

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 REPLY IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT**

Complainants Doug and Geri Boyer's (the Boyers) Memorandum in Opposition to Respondents MRB Development, LLC, Renae Eichholz and Mark Eichholz's Motion for Summary Judgment admits the key facts relating to the Motion for Summary Judgment. The Boyers admit the allegations in paragraphs 19 through 22, 24 and most of 29. This means the Boyers admit that Exhibits G, H and I are the result of their expert's testing inside the Boyers' loft, and that the numbers reflected therein are accurate. This should end the debate. As argued in the Motion for Summary Judgment, Plaintiffs' own expert's objective numbers prove compliance with the only regulation the Boyers plead was violated, which is 901.102. This is the primary reason the Motion for Summary Judgment was filed in the first place. Compliance is proven by the Boyers' expert, which makes this case different from all prior cases where the measurements were thrown out for one reason or another. The Boyers cannot ask to throw out their own expert's numbers.

Respondents are in compliance with the only regulation that establishes an objective standard for the citizens of Illinois. If the law is not objective, but instead a vague law which is

completely reliant on the subjective level of annoyance of a neighbor, then the citizens of Illinois can never defend themselves from a noise complaint. That is true of this case. If Respondents are found to be in violation of the Illinois noise standards merely because the Boyers claim annoyance, no citizens of Illinois are safe.

In the remaining 38 pages of the Boyers' Memorandum in Opposition, they object to facts, insert irrelevant facts, misrepresent facts, and try to argue that the opinion of their expert creates a factual dispute. Respondents will not respond to this attempt to drag them into a rabbit hole. Mr. Biffignani's opinion that his objective numbers show non-compliance because he believes the numbers should be "normalized" is not a fact. It is an opinion. All other claimed disputes of fact are irrelevant when the 1st paragraph of this Reply is considered. Compliance with an objective standard must mean something. The Engineers/Judges reviewing this case must look at the ramification of ruling differently. What if the Boyers' actual motive is to harass Respondents and burden Respondents with attorney's fees until such time and Respondents give up? If true, Respondents must be able to defend themselves. Respondents must be able to argue that the noise level is acceptable under the regulations of the Illinois Pollution Control Board. Finding that the regulations mean nothing, but instead the subjective annoyance of the Boyers is controlling, then Respondents have no defense.

In conclusion, the basic facts are simple. Respondents offer live music to their customers on Wednesday through Sunday. In the end, only two hours of that music falls under the nighttime standard established by 901.102. On extremely rare occasions, Respondents have allowed music to extend past 11 p.m. on Friday and Saturday. Otherwise, the music stops at 11 p.m. on Friday and Saturday and 9 p.m. on Wednesday, Thursday and Sunday. At worst, the noise level in the Boyers' loft is 39 dBA. Nothing about these facts established noise pollution.

When you consider the objective numbers from Plaintiffs' expert shows compliance with 901.102, then Complainant's case is perfect for Summary Judgment in Respondents' favor.

WHEREFORE, for each of the foregoing reasons, Respondents are entitled to summary judgment in their favor and against Complainants, or alternatively, partial summary judgment ruling that they are in compliance with 901.102, and for any other relief this Board deems just and proper.

Respectfully submitted,

Dated: June 30, 2023

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CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served on the date of June 30, 2023 Respondents' Joint Memorandum in Support of their Motion for Summary Judgment upon the following persons by email and by depositing the document in a U.S. Postal Service mailbox by 6:00 p.m., with proper postage prepaid to:

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