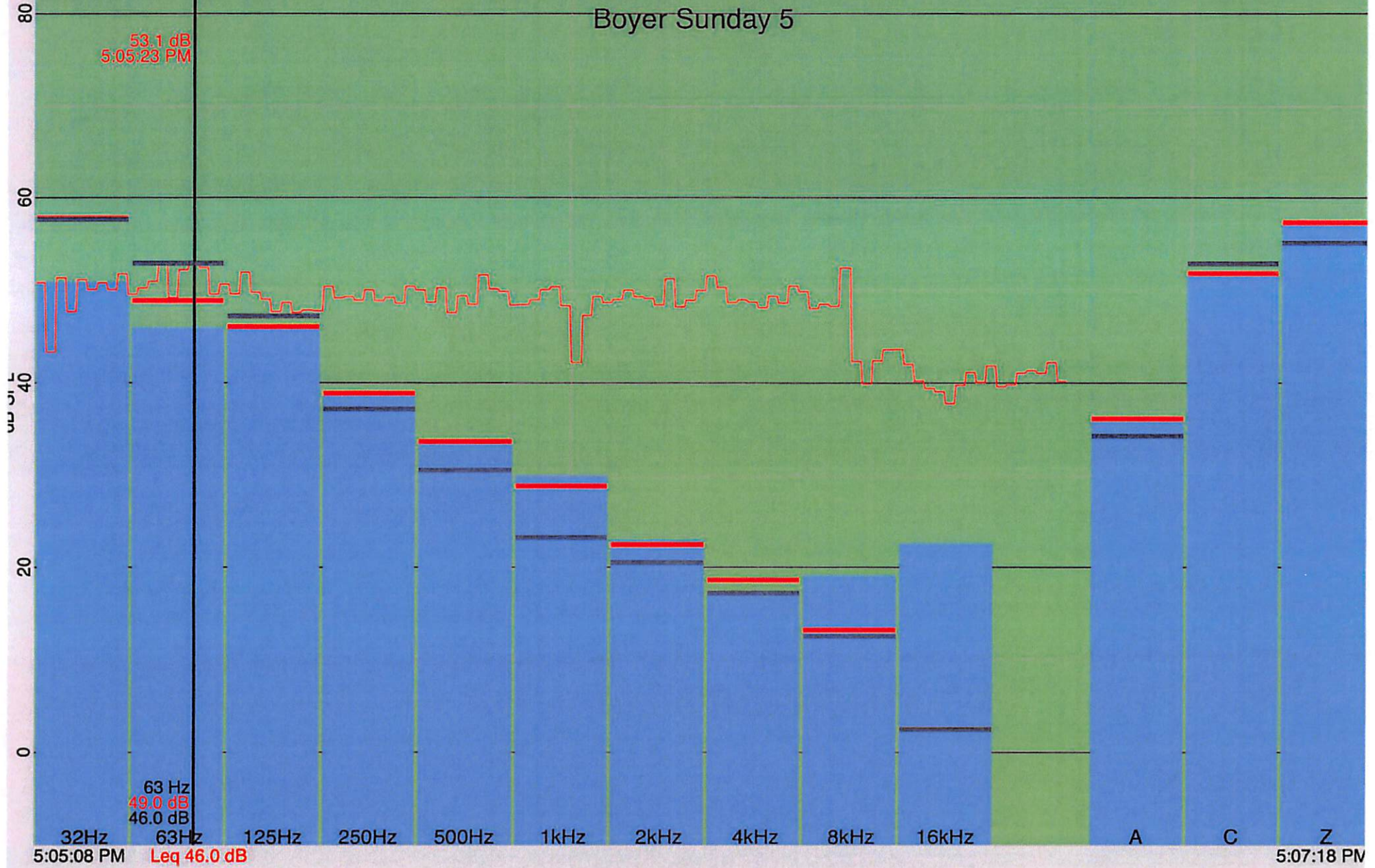
Internal Mic 1 High Range

SPL Octave Logging

LZeq: 36.2 dB

11/21/21, 5:05:08 PM - 5:06:48 PM

Boyer Sunday 5



Octave 63 Hz



5:07:18 PM

Internal Mic 1 High Range

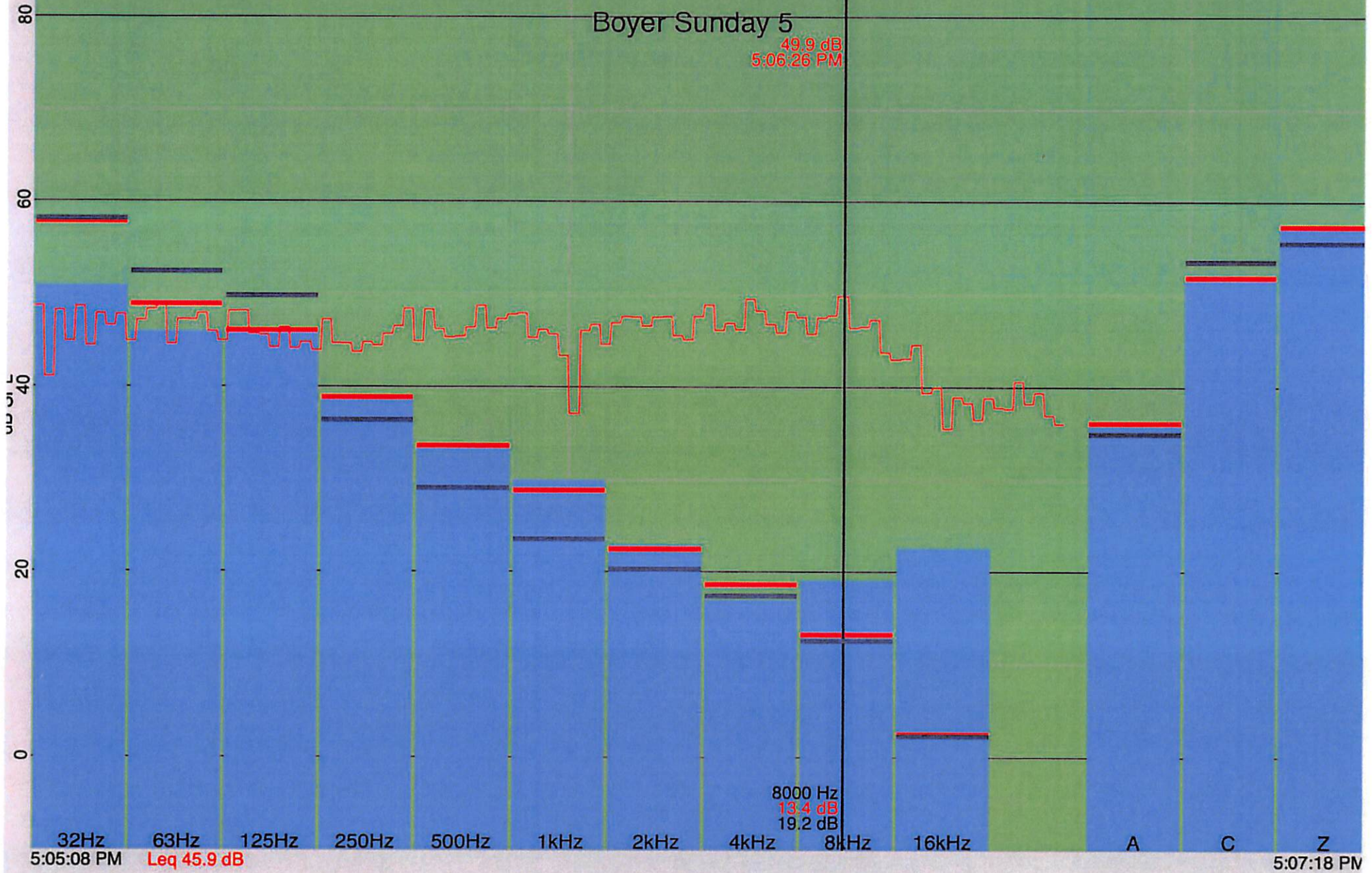
SPL Octave Logging

LZeq: 36.2 dB

11/21/21, 5:05:08 PM - 5:06:48 PM

Boyer Sunday 5

49.9 dB
5:06:26 PM



Octave 125 Hz



5:07:18 PM

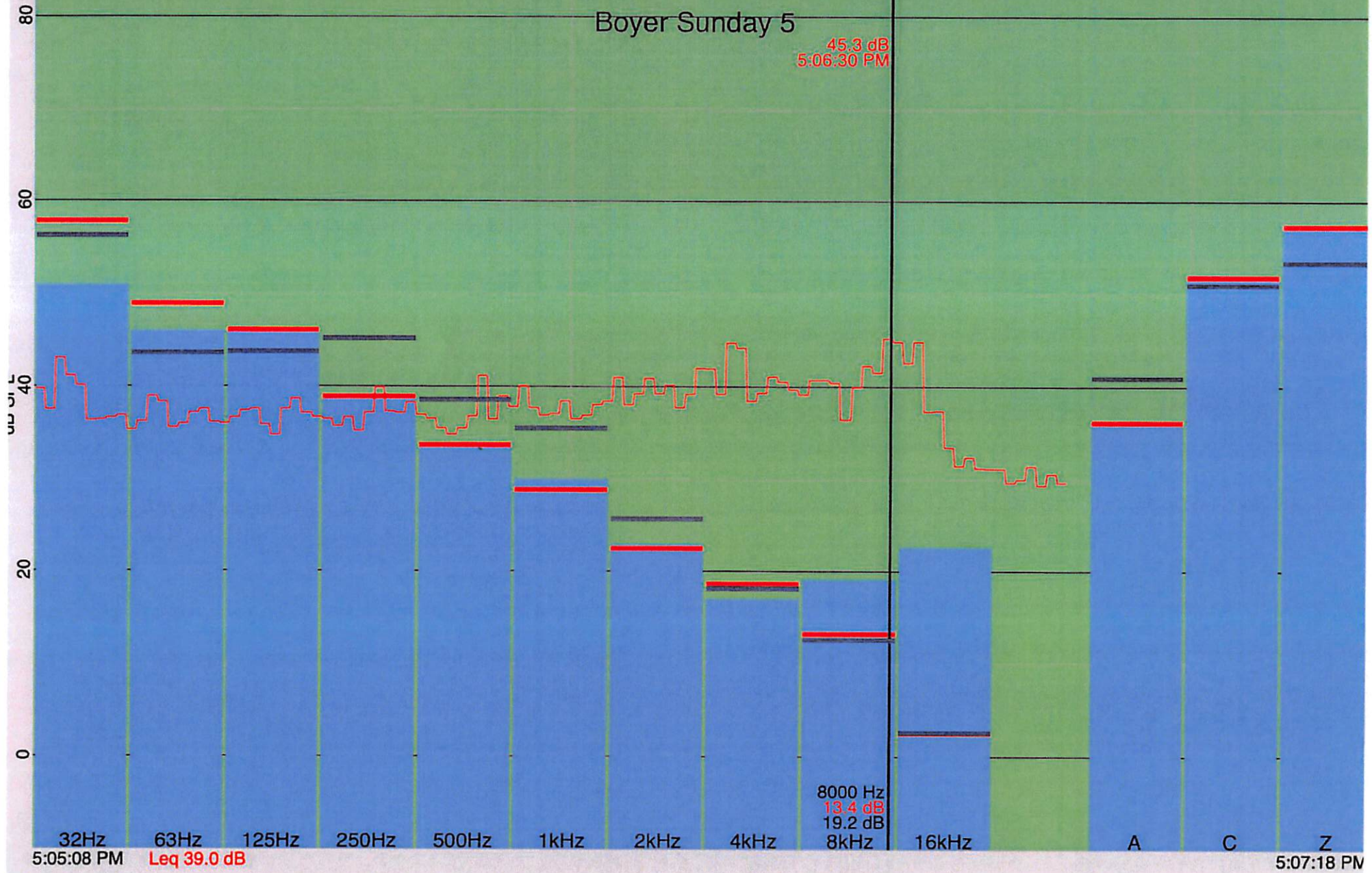
Internal Mic 1 High Range

SPL Octave Logging

LZeq: 36.2 dB

11/21/21, 5:05:08 PM - 5:06:48 PM

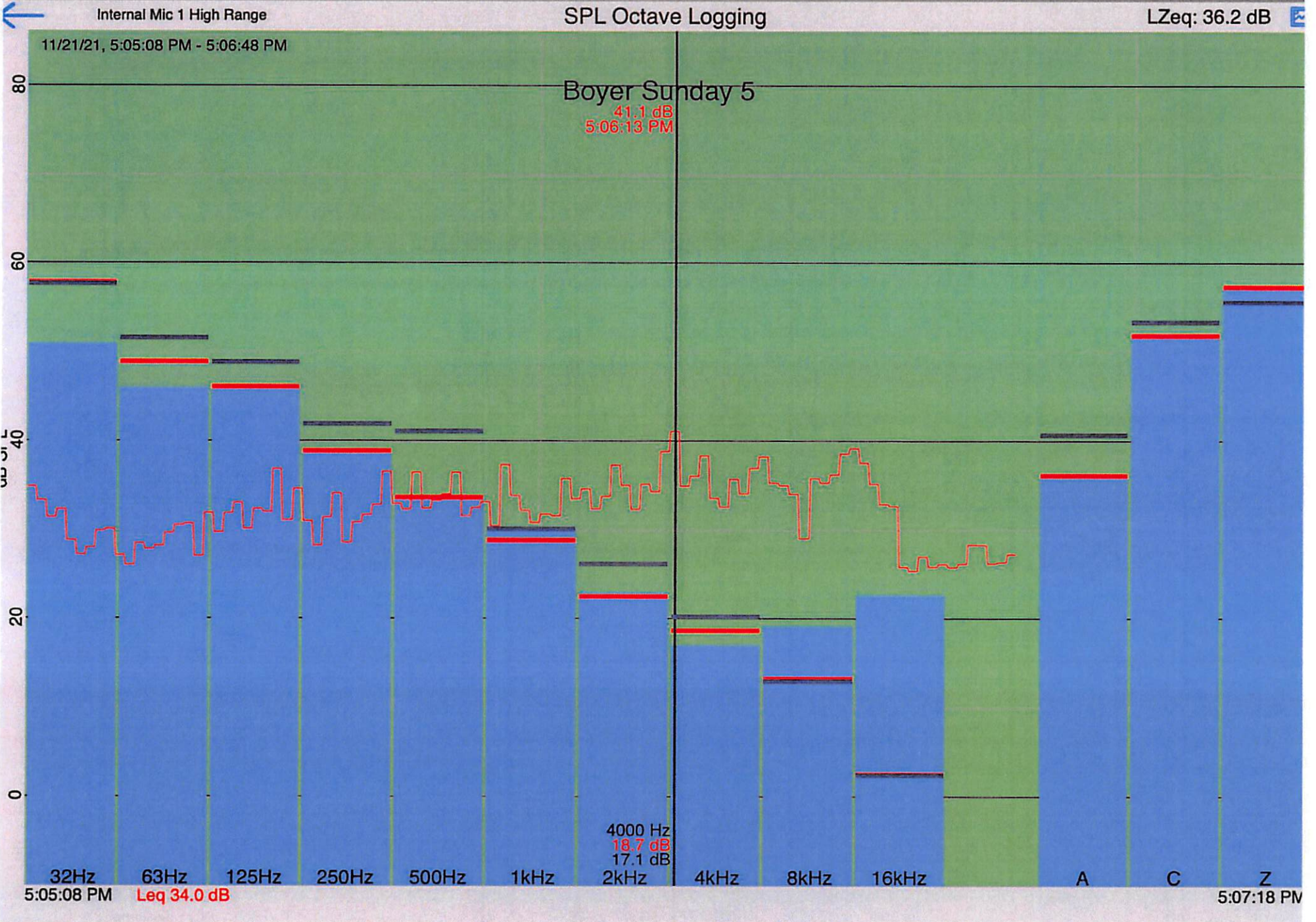
Boyer Sunday 5



Octave 250 Hz



5:07:18 PM



Internal Mic 1 High Range

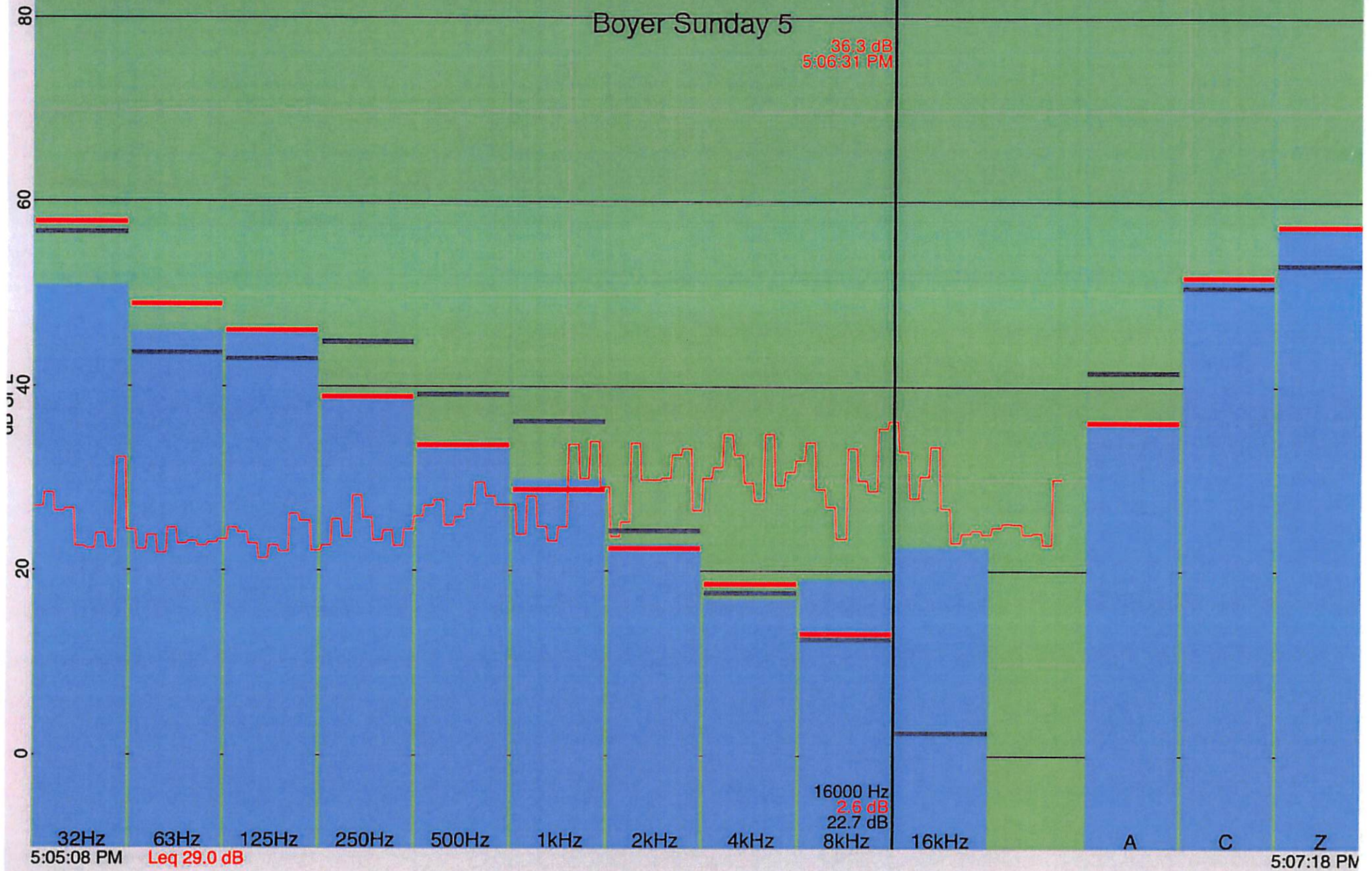
SPL Octave Logging

LZeq: 36.2 dB

11/21/21, 5:05:08 PM - 5:06:48 PM

Boyer Sunday 5

36.3 dB
5:06:31 PM



Octave 1 kHz



5:07:18 PM

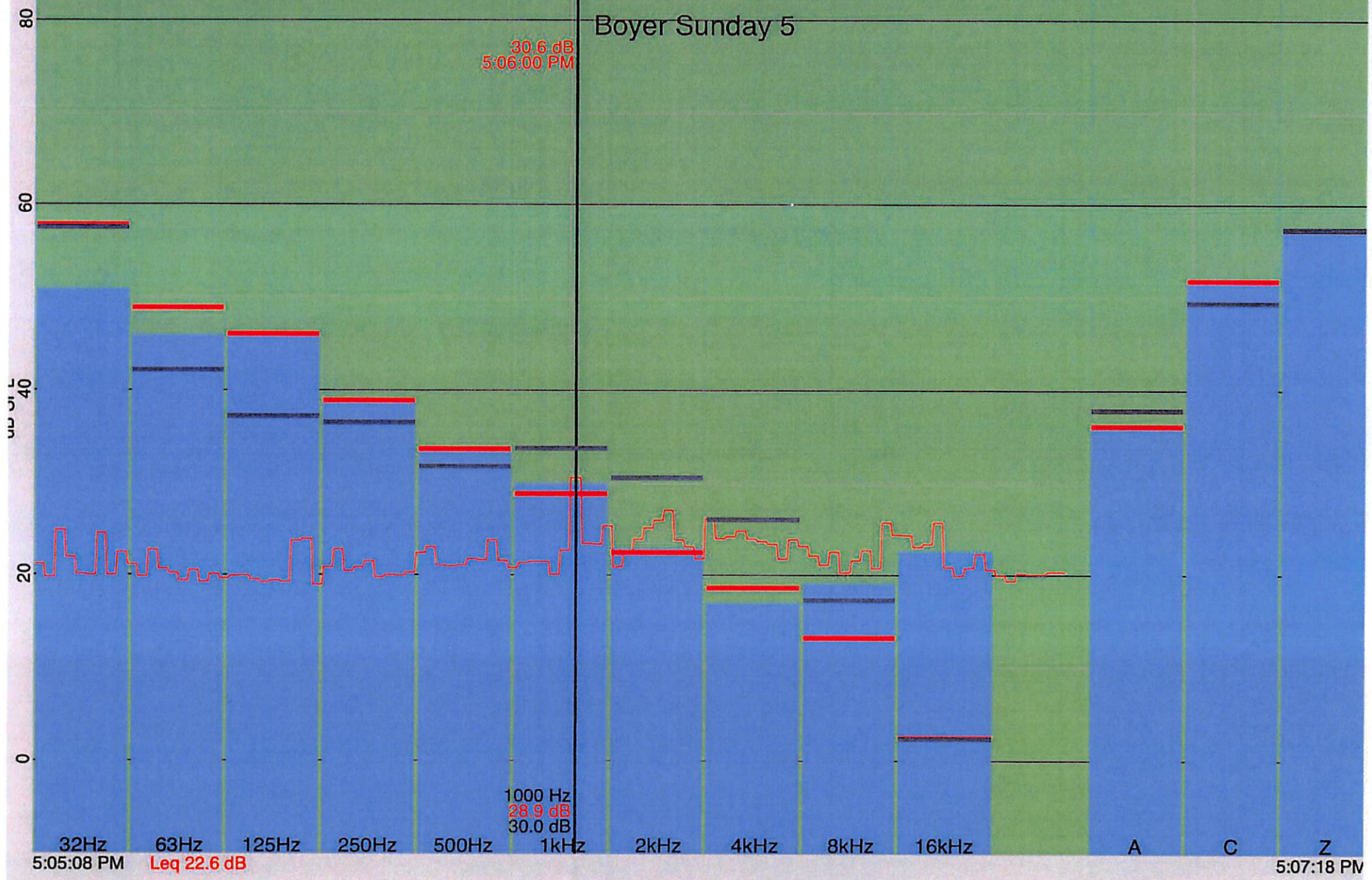
Internal Mic 1 High Range

SPL Octave Logging

LZeq: 36.2 dB

11/21/21, 5:05:08 PM - 5:06:48 PM

Boyer Sunday 5



Octave 2 kHz



5:07:18 PM

Internal Mic 1 High Range

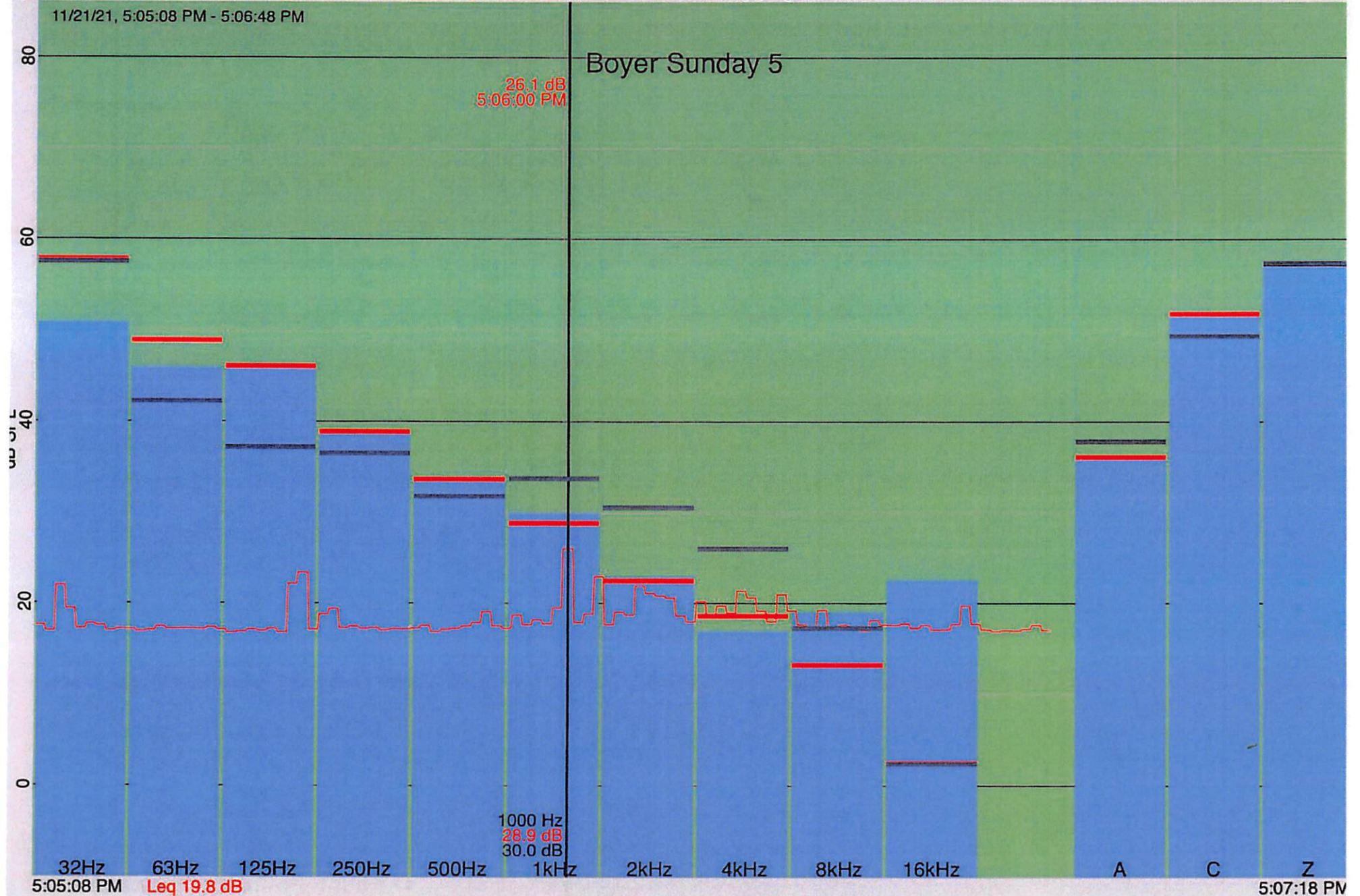
SPL Octave Logging

LZeq: 36.2 dB

11/21/21, 5:05:08 PM - 5:06:48 PM

Boyer Sunday 5

26.1 dB
5:06:00 PM



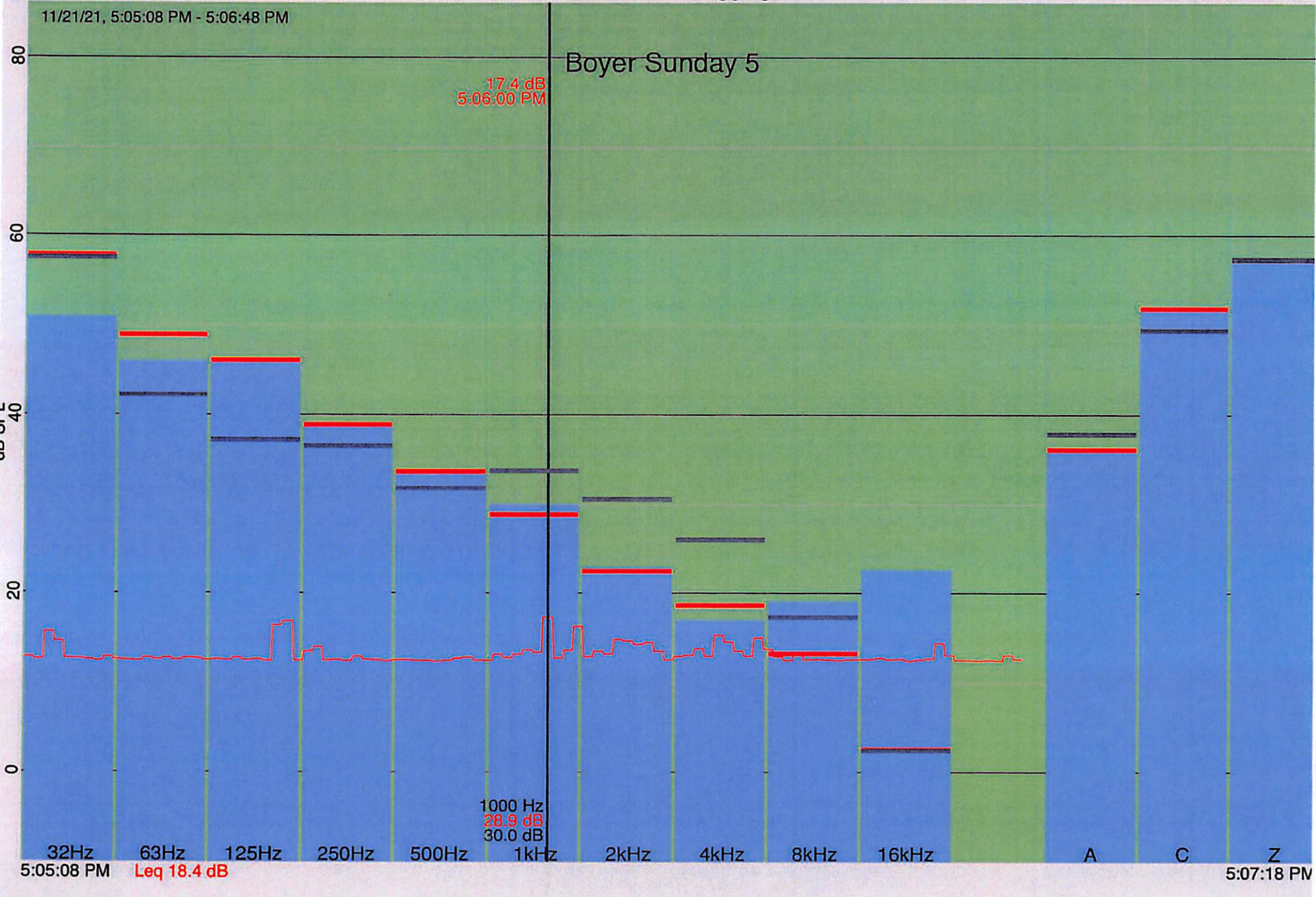
1000 Hz
28.9 dB
30.0 dB

Leq 19.8 dB

Octave 4 kHz



5:07:18 PM



Sondare Acoustics

Nov. 26, 2021

Geri Boyer
President
Kaskaskia Engineering Group

Reference: Sound Study #2

Geri,

Per the estimate dated Nov.16, 2021, a second sound study was performed while a band with amplification was playing at the Copper Fire restaurant at 200 E Main St, Belleville, Il. The sound study included sound level measurements in the second story loft adjacent to the restaurant on Nov.21, 2021 from 2:00pm-5:00pm.

To characterize the measured sound levels, the following is a list of and type of music performed during the April 23-24 measurement period and on Sunday Nov.21;

Friday April 23 night- Steel Creek- 6 member acoustic country band

Saturday April 24 Day, 11:00am- Billy Barnett- solo acoustic guitarist;

3:00pm Moonbuzz Acoustic- two person acoustic band

Saturday April 24 night – DJ - 80s playlist

Sunday Nov. 21, daytime- Saloonatics- Rock/Pop Band

Summary-

The average un-weighted sound level, Leq, was about 3dB higher for the 3hr daytime time period on Sunday, Nov. 21, 2021 than the nighttime 1.5 hour time period (10-11:30pm) on Apr.24, 2021. An increase of 3dB may be slightly perceivable.

The average A-weighted sound level, LeqA, was about 3dB lower for the respective day and time periods.

This can be explained in that the low and high frequencies were slightly higher (un-weighted) but the middle frequencies were slightly lower.

Structural vibration levels due to the sound levels were not significant.

General Information-

Although this still needs to be verified by looking at architectural drawings, after viewing the loft and Copper Fire exterior walls, it appears that there is not a large airspace between the two walls. Assuming the two walls combine to be 8-12" brick, the transmission loss could be 51dB instead of 55dB. An STC of 51 would equate to about 44 in the field due to flanking.

Terms:

Noise – unwanted sound

SPL-Sound Pressure Level - This is usually stated as un-weighted unless specified.

SPL (A) – The A-weighted sound pressure level. This is the SPL with a weighting applied which corresponds with human hearing.

Leq, T (dB)– The equivalent sound level measured over the measurement period, T.

Leq, A, T (dBA) - The equivalent A-weighted sound level measured over the measurement period T.

LA, max – The A weighted max sound level.

Ordinances-

1. The City of Belleville, IL amended the Title XI: Business Regulations, Chapter 110 General Licensing Provisions § 110.31 PROHIBITION AGAINST NUISANCES. The new ordinance No.8996-2021 states;
 - (A)No business, trade or occupation shall be carried on in any manner which will create a public or private nuisance, nor shall such operation be carried on in a manner which will produce unreasonably offensive noise, odor or other physical disturbances at or beyond the property line of the premises at which such operations take place, or otherwise threaten the public health, safety, morale or welfare or quality of life. Unreasonably offensive noise may include noises due to intermittence, beat frequency, volume or shrillness so it does not become a nuisance to adjacent uses
2. The St Clair County Code, Chapter 40 – Zoning Code, also addresses noise annoyance in Article VIII (p.170).
3. The Illinois EPA provides guidelines for noise annoyance but states that complaints can be made with and without measurements if the noise interferes with the enjoyment of life. They also state that since they do not have inspectors to investigate, complaints should be made with local governments. A complaint has been filed with the IPCB on 9/17/2021.

Sound Level Measurements of the Boyer Second Story Loft

On Sunday 11/21/2021 sound measurements were taken from 2-5pm. The measurement process and procedure was the same as used on April 23-24, 2021. A 4 member rock/pop band was playing at Copper Fire. The band was setup in the front of the bar adjacent to the loft wall. The band was using large speakers and significant amplification. (see note below).

The Daytime ambient level measured in the loft before and after the band started playing was about 30dBA.

The maximum sound levels for octave bands measured on Sunday 2-5pm compared to Saturday night April 24 10-11:30 pm are shown in Fig 1 below.

Octave Band Frequency (Hz)	Loft- Saturday night 4/24 @10-11:30	Loft – Sunday 11/21 2-3pm	Loft- Sunday 11/21 4-5pm	Loft 11/21 5:05-5:07 (Last song played)
32Hz	67dB	63dB	59dB	67dB
63	52	54	53	53
125	53	49	50	50
250	46	47	45	41
500	45	37	41	41
1000	42	32	40	36
2000	39	28	31	31
4000	34	22	31	26
8000	30	18	22	18

Fig. 1

The max levels were very similar between the DJ on 4/24 and the live band on 11/21.

The un-weighted AVERAGE sound levels (Leq) by octave band are shown in Fig. 2

Octave band Hz	Sat. 4/24 10-11:30pm	Sunday11/21 2-3pm	Sunday11/21 4-5pm	Sunday11/21 5:05-5:07pm
32Hz	46dB	51dB	50dB	50dB
64	42	43	46	45
125	42	41	45	45
250	36	38	41	39
500	32	30	34	34
1k	29	24	30	30
2k	26	20	25	23
4k	19	16	19	18
8k	20	18	20	19
Leq (T)	54dB (1.5hr)	56dB (1hr)	57dB(1hr)	58dB(2min)
LeqA(T)	38dBA(1.5hr)	33dBA(1Hr)	37dBA(1hr)	36dBA(2min)

Fig.2

The average 2-5pm Leq level is approximately 3dB higher on Sunday 11/21 than on Saturday 4/24. A 3dB Leq difference may be slightly perceivable.

The average 2-5pm LeqA level is about 3dBA lower. The variability can be due to the weighting of the low and high frequencies (A weighting modeled after human hearing).

Reference information:

Additional measurements-

Measurements were also made using a second sound level meter (Svantek 977 Class 1) for both sound and vibration levels in multiple locations in the loft for short durations from 4-5pm as shown in Fig.3 (data is also available by octave band).

Measurement location	Leq	Leq A
Couch	57dB	34dBA
Table by wall	58	36
Dining room table	57	39
Kitchen island	57	37
Bedroom dresser	58	35
<i>Average</i>	57	36
Coffee table (ambient)	54	30

Fig. 3

Informal measurements-

During lunch at Copper Fire several informal sound measurements were taken using an iphone while the band was playing. Although measurements were made for octave bands; the overall Leq, LeqA and several max levels are provided below;

Middle of the room

Leq =96dB (this is understated due to limitations of the iphone internal microphones)

LeqA= 94dBA

Peak levels- several at 106dB

Back of the room – 84dBA

Sidewalk outside of the glass window behind the band-70dBA (window STC=approx. 24)

Although these were informal measurements they are in line with assumptions provided in the April report.

Vibrations-

Vibrations on walls and furniture were difficult to detect and measured levels were very low.

Please let me know if you have any questions about the above.

Thanks

Mike Biffignani
President Sondare Acoustics
3145688042

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DOUG and GERI BOYER,

Complainants,

v.

MRB DEVELOPMENT, LLC d/b/a

PCB 22-9

COPPER FIRE; RENAE EICHHOLZ; and

MARK EICHHOLZ,

Respondents.

VIDEOCONFERENCE DEPOSITION OF

GARY BROWN

DATE: Thursday, January 19, 2023

TIME: 12:58 p.m.

LOCATION: Remote Proceeding

Minneapolis, MN 55402

REPORTED BY: Adrian Gharineh, Notary Public

JOB NO.: 5663656

EXHIBIT K

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A P P E A R A N C E S

ON BEHALF OF COMPLAINANTS DOUG AND GERI BOYER:

BROOKE F. ROBBINS, ESQUIRE (by videoconference)
Lathrop GPM LLP
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500 IDS Center
Minneapolis, MN 55402
brooke.robbins@lathropgpm.com
(612) 632-3472

ON BEHALF OF RESPONDENTS MRB DEVELOPMENT, LLC d/b/a
COPPER FIRE, RENAE EICHHOLZ, and MARK EICHHOLZ:

PAUL E. PETRUSKA, ESQUIRE (by videoconference)
Greensfelder Hemker & Gale
12 Wolf Creek Drive, Suite 100
Belleville, IL 62226
ppetruska@greensfelder.com

ALSO PRESENT:

Geri Boyer, Complainant (by videoconference)

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Exhibit 7	EPA Part 901	71
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(Exhibits attached.)

D O C U M E N T S R E Q U E S T E D

NO.	DESCRIPTION	PAGE
1	Bill for witness' time in this action	12
2	ASHRAE handbook NC to dB charts	36
3	ASHRAE handbook NC to dB charts again	41
4	Decibel calculation sheet	97

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P R O C E E D I N G S

THE REPORTER: Good afternoon. My name is Adrian Gharineh; I'm the reporter assigned by Veritext to take the record of this proceeding. We are now on the record at 12:58 p.m.

This is the deposition of Gary Brown taken in the matter of Doug and Geri Boyer vs. MRB Development, LLC, et al., on Thursday, January 19, 2023, at remote via Zoom.

I am a notary authorized to take acknowledgments and administer oaths in Minnesota. Parties agree that I will swear in the witness remotely.

Additionally, absent an objection on the record before the witness is sworn, all parties and the witness understand and agree that any certified transcript produced from the recording of this proceeding:

- is intended for all uses permitted under applicable procedural and evidentiary rules and laws in the same manner as a deposition recorded by stenographic means; and
- shall constitute written stipulation of such.

1 At this time, will everyone in
2 attendance please identify yourself for the record?

3 MS. ROBBINS: Brooke Robbins from
4 Lathrop GPM on behalf of the complainants.

5 MR. PETRUSKA: I'm Paul Petruska of
6 Greensfelder Hemker & Gale, attorney for the
7 respondents.

8 MR. BROWN: I am Gary Brown with
9 McClure Engineering, witness, provided acoustical
10 services --

11 THE REPORTER: Thank you. Hearing no
12 objection, I will now swear in the witness. Could
13 you, please, raise your right hand?

14 WHEREUPON,

15 GARY BROWN,
16 called as a witness, and having been first duly sworn
17 to tell the truth, the whole truth, and nothing but
18 the truth, was examined and testified as follows:

19 THE REPORTER: Thank you. You may
20 proceed.

21 EXAMINATION

22 BY MS. ROBBINS:

23 Q Mr. Brown, as I said just a minute ago, my
24 name is Brooke Robbins, and I represent the
25 complainants in this action. Have you been deposed

1 before?

2 A Yes.

3 Q How many times?

4 A Probably close to about ten times.

5 Q About ten times, and --

6 A I can't remember. It's over 35 years. So I
7 can't remember all of them.

8 Q Understood. And have all your depositions
9 been in your capacity as an expert or sound engineer?

10 A Yes.

11 Q Okay. I know the court reporter just went
12 over a few ground rules, but I'm just going to remind
13 you what some of those ground rules are and what we
14 can expect today.

15 Obviously, you've done this before. So you
16 kind of know what to expect, but I'm not sure you've
17 done this in the Zoom world before.

18 A I have not.

19 Q Exactly, so just like you've been doing,
20 always give a verbal response so the court reporter
21 can get it down. On Zoom, there's definitely probably
22 going to be a lag between when I stop talking and or
23 when you stop talking.

24 So we need to be really conscious of trying
25 not to speak over each other. So I'm going to do my

1 best to make sure that you have finished your answer
2 before I start asking the next question, and I'm going
3 to ask that you do the same thing. Okay?

4 A Okay.

5 Q If at any time I ask a question and you
6 don't understand my question, please, just let me
7 know. Okay?

8 A Yes.

9 Q Especially since we're going to be talking
10 about some technical things, I may not be using
11 terminology that you understand or using the proper
12 term. So just feel free to correct me or indicate
13 that you don't understand my question.

14 However, if you don't tell me that you don't
15 understand my question, is it fair to agree that you
16 do?

17 A Okay.

18 Q Okay. I'm going to ask just general ground
19 rule, you know -- as we're going along, this isn't any
20 type of competition. We don't have to just keep going
21 through.

22 If at any point you need a break, just let
23 me know. You can request it at any time whether you
24 need to stretch your legs, go to the bathroom,
25 anything like that.

1 I just ask that if I've asked a question,
2 your first answer that question before we go on break.
3 Okay?

4 A Yes.

5 Q Okay. And is there any reason you would not
6 be able to answer honestly or truthfully today?

7 A No.

8 Q What did you do to prepare for this
9 deposition?

10 A I read through some of the exhibits that
11 were provided to me.

12 Q And what exhibits were provided to you?

13 A Exhibits 1 through 8, the report, my CV,
14 instrumentation that was used, and the noise code that
15 was -- Illinois Title 35 Noise Code.

16 Q Okay. And did you review anything other
17 than those eight exhibits that I sent over prior to
18 the deposition?

19 A I reviewed some of my sound data that I took
20 and my report that I put together.

21 Q Mr. Brown, are you represented by counsel
22 today?

23 A Yes. Or -- let me back that up. I -- no,
24 me personally, no counsel.

25 Q Okay. Did you speak to anyone regarding

1 being deposed today?

2 A I did speak with Paul.

3 Q Mr. Petruska, he's sitting next to you.

4 When did you speak with Mr. Petruska?

5 A I spoke with him a couple times over the
6 last couple weeks.

7 Q I am going to -- do you have the exhibits in
8 front of you, Mr. Brown?

9 A Yes.

10 Q I think that Exhibit 1 is slightly changed
11 just because we had to move this deposition date, but
12 you should have a copy that looks substantially
13 similar to the one I'm about to share on my screen.

14 Just the change in the date is reflected.
15 Can you see Exhibit 1 on my screen in front of you?

16 (Exhibit 1 was marked for
17 identification.)

18 A Yes.

19 Q Okay. And is Exhibit 1 the -- well, the
20 copy I have is the Amended Subpoena for Expert
21 Deposition and Documents. Correct?

22 A Yes.

23 Q Okay. And on your behalf, Mr. Petruska
24 accepted this subpoena for you. Correct?

25 A Correct.

1 Q And you're here today pursuant to this
2 subpoena.

3 A Yes.

4 Q And if you go down to the heading at the
5 bottom of the first page that says "documents," in the
6 subpoena, you were asked to provide five different
7 categories of documents. Correct?

8 A Yes.

9 Q Have you provided all responsive documents?

10 A Yeah, I believe so.

11 Q Okay. We're just going to go through each
12 one real quick just to be sure. So No. 1 is all
13 documents or other materials upon which you rely to
14 provide any expert opinion in this matter. Did you
15 provide all of those documents?

16 A There was some, you know, experiences,
17 documents I read through my career. I haven't
18 provided all those.

19 Q I believe in response to this you provided
20 copies of three sections from Title 35 of the EPA.
21 Does that sound correct?

22 A Yes.

23 Q And then I think you also supplied a copy of
24 the data specifications sheet for the SV 307 noise
25 monitoring station. Is that correct?

1 A Correct.

2 Q Okay. So besides those four documents and
3 maybe experiences that you've had throughout your
4 career, you can't think of any other documents that
5 you specifically relied on in your expert opinion.
6 Correct?

7 A Correct.

8 Q Okay. No. 2, you did provide your most
9 recent version of your curriculum vitae.

10 So moving onto No. 3, all recordings
11 reflecting time you spent related to this action,
12 including itemization of activities, I believe in
13 response to this, I was provided with a list of your
14 company's rates.

15 What is your specific position at McClure
16 Engineering?

17 A I am a project manager.

18 Q And what is your per-hour rate for your
19 expert witness in this matter?

20 A In this matter, I -- I'm not clear --
21 there's two rates provided, I believe. The rate that
22 I do my normal workday and then a rate for cases and
23 courts and depositions, and I -- I am not sure of that
24 rate right now. At one time, it was 250.

25 Q Have you sent Mr. Petruska or anyone from

1 Copper Fire a bill yet for your time on this matter?

2 A Yes.

3 MS. ROBBINS: Okay. Mr. Petruska, I'm
4 going to ask for a copy of that bill.

5 MR. PETRUSKA: Sure.

6 BY MS. ROBBINS:

7 Q And, Mr. Brown, do you know off the top of
8 your head about how much time you've spent on this
9 matter?

10 A Yes, close to 40 hours.

11 Q Okay. And then No. 4 is all documents
12 including any reference materials you considered or
13 relied upon in forming any opinions in this action.

14 I believe you provided the same four
15 documents. Do you have any other responsive documents
16 for Request No. 4?

17 A No, not at this time.

18 Q You can put Exhibit 1 away. Mr. Brown,
19 what's your highest level of education?

20 A I've got two degrees, a Bachelor of Science.
21 So I got a BS in civil engineering and construction
22 engineering.

23 Q And what schools were those from?

24 A The construction engineering was SIU
25 Edwardsville. The civil engineering was from a joint

1 program with University of Missouri and Washoe School
2 of -- or Washoe.

3 Q And you got those degrees in different
4 years.

5 A Yes.

6 Q When did you first begin working as an
7 engineer?

8 A 1987.

9 Q And when you began working as an engineer in
10 1987, did you have any of your degrees yet?

11 A No, I was going to school and doing an
12 internship with Engineering Dynamics International.

13 Q And what kind of -- I guess, was your
14 internship with Engineering Dynamics International
15 related to sound engineering, or was it related to
16 some other type of engineering?

17 A No, it was related to sound engineering.

18 Q And what was your first position after -- I
19 guess, how long did you hold the position at
20 Engineering Dynamics International?

21 A I worked with them for 30 years. I took
22 over the business. I took over that company in 2010.

23 Q And I guess, can we say "EDI" and you'll
24 know what I'm talking about?

25 A Yes.

1 Q Okay. I guess, when you ran the business,
2 what was their primary -- who did they primarily
3 serve?

4 A They served architects, engineers, and
5 private citizens.

6 Q And was that all on sound engineering?

7 A Not all of it, some of it was on vibration
8 analysis and vibration dynamics and structural
9 analysis on air handling units.

10 Q Sorry, what was that last thing you said?
11 You cut out.

12 A Structural analysis on air handling units,
13 wind loads, seismic loads.

14 Q And I guess, what year did you start working
15 at McClure Engineering?

16 A 2012.

17 Q And you said your current position is
18 project manager.

19 A Yes.

20 Q Was that the position that you joined
21 McClure Engineering as?

22 A Yes.

23 Q And when you left EDI, your title was owner
24 or president. Or what was your title?

25 A Owner.

1 Q Are you doing the same type of work for
2 McClure Engineering that you were doing for EDI?

3 A Correct, yes, exactly the same.

4 Q Mr. Brown, do you have any licenses related
5 to your work --

6 A No, I am currently not licensed.

7 Q Have you been licensed previously?

8 A No. No, I never passed the test.

9 Q I guess, you attempted to obtain the license
10 at some point.

11 A Correct.

12 Q And what license was that?

13 A The professional engineering license.

14 Q When did you try to obtain a professional
15 engineering license?

16 A My first attempt was 2008.

17 Q How many times have you attempted to get
18 that license?

19 A Twelve.

20 Q Twelve. Are you still currently in the
21 process of trying to get a professional engineering
22 license?

23 A I haven't for the last three years.

24 Q And why are you no longer attempting to get
25 a professional engineering license?

1 A Took a break from it, try to regroup, trying
2 to figure out what my next step would be, I tried for
3 civil -- get my license in civil engineering.

4 I have no practical experience in it. I --
5 that is not what I do as a living. There is no
6 acoustical test provided for PE. So I'm looking to do
7 mechanical.

8 Q And is it typical for people in your
9 position to not be a professionally -- to have a
10 professional engineering license?

11 A Typical, it's -- a lot of people that's in
12 acoustics don't have them. There are a few. I --
13 would it be typical? I can't say that. I don't know.

14 Q So you know of other acoustics engineers who
15 do have one and you know of other acoustics engineers
16 who don't have one. Correct?

17 A Correct.

18 Q I'm going to ask you to pull up what I
19 marked as Exhibit 2. I'll also pull it up on the
20 screen. It's your CV.

21 (Exhibit 2 was marked for
22 identification.)

23 I'm going to start at the part about -- if
24 you go down to your memberships of professional
25 organizations.

1 A Yes.

2 Q And Exhibit 2 is the CV that you provided.
3 Correct?

4 A Correct.

5 Q Okay. So are you a member of any
6 professional organizations that are not listed on your
7 CV?

8 A No.

9 Q So the Acoustical Society of America, what
10 is that?

11 A That is just a -- a society of acoustical
12 technicians that have a common interest in acoustics
13 in education and profession.

14 Q And you identified that you're the secretary
15 of the St. Louis Chapter. Correct?

16 A Yeah, the small chapter, we started a small
17 chapter in St. Louis three years ago, and because of
18 the pandemic stuff, we haven't met for the last year
19 and a half, kind of started it right before the
20 pandemic hit, had several meetings.

21 Q Is the ASA like a national organization?
22 And then you're part of --

23 A Yes.

24 Q And you're part of just the one local
25 chapter.

1 A Correct.

2 Q And besides, I guess, when you were having
3 meetings prior to a year and a half ago, do you do
4 anything else for the ASA?

5 A No.

6 Q The American Society of Heating,
7 Refrigerating, and Air-Conditioning Engineers, what's
8 this?

9 A That is a -- a group of engineers that deal
10 with the HVAC industry with heating, refrigeration,
11 and air-conditioning in their field of study. So I --
12 I deal with air handling units on noise and pumps.

13 So I do -- I'm a part of this -- this group
14 because they have some good information on -- just
15 general information on acoustics and -- and operations
16 and how the mechanical systems work.

17 They -- they keep the industry up to code
18 and up to date on new -- new technology, new -- new
19 ways of calculating things, and --

20 Q You said that you worked on -- you worked
21 personally on pumps. Did I get that right?

22 A No, I don't work personally on them. I -- I
23 deal with noisy pumps sometimes. So I know how they
24 operate, how they transmit noise and cause a problem
25 in a building.

1 Q And do you play any role in your ASHRAE
2 membership?

3 A No, just a member.

4 Q Do you attend meetings regularly?

5 A Every once in while --

6 Q And -- sorry, go ahead.

7 A I -- I did get invited to be a speaker at a
8 local meeting last month.

9 Q And did you speak at a local meeting?

10 A Yes, I did.

11 Q And what was the topic of your speech?

12 A Acoustics, this particular -- my topic that
13 I talked about was environmental noise.

14 Q And besides regularly attending meetings and
15 the one time you've been a speaker for that
16 organization --

17 A Yeah, that was the first time.

18 Q Okay. And then the Institute of Noise
19 Control Engineers, what's that?

20 A That is a small group of noise control
21 engineers that have a -- have information on various
22 products and noise control solutions.

23 They -- they're very good at providing
24 information on various noise control options, and they
25 have some seminar -- or conferences. They actually

1 have a board-certified test for their group in
2 acoustics.

3 Q But you haven't taken that test. Correct?

4 A I have taken it, and I did not pass.

5 Q Have you tried to take it more than once, or
6 just one time?

7 A Yeah. I've tried it, I believe, three
8 times.

9 Q And when was the most recent time you tried
10 to pass that test?

11 A 2019, right before the pandemic.

12 Q And are you planning to try and take that
13 test again?

14 A Yes. Yeah. Actually, they have a course
15 that I was going to take. It's a three-step course
16 that, once you pass that course, you automatically get
17 board certified.

18 Q I'm just going to stop sharing my screen.
19 So you can see me and I can see you easier since you
20 have it in front of you.

21 You mentioned that the noise control
22 engineers provide you knowledge about various products
23 on noise control solutions. Is noise control
24 solutions one of the aspects of your job?

25 A Correct, yes.

1 Q So can you explain to me what you do
2 regarding noise control solutions?

3 A So I deal with a lot of similar projects,
4 but none of them are the same. So in a particular
5 case, I'll -- there will be air handling unit on a
6 building.

7 That air handling unit is causing a
8 disturbance to some of the occupants.

9 I will go in and get measurements of that
10 unit, analyze it, provide solutions, and
11 recommendations on how to fix -- not fix the problem
12 but reduce the noise and make it a little more
13 livable.

14 Q And you provide air handling units as an
15 example of one type of noise, but you've dealt with
16 other types of noises external to properties.

17 A Yes. I've dealt with heat exchangers,
18 blowers, exhaust vents, pumps, anything mechanical,
19 probably seen it.

20 MR. PETRUSKA: And just to remind you,
21 you are answering "yes" sometimes in the middle of her
22 question, and I understand why you do it.

23 Every human does it, but the court
24 reporter can't take down both of you speaking at the
25 same time. So I'm just giving you a reminder. Wait

1 until she's done with her question before you answer.
2 Does that make sense?

3 THE WITNESS: Yes.

4 MR. PETRUSKA: Okay.

5 MS. ROBBINS: Thanks, Mr. Petruska.

6 BY MS. ROBBINS:

7 Q So when you do your noise control solutions,
8 it seems like most of the examples are some type of
9 mechanical object outside of -- is it outside of
10 residences, commercial, or any certain type of
11 properties?

12 A All of the above, yes.

13 Q And do you have experience providing noise
14 control solutions -- any prior experience providing
15 noise control solutions involving any type of bar or
16 restaurant?

17 A I have done a couple projects on those, yes.

18 Q I'd like to talk more about those. So I
19 guess, what previous experience do you have a bar or a
20 restaurant?

21 A Usually, it's impacting the resident behind
22 the bar or next to a bar. I'll do some noise studies
23 for those, pick up monitoring, and record what the
24 sounds are and then report back on what impact they
25 have on the neighbors.

1 Q And do you know how many times you've been
2 asked to do that type of study for a bar or a
3 restaurant?

4 A I've probably done about a dozen.

5 Q And do you remember if you were employed by
6 the bar or the restaurant or the residents?

7 A Typically, I think there's only been one or
8 two that was resident. All the others, either the --
9 or owner -- or the property owner or the leasing agent
10 or the property's leasing company.

11 Q Have you previously provided any expert
12 opinion regarding a bar or restaurant?

13 A I can't think of any right now.

14 Q So it would be about a dozen times that you
15 have worked with a bar or restaurant that was just on
16 noise control solutions and measurements and not for
17 an expert report. Correct?

18 A It was for a report, but it either didn't go
19 to court or it was negotiated before it got to that
20 point.

21 Q In those, I guess, prior reports, did you
22 provide an ultimate conclusion as to whether or not
23 any noise control solution should be implemented?

24 A I don't recall any.

25 Q Mr. Brown, what training did you receive to

1 become an acoustical engineer?

2 A Everything was pretty much hands-on. I did
3 do a couple courses through Trane [ph] and through a
4 couple of those societies.

5 ASA offers a couple little, small courses,
6 nothing that would show up anywhere, just kind of a
7 self-evaluation type thing. Everything else was
8 hands-on.

9 Q Have you regularly attended those types of
10 small trainings, or was that early on in your career?

11 A That was early on.

12 Q So what do you do to stay up to date on the
13 most recent developments in acoustical engineering?

14 A A lot of reading, reading the latest --
15 latest articles in the field.

16 Q You still have Exhibit 2 in front of you,
17 your CV.

18 A Yes.

19 Q You can just go down and look at your
20 present position, McClure Engineering. I can share my
21 screen if that's helpful, but I'm not sure if it is.
22 So you list your job duties. Correct?

23 A Yes.

24 Q Okay. And the first one is on-site field
25 testing. What is "on-site field testing"?

1 A There's about half a dozen tests that we do.
2 We do what they call an ASTC test. It's a field sound
3 transmission class test where we test walls and office
4 privacy.

5 The is a test called the reverberation time
6 test that we test the -- the acoustics of a space,
7 like an auditorium, a gym.

8 Other field tests are doing environmental
9 noise monitoring, setting those up, and recording
10 someplace for a week, either it be out in the middle
11 of the field or in a residential area next to a
12 highway or near an airport.

13 I did, for years -- one project I had for
14 almost nine years was testing the impacts of airplanes
15 over a house, doing inside/outside noise measurements
16 of those houses, tested nearly 600 of them, and we
17 soundproofed about a thousand of them.

18 Q Who was the soundproofing -- or the impacts
19 of the airplanes, who was that for?

20 A That was for the City of St. Louis, the
21 St. Louis Lambert Airport.

22 Q And when you were conducting that studying,
23 were you measuring the sound of the airplanes outside
24 of the house or inside of each house?

25 A Both, simultaneous.

1 Q And you said that there was about a thousand
2 homes that ended up being soundproofed. Correct?

3 A Correct.

4 Q And was there a specific threshold for noise
5 that you had to measure for them to get soundproofed?

6 A Yeah. We were trying to achieve a 5 dB
7 reduction before and after tests.

8 Q "DB" is decibels. Correct?

9 A Correct.

10 Q And did every home that you did a noise test
11 on get soundproofed?

12 A The ones we did -- yes.

13 Q So you did soundproof -- or you did testing
14 on about a thousand homes. Correct?

15 A About 600 of them total.

16 Q Okay. So you did about 600 homes, and then
17 that same amount of 600 homes was soundproofed.

18 A Correct, and post -- pre -- pre-construction
19 and post-construction measurements were taken of each
20 of those.

21 Q And what construction was done to reduce the
22 sound by 5 decibels?

23 A Windows, new windows were added, new doors,
24 if had a chimney or a fireplace, that was acoustically
25 modified to provide a sound trap for it, any outside

1 vents, roof vents, and gables were all soundproofed
2 and modified to provide an acoustical boot, so
3 eliminate -- minimize the sound going in.

4 Q And were those homes that the study was done
5 on selected based off of their location to the
6 airport?

7 A Correct.

8 Q So they were on a flight path.

9 A Yes.

10 Q And did the City of St. Louis pay for the
11 soundproofing?

12 A The FAA did as part of the FAA program.

13 Q Okay. The second job duty listed is
14 architectural acoustics. I guess, what's
15 architectural acoustics?

16 A So the architectural acoustics is like the
17 office building like what we're in, making sure the
18 offices have the right privacy for an executive office
19 compared to a standard office. Conference rooms are
20 acoustically isolated.

21 Sound from mechanical equipment is -- is
22 evaluated. Other architectural acoustics is the
23 auditorium, the gymnasium, providing an acoustic
24 service for those, theaters, auditoriums, et cetera.

25 Q With that type of work, are you providing

1 construction and renovation advice, or what is the
2 work that you're doing --

3 A Correct. We'll provide information on what
4 kind of absorption that room needs, what kind of wall
5 construction would be needed to provide the proper
6 sound isolation and sound transmission.

7 Q Mechanical systems sound isolation, we've
8 already talked about that that was the stuff you do
9 regarding any type of mechanical devices attached to a
10 building or next to a building. Correct?

11 A Correct.

12 Q And that's to reduce the sound inside
13 residential and commercial spaces.

14 A Yes.

15 Q And the performance-based acoustics, is that
16 like theaters?

17 A Yes.

18 Q And you work you do for theaters, is that
19 the same type of work where you're providing them
20 construction and renovation advice to better the
21 acoustics?

22 A Yes, and also, we provide our expertise in
23 theater design, how to set up a theater, staging,
24 stage rigging, stage lighting.

25 We have departments that take care of

1 lighting and stage rigging and just general theater
2 applications.

3 Q And industrial acoustics, what's that?

4 A So if you go into a plant, say an industrial
5 plant where they have machines on a process line,
6 we'll go in and come up with solutions on noise
7 control and -- and how to modify machinery to make it
8 quieter so an employee's not exposed to excessive
9 amount of noise or exposed to over noise dose.

10 Q And then the last one listed is noise
11 control. Is noise control separate from all of the
12 other topics we covered, or is it a part of it?

13 A It's all part of it. It -- each one might
14 have a noise control issue that may need to be
15 addressed. But noise control in itself can be a
16 separate item for, say a missile launcher.

17 You need to isolate that trailer that the
18 missile's on. So we'll provide noise control
19 isolation for that trailer.

20 Q So noise control is providing some type of
21 advice on remediation measures regarding a certain
22 noise. Correct?

23 A Correct.

24 Q So about how much of your work is conducting
25 sound studies?

1 A Provide 50 percent of it.

2 Q And approximately, how many sound studies
3 would you say you do each year?

4 A Probably be anywhere from, oh, 25 to 30
5 projects a year.

6 Q Do you typically conduct studies involving
7 residential or Class A property?

8 A Yes, I do.

9 Q Have you previously conducted any sound
10 studies in Illinois?

11 A Yes.

12 Q Have you previously advised on sound or
13 noise of a property that's subject to the Illinois EPA
14 standards?

15 A Yes.

16 Q And when you're conducting a noise study, do
17 you typically conduct the noise study inside or
18 outside of the property?

19 A In relations to the Illinois EPA, those are
20 all done outside.

21 Q So you've never previously done inside of a
22 property subject to the Illinois EPA.

23 A That's correct.

24 Q Is there any other work that you do as a
25 sound engineer that we didn't cover?

1 A I do a lot of vibration studies, vibration
2 testing, vibration analysis.

3 Q And what are vibration studies?

4 A So if a new construction's being built next
5 to an existing building, we'll monitor those
6 construction activities, make sure the vibration from
7 that activity doesn't impact the -- the occupants
8 or -- mice is one of the big ones that has come up
9 here lately with Washoe School of Medicine.

10 Q So you advise on construction projects to
11 keep the vibrations low. Correct?

12 A Correct.

13 Q Is there anything else we did not cover that
14 you do as a sound engineer?

15 A Not that I can think of right now, I think
16 we covered everything.

17 Q So if you're looking at Exhibit 2, besides
18 the one published article that you list, have you
19 published any other publications in the last ten
20 years?

21 A No.

22 Q Can you pull up Exhibit 3? Mr. Brown, is
23 Exhibit 3 that one publication that's called Cutting
24 Through the Noise on the [sic] Wall Construction that
25 identified on your CV?

1 (Exhibit 3 was marked for
2 identification.)

3 A Yes.

4 Q And where was this article published?

5 A Insulation Magazine.

6 Q And I'm not familiar with Insulation
7 Magazine. Can you tell me what that is?

8 A It is the -- the industry magazine for
9 various insulation products, sound insulation, thermal
10 insulation. That's pretty much it.

11 Q What's the purpose of this article?

12 A To give some insight on noise testing, noise
13 nomenclature for wall construction, give some examples
14 on what kind of level and what privacy would need to
15 obtain.

16 Q In the first line, you identify that it is
17 for multi-level living spaces. Correct, multi-unit
18 living spaces? Correct?

19 A Correct.

20 Q And also in the article, you identified that
21 privacy is a significant issue between living spaces.

22 A Yes.

23 Q And you said that you tried to outline and
24 provide goals for proper design. Correct?

25 A Yes.

1 Q You can turn to Page 5 of that document.
2 I'm also going to share my screen so I know we're
3 looking in the same place. Are you there?

4 A Yes.

5 Q Okay. So if you go down below Figure 4, in
6 this paragraph, you identify and state that NC-25 is
7 recommended background sound for sleeping. Correct?

8 A Correct.

9 Q And "NC" means noise criterion. Correct?

10 A Yes.

11 Q So this is a recommended nighttime sound
12 level.

13 A No, this is a recommended unoccupied space
14 for background sound.

15 Q So NC-17 [sic], you state it's recommended
16 sound for sleeping. You don't say sleeping is a
17 nighttime sound.

18 A I'm sorry. What was the question?

19 Q I guess I was just confused by your answer
20 because you -- in your article it says, "NC-25 is the
21 recommended background sound for sleeping." And
22 you're saying it's for an empty space. Can you
23 explain that to me?

24 A Yeah. So it's for an unoccupied space, but
25 in this particular case, you would say there's a

1 person in there sleeping. But that's not how the room
2 is tested.

3 It's tested unoccupied, and it would -- it
4 could be any time of the day for sleeping. People do
5 sleep during the day, too, so. It's not -- it's not
6 necessarily recommended for a nighttime condition.

7 Q Understood. So it's not nighttime because
8 someone's not always sleeping at night, but NC-25 is
9 the recommended background sound for when someone is
10 trying to sleep. Correct?

11 A It is the ideal background, but it's -- it's
12 subjective, too. People can -- can't sleep with that
13 low of a sound level, too, sometimes. So there is
14 cases that people do need background sound, so. This
15 is -- this is just ASHRAE's recommended.

16 Q And that background sound would be something
17 like white noise.

18 A Correct.

19 Q And do you know how NC, or noise criterion,
20 translates to decibels?

21 A Yes. It is done based on the octave band
22 frequency, and then it's ran through a -- a curb
23 through each of those frequencies.

24 And that curb is provided with your -- if
25 it -- the sound level meets that curb, then that's the

1 NC level that it's at. That's how it's determined.

2 Q And do you know the range of NC-25 for -- on
3 that octave band frequency, do you know what the range
4 is from highest to lowest?

5 A Yeah, not without looking at the chart.
6 Offhand, I -- I can't provide that right now without
7 looking at the -- the NC chart.

8 Q And where would you locate that NC chart?
9 Is it online?

10 A That would be located in Chapter 48, I
11 believe now, of the ASHRAE handbook or the ASHRAE --
12 yeah, it is the handbook.

13 Q So when you would calculate NC-25 to what
14 the decibel range would be, you would look to that
15 ASHRAE handbook to determine that.

16 A Correct, and then it would be based on the
17 frequencies at each octave.

18 Q But you can't remember off hand what the
19 range would be for 25-NC?

20 A No, I'm sorry. I cannot right at this time.

21 Q And do you have a copy of the ASHRAE
22 handbook, or is it publicly available?

23 A Yeah, it's public available. I -- I have a
24 copy of it in my office --

25 Q Is it publicly available online?

1 A Yes, I believe so. I -- I'm not sure if
2 it -- for purchase, you can probably get it.

3 MS. ROBBINS: Mr. Petruska, when we go
4 on a break, I'm going to see if I can locate it.

5 MR. PETRUSKA: Sure.

6 MS. ROBBINS: If I cannot, I'm going to
7 ask that you provide a copy from Mr. Brown since he
8 seems to have a copy in his office.

9 MR. PETRUSKA: Sure, we can do that.

10 MS. ROBBINS: Okay.

11 BY MS. ROBBINS:

12 Q And, Mr. Brown, you said it would be in
13 Chapter 48 -- would tell you what NC-25, what that
14 octave band frequency range would be for decibels.
15 Correct?

16 A Correct.

17 Q Okay.

18 A Yeah, I believe it's Chapter -- they've
19 changed it a couple of times over the years. It might
20 be 49 now.

21 Q And there's no other source for where you
22 can calculate an NC number into decibels.

23 A I have set up a spreadsheet to calculate
24 this for me.

25 Q And that spreadsheet is just based off of

1 Chapter 48.

2 A Correct.

3 Q Okay. And turning back to your article, in
4 the next line, you also say, "NC-35 is typical of a
5 quiet environment, similar to daytime conditions in a
6 residential setting." Correct?

7 A Yes.

8 Q So in that way, you do say "daytime." So
9 NC-35 is out of any time that a resident's not
10 sleeping or maybe not doing something loud.

11 A Correct, yes.

12 Q Such as working?

13 A Yeah, working in a private office at the
14 home, that would be a typical environment, quiet
15 environment.

16 Q And do you know off hand how NC-35
17 translates to decibels?

18 A Yeah, it's about -- it's about 30 maybe.

19 Q So NC-35 is about 30 dB, and NC-25 is
20 something slightly lower.

21 A Yeah. Typically, it's about five -- five
22 points less than what the NC is, I believe. I'm
23 almost positive.

24 Q Okay.

25 A I think that's the rule of thumb.

1 Q If we go to the last sentence of your
2 article, you note that privacy is, you know, and
3 soundproofing is a need that's continuing to grow, and
4 it's important that these are taken into account when
5 in the design phase. Correct?

6 A Correct.

7 Q You can put away Exhibit 3. Mr. Brown, how
8 many times have you previously been deposed as an
9 expert witness?

10 A Probably close to about ten to a dozen
11 times.

12 Q And how many of those times have been within
13 the last five to seven years?

14 A I can only recall one right now.

15 Q And which one was that?

16 A Well, there was -- I'm sorry, not for a --
17 this was for a town hall. I've done a couple of
18 those. I've done three of those in the last two,
19 three years. One was a pickleball where I came in,
20 talked with the -- the zoning and planning.

21 I've done two carwashes, too, in the past
22 year where I went to a board meeting, talked with the
23 planning and zoning. The last time I was deposed, on
24 a project I -- I can't recall right now.

25 Q Do you know if you've ever been deposed as

1 part of a court hearing or trial or --

2 A Yes.

3 Q Okay. And do you know what courts or
4 jurisdictions those were before?

5 A Yeah, the one that comes to mind right now
6 is the St. Louis City Courts, Figueroa, Lou --
7 Figueroa vs. -- I can't think of the other guy's name.

8 Q Do you know how long ago that was?

9 A That was -- it was probably close to about
10 12 years ago. It was before 2010.

11 Q So before you became the owner of EDI.

12 A Yes.

13 Q Do you know if a court has ever refused to
14 qualify you as an expert?

15 A No.

16 Q Do you know if a court has ever granted a
17 motion to strike your report or your testimony?

18 A Not that I'm aware of, no.

19 Q Turning back to your CV, I'll pull up a
20 section of it so you can see really quick. You
21 identify expert witness experiences and list two. Do
22 you see that?

23 A Yes.

24 Q Okay. So the first one is Wagner vs.
25 Friedmann. Correct?

1 A Yes, and that was -- it's been a while back,
2 and that one never went to court. I did get to do a
3 deposition on that. That was for a -- a murder case
4 in Union, Missouri.

5 The guy was claiming that there was somebody
6 else in the house when the gun was fired, and they
7 didn't hear it fire. We did some tests in the actual
8 house --

9 THE REPORTER: Excuse me. This is the
10 court reporter. I got kicked out of the meeting on my
11 main Zoom, but my backup is still running just so you
12 know.

13 MS. ROBBINS: Do you want us to wait
14 for you?

15 THE REPORTER: It might take me just a
16 second. Let me just see if I can get in real quickly.

17 MS. ROBBINS: We'll take a break until
18 two o'clock.

19 THE REPORTER: Okay, sounds good. We
20 are now off the record at 1:53 p.m.

21 (Off the record.)

22 THE REPORTER: We are now back on the
23 record at 1:57 p.m.

24 MR. PETRUSKA: Just to clarify, I said
25 earlier that I would produce all of Chapter 48, but I

1 didn't ask even ask the witness how long it is.

2 He said it's about 40, maybe up to 50,
3 pages long, and he thinks maybe two pages would relate
4 to the charts.

5 So what I will do is, I will produce
6 what I believe is the section that you're going to
7 need. And if you need more, ask me, and I'll produce
8 more.

9 But I'll try -- I'll probably produce
10 five to ten pages around that chart so you can see
11 what you're looking for. And if it's not enough, let
12 me know, but I don't want to produce 48 pages for no
13 reason.

14 MS. ROBBINS: Understood and just I
15 agree with that.

16 MR. PETRUSKA: I just want -- yeah.

17 MS. ROBBINS: Yeah. I agree. So,
18 Mr. Petruska, just send me over what you think is
19 relevant in relation to calculating the NC to
20 decibels. I'll let you know if we need something
21 further.

22 MR. PETRUSKA: Sure.

23 BY MS. ROBBINS:

24 Q All right. Mr. Brown, I think when we lost
25 our court reporter, we were talking about the Wagner

1 vs. Friedmann case. Correct?

2 A Yes.

3 Q And that's the one that you said was a
4 murder case that you were deposed on, but it settled
5 sometime before trial.

6 A Correct.

7 Q And you said that you conducted a study
8 regarding the sound of gunfire inside of a home.
9 Correct?

10 A Yes.

11 Q Do you remember which side hired you as an
12 expert witness?

13 A It would've been the -- the prosecuting side
14 in that case.

15 Q And was the prosecuting side -- what were
16 they trying to prove regarding the gun noise?

17 A That the gunfire could be heard throughout
18 the house.

19 Q And what was your ultimate opinion in that
20 case?

21 A That the impulse from the gunfire was --
22 reached 110 in the room --

23 Q 110 decibels?

24 A Yes, correct, sorry.

25 Q That's okay. I just wanted to make sure

1 we're talking about decibels and not NC or octave
2 band. I know there's a lot of different numbers.

3 Okay. And do you remember what year this
4 case was in?

5 A No, I do not.

6 Q It was a Missouri State Court case.

7 A Yes.

8 Q Okay. And then the other case -- oh, and it
9 says also "Carlson Law Firm." Was that the law firm
10 that hired you?

11 A Yes, well, it was the -- their investigator
12 hired me.

13 Q Carlson Law Firm was the investigator for
14 the prosecution.

15 A Yeah. I -- I'm not sure how that worked. I
16 can't -- I -- that -- that case has been a while back.

17 Q Okay. And then the Kramer vs. Amed case is
18 the other one you listed, and it just says, "Noise
19 study, hearing loss from 9101 [sic] Lawn Avenue
20 Alarm." What's that case?

21 A There was a -- a house was being sold, and
22 there was a -- a pool that went out the back door.
23 And there was an alarm that was connected to that back
24 door, and one of the guys that was showing the house,
25 walking through the house opened that door.

1 And he -- he ended up being about 6-3, 6-4
2 right at your height of that alarm and claimed that he
3 got hearing loss when he opened that door.

4 Q Do you remember how long ago that case was?

5 A Yeah, that one was about eight years ago, I
6 believe.

7 Q Which party were you hired as an expert for?

8 A For the homeowner.

9 Q And what kind of noise study did you
10 conduct?

11 A We conducted a -- a test of the -- the alarm
12 that went off inside the home. So we hooked the guy
13 up with a monitor to record what level he was exposed
14 to and then had two other monitors in the room to
15 record the level of that alarm.

16 Q Do you remember if you were deposed in that
17 case?

18 A It got settled before I got deposed. Wait.
19 I take that -- no, it did not. I did get deposed, and
20 it was in -- it was in the office. Yeah, so I did get
21 deposed on that one.

22 Q But it settled before trial.

23 A I believe so, yes.

24 Q And do you remember what jurisdiction it
25 was in?

1 A St. Louis County, I believe. The house was
2 in Brentwood.

3 Q And do you remember what your ultimate
4 expert opinion was in that case?

5 A The level was loud. I don't recall what my
6 conclusion was, if -- if it exceeded the -- it did
7 exceed the OSHA level but not duration.

8 Q Have you ever served as an expert witness
9 for Mr. Petruska or anyone at Greensfelder, his firm?

10 A No, I don't believe so.

11 Q I think I might have asked this previously.
12 But have you ever previously testified about the
13 Illinois EPA noise standards?

14 A I can't recall.

15 Q Have you previously testified in any case in
16 Illinois?

17 A Yes, there is one. I'm trying to -- I can't
18 recall what the case was. I have done some town hall.
19 There was a -- I'm sorry.

20 There was one in Edwardsville [ph] that I do
21 recall testifying for. A homeowner had had a gun
22 range out his back door. That case, that was a loss
23 for my client.

24 Q And which side was your client?

25 A He was the one being sued by the city or

1 being fined.

2 Q For having the gun range?

3 A Yes.

4 Q So it was ultimately determined that the gun
5 range violated whatever city --

6 A Yeah, it was Edwardsville's [ph] noise
7 ordinance, not the Illinois.

8 Q And in your expert opinion there, did you
9 conduct a noise study on the gun range?

10 A Yes.

11 Q And the gun range, I assume, is outside.

12 A Correct.

13 Q Was your conclusion that it did not violate
14 the Edwardsville [ph] noise ordinance?

15 A I -- I concluded that the -- the level
16 was -- had diminished by time it hit the property
17 lines, that it was lower than what the Illinois EPA
18 had put. But Edwardsville's [ph] noise code, the
19 judge used it.

20 Q So your ultimate conclusion was based off of
21 the noise outside using the Illinois EPA guidelines.
22 Correct?

23 A Correct.

24 Q Okay. But the court's ultimate decision was
25 based off of the city ordinance.

1 A Yes.

2 Q And when you were conducting measurements in
3 that case, it was from an outdoor gun range to the
4 property line outdoors.

5 A Yes. Yeah, he was on about ten acres of
6 land.

7 Q So you went to the property line of the
8 nearest neighbors.

9 A Correct.

10 Q Just checking my notes, do you still have
11 your Exhibit 2, your CV in front of you?

12 A Exhibit 2, yes.

13 Q Towards the end of that, you list your work
14 history and representative projects and clients, and
15 you identify Continental Bar in St. Peters, Missouri.
16 Do you see that?

17 A Yes.

18 Q And was that sound -- that says, "Sound
19 measurements and study of bar noise impact on
20 residents." Correct?

21 A Correct.

22 Q And I am assuming the bar is located in
23 St. Peters, Missouri.

24 A Yes.

25 Q And do you know if this bar played live

1 music?

2 A Yes, on Fridays and Saturdays.

3 Q And who hired you?

4 A The bar owner.

5 Q And why did the bar owner hire you?

6 A The residents were filing a complaint
7 against his bar for excessive noise.

8 Q You did a noise study. Did you do anything
9 else?

10 A That was it.

11 Q And was the noise study conducted inside the
12 residence, or how --

13 A No. No. It was all done outside.

14 Q And why was that?

15 A The sound was at the property line, going
16 over from the bar on the back side there.

17 Q So the bar and the residents, there was a
18 gap between the two buildings.

19 A Correct.

20 Q So you did a sound study where you measured
21 outside at the property line.

22 A Yes.

23 Q And not inside that residence.

24 A Not inside, no.

25 Q And what was your ultimate conclusion in

1 that case?

2 A There was -- Highway K was the dominating
3 noise source. It was louder than what the bar was
4 producing.

5 There was sound coming from the bar, but it
6 was actually after the band stopped and people were
7 leaving. So we get more noise from the car -- cars
8 exited the parking lot.

9 Q Do you know if there was ever any type of
10 official complaint or lawsuit filed in that case?

11 A I'm not sure of the legal implications on
12 that one.

13 Q And you said your conclusion was that the
14 highway noise was louder than the bar source.
15 Correct?

16 A At that -- yeah, during that time frame when
17 the bar was -- quit -- when the music stopped playing.
18 And there was a little bit of a sound from the road
19 that was impacting with the bar music. It was still
20 lower than the property line noise level.

21 Q And in that case, could you hear the bar
22 noise at the residence at all?

23 A Yeah, on occasion, yes.

24 Q It was just lower than the regular noise
25 that was occurring from the road.

1 A Correct, the background sound.

2 Q And do you remember if you provided any
3 recommendation for noise remediation efforts at that
4 bar?

5 A I do not believe we provided any
6 recommendations at that time.

7 Q Is it typical for you not to provide
8 recommendations when you conduct a noise study?

9 A It depends on the client, if they want to
10 pay for the extra recommendations or if they just need
11 the -- the study, just the levels.

12 Q And how much extra would it cost in your
13 time for you to provide recommendations?

14 A It depends on the project, what is being
15 analyzed, and what's -- what's some of the
16 recommendations may be.

17 If it's a wall, it may take a little bit
18 longer to analyze that wall and run some calculations.
19 If it's building materials or constructing some type
20 of wall or some interior corrections, it would depend
21 on what actually needs to be constructed.

22 Sometimes, it could be, you know, a couple
23 hours of my time. Sometimes, it could be 20 hours.

24 Q I'm just going to ask just one more line of
25 questions, and then we can take a break because we've

1 been going for about a little bit over an hour here.

2 So I believe that you have previously taken
3 the Illinois EPA standards in -- they've previously
4 impacted your opinions or your sound studies.

5 Correct?

6 Like, the gun range case, for example, you
7 previously said that you looked at the Illinois EPA
8 standards there. Correct?

9 A Yes.

10 Q And in that one, you provided an opinion as
11 to whether sound levels met those standards under the
12 EPA.

13 A I compared them to that, yes.

14 Q And that one was for outside noise. Have
15 you ever compared the EPA standards to inside noise?

16 A No.

17 MS. ROBBINS: All right. That's a good
18 place for a break. We can go off the record, and the
19 time will be 2:25.

20 THE REPORTER: We are now off the
21 record at 2:15 -- we are now off the record at
22 2:15 p.m.

23 (Off the record.)

24 THE REPORTER: We are now back on the
25 record at 2:22 p.m.

1 BY MS. ROBBINS:

2 Q Mr. Brown, I'm now going to kind of shift
3 gears to, you know, your expert opinion in this case
4 instead of your background. Okay?

5 A Okay.

6 Q So you understand that you've been
7 designated as an expert in the litigation between Doug
8 and Geri Boyer and MRB Development, commonly known as
9 Copper Fire. Correct?

10 A Yes.

11 Q And do you know which entity or party
12 engaged you as an expert?

13 A Copper Fire.

14 Q Have you seen the complainants' expert
15 report before you completed your acoustical study?

16 A I did see those documents.

17 Q So you've seen Mr., I can't pronounce his
18 last name, Biffignani -- that's B-I-F-F-I-G-N-A-N-I's
19 report.

20 A Yes.

21 Q And do you see that report before you
22 conducted your study or after you conducted your
23 study?

24 A I don't recall when I was provided that. I
25 think it was provided after I did mine. I could be

1 wrong. I'm not sure.

2 Q Do you have an opinion on the complainants'
3 expert's report?

4 A From what I can see, it kind of lined up
5 almost identical with mine.

6 Q Would you say you applied similar
7 methodology that Mr. Biffignani did?

8 A Yes. Yeah, there was similarities.

9 Q What were you asked to hire or do in your
10 expert opinion?

11 A To obtain sound data during a -- a music
12 performance at Copper Fire.

13 Q And were you told why you were being asked
14 to get the sound data?

15 A The property owner next to Copper Fire was
16 complaining about sound levels in her apartment.

17 Q Can you describe the methodology you used to
18 conduct your study?

19 A I used ANSI standards, the American --
20 national testing standards for sound control -- or
21 sound measurements. I followed the ASA guidelines and
22 ASHRAE testing methods.

23 Q Did you also review any of the Illinois EPA
24 standards for sound testing?

25 A Yes.

1 Q And did you comply with those standards for
2 the methodology for sound testing?

3 A Yes, as best as possible in this particular
4 case.

5 Q Did you ever speak with the owners of Copper
6 Fire?

7 A No. I believe they were out of town that
8 weekend I was there.

9 Q Did you speak with any managers or employees
10 of Copper Fire?

11 A Yes, I spoke with a couple employees that
12 were -- that were on the job site that day. I set up
13 my monitors.

14 Q And you said you were setting up your
15 monitors. There was one monitor you set up inside the
16 bar. Correct?

17 A Correct.

18 Q And the only employees or managers that you
19 spoke to were those that were working on the day you
20 were setting up your equipment. Correct?

21 A Yes.

22 Q And what did you speak with those employees
23 or managers about?

24 A Basically, location of the monitor, make
25 sure it was not in -- in traffic or going to be bumped

1 or -- if it was out of the way.

2 Q And do you know if they had to move any
3 tables or anything to assist in making sure it was out
4 of the way?

5 A The particular place that we went with, no,
6 nothing needed to be moved except there was a sign
7 that was right in front of the door there. I think we
8 moved it just a little bit, just to get away
9 again from the monitor.

10 Q And what did you pick the location you did
11 for your monitor?

12 A It was center of the room, still a little
13 bit away from the band, in a -- in an open area that
14 was not -- did not have any traffic through. But it
15 still had area for gathering, and it was still close
16 to the bar.

17 Q About how far away from the speakers on the
18 stage was the monitor inside the bar?

19 A About 12 feet.

20 Q You conducted your study on July 9, 2022.
21 Correct?

22 A Correct.

23 Q And do you know if Copper Fire, and when I
24 say "Copper Fire," I mean Copper Fire's owners, were
25 aware that you were conducting a study on that day?

1 A Yes.

2 Q And do you know how they were aware you were
3 conducting your study?

4 A I believe they were aware through the --
5 through their attorney.

6 Q Do you know how long before the study they
7 were notified that you were conducting it on that day?

8 A We scheduled it a week out.

9 Q And when it was scheduled a week out, do you
10 know if the band that played that day were already
11 booked and scheduled?

12 A I believe they were, yes.

13 Q And you measured sound inside of Copper Fire
14 at the same time that you measured sound inside the
15 Boyer residence. Correct?

16 A Correct.

17 Q Did you give any employees inside Copper
18 Fire any instructions regarding your equipment?

19 A No.

20 Q Did you tell them not to touch it or do this
21 if X happens, anything like that?

22 A Yes.

23 Q What type of instructions, I guess,
24 involving not touching or in that realm?

25 A "Please, don't move the monitor. Let me

1 know if it becomes an issue or it comes in the way."
2 That was on site.

3 Q And did you stay at Copper Fire all day?

4 A No, I did not.

5 Q So did you give them your contact
6 information if they needed to reach you regarding the
7 sound equipment?

8 A They were given the attorney's number.

9 Q And did anyone call you throughout the day
10 about there being any issue with the sound equipment
11 inside the bar?

12 A I received one call from Paul right before
13 the second band started.

14 Q And what happened on that call?

15 A Just that they were getting ready to set up
16 and that they had put a couple speakers fairly close
17 to the monitor, but they had readjusted those and
18 moved them back closer to the stage.

19 Q Okay. So this second band that played, The
20 Motherlovers, placed speakers in a different place
21 than when you had originally set up your sound
22 monitor.

23 A They had -- in the process of setting up
24 their equipment, they had -- it looked like they had
25 moved a speaker all the way out pretty far. But that

1 was just to set it up.

2 Once they start playing, everything was
3 shifted back towards the stage in its regular
4 locations.

5 Q So your monitor was 12 feet away when the
6 second band was playing. Correct?

7 A Correct.

8 Q Okay. And if that speaker had not moved
9 back, would that have impacted the sound study?

10 A No. I don't believe it would've impacted.
11 It just made that location appear louder. It would've
12 made the sound level louder at that monitor location.

13 In that field of -- free field of sound
14 level, it had enough time to generate the noise in the
15 room. So it was evenly distributed where it wasn't
16 just a direct sound coming from the speaker.

17 Q So you said you were not in the bar all day.
18 So what did you do after you set up your equipment
19 inside Copper Fire?

20 A So we started at roughly about nine -- nine
21 or ten o'clock that morning to set up the monitor
22 inside the apartment first. There was some people in
23 there. So we went in.

24 I looked around, got that one set up, moved
25 over to the bar, got that one set up, and then set one

1 up outside between the two -- two buildings, finished
2 that about eleven, between ten and eleven, I guess. I
3 went and visit my mother before the other band started
4 at one --

5 Q So were you present when the first band was
6 playing?

7 A Yes.

8 Q For the entire time or just for like --

9 A Just for their last sets, set and a half.

10 Q About what time was that?

11 A It was around two -- 2:30, three o'clock.

12 Q So you were present when the first band was
13 finishing around 2:30, three o'clock. Then there was
14 a break in time when there was no band playing.

15 Correct?

16 A Correct.

17 Q And then you left the site again. Correct?

18 A Yes, I did.

19 Q Okay. And that when you had left the site
20 is when you received the call from Mr. Petruska about
21 the band moving the speakers when setting up.

22 Correct?

23 A Yeah. I was on my way back when he called.

24 Q And what time did you get back at?

25 A A little bit before the second band started,

1 so it was probably around 6:30, quarter until seven.

2 Q Did you stay for the entire set?

3 A Yes, I did. I stayed in the bar until they
4 went on break.

5 After they went on break, I went up into the
6 loft, Apartment C, and sat in there and took notes and
7 recorded until the end of the -- until the end of that
8 set, until the band was over. That was about eleven
9 o'clock.

10 Q Yeah. So let me just go ahead and pull up
11 what I'm going to mark as Exhibit 4 which is your
12 sound study if you want to put that in front of you.

13 Do you have it in front of you? I'm just on
14 the first page. Just so we have a clear timeline,
15 Three of a Perfect Pair which is the first set, it
16 went from two to 2:45.

17 You were not there for the two to 2:45, and
18 you were there from the three to 3:30 set. Or do I
19 have that backwards?

20 (Exhibit 4 was marked for
21 identification.)

22 A Yeah. I was there for the last set, the
23 second set. I got there about three, I guess.

24 Q Okay. So you left after you set up the
25 equipment, came back for Three of a Perfect Pair set,

1 left again, and then came back right before The
2 Motherlovers started.

3 A Correct.

4 Q Okay. And you stayed in Copper Fire
5 listening to The Motherlovers until -- if we go down
6 and look at Figure 3, you have a notation of when
7 McClure entered the room to get sounds.

8 So that's at about, I don't know, somewhere
9 between nine and 9:30 you moved to the Boyer
10 residence.

11 A Yes.

12 Q Okay. And you were never inside the Boyer
13 residence when the first band was playing though.
14 Correct?

15 A Correct.

16 Q Okay.

17 A Yeah. People were in the apartment all the
18 way until -- you can see where they left.

19 Q Right, right here.

20 A Yeah.

21 Q Okay, just before -- just after noon and
22 then -- but before the band started. Correct?

23 A Correct.

24 Q Okay. And when you came back into the
25 apartment in the evening, no one else was in the

1 apartment with you. Correct?

2 A Correct.

3 Q Did you set up all the equipment yourself,
4 or did anyone help you?

5 A No, I set it up.

6 Q Okay. And did you speak to either of the
7 bands that played at Copper Fire?

8 A I did talk with the -- couple of guys from
9 Motherlovers, just on the initial -- when they were
10 setting up, trying to get an idea of where their
11 speaker was going to finally end up.

12 And then we went -- I was standing there
13 when they went over the level requirements of the
14 band.

15 Q So The Motherlovers were aware that you were
16 conducting a sound study of the bar. Correct?

17 A Yes.

18 Q And do you know if the first band was aware
19 that you were conducting a sound study at the bar?

20 A I do not believe they were aware. I -- I
21 would imagine they knew something was up 'cause the
22 space rocket thing's looking right at them.

23 Q So you actually got to my next question
24 which was about, I guess, what you just called the
25 "space rocket." That equipment was just set up over

1 in the middle of the bar. So anyone could see it.

2 Correct?

3 A Correct.

4 Q Okay. And if you go to Exhibit 5, what
5 we'll be marking as Exhibit 5, to use your own words,
6 that's a picture of the space rocket. I can share my
7 screen as well. This is the "space rocket" you used,
8 the SV 307. Correct?

9 (Exhibit 5 was marked for
10 identification.)

11 A Yes. That's the sound monitor I used.

12 Q Okay. And this is what the device you used
13 looked like. Correct?

14 A Correct.

15 Q About how large is this device?

16 A It's roughly about 18 inches tall, a
17 circular diameter of about 4 inches. It goes on a
18 tripod.

19 My tripod is not the same as is shown in the
20 picture. Mine's just a standard camera tripod. It
21 gets screwed on top.

22 Q Understood. So altogether, you actually
23 though set up three of these devices. Correct?

24 A Correct.

25 Q So one was the one you were just talking

1 about that was inside the bar that you said was in an
2 open area about 12 feet from the speakers. Correct?

3 A Correct.

4 Q And then one was inside the Boyer residence.

5 A Yes.

6 Q And then the third one was outside of Copper
7 Fire.

8 A Yes.

9 Q And all of three of those devices ran
10 continuously for that roughly 11-hour period.
11 Correct?

12 A Yes.

13 Q Okay.

14 A They were all set up to run continuously
15 during that whole time.

16 Q And is there a way for you to monitor them
17 in any way remotely when you're not on-site?

18 A Yes, there is. But this -- these have not
19 had the cell phone installed on them yet. So they
20 have the technology or the capabilities to record --
21 you know, to provide information remotely.

22 But it takes a cell phone chip and a Wi-Fi
23 connection, and that was not -- I did not go through
24 that to get that set up.

25 Q Did you not go through that to get that set

1 up just because of like the extra work and hassle to
2 set it up, or you don't think it's necessary?

3 A I did not believe it was necessary for this
4 project.

5 Q And when you were away from the bar and, I
6 guess, the bar, the residence, and the one that was
7 outside, is there any way for you to know if at any
8 point they stopped taking in readings or were impacted
9 by some other outside --

10 A Yeah. There was a -- the -- the monitor has
11 a -- what they call a "trigger" or a "vibration
12 trigger" on them. If they get knocked over or get
13 moved, that tells me. It'll indicate what time that
14 may have happened.

15 If they stopped, it would not -- you would
16 have a blank in the recording, a time frame where it
17 was stopped in the data. I did not see any of that,
18 indication of that.

19 Q The unit that you had set up outside of
20 Copper Fire, was that just on the sidewalk in front of
21 the building?

22 A Yes. It was located right between the two
23 buildings, right at the -- there is an iron fence, and
24 it was just outside the tables area. And it was
25 chained or locked to the -- that fence.

1 Q And did you ask anyone inside Copper Fire to
2 keep an eye out for the unit that was outside?

3 A No, there was no need to. It was locked and
4 secured. I felt confident it wasn't going anywhere.

5 Q And what would've happened if somebody
6 walked by and, you know, touched one of your units?

7 A If they touch them, nothing, the worst they
8 can do is run by and scream or try to sing into it.

9 Q But you would've picked up if something like
10 that had happened in your --

11 A Correct.

12 Q Okay. At any time when you were inside
13 Copper Fire while the two bands were playing, so we'll
14 start with the first band.

15 While the first band was doing its second
16 set and you were inside of the bar, at any time while
17 they were playing did you try to talk to anyone?

18 A No, I kept to myself, sitting back at the
19 bar.

20 Q And what about when The Motherlovers were
21 playing? Did you try to talk to anyone while you were
22 inside the bar at that time?

23 A Paul had joined me, and we talk a little
24 bit. And then once they were on break, I left, and I
25 kind of stayed back in the back corner, out of the

1 way, make sure I didn't take a table that was needed
2 or -- I stayed out of the way.

3 Q Yeah. And when you were talking with Paul
4 while The Motherlovers were playing, do you remember
5 if you had to raise your voice at all?

6 A Yes.

7 Q And that was so that he could hear you.

8 A Correct, it was -- yeah, it was a little
9 above 80 in there. We talk at about 70. So I
10 would've had to raise my voice a little bit to get
11 above that 80 threshold.

12 Q And when you're saying "70" and "80," just
13 so that it's clear for the record, you're talking in
14 decibels.

15 A That's correct.

16 Q So we're going to go back to Exhibit 4 which
17 is your expert report. So if you look on the first
18 page in Summary of Results, do you see where I am?

19 The first line of Summary of Results says,
20 "The sound emitted from Copper Fire Bar and Eatery
21 while the [sic] band is playing is the primary focus
22 of this sound study." Correct?

23 A Yes.

24 Q And who established this as your primary
25 focus?

1 A This is something I established, that it was
2 the dominant source that I can hear around the bar.

3 Q So your primary focus was not how loud the
4 sound was perceived in the Boyer residence.

5 A So that encompasses that primary focus of
6 the sound emitted to other areas.

7 Q So --

8 A The sound generated -- generated in the bar
9 emitted to other areas was the primary focus.

10 Q If we look at Table 1 on that same first
11 page, you state that you measured the sound pressure
12 level from the center of Unit C, 10 feet from the
13 property line wall. Correct?

14 A Yes, it was halfway through the -- half
15 distance between the two walls.

16 Q And you say that that was 10 feet from the
17 property line wall. Correct?

18 A Correct.

19 Q And why did you pick this spot for your
20 measurements?

21 A It was the center of the room. It was
22 further from the window, the front window, and it
23 looked like an area that was pretty much used for
24 either dining or sitting in the living rooms, possible
25 areas of conversation.

1 Q And you said it was further from the window.
2 If you had been closer to the window, could that have
3 like impacted your readings and had higher sound
4 readings?

5 A Correct, yes. There would've been more
6 street noise impacting the monitor.

7 Q And if you'd measure closer to the property
8 line, as in the wall between Copper Fire and the Boyer
9 residence, is it possible that your sound readings
10 would've been higher if you had been closer to the
11 wall?

12 A It is possible, yes, not by much, but, yeah.
13 It would be some increase.

14 Q So under Table 1, you have a note, and it's
15 an asterisk that's going up to your 10 feet
16 designation. You say, "*The Illinois EPA states the
17 measurement should be measured at 25 feet from the
18 property line." Correct?

19 A It's 25 feet from the sound source,
20 actually, which is --

21 Q Okay.

22 A Which in this case is the property line.

23 Q The sound source is the property line.

24 A The sound source is at the property line.
25 It continuously goes along that wall.

1 Q I guess, where did you get the information
2 that it needed to be 25 feet from the property line?

3 A From the Title 35 Illinois EPA Noise Code.

4 Q Let's look at what's going to be marked as
5 Exhibit 6 which is the EPA Code Section or Part 900.
6 And you're familiar with the Section 900. Correct?

7 (Exhibit 6 was marked for
8 identification.)

9 A Yes.

10 Q And you even provided Section 900 as one of
11 the sections you relied on. Correct?

12 A Correct.

13 Q Okay. Go to Page 7 which has the definition
14 for "property-line noise source," bottom of Page 7,
15 and I'll also pull it up on my screen. Are you there,
16 Mr. Brown?

17 A Yes.

18 Q Okay. So according to the EPA, the
19 definition of "property-line noise source" is, "Any
20 equipment or facility, or a combination of equipment
21 and facility, that operates within any land used as
22 specified," under the Code.

23 "The equipment or facility, or combination
24 of the [sic] equipment or [sic] facility, must be
25 capable of emitting sound beyond the property line of

1 the land on which it is operated." Correct?

2 A Yes.

3 Q So the property-line noise source, I just
4 want to understand because you were stating that the
5 property line itself is the noise source.

6 But isn't it, under this definition, isn't
7 it the equipment that is capable of emitting sound
8 beyond the property line?

9 A Yeah, that's correct.

10 Q Okay. So in the case of the bar and the
11 bands playing, we're talking about the speakers would
12 be emitting the sound. Correct?

13 A Yes.

14 Q So if we go to Exhibit 7 which is Section or
15 Part 901, I'll share my screen as well. So if we're
16 looking at 901.102(a) -- and (a) and (b) are for Class
17 A land which is residential. Correct?

18 (Exhibit 7 was marked for
19 identification.)

20 A Yes.

21 Q Okay. So it's talking about the sound
22 emitted from Class A land. But if you look at the
23 last line in (a), it says, "Sound pressure levels must
24 be measured at least 25 feet from the property-line
25 noise source." Correct?

1 A Correct.

2 Q Okay. So based off of the definition and
3 that requirement, the measurement should be taken
4 25 feet, in this case, from the speaker.

5 MR. PETRUSKA: I'm going to object. It
6 says "at least." Doesn't it?

7 MS. ROBBINS: Sure.

8 BY MS. ROBBINS:

9 Q "Must be at least 25 feet" from the speaker.

10 MR. PETRUSKA: You can answer.

11 THE WITNESS: Yes, that sounds --

12 BY MS. ROBBINS:

13 Q Okay. So under those EPA standards, the
14 25 feet requirement is from the noise source, not from
15 the property line. Correct?

16 A Correct.

17 Q Do you know where the stage was located in
18 relation to the Boyer residence?

19 A Right along that wall, right at the wall.

20 Q And do you know if that --

21 A That stage --

22 Q Okay. So if you were standing on the stage
23 looking out into the audience, which direction is the
24 Boyer residence?

25 A To the left.

1 Q And where is the closest speaker to the
2 Boyer residence?

3 A Probably right at that wall at the front of
4 the building there. On Figure 2, I kind of put a
5 sketch together of how everything's laid out.

6 Q Let me pull up Figure 2, and we're talking
7 about Figure 2 in Exhibit 4.

8 A Right.

9 Q So I am looking at Figure 2, and I'm just
10 going to share it so that I understand what we're
11 talking about. Can you see my mouse?

12 A Yes.

13 Q So you're saying that the closest speaker
14 was right here in the band area.

15 A Approximate, yes.

16 Q Okay. And still looking at Exhibit 4, I'll
17 stop sharing my screen just because I know I turn
18 little and it's hard to see you as well.

19 But if you go to Table 1 on Exhibit 4, it's
20 on the first page. You list at the bottom the
21 Illinois EPA sound limits for daytime and nighttime
22 hours. Correct?

23 A Correct.

24 Q And you list those in decibels. Correct?

25 A Yes, dBA.

1 Q Yeah. And you state that at daytime, it's
2 55, and at night time, it's 50. Correct?

3 A Yes.

4 Q The EPA doesn't give sound limits as one
5 number in decibels. Correct?

6 A That is correct. It gives them in octave
7 band frequencies.

8 Q Okay. So you're daytime and nighttime
9 limits, you've calculated them somehow using the EPA
10 standards. Correct?

11 A Yes.

12 Q How did you calculate those numbers?

13 A Off the octave band frequency.

14 Q Okay. Did you do the math yourself, or did
15 you use an octave band calculator?

16 A The actual program that I used for the
17 SVANTEK monitors has an octave band dBA calculator.

18 Q Okay. So you used that calculator on that
19 device, entered in all of the numbers from Part 901 of
20 the EPA, and it gave you these numbers.

21 A Correct.

22 Q Did you verify that those numbers were
23 correct?

24 A Yes.

25 Q How did you verify the numbers were correct?

1 A Running the -- the monitor, just checking
2 the data.

3 Q Are you aware that when you placed the EPA
4 numbers for nighttime hours into an octave band
5 calculator that the permissible sound limit is
6 actually 44.4 decibels?

7 A The --

8 Q For nighttime.

9 A The octave --

10 Q Yeah.

11 A I'm sorry. What?

12 Q Yeah. So I asked if you were aware --
13 because I know you said you relied on one device --

14 A Yeah. It's not quite -- it's 54.8 or
15 something like that.

16 Q And what I said is, "Are you aware that it
17 is actually 44.4?"

18 A 44.4?

19 Q Yes.

20 A For the nighttime?

21 Q Yes.

22 A I would have to see that. I don't -- I
23 don't see it.

24 Q And I assume that you don't have the monitor
25 that you used to calculate the octave band with you

1 currently.

2 A With me now? No, I do not.

3 Q Well, I'll represent to you that I used a
4 calculator and got 44.4, but we'll talk about it in
5 both ways. Okay, since your report says 50 but I did
6 calculate it at 44.4. Okay?

7 So looking at Exhibit 4, in your ultimate
8 conclusion at the end, you state, "While the [sic]
9 music can be heard, based on our sound level
10 measurements, the sound level inside the apartment is
11 below [sic] Illinois Title 35 Subtitle H: Noise Code
12 sound level limit at all frequencies." Correct?

13 A Correct.

14 Q And that is the sound level inside of the
15 Boyer residence.

16 A Yes.

17 Q And on Page 3 of your report, I'll share my
18 screen so you can see what I'm talking about, you
19 identify that Illinois Code Subtitle H was created to
20 determine outside noise issues. Correct?

21 A Yes.

22 Q And you bolded "outside."

23 A Yes.

24 Q And why did you bold "outside"?

25 A Just to show that's for outside noises.

1 Q So you would agree that you were -- go
2 ahead.

3 A It was written for noise outside -- outside
4 a building.

5 Q So you would agree that you relied on the
6 Illinois EPA Code that set standards for outside noise
7 issues.

8 A Correct.

9 Q And the noise issues that you ultimately
10 were reporting and reaching a conclusion on were for
11 inside noises.

12 A Yes.

13 Q So you measured inside the Boyer residence.
14 Correct?

15 A Yes.

16 Q And you reached your conclusion that the
17 sound level inside was below the guideline for
18 outside. Correct?

19 A Correct.

20 Q Did you take into account that you were
21 analyzing noise inside of a residence and not outside
22 of a residence in reaching your conclusion?

23 A Yes.

24 Q How so?

25 A Taking in account the -- the absorption in

1 the room, the -- the wall transmission sound loss.

2 Q In your opinion, is the standards for noise
3 levels inside of a residence the same as for noise
4 levels outside of a residence?

5 A Same? No.

6 Q So it's not your opinion that the same
7 standards for what is reasonable noise inside a
8 property is also reasonable noise for outside a
9 property.

10 A That's correct.

11 Q Mr. Brown, do you know how many decibels the
12 average window mitigates?

13 A How much it mitigates? Yeah, a window
14 typically -- window, just a single pane, it's about
15 15 dB. On a good one, you can get up to as high as
16 40, 35.

17 Q So if we're going off of your limit of 15 to
18 35, we can pick somewhere in the middle of that which
19 is about 25 for an average window, somewhere in there.
20 Correct?

21 A Yes.

22 Q Okay. So if the applicable noise outside at
23 nighttime under the Illinois EPA Code is
24 44.4 decibels, wouldn't the applicable noise inside be
25 somewhere around 20?

1 MR. PETRUSKA: I'm going to object,
2 misstates the evidence. There's been no evidence
3 submitted to this witness showing that the level is
4 actually 44, assumes facts not in evidence. But you
5 can answer the question if you understand it.

6 THE WITNESS: What was the question
7 again?

8 BY MS. ROBBINS:

9 Q I said if the applicable noise for nighttime
10 under the Illinois EPA is 44.4, wouldn't the
11 applicable inside noise be something like 20 if you're
12 calculating the mitigation of a window?

13 A No, not necessarily, no.

14 Q So you don't take into account how a wall or
15 a window would mitigate noise in determining what the
16 correct inside noise should be.

17 A Yes, it can be used. I -- I'm not sure of
18 your question though, but I'm not sure --

19 Q I can repeat my question. I can also --
20 I'll use your number. So if your calculation is
21 correct in your report that the proper decibel noise
22 level according to the EPA for outside noise at night
23 is 50 decibels, we can go with that.

24 And you just testified that an average
25 window is somewhere between -- well, mitigates

1 somewhere between 15 and 35 decibels of noise.
2 Wouldn't an applicable inside noise be somewhere 15 to
3 35 decibels below that 50 that you had created for
4 outside noise?

5 MR. PETRUSKA: I'll object. It's vague
6 and confusing and misstates the evidence. It's not
7 proper science either.

8 BY MS. ROBBINS:

9 Q So is it your opinion that you do not take
10 the -- in this report, did you take into account at
11 all that you were conducting a sound study internal in
12 determining whether it met the EPA noise standards?

13 A I was aware of it, yes.

14 Q But you didn't change what the standards
15 were from the outside --

16 A No, I did not. No.

17 Q So you didn't take into account that there
18 was two brick walls between the buildings.

19 A I could not confirm that.

20 Q Do you know how a brick wall compares to a
21 window in stopping or mitigating noise?

22 A Yes.

23 Q And how is that?

24 A A brick wall has good properties of blocking
25 sound.

1 Q Do you know about how many decibels?

2 A Depends on the brick wall and what -- what
3 the thickness of it is and how much mass, so a typical
4 cinder block is 50 -- about 50 STC.

5 Q We can go look at your actual report. So if
6 you go to Page 5 of your report, in the second
7 paragraph, I'm sharing so you can see where I'm
8 looking at.

9 You state that it was determined that the
10 sound transmission loss between the bar and apartment
11 is 55 decibels. Correct?

12 A Correct.

13 Q And you're not aware that there are brick
14 walls between the bar and the residence.

15 A Oh, yeah. I mean, I -- there was a brick
16 wall there.

17 Q Okay.

18 A What that was constructed of, I do not have
19 details. Nobody can confirm what -- what the actual
20 construction of that wall was.

21 Q Do you know that it was at least two brick
22 walls versus how it was constructed --

23 A I would assume, yeah. There was two brick
24 walls, two buildings built.

25 Q Okay. So you were aware that there were two

1 brick walls was what was between Copper Fire and the
2 Boyer residence.

3 A That's what I assume. I do not have any
4 evidence or any -- any other stated facts of what that
5 wall is constructed of. We can assume that it's two
6 brick walls, but it could have, you know -- aware -- I
7 don't -- I just --

8 Q Yeah. So --

9 A I'm guessing on what the wall construction
10 is.

11 Q Yeah. Without saying what the wall
12 construction was, the impact of each wall itself was
13 about 27 1/2 decibels then. Correct?

14 A I can't say that for sure, no.

15 Q So --

16 A You -- you can say what the composite of it
17 is.

18 Q Yeah. So together, they were --

19 A Independently, I -- you can't attest, I
20 mean.

21 Q Okay.

22 A It's -- it's not done like that
23 independently unless you do an actual test on that one
24 independent wall and then determine what the other one
25 is.

1 Q So you --

2 A But it's -- it's all composite wall. That's
3 how it was assumed and how it was estimated that --
4 what the STC of that wall is.

5 Q I understand --

6 A -- an educated guess on what that wall was
7 assumed to be.

8 Q So if a window is 15 to 35 and, in this
9 case, the two walls that are of unknown make, were 55
10 jointly. Correct?

11 A Correct.

12 Q Okay. But you don't know the individual
13 impact of each wall.

14 A No, I do not.

15 Q But the walls function like a window would
16 function in mitigating sound. Correct?

17 A No, the wall would function as a wall.

18 Q They function in some capacity to mitigate
19 sound.

20 A Correct, they will have some type of block.
21 It will block the sound some way.

22 Q And if you go to Page 3 of your report, you
23 list -- right after the section we talked about where
24 you bolded "outside," so that's where you identify
25 that the Illinois Code was created to determine

1 outside noise. Correct?

2 A Yes.

3 Q And then you identify other sources of
4 information used as guidelines in your study to
5 determine acceptable indoor noises.

6 A Yes.

7 Q But you don't discuss those guidelines or
8 resources at any point in the report besides listing
9 them here on Page 3. Correct?

10 A That is correct.

11 Q And you also did not provide those
12 guidelines or resources in response to the subpoena.
13 Correct?

14 A Not all of them, no.

15 Q You didn't provide any of them. Correct?

16 A No, I guess not, no.

17 Q And you've already testified that, in fact,
18 you did not alter the EPA outside noise emission
19 guidelines to determine the acceptable indoor limits.
20 Correct?

21 A Correct.

22 Q Even though you stated that you had to look
23 at other resources to determine that. Correct?

24 A Yes.

25 Q So did these studies impact what you

1 determined was an acceptable indoor sound limit?

2 MR. PETRUSKA: I'm going to object,
3 misstates -- I don't think he was ever asked to
4 determine an indoor level. But you can answer if you
5 understand the question.

6 THE WITNESS: No, I don't. No, I have
7 not determined what an inside level should be.

8 BY MS. ROBBINS:

9 Q So you have not determined what an inside
10 level should be. You have only determined whether or
11 not inside the Boyer residence meets the outside
12 standards.

13 A Correct.

14 Q So why did you identify these other
15 resources as guidelines in this study for acceptable
16 indoor sound limits if you didn't use them?

17 A Because they all vary on what -- what their
18 interpretation of "inside noise" should be, there is a
19 range of level that is associated with each -- each
20 one.

21 So HUD's got their own guideline. World
22 Health's got their own, all the acoustical
23 societies --

24 Q But to my understanding you just didn't take
25 into account any of those studies in your --

1 A No, not for this study, no.

2 Q Okay. So you said they all had varying
3 guidelines for indoor noise. Let's go to the World
4 Health Organization. Do you know what the World
5 Health Organization recommends for bedrooms at night
6 for quality sleep?

7 A Yeah, somewhere around 30, 35.

8 Q And you didn't take this into account in
9 reaching your conclusion in your expert report.
10 Correct?

11 A Not in this report, no.

12 Q What about the America Society of Heating,
13 Refrigeration, and Air-Conditioning, ASHRAE? You're a
14 member of ASHRAE. Correct?

15 A Yes.

16 Q And I'm assuming that this one when we were
17 talking about earlier all of the mechanical systems
18 and stuff that you mitigate noise on is related to
19 ASHRAE. Correct?

20 A Correct.

21 Q Does this organization have any limits or
22 recommendations for the sounds that mechanical systems
23 should make inside a residence?

24 A Yeah, they have some ranges for the noise
25 criteria, where it should fall.

1 Q And what is that noise criteria?

2 A For which case?

3 Q For, I guess --

4 A We talked about that earlier. Didn't we?

5 Yeah --

6 Q Are you saying that the NC-25, the noise
7 criteria that we talked about earlier, that's the same
8 requirement from ASHRAE?

9 A Correct.

10 Q Okay. So NC-25 is what ASHRAE recommends
11 for sleeping.

12 A Twenty-five to 30, yes.

13 Q Okay. And if I remember correctly, for
14 quiet space, it was slightly higher. The NC was about
15 10 higher. Correct?

16 A Yeah. Typically, in a range of 30 to 40.

17 Q And did the ASHRAE factor any way into your
18 determination as to what an acceptable indoor sound
19 limit is in this case?

20 A No. Those are under unoccupied spaces and
21 just a recommendation. It's not a -- a standard or a
22 guide or what it should be.

23 Q And just so we have a clear record of it, in
24 your study, you determined that, if we're looking at
25 The Motherlovers in Table 1, their second set which

1 played from 10 to 11 p.m., that would be considered
2 nighttime noise. Correct?

3 A Yes, that counts for nighttime.

4 Q Okay. And in that case, it was 39
5 decibels --

6 A Yes.

7 Q Okay. So we'll go back to the sources that
8 you listed. So you also identify the Noise Control
9 Engineering. You're also a member of that
10 organization as well. Correct?

11 A Correct.

12 Q Does the Institute of Noise Control
13 Engineering have standards and opinions on what is
14 appropriate inside noise?

15 A Yes.

16 Q What are they?

17 A They are pretty much in line with what
18 ASHRAE has put out as far as ranges of sounds for
19 particular living space: apartments, hospitals,
20 offices.

21 Q Do they agree with ASHRAE's determination
22 that an NC-25 is appropriate for sleeping?

23 A It is in that, yes. It is in that range.

24 Q And you previously stated -- I know that we
25 don't have Chapter 48 of ASHRAE.

1 But I believe you previously testified that
2 when you were talking about the daytime sound limit of
3 NC-35, that you thought that was around 30 decibels
4 and that NC-25 would be about 5, that you would
5 calculate, decibels by subtracting about 5 from the NC
6 number. Correct?

7 A Correct.

8 Q So if we're subtracting 5 from the NC
9 number, that would be 20 decibels. Correct?

10 A Yes.

11 Q And that is higher than 39 decibels.
12 Correct?

13 A Correct.

14 Q And then you cite the Acoustical Society of
15 America, the ASA, and that's the one that you're the
16 secretary up in the St. Louis Chapter. Right?

17 A Correct.

18 Q And does the ASA also have standards or
19 opinion regarding inside noise?

20 A They do not have a lot on that --

21 Q Do you know why -- go ahead.

22 A I don't know why they don't have a lot on
23 that, but they do -- they do talk about it. They have
24 a lot of articles. They're more article-based. So
25 people have their own opinions.

1 Q So you've read --

2 A And there's -- there's thousands and
3 thousands of articles.

4 Q So you've read some of those articles.
5 Correct?

6 A A few, not -- not a lot of them, just a
7 couple of them.

8 Q And in those articles, the various authors
9 would be giving opinions -- would potentially be
10 giving opinions on what proper inside noise would be.
11 Correct?

12 A Correct.

13 Q Okay. But you can't point to a specific
14 article that you looked at or relied on in relation to
15 this report.

16 A No, I did not.

17 Q Instead, you listed these sources, but it's
18 your testimony today that you didn't rely on them in
19 reaching your conclusion.

20 A That's correct.

21 Q And you didn't, for your expert opinion,
22 determine what an acceptable indoor sound limit is.
23 Correct?

24 A Yeah, 'cause it's subjective, and I've -- it
25 varies from person to person.

1 Q But according to your expert report, other
2 sources of information could be used to help determine
3 acceptable noise indoors. Correct?

4 A It could, yeah.

5 Q So we've already discussed two subsections
6 of the EPA 900 which we looked at when we were looking
7 at the definition and then 901 which has the octave
8 band frequencies and also says the statement about
9 25 feet. Right?

10 A Yes.

11 Q Okay. So we're going to look at Exhibit 8
12 now which is Section 910. So if you go to
13 910.104 -- and this was also one of the sections you
14 provided in response to your subpoena; correct?

15 (Exhibit 8 was marked for
16 identification.)

17 A Yes.

18 Q Okay. And you relied on this section in
19 completing your report.

20 A Yes.

21 Q So looking at Section 910.104, are you aware
22 that under this section a violation of the Illinois
23 EPA noise regulations, "Can be established without
24 sound pressure level measurements [sic]." Correct?

25 A Yes, it does say that.

1 Q And sound pressure measurements just
2 corroborate evidence alleging violations of this
3 section. Correct?

4 A Correct.

5 Q And that's only if those measurements are
6 properly collected. Correct?

7 A That's correct, yes.

8 Q Okay.

9 A -- a nuisance.

10 Q So in your report, you acknowledge that the
11 music can be heard inside the Boyer residence.
12 Correct?

13 A Yes.

14 Q And you sat inside the Boyer residence for
15 the final set of The Motherlovers from about 9:30
16 until eleven. Correct?

17 A Correct.

18 Q As a sound engineering expert, do you
19 participate in sound mitigation efforts regularly?

20 A I'm sorry. What was --

21 Q You've testified today that you regularly
22 participate in sound mitigation efforts. Correct?

23 A Yes.

24 Q Okay. Based on your expertise, is there
25 anything that can be done to reduce the sound from

1 Copper Fire to its neighbors?

2 A Yes.

3 Q What?

4 A The wall can be improved by adding mass and
5 put an acoustical separation in that wall. A window
6 to the front of the apartment can be improved to
7 eliminate some of the street noise and other noises
8 coming in from that direction.

9 And those are two -- probably the two basic
10 and most -- probably give you the best bang for your
11 buck.

12 Q Did you discuss any of these measures with
13 Mr. Petruska or anyone at Copper Fire?

14 A Nobody with Copper Fire, I have discussed a
15 few options with Paul.

16 Q Did you discuss those with Paul before or
17 after your study?

18 A During the whole time, both, before and
19 after.

20 Q And that was when he -- so you discussed it
21 with him when you met at the -- because he met you at
22 the bar that night. Correct?

23 A Yeah, we kind of looked at the -- the wall
24 and I discussed a few possible options --

25 Q Since then, you've discussed it with Paul

1 again.

2 A Yes, this week I did. He brought it up
3 again, asking what mitigations there are, basically
4 the same question you had.

5 Q And to your knowledge, you don't know if
6 Copper Fire has heard what those mitigation efforts
7 would be.

8 A No. It has not been formally presented to
9 them --

10 Q Okay. And you also stated -- yeah. And you
11 stated that the wall can be improved and then the
12 window, and these would be the things that would get
13 the most bang for your buck is what you said.

14 Do you know approximately how expensive
15 these things would be?

16 A I do not do cost estimates. That would have
17 to come from a contractor, and I don't know the square
18 footage of that wall or all the details that would go
19 into making that estimate.

20 Q Do you know how much a high-quality window
21 costs?

22 A Yes, they're very expensive.

23 Q About how much?

24 A I -- I can't give you the price. I --
25 change -- I worked on a whole lot of windows in the --

1 when I did the airport project, and all those
2 costed -- that was, you know, 12 years, 15 years ago.

3 Q So you don't have --

4 A I do not have estimates --

5 Q So you don't have updated knowledge on what
6 a window would cost today.

7 A Today, I do not, no.

8 MS. ROBBINS: Mr. Petruska, I think I'm
9 done with my questions, but I just want to go through
10 my outline quick, obviously, just subject to any
11 potential cross.

12 So if we can just go off the record for
13 just a minute or two for me to just -- quick check.

14 MR. PETRUSKA: Sure.

15 THE REPORTER: We are now off the
16 record at 3:23 p.m.

17 (Off the record.)

18 THE REPORTER: We are now back on the
19 record at 3:24 p.m.

20 BY MS. ROBBINS:

21 Q Mr. Brown, I just have one quick follow-up
22 question regarding calculating your daytime and
23 nighttime decibel numbers using the EPA guidelines.

24 A Yes.

25 Q Okay. So if you can, just quick, look at

1 Exhibit 7. I'm also just going to share my screen.
2 If you look at Section 901.102(a) and (b), one, the
3 first is for nighttime noise -- or daytime noise and
4 then nighttime hours. Correct, when you're looking at
5 these charts?

6 A Yes.

7 Q Okay. And just to clarify, when you were
8 entering the numbers in the machine that you used to
9 calculate the decibel numbers, you were using the
10 octave band frequency number and aligning it with the
11 Class A land -- or which column, which numbers were
12 you using?

13 A Class A land.

14 Q Okay. So you put that into your calculator
15 that you used, and you inputted each number.

16 A Yes.

17 Q Okay. And it's your belief that nighttime
18 is 50 decibels. Correct?

19 A I believe so. You got me guessing it now.
20 I -- you've said you calculated something different.

21 Q Yeah. And, Mr. Brown, do you still have the
22 calculator system that you used to get that number?

23 A Yeah, it's on my computer at work.

24 Q Okay. And is it readily available and
25 something you could easily calculate again and have on

1 a sheet and, you know, send to --

2 A Yes.

3 MS. ROBBINS: Okay. Mr. Petruska, I'm
4 going to ask to see his calculation sheet.

5 MR. PETRUSKA: Are you asking to redo
6 the calculation?

7 MS. ROBBINS: No, to see his
8 calculation sheet. I just want to see how he
9 calculated it or what he used to calculate it.

10 MR. PETRUSKA: Do you have that?

11 THE WITNESS: I do have that, yeah.
12 I'll get it for you in a bit.

13 MS. ROBBINS: Okay. I have no further
14 questions subject to any redirect.

15 EXAMINATION

16 BY MR. PETRUSKA:

17 Q You were asked about Mr. Biffignani's
18 report, and you said they were fairly similar, I
19 guess. I want to ask. Did Mr. Biffignani also look
20 at the same standards that you looked at?

21 A I believe so, yes --

22 Q He used those tables that she just
23 referenced in Exhibit 7. Correct?

24 A Correct, yes.

25 Q Okay. But he misused his results when he

1 compared them to those tables. Didn't he?

2 A Correct.

3 Q He looked at peak levels. Didn't he?

4 A Yes.

5 Q Okay.

6 A Yeah, and nowhere in the standard does it
7 say use peak or -- it says use the Leq which is
8 equivalent sound energy.

9 Q And also, just to make sure, you know where
10 this case is pending; right? It's pending in front
11 of, what?

12 A I'm sorry.

13 Q It's pending in front of the Illinois
14 Pollution Control Board.

15 A Yes.

16 Q So it makes sense to look at what standards
17 they have set. Correct?

18 A Correct.

19 Q Okay. You didn't elect to file this suit
20 there. Right? That wasn't your decision.

21 A No, no.

22 Q Geri Boyer elected to file the suit there.

23 A Yes.

24 Q Okay. It seems like now she wants to change
25 the standards that are set, but I'll let that go. You

1 don't know what type of -- or do you know what type of
2 microphone Mr. Biffignani used?

3 A Yeah, I believe he used a Precision Eye [ph]
4 mic.

5 Q Okay. And do you know how close he put it
6 to the wall?

7 A I do not know his locations. He does have a
8 brief description in his report. I -- I haven't read
9 it in a couple weeks, so.

10 Q Okay. So when you're saying the results are
11 fairly similar, you're saying if he would've used the
12 proper -- is it Leq?

13 A Yes, Leq.

14 Q If he used the proper Leq, you suspect his
15 numbers would've been similar to yours.

16 A Well, he did, in part of his report, do Leq,
17 and they do come out almost identical to ours.

18 Q Okay. And you also noticed Mr. Biffignani
19 had a number in his report for the Leq at 1 a.m. Is
20 that correct? Do you remember him mentioning that in
21 his report?

22 A Yes, I do vaguely.

23 Q If that number was 29, I'll just ask you to
24 assume that number's 29, at 1 a.m. in the morning,
25 that wouldn't fit the 20 decibels that they're asking

1 for in this case. Right?

2 A That's correct.

3 Q You can't get to 20 in this case. Is that
4 fair?

5 A Yeah. You -- it's -- at 30 -- my background
6 sound level in this apartment was 30. So anything --
7 you can't get any lower than that.

8 Q Also, the wall in the apartment, was that
9 exposed brick?

10 A Yes.

11 Q Is there drywall on the Copper Fire side?

12 A Yes.

13 Q If someone removed drywall from that
14 apartment, would that make it less noisy or more noisy
15 compared to Copper Fire?

16 A It would make it more.

17 Q More noisy.

18 A It would increase.

19 Q Right. So if someone wanted less noise,
20 they could put up drywall over that exposed brick.
21 Right?

22 A Correct, yes.

23 MR. PETRUSKA: That's all the questions
24 I have.

25 MS. ROBBINS: I have nothing in

1 response.

2 MR. PETRUSKA: We are done. So in
3 Illinois, you have a choice to read over a deposition
4 and then sign saying that you agree that it was taken
5 down correctly.

6 Or you can waive your signature and
7 say, "I don't really want to read it over." I'm going
8 to ask you to read this depo anyways.

9 THE WITNESS: I want to read it.

10 MR. PETRUSKA: Okay, he wants to read.
11 Okay. So we're going to read and then sign. Okay.

12 THE REPORTER: Should we send it
13 directly to you, or do you want it sent to you,
14 Mr. Brown?

15 MR. PETRUSKA: Can you send it to both
16 of us? That way, I know he got it. Can you give him
17 an email address?

18 THE WITNESS: Yes, G B-R-O-W-N at
19 M-C-C-L-U-R-E E-N-G dot com.

20 THE REPORTER: Perfect, thank you. And
21 then before I close the record out, Ms. Robbins, do
22 you need a copy of the transcript?

23 MS. ROBBINS: Yes, please.

24 THE REPORTER: And, Mr. Petruska, do
25 you need a copy?

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MR. PETRUSKA: Yes.

THE REPORTER: All right. We are now
off the record at 3:31 p.m.

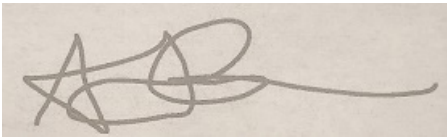
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(Whereupon, at 3:31 p.m., the
proceeding was concluded.)

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CERTIFICATE OF DEPOSITION OFFICER

I, ADRIAN GHARINEH, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



ADRIAN GHARINEH

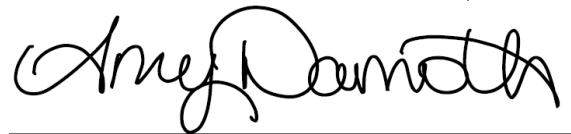
Notary Public in and for the
State of Minnesota

Review of the transcript was requested.

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CERTIFICATE OF TRANSCRIBER

I, AMY DAMOTH, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



AMY DAMOTH

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Veritext Legal Solutions
1100 Superior Ave
Suite 1820
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Phone: 216-523-1313

February 3, 2023

To: Mr. Petruska

Case Name: Boyer, Doug And Geri v. MRB Development, LLC Et Al.

Veritext Reference Number: 5663656

Witness: Gary Brown Deposition Date: 1/19/2023

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,
Production Department

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DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 5663656
CASE NAME: Boyer, Doug And Geri v. MRB Development, LLC Et Al.
DATE OF DEPOSITION: 1/19/2023
WITNESS' NAME: Gary Brown

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have made no changes to the testimony as transcribed by the court reporter.

Date Gary Brown

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

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DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 5663656
CASE NAME: Boyer, Doug And Geri v. MRB Development, LLC Et Al.
DATE OF DEPOSITION: 1/19/2023
WITNESS' NAME: Gary Brown

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

Date Gary Brown

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

- They have read the transcript;
- They have listed all of their corrections in the appended Errata Sheet;
- They signed the foregoing Sworn Statement; and
- Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal this _____ day of _____, 20____.

Notary Public

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ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST
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Date Gary Brown

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Notary Public

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Illinois Code of Civil Procedure

Article II, Part E

Rule 207, Signing and Filing Depositions

Ukipkpi"cpf"Hknkpi"Fgrqukvkqpu

(a) Submission to Deponent; Changes; Signing.

Unless signature is waived by the deponent, the officer shall instruct the deponent that if the testimony is transcribed the deponent will be afforded an opportunity to examine the deposition at the office of the officer or reporter, or elsewhere, by reasonable arrangement at the deponent's expense, and that corrections based on errors in reporting or transcription which the deponent desires to make will be entered upon the deposition with a statement by the deponent that the reporter erred in reporting or transcribing the answer or answers involved. The deponent may not otherwise change either the form or substance of his or her answers. The deponent shall provide the officer with an electronic or physical address to which notice is to be sent when the transcript is available for examination and signing. When the deposition is fully transcribed, the officer shall deliver to the deponent, at the address supplied,

notice that it is available and may be examined at a stated place at stated times, or pursuant to arrangement. After the deponent has examined the deposition, the officer shall enter upon it any changes the deponent desires to make, with the reasons the deponent gives for making them. If the deponent does not appear at the place specified in the notice within 28 days after the mailing of the notice, or within the same 28 days make other arrangements for examination of the deposition, or after examining the deposition refuses to sign it, or after it has been made available to the deponent by arrangement it remains unsigned for 28 days, the officer's certificate shall state the reason for the omission of the signature, including any reason given by the deponent for a refusal to sign. The deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 211(d) the court holds that the reasons given by the deponent for a refusal to sign require rejection of the deposition in whole or in part.

(b) Certification, Filing, and Notice of Filing.

(1) If the testimony is transcribed, the officer

shall certify within the deposition transcript that the deponent was duly sworn by the officer and that the deposition is a true record of the testimony given by the deponent. A deposition so certified requires no further proof of authenticity

(2) Deposition transcripts shall not be filed with the clerk of the court as a matter of course. The party filing a deposition shall promptly serve notice thereof on the other parties and shall file the transcript and any exhibits in the form and manner specified by local rule.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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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.)

RESPONDENTS' JOINT ANSWERS TO COMPLAINANTS' FIRST SET OF INTERROGATORIES

Comes Now, Respondents MRB Development, LLC d/b/a Copper Fire, Renae Eichholz and Mark Eichholz, by and through their undersigned attorney, and hereby answer Complainants' First Set of Interrogatories.

INTERROGATORIES

1. Please states:
 - a. The name, address, and phone number of the person or persons answering these interrogatories;
 - b. His/her relationship to You; and
 - c. His/her position of employment.

ANSWER: Renae Eichholz is answering for all three Respondents with the assistance of her attorney. Renae is one of three members of MRB Development, LLC d/b/a Copper Fire.

2. Identify all persons, known to You, who have information or knowledge with respect to any factual matters related to any of the allegations in the Complaint and/or the defenses set forth in Your Answer. Include the address, telephone number, occupation, and title or position for each person listed and a description of the subject matter of the person's knowledge.

ANSWER: Respondents will disclose all fact witnesses as required. To answer this interrogatory directly, the only persons with knowledge of the allegations in the Complaint

and in Respondents Answers are Renae and Mark Eichholz. With respect to the facts raised in the Complaint and in Respondent's Answer, Respondents identify the following:

General Manager Mary Gutzler, Kitchen Manager Jeremy Francis, Assistant Manager Sarah Joiner, Lt. Col. Matt Eiskant, Mark Bartel (downtown resident), Tim Albert (musician and sound man), Alderman Chris Rothweiler, Alderwoman Shelly Schaefer.

3. State whether written or recorded statements have been obtained from any persons mentioned in the answer to Interrogatory No. 2 above with regard to the facts or circumstances surrounding the allegations in the Complaint and/or defenses set forth in Your Answer. If so, state the name, address, employer, and job title of the persons presently having control or custody of such statements.

ANSWER: No statement obtained by Respondents, but Respondents are in possession of police reports, text messages, and facebook messages that support Respondent's position that the music levels are not in violation of any laws or regulations.

4. Identify all communications, whether written, oral or electronic, between You and any party to this Litigation or third party (except communications with counsel) related to the allegations in the Complaint and/or defenses set forth in Your Answer including:

- a. The approximate date of the communication;
- b. The parties to the communication;
- c. The form of the communication, whether written, electronic or oral;
- d. If oral, a brief description of the content of the communication; and
- e. If written or electronic, produce copies of the communication(s) with your response.

ANSWER: All communications relating to this matter have been by text message, except for the following emails:

March 17, 2018 – 3 emails between Geri and Renae

May 2-3, 2018 – 2 emails between Geri and Renae

May 18, 2018 – 1 email from Geri to Renae

December 12, 2018 – 1 email from Geri to Renae

June 2, 2020 – 1 email form Mayor Eckert to a group, and 1 email from Mark to Mayor Eckert.

December 11, 2021– 3 emails between Geri and Renae

Respondents' attorney will arrange a time to exchange the texts messages.

5. Identify every complaint, protest, grievance, criticism, warning, and/or charge you have received in relation to noise or sound emanated from Copper Fire from January 2020 to present, including: (a) the date of the complaint; (b) the nature of the complaint; (c) the person(s) complaining and/or source of the complaint; (d) if any music or band was playing at Copper Fire at the time of the complaint, and, if so, the name of the band or performer and a description of the music being played; (e) the time of the complaint; (f) whether you took any actions to remediate and/or decrease sound in response to the complaint (if yes, describe remediation efforts); and (g) whether any there is any document or communication evidencing the complaint, protest, grievance, criticism, and/or charge.

ANSWER: Respondents have never been charged with a noise violation or violation of any noise related ordinance. Respondents have received complaints, protest, grievances, and warnings from Geri Boyer. All were in texts messages, which will be exchanged. Please see the attached schedule of music to see who was playing and when.

6. Identify every remedial effort You have taken to address concerns, complaints, protests, grievances, criticisms, warnings and/or charges regarding noise and/or sound emanating from Copper Fire from January 2020 to present. For each, include the date and time each remediation effort was completed, and state if the effort was/is permanent.

ANSWER: Beginning in May 2021, Copper Fire took the following steps to address the sole source of noise complaints (the Boyers):

a) **Wolfe & Nation played inside in May 2021 at Copper Fire and the noise was more than expected. When Wolfe & Nation returned on June 25th, Copper Fire wanted to have them outside. When the weather eliminated the outdoor option, Wolfe & Nation were asked to play an acoustic set, which they did. The decibel level was monitored that night and the band was asked to turn the sound down on two or more occasions. This same process has been used with every band thereafter. If the decibels levels inside the bar exceeded 95 decibels the bands were asked to turn the master sound down.**

b) **Consistent with paragraph 1, Respondents downloaded the NIOSH Sound Level Meter on a specific iPhone and that iPhone is kept in the same location of the restaurant to monitor the decibel level inside the restaurant. If anyone inside the restaurant has a concern,**

the manager on duty will check the app for an instantaneous level and adjustments will be made to music to ensure the levels stay below 95 decibels. Respondents also watch the LAeq, Lmax and TWA readings. If there is a problem with the decibel level, bands are asked to turn their master sound down.

c) Respondents also tried to find an agreed upon resolution of the Boyer's noise complaints with a three-week trial period (May 22 through June 12). The results of that trial are reflected in the June 11, 2021 email from Respondents' attorney to the Boyer's attorney. On June 11, 2021, Geri Boyer made the first complaint during the three-week period. She then complained for the next two days.

d) During the three-week trial period, Respondents also tested the sound on the house music (Touch Tunes machine). Respondents were allowed into the Boyer's business and 2nd floor apartment to listen for sound. Nothing could be heard in the business, partially because the overhead lights were quite loud. Further, even at maximum level, no human being could hear sound in the 2nd floor apartment. Notwithstanding those results, Respondents established a 3/4 (75%) maximum sound level for the house sound, which has not been violated since.

e) After the three-week trial period, Respondents tried moving the bands from the east side of the restaurant to the west side, but the Boyers began complaining even more. This remediation attempt failed, and the bands are back on the east side of the restaurant with the speakers facing away from the Boyers.

f) Respondents also have attempted to turn the music volume down when complaints have been received from Geri Boyer, but such remedial measures rarely led to resolution. On June 13, 2021, Geri Boyer admitted in a text message "We aren't going for loud. We are going for not hearing your music."

g) Renae Eichholz has met with numerous musicians and people who address sound levels to get advice as to what can be done. Respondents are disclosing Tim Albert as an example of this investigation.

h) Respondents disclose their noise level limits to all bands before they are retained. The bands are asked if they will comply. As mentioned above, when problems occur the bands are asked to turn the music down, which they do.

i) Respondents also posted a sign inside the restaurant for all bands to see asking them to comply with our recommended noise limits.

j) In May 2022, Respondents installed some acoustic tiling on one wall as a test.

7. Identify each of the “many changes” You alleged in Your Answer to Paragraph 17 of the Complaint. For each, include the date and time of each change and state whether the change was/is permanent.

ANSWER: See the answer to interrogatory 6.

8. Identify each of the changes You have implemented since the Boyer’s sound testing was conducted, as asserted in Your Second Affirmative Defense. For each, include the date and time each change was completed, and if the change was/is permanent.

ANSWER: See the answer to interrogatory 6.

9. Identify every band or performer that has played at Copper Fire from January 2020 to present. For each, provide:

- a. The name of the band or performer;
- b. The date(s) they performed;
- c. The time(s) they performed;
- d. The number of performers in each;
- e. The types of instruments played;
- f. Whether the performance occurred inside or outside Copper Fire;
- g. A description of the style of music played; and
- h. The contact information for the band or performer.

ANSWER: See the attached schedule of live music.

10. Identify every written or oral noise and/or sound complaints, warnings, protests, grievances, criticisms, and/or charges You have received or have been issued to You and/or Copper Fire from January 2020 to present, including:

- a. The approximate date;
- b. The parties lodging the complaint;
- c. The form of the communication, whether written, electronic or oral;
- d. If oral, a brief description of the content of the communications that occurred; and
- e. If written or electronic, produce copies of the communication(s) with your response.

ANSWER: See the answer to interrogatory 5.

Respectfully submitted,

Dated: June 3, 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 3rd day of June, 2022 the foregoing
Answers to Interrogatories upon the following person by emailing the document to:

Matthew A. Jacober
Brooke Robbins
Lathrop GPM LLP
7701 Forsyth Boulevard
Suite 500
Clayton, MO 63105
*Attorneys for Complainants,
Doug and Geri Boyer*



Paul E. Petruska

7:34



Renaë >



iMessage
Nov 6, 2020, 11:58 PM

Please turn music off at
Copper fire.

Fri, Jun 11, 9:41 PM

We can hear the music
tonight.

How loud? What is you're
reading?

We will ask them to turn it
down but our reading is
lower than last night

I'm just hearing it.

We heard it last night too
but forgot I was suppose to
text.

We asked them to turn it
down. Better?



iMessage



EXHIBIT M
BOYER000039

7:34



RE



Rena >

Yes

Thank you

Sat, Jun 12, 7:26 PM

Can the volume of the band go down? We can hear it.

I had them turn it down

We can still hear it. Needs to go down more.

Now?

Good

Sun, Jun 13, 3:35 PM

We can hear music. It's not offensive since we're just working around house but for your understanding, we can hear "take a load off Bennie" now.



iMessage



7:34



RE



Rena >

It's lower than last night

It must be a different frequency. Definitely sounds louder here.

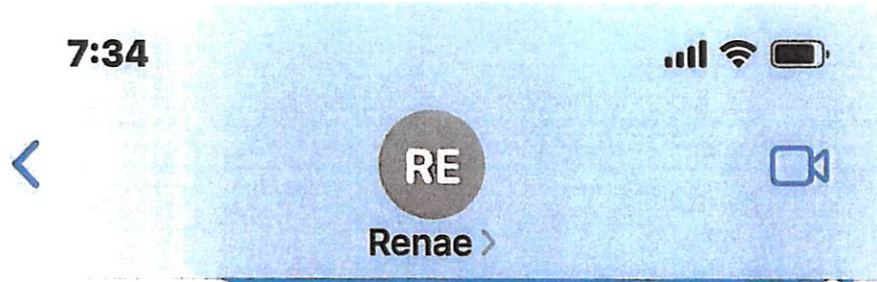
Same as Friday and Saturday. Everyone can talk and hear freely in our place. I called in and talked to staff and one customer while music was playing and I couldn't hear the music and we could hear each other clearly.

I walked by and it could be heard to the other side of Main Street with doors closed. That's a lot louder than the music we tested and couldn't hear in loft. Just take it down a little more. You know everyone can hear it and it will be even more enjoyable.



iMessage





It's probably the drums and bass.

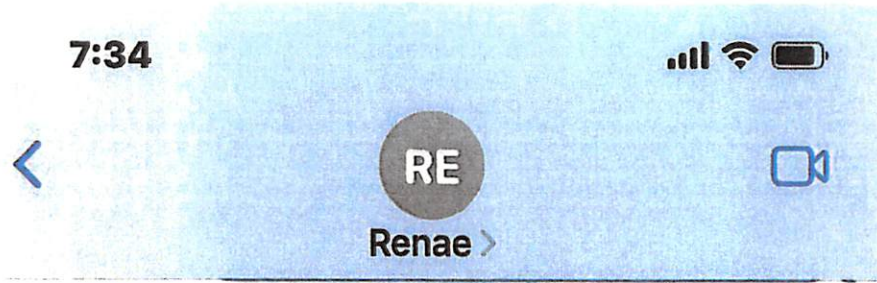
We had drums and bass Friday and Saturday as well.

Don't know what to tell you. It's not a perfect science that's why we're doing a trial. There's judgement that has to be used as well.

It's low and our customers are happy and saying it's not loud. What is your phone app decibel reading?

I'm not measuring. I'm going on hearing. If your staff goes outside and closes the doors and they can still hear the music, it's too loud.





The decibels are lower than any of the last 3 days. We are using a consistent testing method. One person acoustic can be heard through the windows with the doors closed and it's not too loud. If you want to record and send it to me so I can hear how loud it is on your side, that might help me understand.

That doesn't work. We aren't going for loud. We are going for not hearing your music.

Mark is on his way up and would like access to hear it.

Tell him to come to front and text me when he gets here

I am out of town. He is



7:35



RE



Renaee >

I am out of town. He is heading there but I don't know exactly when he will be there. Staff walked across the street and had to listen hard to hear anything. Noise on Patio can be barely heard. Decibels are reading lower than our house music. I will tell him to text you when he arrives.

It's quieter now.

Going outside with the doors closed and seeing if it can be heard on the sidewalk is a good test. The music when we tested couldn't be heard outside. Frequency at a decibel reading takes an expert but hearing is mostly the same for everyone.



iMessage



7:35



RE



Renaee >

I thought you said you heard it across the street. My staff could hardly hear it. Are you saying you had the sound company, it couldn't be heard outside?

No. I'm saying that when you and I and the attorneys sound checked when we couldn't hear it in my building we also couldn't hardly hear it at your tables outside. That's a great easy check.

When I walked to the funeral home earlier it was loud at your outside tables.

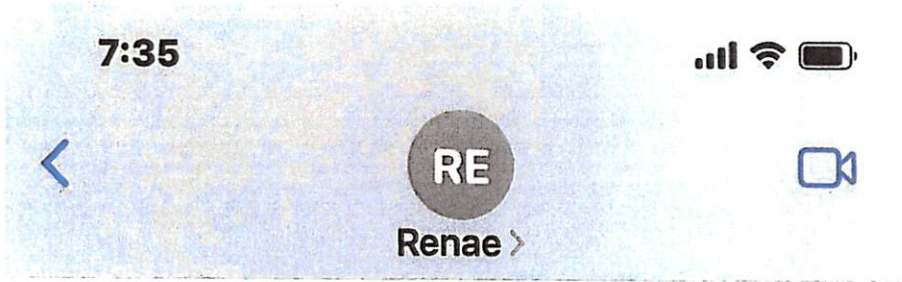
When we put the house sound all the way on, we could hear it outside the closed doors.

But at a reasonable level. This doesn't have to be so



iMessage





But at a reasonable level.
This doesn't have to be so
hard.

Fri, Jun 18, 9:50 PM

Just getting home and
putting grandkids to bed.
Music is pretty loud.

It should be better now

Yes. Thanks

I can still hear it but we can
live with it.

Paradise by the dashboard
lights was too loud

Fri, Jun 25, 10:22 PM

Thank want you go on
record - this is too loud.

Right now?



iMessage



7:36



RE



Rena >

We can still hear every word of the song.

We turned it down over 10 decibels

It's still clear over here. It's after 11 is it ending soon.

We have turned it down twice since 10:00 and I can't bring it down more. It's reasonable.

This shows that bands that size can't work inside. I've got a 5 year old up because it's not quiet enough for him to sleep. We can talk about it on Monday.

We are doing everything we can to comply with the law and that is 63 decibels and below on your side which I think we've been



iMessage



7:36



RE



Rena >

We are doing everything we can to comply with the law and that is 63 decibels and below on your side which I think we've been doing.

I'm sorry. Noise isn't as simple as decibel readings.

I don't like this any more than you do.

Sun, Jun 27, 4:45 PM

Again, for the record, we can hear "Don't Stop Believing" playing. Just got home.

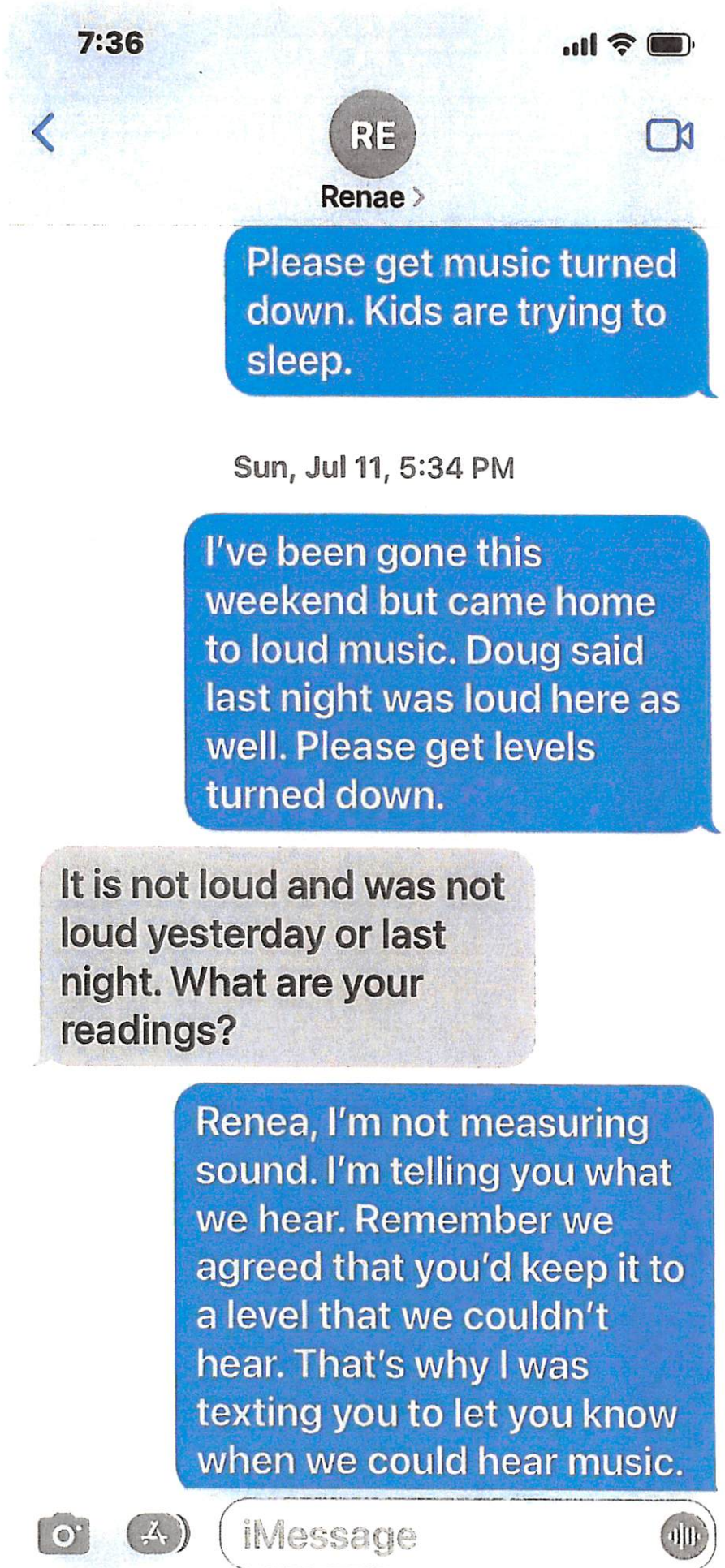
They are averaging 80 decibels. It can't go down lower.

Fri, Jul 2, 10:10 PM



iMessage





7:36



RE



Renaë >

Geri

That is not what we agreed to. In fact we haven't agreed to anything. We are following sound level ordinances and the laws in place.

Renaë

The law in place in the City and the county is no sound off the premises. What's going on? We agreed to weeks of a test. You're attorney agreed to that. Are you changing the terms of the test or saying test is over.

That's not the law

Yes it is the police just aren't enforcing it.



iMessage



7:36



RE



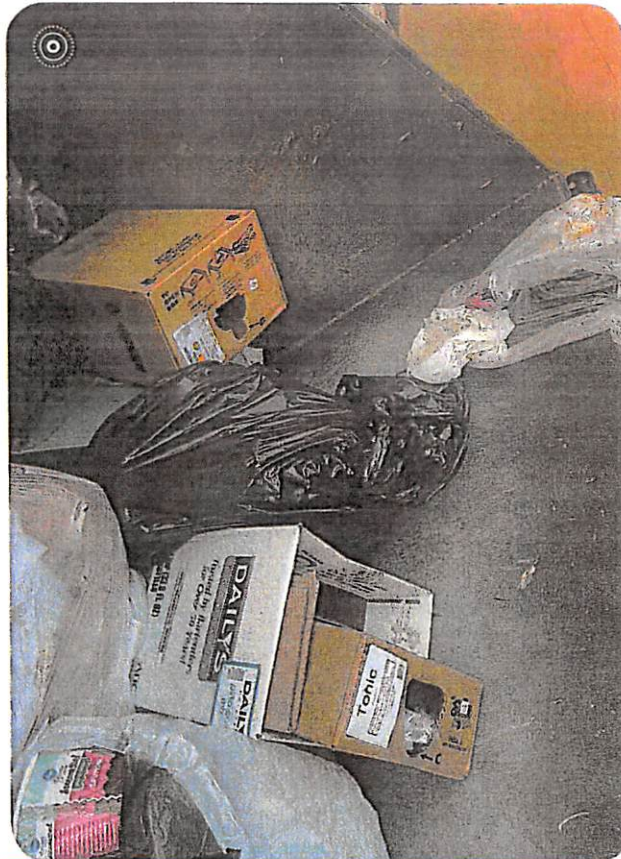
Rena >

That is not true

Sun, Jul 18, 5:04 PM

We've been tolerant of loud music last night and all afternoon. Please end this

Mon, Aug 16, 10:16 AM



You staff are putting trash



iMessage





You staff are putting trash in our dumpster. Can you let them know which one is yours?

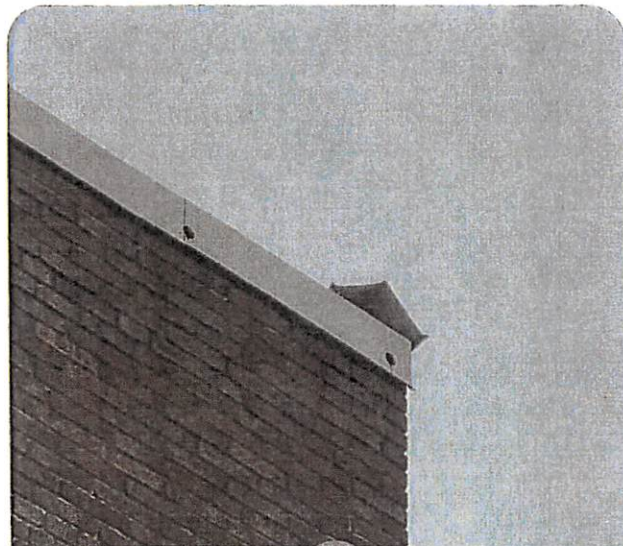
Thu, Sep 2, 9:02 PM

Band volume needs to come down.

Fri, Oct 15, 9:34 PM

Please get the volume of this music turned down.

Sat, Dec 18, 2:38 PM



iMessage





There's a piece of flashing coming loose on your building and banging. Might want to get it fixed before more water gets in.

Sat, Dec 18, 4:03 PM

Thank you

Wed, Dec 22, 6:11 PM

Please turn the music down. We can hear it and my Aunt is suffering.



Not Delivered

Please turn the music down. We can hear it and my Aunt is suffering.

I'm here and am happy to run up and hear it.



iMessage



7:37



RE



Rena >

Please turn the music down. We can hear it and my Aunt is suffering.

I'm here and am happy to run up and hear it.

Wed, Dec 22, 9:34 PM

We are caring for a dying woman. We are not dealing with you as well. Just do the right thing.

Stop texting me

The nurse that sat with her on Friday is going to email the attorneys. She was appalled by the noise.

Stop disrupting our lives.

Stop harassing us. We've asked to hear it. We've never been sent even a recording.



iMessage



7:37



RE



Rena >

Thu, Dec 23, 7:06 PM

Music is too loud.

They haven't started yet

Stop texting me

Thu, Dec 23, 9:07 PM

This is pushing it too far.
Drums when you know we
have a dying person here.

Stop texting me

Wed, Dec 29, 7:13 PM

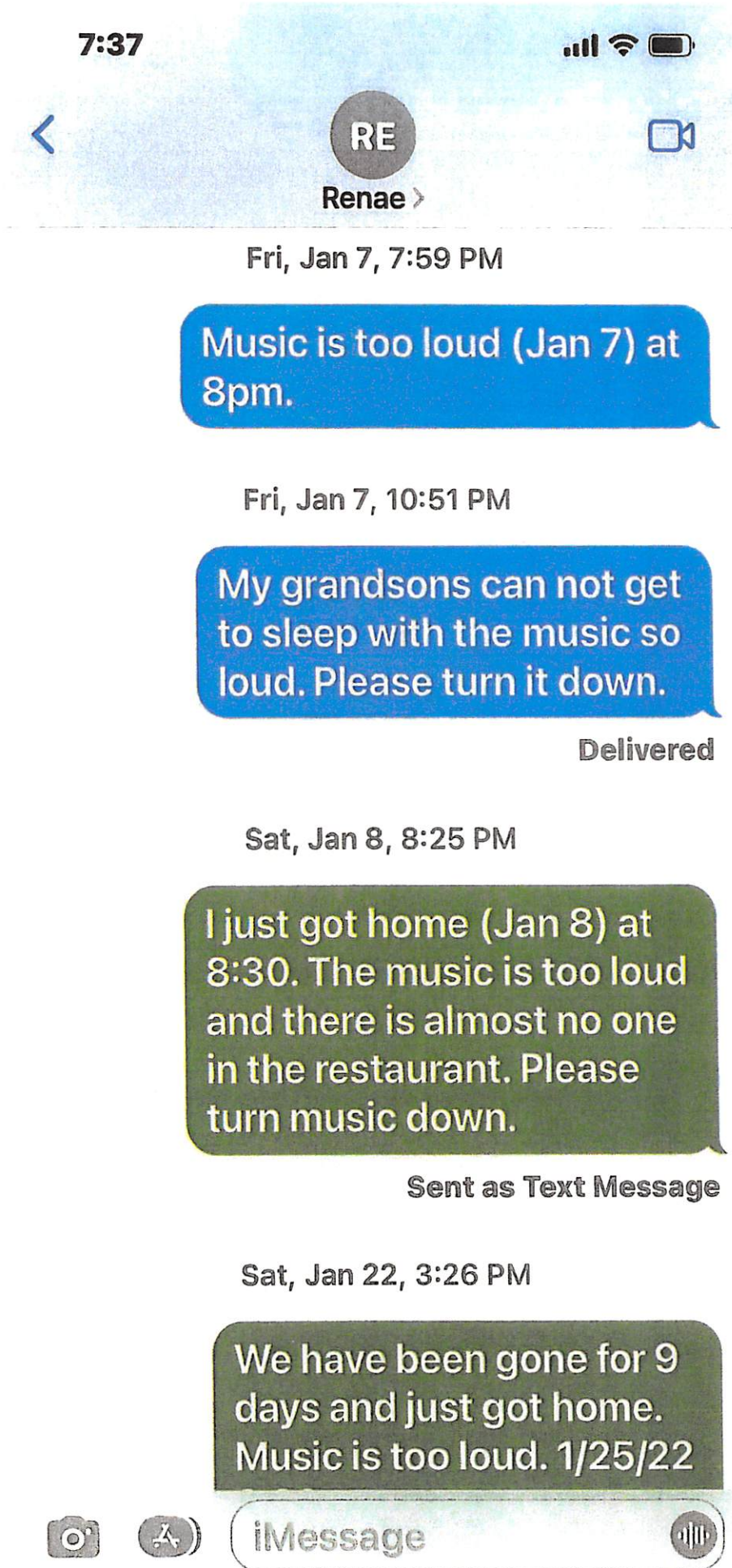
I am once again
documenting for the
lawsuit that we can hear
the music (3 piece band
with amp). Please turn it
down.

Stop texting



iMessage





7:38



RE



Rena >

Sent as Text Message

Sat, Jan 22, 3:26 PM

We have been gone for 9 days and just got home. Music is too loud. 1/25/22 3:30pm.

Sent as Text Message

Sat, Jan 22, 8:14 PM

The music tonight is also too loud.

Sent as Text Message

Fri, Jan 28, 8:26 PM

It's Jan 28 at 8:25pm. Music is too loud. I am watching my grandsons and it's disturbing their sleep.

Sent as Text Message

Sat, Feb 5, 9:02 PM



iMessage



7:38



RE



Rena >

Sat, Feb 5, 9:02 PM

It's Feb 5 and we were bothered by music last night, this afternoon and now this evening is really loud. I was gone last Sat but my husband said it was really loud. I will touch base with my attorney this week on the progress of the law suit.

Sent as Text Message

Fri, Feb 11, 8:03 PM

It's Feb 11 and the music is too loud. Drums are too much.

Sent as Text Message

Text Message

Sat, Feb 12, 4:29 PM

Before this band breaks and gets ready for their



iMessage



7:38



RE



Renae >

It's Feb 5 and we were bothered by music last night, this afternoon and now this evening is really loud. I was gone last Sat but my husband said it was really loud. I will touch base with my attorney this week on the progress of the law suit.

Sent as Text Message

Fri, Feb 11, 8:03 PM

It's Feb 11 and the music is too loud. Drums are too much.

Sent as Text Message

Text Message

Sat, Feb 12, 4:29 PM

Before this band breaks and gets ready for their next round, please turn the volume down.



iMessage

