

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 22-9

(Enforcement)

COMPLAINANTS' POST-HEARING CLOSING BRIEF

INTRODUCTION

Complainants filed this action because Respondents are creating unreasonable and unlawful noise pollution. Nearly every night of the week and throughout the day on the weekends, Respondents insist on playing amplified, live music inside Copper Fire with no regard for Complainants. Despite Complainants' many requests, Respondents refuse to decrease the noise to a reasonable and appropriate level or install any sound mitigation devices. As a result, Complainants are forced to endure a home and work environment filled with unreasonable noise pollution, which interferes with Complainants' ability to sleep, watch television, read and have regular conversations in their home, or operate their business in a quiet and peaceful work environment. Put simply, the noise from Copper Fire is unbearable.

The live music from Copper Fire unreasonably interferes with the Boyers enjoyment of life and is a nuisance. Five nights a week and during the day on Saturdays and Sundays, Copper Fire hosts live music directly adjacent to the Boyers' loft and business. For over six years, the Boyers have had to deal with the constant noise and annoyance coming from Copper Fire. Despite

Respondents being well aware Copper Fire was directly adjacent to residential lofts and Complainants' business, Respondents made no efforts to remediate or mitigate sound when designing the space, made no attempt at remediating and mitigating the sound after the Boyers notified Respondents on the first day Copper Fire opened they could hear the music in their loft, made no attempt at remediating and mitigating the sound before Complainants filed this action, and have failed take reasonable steps to remediate and mitigate the sound since this action was filed. Respondents simply refuse to take the easy, and most importantly FREE remediation effort—turn down the music.

FACTS

I. COMPLAINANTS HAVE PRIORITY LOCATION.

Geri and Doug Boyer purchased and moved into Suite 230 of the Writer's Loft, located at 208 East Main Street in Belleville, Illinois, in 2008. (Oct. 7, 2024 Hearing Transcript ("Day 1 Tr."), at 48:13-18, 49:25-50:4, 128:20-23, 207:8-10; Ex. C-1.) They purchased Suite 230 from a developer who was renovating the entire building, but at the time they moved in, only Suite 230 was finished. (Day 1 Tr., at 50:5-17.) While the developer was in the process of renovating the rest of the building, he ran out of money and ended up going bankrupt. (Day 1 Tr., at 50:18-51:4.) Ultimately, the Boyers purchased the entire building and finished renovations. (Day 1 Tr., at 52:16-53:5.) In total, there are currently seven loft units in the building, three on the second floor and four on the third floor. (Day 1 Tr., at 53:6-23.) The Boyers own and rent all four units on the third floor and one unit on the second floor, in addition to owning and living in Suite 230 as their primary residence. (Day 1 Tr., at 53:24-54:13.) Kaskaskia Engineering Group, LLC's ("Kaskaskia"), Geri's business, offices occupy the entire first floor of 208 East Main Street. (Day 1 Tr., at 20:13-

17, 54:14-19.) Kaskaskia has 75 employees across all its offices, and the Belleville office is its headquarters where all administrative staff and many engineers sit. (Day 1 Tr., at 76:1-15.)

Two lofts are located along the western wall of the building, Suite 230, the Boyers' loft, and Suite 330, owned by the Boyers and rented to Julie Orlet, which is located on the third floor, directly above the Boyers' loft. (Day 1 Tr., at 29:22-30:3, 55:24-25, 232:4-10; Ex. Demonstrative 1; Ex. Demonstrative 3.) Kaskaskia occupies the entire first floor and is therefore also located along the western wall of the building. (Ex. Demonstrative 1; Ex. Demonstrative 2; Day 1 Tr., at 20:13-14, 23:22-24:5, 54:17-19.) These two suites and Kaskaskia are directly adjacent to and share a wall with Copper Fire. (Day 1 Tr., at 21:11-13, 23:22-5.) When live music is playing inside Copper Fire, it can be heard in the Boyers' Suite, Kaskaskia, and Suite 330. (Day 1 Tr., at 25:4-17, 26:14-24, 29:22-30:8, 232:4-233:3.)

At the time the Boyers purchased and moved into Suite 230, and until 2018, the adjacent building (now Copper Fire) had a Quiznos and Junction Coffee on the first floor. (Day 1 Tr., at 24:8-20, 44:22-45:2, 209:19-210:1; Nov. 6, 2024 Hearing Transcript ("Day 2 Tr."), at 102:19-22.) Quiznos and Junction Coffee did not have live music. (Day 1 Tr., at 24:21-22, 210:5-7; Day 2 Tr., at 102:19-103:1.) Before Copper Fire went in next door, Complainants did not experience any noise pollution from their neighbors at 200 East Main Street in Belleville, Illinois. (Day 1 Tr., at 24:23-25, 210:2-4.) The Complainants' loft was constructed, and Complainants purchased and moved into the loft before Copper Fire existed. (Day 1 Tr., at 210:8-19; Day 2 Tr., at 103:5-7.) Further, Complainants purchased and completed renovations on the remaining suites and Kaskaskia's offices before Copper Fire existed. (Day 1 Tr., at 48:13-18, 49:25-54:16, 128:20-23, 207:8-10; Ex. C-1.)

MRB Development, LLC, which is doing business as Copper Fire, was incorporated on January 6, 2016. (Day 2 Tr., at 100:22-25, 101:12-22; Ex. C-22.) Renae and Mark Eichholz each own a 40 percent interest in Copper Fire. Brett Eichholz, Renae's stepson, owns a 20 percent interest in Copper Fire. (Day 2 Tr., at 101:1-11.) Copper Fire is located at 200 East Main Street directly adjacent to the west of the 208 East Main Street building. (Day 2 Tr., 103:5-7; Ex. Demonstrative 1.) Both 208 and 200 East Main Street are brick buildings, and it is believed an air space separates the two brick buildings, however, this cannot be confirmed without destructive testing. (Day 2 Tr., 32:22-33:15; Ex. C-22, at 1; Ex. C-23, at 2.) Copper Fire did not open until March 17, 2018. (Day 2 Tr., at 102:5-10, 119:6-18.) Issues with unreasonable and unlawful noise pollution began immediately. (Ex. C-3.)

II. THE CONSTRUCTION OF COPPER FIRE DID NOT TAKE INTO ACCOUNT ITS NEIGHBORS.

Copper Fire occupies a two-story, open-air space at 200 East Main Street in Belleville, Illinois. (Day 2 Tr., at 103:15-104:22.) Before Copper Fire opened, Respondents were aware residential lofts were located next door in the 208 East Main Street building. (Day 2 Tr., at 103:5-7.) However, Respondents did not consider the impact Copper Fire might have on its neighbors. (Day 2 Tr., at 103:8-10.) Respondents hired an architect to build out the space into Copper Fire, but despite Copper Fire being a two-story open-air space directly adjacent to residential lofts and Kaskaskia, Respondents never discussed sound mitigation with their architect, and never installed sound mitigation measures or sound deadening devices. (Day 2 Tr., at 103:15-105:9.) Nothing was installed on the eastern wall of Copper Fire to mitigate sound to its neighbors as part of the Copper Fire build out, despite the fact Renae Eichholz testified Respondents intended Copper Fire to be a "destination venue" and "there was never any doubt" Copper Fire was going to have live music. (Day 2 Tr., at 106:1-5, 218:9-219:14, 235:13-236:9.)

III. COPPER FIRE PLAYS LIVE MUSIC FIVE DAYS A WEEK FOR OVER SIX YEARS.

Since Copper Fire opened in March 2018, it has live music five nights per week and on weekend days typically under the following schedule:

- Wednesdays from 6:00 PM to 9:00 PM;
- Thursdays from 6:00 PM to 9:00 PM;
- Fridays from 8:00 PM to 11:00 PM;
- Saturdays from 2:00 PM to 5:00 PM and from 8:00 PM to 11:00 PM; and
- Sundays from 2:00 PM to 5:00 PM.

(Day 2 Tr., at 107:3-10.) While these live music hours have been consistent for the last couple of years, previously live music could start as early as 11:00 AM and go until midnight on the weekend. (Day 2 Tr., at 109:16-114:1; Ex. C-16.)

Bands and performers at Copper Fire set up at the front of Copper Fire along the eastern wall which is directly adjacent to the 208 East Main Street building. (Day 1 Tr., 26:11-13; Ex. Demonstrative 2; Ex. Demonstrative 3.) Bands and performers bring their own sound equipment and control their own amplification and speakers when performing. (Day 2 Tr., at 115:20-156:1, 206:21-207:2, 230:12-14.)

IV. LIVE MUSIC FROM COPPER FIRE CREATES NOISE POLLUTION.

Since the very first day Copper Fire opened it has caused a nuisance on its neighbors at 208 East Main Street. (Ex. C-3.) When live music is playing at Copper Fire, the music can be heard inside Kaskaskia, inside the Boyers' loft, and inside Suite 330. (Day 1 Tr., at 25:4-17, 26:14-24, 29:22-30:8.) Numerous witnesses, including Geri Boyer, Doug Boyer, Becca Boyer, and Mike Biffignani all testified the music from Copper Fire can be heard inside the Boyers' loft. Numerous videos exemplifying the bands and live music performances at Copper Fire were presented and

entered into evidence at the final hearing. (Ex. C-30; Ex. C-31; Ex. C-32; Ex. C-33; Ex. C-38.) Three of these videos are of bands and performers when Geri Boyer texted Renae Eichholz informing her the music was too loud. (Ex. C-30; Ex. C-31; Ex. C-32; Day 2 Tr., at 127:19-130:1, 137:18-139:17, 140:4-145:4; Ex. C-11.)

A. Becca Boyer's Testimony About the Noise Level from Copper Fire.

Becca Boyer is Complainants' daughter. (Day 1 Tr., at 19:25-20:2.) She lives in the Writer's Lofts on the second floor in Suite 220 located on the far east side of the building, away from Copper Fire. (Day 1 Tr., at 20:18-21, 21:5-10; Ex. Demonstrative 3.) Becca owns her suite. (Day 1 Tr., at 20:22-23.) Becca is the Vice President of Kaskaskia and has worked from Kaskaskia's office located at 208 East Main Street since 2012. (Day 1 Tr., at 20:7-17.) According to Becca, the music from Copper Fire can be heard "very clearly" inside Geri and Doug Boyers' loft, and the music can be heard in Kaskaskia's offices. (Day 1 Tr., at 25:1-17.) In fact, the music is so loud, she can identify the specific songs and instruments playing at Copper Fire. (Day 1 Tr., at 25:1-8, 25:17, 26:2-27:6.) Becca described the music as "very loud" and said you have to raise your voice to have a conversation inside Geri and Doug's loft and turn up the volume on the television in order to watch it. (Day 1 Tr., at 27:7-14.) Becca has also been in Suite 330, currently rented by Julie Orlet, and reported she could hear music playing from Copper Fire inside Julie's loft as well. (Day 1 Tr., at 30:4-8.) As a resident of downtown Belleville, Becca stated no other bars or restaurants play music as loud as Copper Fire, and the noise from live music can also be heard on the street outside Copper Fire. (Day 1 Tr., at 30:9-11, 30:23-31:5, 39:20-23.) Becca testified Copper Fire has not reduced the sound coming from the live music playing inside the restaurant. (Day 1 Tr., at 31:16-21.)

B. Geri Boyer's Testimony About the Noise Level from Copper Fire.

Geri Boyer testified she can hear live music from Copper Fire inside her loft and on the west side of Kaskaskia's offices. Geri testified she can hear the words, melody and beat of the music, can sing every word with the music, and the music is so loud it can feel like its vibrating inside her loft. (Day 1 Tr., at 74:16-25, 79:25-80:2, 103:11-18.) According to Geri, she started hearing music from Copper Fire inside her loft on the first day Copper Fire opened, March 17, 2018, the noise is constant, and she heard it as recently as "yesterday afternoon."¹ (Day 1 Tr., at 82:1-7, 82:17; Ex. C-3; Ex. C-5; Ex. C-11.) Geri recorded the music from Copper Fire inside her loft on her cell phone on a few occasions. (Day 1 Tr., at 114:13-18; Ex. C-12; Ex. C-14.) Geri testified the music from Copper Fire is so loud it interferes with conversations, makes it difficult to watch television, impossible to read a book, and she cannot listen to her own music. (Day 1 Tr., at 63:14-64:12, 64:16-65:1.) Geri attempted to ask Respondents to turn the music down on multiple occasions, but Respondents have ignored her requests, don't believe her, and ultimately Renae Eichholz blocked Geri from texting her. (Ex. C-3; Ex. C-4; Ex. C-5; Ex. C-6; Ex. C-7; Ex. C-11; Day 1 Tr., at 99:20-104:25; Day 2 Tr., at 124:19-126:24, 127:19-128:6, 130:8-132:12, 137:18-138:2, 140:4-142:22, 145:16-149:1.)

C. Doug Boyer's Testimony About the Noise Level from Copper Fire.

Doug Boyer has hearing aids and testified he can still hear the music from Copper Fire inside his loft even when he takes them out. (Day 1 Tr., at 216:16-217:1.) Doug said at times he feels like he can feel the music as well as hear it. (Day 1 Tr., at 218:13-21.) Doug testified the live music from Copper Fire is distracting from a regular conversation on the weekends, and he has to

¹ Geri testified on October 7, 2024, so "yesterday afternoon" references Sunday, October 6, 2024.

turn the volume up and take out his hearing aids in order to watch television. (Day 1 Tr., at 215:7-20.)

D. Mike Biffignani's Testimony About the Noise Level from Copper Fire.

Mike Biffignani, a sound expert, conducted two sound studies inside the Boyers' loft. (Ex. C-22; Ex. C-23.) Mr. Biffignani measured the ambient sound level inside the Boyers' loft at 29 or 30 decibels making the loft a "very quiet living space" and ideal for sleep. (Day 2 Tr., at 19:2-12; Ex. C-22, Fig. 3, at pg. 5-6.) When live music is playing at Copper Fire, the average decibel level inside Complainants' loft increases to 38 to 39 decibels. (Ex. C-22, Fig. 3.) This 10-decibel increase is perceived as twice as loud. (Day 2 Tr., at 30:22-23.) Further, regardless of decibel level, Mr. Biffignani testified repetitive and continuous noise for a long duration impacts the ability to tolerate the noise. (Day 2 Tr., at 39:17-40:6.)

Mr. Biffignani opined when accounting for transmission loss due to the two brick walls and airspace between Copper Fire and loft, he estimated the music at Copper Fire was approximately 95 decibels. (Day 2 Tr., at 32:22-34:11.) Mr. Biffignani then confirmed his theory when he visited Copper Fire for lunch during one of his sound studies and measured the noise from the band around 95 and 96 decibels. (Day 2 Tr., at 34:12-36:2; Ex. C-23, at pg. 5.)

Mr. Biffignani testified 95 decibels is extremely loud and equates to the sound levels he has measured at stadium concerts. (Day 2 Tr., at 34:12-14, 36:13-37:6.) Mr. Biffignani also testified he observed a couple struggling to have a conversation inside Copper Fire when the music was playing. (Day 2 Tr., at 36:5-10.) Mr. Biffignani could hear the music from Copper Fire from the sidewalk outside and measured the sound outside Copper Fire at 70 decibels. (Day 2 Tr., at 66:8-67:5; C-23, at pg. 5.) During one of his sound studies, Mr. Biffignani also captured recordings of the music from Copper Fire playing inside the Boyers' loft. Mr. Biffignani was able to listen to

these recordings and recognize the songs playing next door inside Copper Fire. (Day 2 Tr., at 57:16-60:18, 64:2-10; Ex. C-23; Ex. C-24; Ex. C-25; Ex. C-26.)

E. Respondents Admit Copper Fire is Loud.

Complainants are not the only ones who think the music at Copper Fire is too loud. Over the last six years Copper Fire has received numerous reviews and complaints on Facebook, Yelp and Google about the sound level inside Copper Fire. (Ex. C-19; Ex. C-20; Ex. C-21.) Renae Eichholz personally handles all written complaints posted online. (Day 2 Tr., at 157:4-17.) Renae often responds to these complaints attempting to explain the sound or noise inside Copper Fire, and admitting the volume is an issue. For example, Renae wrote the following in response to reviews commenting on the noise at Copper Fire:

- “If it was too loud, you may have caught just the beginning as he fine tuned the volume.” (Ex. C-19, at Facebook 2.)
- “In terms of the atmosphere, we know our tall ceilings can sometimes contribute to a noisier environment when it’s busy. . . . the unique architecture of our space limits what we can do.” (Ex. C-20, at Yelp-1.)
- “So everything was good except the music was too loud? I know and that drives us crazy because we work with each group on their sound levels.” (Ex. C-21, at Google-14.)
- “As much as we love the Live Music, we have a hard time controlling the musicians. The bar is two stories and the sound travels uncontrollably.” (Ex. C-21, at Google-13.)
- “The two story room has been a beast to control sound.” (Ex. C-21, at Google-4(B).)
- “The band last night was a new one. Very good but we battled over the noise” (Ex. C-21, at Google-3.)
- “Sometimes the musicians, especially if new struggle to get the sound right.” (Ex. C-21, at Google-2(C).)

Despite this known and continuous issue with the “uncontrollable” noise, which “has been a beast to control,” Respondents continue to play live music five nights a week and on the weekend days without installing any sound deadening or mitigation devices, refusing to turn the sound down, and with no regard or care for Copper Fire’s neighbors. According to Respondents, “[Copper Fire’s] neighbors are listening to great music whether they like it or not.” (Ex. C-10; Day 1 Tr., at 97:17-98:3.)

V. THE NUISANCE FROM COPPER FIRE HAS GREATLY IMPACTED COMPLAINANTS.

The constant noise coming from Copper Fire is detrimental to the Boyers’ physical and mental health and has interfered with everyday activities inside their loft and business. Complainants testified when music is playing at Copper Fire, they cannot have a normal conversation in their loft and have to project their voices, cannot watch television in their home, cannot listen to their own music, and cannot read a book. (Day 1 Tr., at 63:3-12, 64:3-12, 64:16-18, 64:24-25, 215:7-20, 216:3-8.) Becca Boyer confirmed this testimony. (Day 1 Tr., at 27:7-14.)

Complainants also testified the noise from Copper Fire interferes with their ability to sleep. The Boyers now wait until the live music stops at Copper Fire before going to sleep, altering their sleep schedules and forcing Complainants to stay up later. (Day 1 Tr., at 67:3-7, 110:21-111:11, 214:21-215:6.) This is especially problematic for Doug, who is a deacon, and needs to be up at 5:45 am on Sunday mornings for his first mass at 7:00 am. (Day 1 Tr., at 204:18-205:13.) Copper Fire plays live music until 11:00 pm on Saturday nights, and Doug cannot go to sleep until the music stops. (Day 1 Tr., at 214:21-215:6.)

The noise has not only impacted Complainants’ ability to sleep, but also interfered with their grandsons’ ability to sleep. The Boyers watch their three grandsons, currently six, seven and nine years of age, every Friday night and some Saturday evenings. (Day 1 Tr., at 67:24-68:8.)

Their grandsons are not able to fall asleep until the music at Copper Fire stops, resulting in these young children being kept up until 11:00 PM or later. (Day 1 Tr., at 68:8-10, 68:24-69:6.)

Geri Boyer described the noise as “Chinese water torture” because “it’s constant and it never stops, it becomes torture.” (Day 1 Tr., at 69:10-15.) Ultimately, Complainants now do everything in their power to avoid being home when the music is playing. (Day 1 Tr., at 110:16-17, 214:12-20.) Complainants built a second home an hour and a half away in Missouri they visit nearly every weekend to get away from the noise at Copper Fire. (Day 1 Tr., at 105:21-108:3, 108:18-109:2.) As a result, Geri has given up all activities in Belleville on the weekends. (Day 1 Tr., at 111:12-112:2.) This includes cantoring at church, which Geri had previously done since she was 16 years old. (Day 1 Tr., at 109:3-19.) The Boyers also are unable to attend social events in Belleville on the weekends since they cannot bear the constant annoyance coming from Copper Fire. (Day 1 Tr., at 111:12-15.)

Both Geri and Doug testified about the negative impact the noise has had on their marriage. Geri moved her office inside Kaskaskia to the far eastern side of the building away from Copper Fire in order to create a quiet workspace. (Day 1 Tr., at 65:22-66:5.) Geri now stays later at work on weeknights to avoid the noise, and as a result, no longer has dinner with Doug. (Day 1 Tr., at 65:22-67:2, 110:11-15, 219:24-220:7.) Additionally, Doug has to return to Belleville on Saturday afternoon for his deacon duties, but Geri stays at their secondary Missouri home to avoid the music from Copper Fire. (Day 1 Tr., at 107:22-108:10, 219:10-23.) As a result of the nuisance from Copper Fire, Geri and Doug spend less time together, which hasn’t been positive for their marriage. (Day 1 Tr., at 220:8-13.)

VI. THE SOUND LEVELS IN COMPLAINANTS' LOFT EXCEEDS THE RECOMMENDED RANGE FOR SLEEP.

The World Health Organization recommends 30 decibels or less for sleep. (Day 2 Tr., at 11:21-4; Ex. C-22, at pg. 3.) Mike Biffignani measured the ambient sound levels in Complainants' loft at 30 decibels during the day and 29 decibels at night. (Ex. C-22, at pg. 4.) Based on the objective sound measurements, the average sound levels inside Complainants' loft increases to 38 to 39 decibels when bands are playing at Copper Fire. (Ex. C-22, Fig. 3; Ex. C-23, Fig. 2.) This is a significant increase from the nighttime ambient level of sound in the Boyers' loft, which was measured within an ideal range for sleep—at 29dBA. (Ex. C-22, at pg. 4.) Notably, this 10-decibel increase “is perceived as twice as loud.” (Day 2 Tr., at 30:22-31:4.) The noise from Copper Fire therefore turns the Boyers' “very quiet living space” into a space no longer conducive for sleep.

VII. COPPER FIRE IS NOT LIKE OTHER BARS AND RESTAURANTS IN DOWNTOWN BELLEVILLE.

At the final hearing, Respondents failed to prove Copper Fire is suitable for its location. While downtown Belleville has other bars and restaurants with music, no other bar or restaurant on Main Street plays live music five nights a week and during every weekend day, with amplified bands of varying sizes, directly adjacent to a residential living space. (Day 2 Tr., at 122:1-15, 126:9-127:18, 184:12-190:24; Ex. C-43; Ex. C-44; Ex. C-45.) Further, no other bar or restaurant plays music as loud as Copper Fire. (Day 1 Tr., at 30:9-11, 30:23-31:5, 39:20-23.) Renae Eichholz admits for at least a period of time into 2021 Copper Fire “was . . . more like the Wild West.” (Day 2 Tr., at 229:23-230:1.) Musicians show up with large speakers and act like they're rock stars, when in fact they're performing in a restaurant, not Busch Stadium. (Day 2 Tr., at 184:12-190:24; Ex. C-43; Ex. C-44; Ex. C-45.) In fact, recognizing certain acts are not suitable for Copper Fire, Respondents schedule certain large acts to perform outside, but when bad weather makes an

outside performance impossible, instead of cancelling these acts, Respondents let these performers play inside Copper Fire directly adjacent to Complainants' loft and business. (Day 2 Tr., at 143:19-145:1.) Respondents failed to establish loud music which interferes with Copper Fire's neighbors is suitable for the area.

VIII. RESPONDENTS HAVE NOT REMEDIATED.

A. Copper Fire Is an Ongoing Nuisance.

Respondents have also not remediated, and Copper Fire remains a nuisance. Becca Boyer, Geri Boyer, and Doug Boyer all testified the music from Copper Fire is just as loud as it was in 2018 when Copper Fire opened. (Day 1 Tr., at 31:16-21, 121:8-12, 231:3-19.) Geri Boyer testified the music from Copper Fire was heard in Complainants' loft as recently as the prior weekend. (Day 1 Tr., at 121:8-12.)

While Respondents claim they have attempted to remediate and nothing they do will satisfy Complainants, this is untrue and unsupported. (Day 2 Tr., at 211:16-21.) Complainants have never said Copper Fire cannot have live music. (Ex. C-3; Ex. C-4; Day 1 Tr., at 185:11-12, 197:18-20, 220:14-221:4.) To the contrary, Complainants have consistently stated since 2018 they believe Copper Fire "could have music if [Respondents] did some sound mitigation and just had music at around 80 dB." (Ex. C-4; *see also* Day 1 Tr., at 220;14-221:4.) Complainants' sound expert Mike Biffignani confirmed a sound limit under 85 decibels would likely mitigate the sound to an appropriate level for sleep inside Complainants' loft. (Day 2 Tr., 42:18-43:8.) Complainants' request is reasonable. They don't want to hear the music from Copper Fire inside their home five nights a week and during the day on weekends. Geri Boyer asked Renae Eichholz to consult with her architect regarding sound remediation on the first day Copper Fire opened, but Respondents

admittedly did not do so, and have not explored installing any sound mitigation or deadening devices. (Ex. C-3; Day 2 Tr., at 119:15-120:16.)

Geri Boyer also attempted to notify Renae Eichholz each time she heard the music from Copper Fire inside her home and requested Renae turn the volume down. (Ex. C-3; Ex. C-11; Day 2 Tr., at 119:15-120:6, 127:11-130:24, 134:7-24, 140:8-20, 149:23-150:2.) On certain occasions Renae would lower the music and Geri responded it helped. However, even though turning down the music makes it quieter, Respondents have been unwilling to do so as a matter of general policy. (Day 2 Tr., at 120:20-22.) Even when Geri notified Renae of the exact song she could hear inside the loft, Renae ignored her request to turn down the volume. (Ex. C-11 at 10; Day 2 Tr., at 145:11-146:1.) Ultimately, Renae Eichholz blocked Geri's number. (Day 2 Tr., at 148:17-25.)

B. Respondents' Sound Policies Did Not Remediate the Nuisance.

While Respondents assert they remediated the noise and implemented noise policies at Copper Fire, the noise pollution from Copper Fire is still a nuisance. While Respondents installed some foam tiles around the perimeter of the ceiling at Copper Fire in 2019, this did not mitigate the noise emanating from Copper Fire to its neighbors. (Day 2 Tr., at 105:10-14, 106:6-9.) Further, while Renae Eichholz claims Respondents looked up the cost of installing sound paneling, Respondents did not provide evidence of a bid at the final hearing nor did they install any sound paneling or other sound mitigation devices. (Day 2 Tr., at 122:16-123:18.)

Despite Complainants informing Renae Eichholz continuously the noise could be heard inside their loft, before 2021, Respondents did not have any controls in place to control the sound level at Copper Fire. (Day 2 Tr., at 201:8-12.) Respondents admit they did not start taking any steps to control the noise until they received Mike Biffignani's first sound study, which is dated May 5, 2021. (Ex. C-22; Tr. Day 2 202:14-18.) Respondents claim they now created a policy to

keep sound emissions under a certain decibel limit, but Respondents have not established their self-proclaimed decibel levels are, in fact, appropriate. (Ex. C-17; Ex. C-18; Tr. Day 2, 153:10-155:22.) Renae Eichholz set the limits and admits she is not a sound expert and has no special training in sound or noise. (Day 2 Tr., at 100:10-21, 127:3-5.) Further, Renae Eichholz believes she would be compliant with the law if the music at Copper Fire was over 100 decibels. (Day 2 Tr., at 233:12-20.) And while Renae Eichholz is okay with it being 39 decibels or lower in Complainants' loft, Renae has never been inside the Boyers' loft when live music is playing at Copper Fire. (Day 2 Tr., at 133:14-15, 198:21-199:1.) Therefore, her self-established allegedly appropriate levels have no merit and do not demonstrate Respondents have abated the nuisance they are creating.

According to the written policies, weeknight decibel limits are 85 to 88 decibels and Friday and Saturday night decibel limits are 88 to 92 decibels. (Ex. C-17; Ex. C-18; Day 2 Tr. 152:17-153:12.) There is no evidence bands comply with the written policy and Respondents failed to show the policies are enforced. (Day 2 Tr., at 153:23-154:3.) Bands control their own sound levels. (Day 2 Tr., at 155:20-156:1.) In fact, Respondents concede there are still instances where the decibel levels are too high, newer acts often have issues with their sound levels, and performers often ride right at the limits. (Day 2 Tr., at 136:19-25; C-21, at Google-15.) Renae Eichholz also testified on Friday and Saturday nights bands exceed the 92-decibel limit and she "feel[s] like they're still in our limits." (Day 2 Tr., at 153:23-154:3.) Respondents believe the music volume must be turned up to accommodate the crowd noise, failing to take into account those items work together to simply increase the nuisance. Instead of lowering the volume of the music to allow more normal conversation, they compete with the crowd, continuing to increase the volume, creating a never-ending nuisance cycle.

C. Respondents Must Turn Down the Music.

Respondents also concede the music can physically be turned down, but claim Copper Fire would not survive with a “no noise standard” and Copper Fire “would be out of business” if decibels had to be kept below 85. (Day 2 Tr., at 213:17-21, 229:10-21.) This statement is unsupported by any evidence. Indeed, the only customer reviews placed into evidence show the exact opposite—customers do not enjoy the level of noise in Copper Fire. (Ex. C-19; Ex. C-20; Ex. C-21; Day 2 Tr., at 156:10-12.) Respondents have not demonstrated any attempt to keep the noise at a level where both their customers and Complainants are satisfied. (Day 2 Tr., at 154:10-155:19.) Instead, Respondents established self-proclaimed allegedly appropriate decibel levels, which are not strictly followed, and which still cause a nuisance.

Respondents admit Copper Fire is loud, a noisier space and the sound travels uncontrollably. (Ex. C-20, at Yelp-1; Ex. C-21, at Google-13; Day 2 Tr., at 164:22-166:2, 174:9-175:9.) When a customer complains about the noise level, Renae’s response is to tell the customer to come back when live music is not playing. (Ex. C-19, at Facebook-1; Ex. C-20, at Yelp-2, Yelp-3; Ex. C-21, at Google-1, Google-2(C), Google-4(B), Google-6, Google-7, Google-12(B), Google-13; Day 2 Tr., at 159:9-160:3, 181:1-10.) The live music schedule is also posted on the door to warn customers about the loud music. (Day 2 Tr., at 159:16-21.) Complainants live and work next door. They cannot simply move their home and office away from Copper Fire when live music is playing. They do not have the option of returning to their home and office when Copper Fire is not creating a nuisance. While Complainants currently try to avoid being home when the live music is playing at Copper Fire, it is impossible and not reasonable for someone to be forced away from their home every night Wednesday through Saturday and weekend afternoons.

Respondents suggested at the final hearing it is Complainants who need to do something inside their loft to remediate the sound. Mike Biffignani testified the wall separating Copper Fire and Complainants' loft is a good wall for transmission loss, meaning Complainants cannot do something more on their side of the wall to stop the noise from Copper Fire. (Day 2 Tr., at 32:22-34:1, 43:19-44:7.) The best way to control the noise pollution is at the pollution source, inside Copper Fire. (Day 2 Tr., at 42:18-43:8, 67:19-25; Day 1 Tr., at 56:8-57:9, 128:3-13.) Also, the least expensive way to remediate the noise pollution is at the pollution source. (Day 2 Tr., at 68:1-13.) Mike Biffignani recommends reducing the noise by 10 decibels at the source in order to reduce the sound heard inside the Boyers' loft. (Day 2 Tr., at 41:23-43:11.) Respondents did not present any credible alternative option for stopping the nuisance noise pollution. Respondents need to turn the sound level down and do whatever is necessary to stop being a nuisance. Blaming the victim never works, but certainly is not an appropriate response in this case.

LEGAL STANDARD

The Illinois Environmental Protection Act (the "Act") states "[n]o 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 regulation or standard adopted by the Board under this Act." 415 ILCS 5/24. Section 900.102 of the Board's regulations provides, in relevant part, no person shall cause or allow emission of sound beyond the boundaries of his property "so as to cause noise pollution" 35 Ill. Admin. Code 900.102. Noise pollution is defined as "the emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity." 35 Ill. Admin. Code 900.101. Taken together, these provisions constitute a "a prohibition against nuisance noise pollution." *Fiser v. Henry's Double K, LLC.*, PCB 18-084,

slip op. at 7 (Jan. 21, 2021) (internal quotation omitted); *Zivoli v. Prospect Dive & Sports Shop, Ltd.*, PCB 89-205, slip op. at 8 (Mar. 14, 1991).

The Board follows a two-step process to determine if noise emissions constitute a nuisance: (1) whether the noise constitutes interference with the enjoyment of the complainants' life; and (2) whether the interference is unreasonable. *Fiser*, slip op. at 7. To evaluate this second step—i.e. the unreasonable interference with the enjoyment of life—the Board considers the Section 33(c) factors enumerated in the Act, which reads as follows:

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

- (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- (ii) the social and economic value of the pollution source;
- (iii) 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;
- (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- (v) any subsequent compliance.

415 ILCS 5/33(c).

The evidence presented at the final hearing in this matter conclusively establishes the noise at Copper Fire interferes with the enjoyment of Complainants' life and is unreasonable. Thus, Complainants request the Board issue an order finding Respondents are in violation of the nuisance noise prohibitions in 415 ILCS 5/24 and 35 Ill. Adm. Code 900.102, order such noise pollution must cease and desist immediately and permanently, and order Respondents pay a \$80,000 penalty to deter future violations.

ARGUMENT

I. THE NOISE FROM COPPER FIRE INTERFERES WITH THE BOYERS' ENJOYMENT OF LIFE.

To determine if noise interferes with the enjoyment of life, “the noise must objectively affect the complainant’s life or business activities.” *Kamholz v. Sporleder*, PCB 02-41, 2003 WL 913437, at *8 (Feb. 20, 2023). The evidence presented at the final hearing establishes the live music from Copper Fire interferes with the Boyers’ enjoyment of life.

A. The Noise Is Constant.

For over six years, Copper Fire has consistently and constantly interfered with Complainants’ enjoyment of life. Copper Fire has live music five nights per week and on weekend days typically under the following schedule:

- Wednesdays from 6:00 PM to 9:00 PM;
- Thursdays from 6:00 PM to 9:00 PM;
- Fridays from 8:00 PM to 11:00 PM;
- Saturdays from 2:00 PM to 5:00 PM and from 8:00 PM to 11:00 PM; and
- Sundays from 2:00 PM to 5:00 PM.

(Day 2 Tr., at 107:3-10.) While these live music hours have been consistent for the last couple of years, previously live music could start as early as 11:00 AM and go until midnight on the weekend. (Day 2 Tr., at 109:16-114:1; Ex. C-16.) This “constant” intrusive noise “never stops” and has frequently and consistently interfered with Complainants’ enjoyment of life for six years. (Day 1 Tr., at 65:1, 69:13, 107:2, 200:5, 220:20.)

B. Effects of Noise Interference on the Boyers.

The constant noise coming from Copper Fire has had a detrimental effect on the Boyers’ physical and mental health and interfered with everyday activities inside their loft and business.

The noise from Copper Fire interferes with Complainants' ability to complete everyday tasks and activities in their loft and business and has made tasks difficult, unenjoyable, or impossible. When music is playing at Copper Fire, the Boyers cannot have a normal conversation in their loft and have to project their voices, cannot watch television at a normal level in their home, cannot listen to their own music, and cannot read a book. (Day 1 Tr., at 63:3-12, 64:3-12, 64:16-18, 64:24-25, 215:7-20, 216:3-8.)

Additionally, as a result of the music from Copper Fire, the Boyers have altered their sleep schedules and now go to bed later as they cannot sleep with the noise from Copper Fire. (Day 1 Tr., at 67:3-7, 110:21-111:11, 214:21-215:6.) The noise has not only impacted their ability to sleep, but also interfered with their grandsons' ability to sleep. The Boyers watch their three grandsons every Friday night and some Saturday evenings. Their grandsons are not able to fall asleep until the music at Copper Fire stops, resulting in these young children being kept up until 11:00 PM or later. (Day 1 Tr., at 67:24-68:10, 68:24-69:6.)

To escape the noise from Copper Fire, Boyers built a second home in Missouri they now visit nearly every weekend to get away from the noise at Copper Fire. (Day 1 Tr., at 105:21-108:3, 108:18-109:2.) As a result, Geri has given up all activities in Belleville on the weekends. (Day 1 Tr., at 111:12-112:2.) This includes cantoring at church, which Geri had previously done since she was 16 years old. (Day 1 Tr., at 109:3-19.) The Boyers also are unable to attend social events in Belleville on the weekends since they cannot bear the constant annoyance coming from Copper Fire. (Day 1 Tr., at 111:12-15.)

Additionally, the noise from Copper Fire has impacted the Boyers' marriage. Geri was able to create a quiet workspace in Kaskaskia's offices by moving her office to the far east side of the building, away from Copper Fire. (Day 1 Tr., at 65:22-66:5.) As a result of the music, the Boyers

no longer have dinner together on weeknights, because Geri stays later at the office to avoid hearing the music from Copper Fire. (Day 1 Tr., at 65:22-67:2, 110:11-15, 219:24-220:7.) Further, the Boyers no longer spend Saturday nights and Sundays together. For his deacon obligations Doug needs to return to Belleville in time for his Saturday evening and Sunday morning services. Geri does not come home with Doug on Saturdays because she cannot sleep with the noise from Copper Fire. (Day 1 Tr., at 107:22-108:10, 219:10-23.) Further, as a result of the music at Copper Fire, Doug is forced to stay up until after 11:00 PM, even though he has deacon obligations early on Sunday mornings and would go to bed earlier if he could. (Day 1 Tr., at 204:18-205:13, 214:21-215:6.) Not spending time together has not been positive for the Boyers' marriage.

In short, the constant noise from Copper Fire has substantially interfered with the Boyers' enjoyment of life. They cannot enjoy normal activities like talking, reading, and watching television in their loft, cannot sleep in their home when Copper Fire has live music, do everything possible to avoid being home when the music is playing, and spend significantly less time together as a result of the music from Copper Fire. This is precisely the type of interference this Board has previously found interferes with a complainant's enjoyment of life. *See, e.g., Pawlowski v. Benchwarmers Pub, Inc.*, PCB, 99-82, 2000 WL 381837, at *6 (Apr. 6, 2000) (finding music from the bar interfered with the complainants' lives because it effected the complainants' ability to sleep, watch television, and marriage); *Manarchy v. JJJ Assocs., Inc.*, PCB 95-73, 1996 WL 419475, at *9 (July 18, 1996) (finding sound emanating from a nightclub caused an interference with the complainants' enjoyment of life on numerous occasions because it interfered with their sleep).

C. Sound Measured in the Boyer Loft Exceeds Recommended Standards for Sleep.

Moreover, based on the objective sound measurements, the average sound levels in Complainants' loft when bands are playing in Copper on weekend evenings are 38 to 39 decibels. (Ex. C-22, Fig. 3.) This is a significant increase from the nighttime ambient level of sound in the Boyers' loft, which was measured at 29 decibels. (Ex. C-22, at pg. 4.) Notably, this 10-decibel increase "is perceived as twice as loud." (Day 2 Tr., at 30:22-31:4.) The noise from Copper Fire therefore turns the Boyers' "very quiet living space" into a space no longer conducive for sleep, interfering with the Boyers' enjoyment of life. (Ex. C-22, Fig. 3, at pg. 5-6.)

Indeed, this Board has previously held a 10-decibel increase, like what was measured here, creates a nuisance. In *Pawlowski v. Benchwarmers Pub, Inc.*, 2000 WL 381837, the complainants lived in a second-floor apartment separated by a brick wall and airspace from Benchwarmers Pub. The complainants testified music from Benchwarmers Pub interfered with their ability to sleep, watch television and had a negative impact on their marriage. The complainants' acoustical consultant measured ambient sound levels at 25 to 26 decibels in their bedroom, but found the average sound levels were 10 decibels louder when the music was playing inside Benchwarmers Pub. The Board determined this level of increase (to an average of 35 to 36 decibels), coupled with the testimony about the interference was sufficient to establish the music from Benchwarmers Pub unreasonably interfered with the complainants' lives and violated Section 24 of the Act and 35 Ill. Admin. Code 900.102.

Here, the Boyers have testified about similar and additional interference from the live music at Copper Fire. The Boyers' expert also measured a 10 decibel increase from ambient level sound when Copper Fire is playing live music. Notably, however, the noise measured in the Boyers' loft is 2 to 4 decibels louder than what the Board relied on to establish Benchwarmers Pub

was in violation of Illinois law. Under these facts, Copper Fire is a nuisance and has interfered with the Boyers' enjoyment of life.

II. THE NOISE FROM COPPER FIRE IS AN UNREASONABLE INTERFERENCE WITH THE ENJOYMENT OF LIFE.

Respondents' interference with the Boyers' enjoyment of life is unreasonable. To determine whether interference is unreasonable, the Board must look to the five criteria referenced in Section 33(c). However, Complainants are not obligated to introduce evidence on each Section 33(c) factor nor does the Board need to find against Respondents on each enumerated factor to find a violation. *Charter Hall Homeowner's Ass'n v. Overland Transp. Sys., Inc.*, PCB 98-81, 1998 WL 714214 *18 (Oct. 1, 1998); *Wells Mfg. Co. v. Pollution Control Bd.*, 73 Ill. 2d 226, 233 (1978). In fact, the Board may consider any relevant factors as determinative in reaching its decision. *Wells Mfg. Co.*, 73 Ill. 2d at 233.

The Section 33(c) factors support finding the noise from Copper Fire's live music was and is an unreasonable interference with the Boyers' enjoyment of life. The record shows the effects on the Boyers' lives and enjoyment of their property went beyond a mere annoyance. Instead, the record demonstrates the potential for noise problems in a commercial space directly adjacent to a known residential space, which could have been anticipated before Copper Fire was constructed or opened. Respondents simply refused to acknowledge this issue, decided not to believe the Boyers' complaints despite admitting Copper Fire is "noisy" and the sound is "a beast to control." With no regard for their neighbors, Copper Fire continues to play live music from amplified bands and performers five nights per week causing a constant annoyance and nuisance inside the Boyers' loft and business.

A. Section 33(c)(i): Degree of Injury or Interference.

In accessing the character and degree of injury or interference caused by the live music at Copper Fire, “the Board looks to whether the noise substantially and frequently interferes with the use and enjoyment of life and property, beyond minor trifling annoyance or discomfort.” *Metivier v. Douglas Kenyon, Inc.*, PCB 92-74, 1993 WL 538290, at *4 (Dec. 16, 1993).

There is no question this factor favors finding an unreasonable interference. For six years, Copper Fire has played lived music five nights a week and on weekend days. (Day 2 Tr., at 107:3-10.) This is not a trifling annoyance, but a constant and substantial interference with the Boyers’ enjoyment of life. The Boyers cannot complete everyday tasks and activities in their loft and business. They cannot have a normal conversation, watch television, read a book, or listen to their own music. (Day 1 Tr., at 63:3-12, 64:3-12, 64:16-18, 64:24-25, 215:7-20, 216:3-8.) The Boyers also cannot go to sleep until the music stops and have been forced to leave their home on the weekends just to have the necessary comfort of a quiet and livable space. (Day 1 Tr., at 67:3-7, 110:16-17, 110:21-111:11, 214:12-215:6.) As a result of the nuisance from Copper Fire, the Boyers spend less time together on weeknights and the weekends, which has a negative impact on their marriage. (Day 1 Tr., at 65:22-67:2, 107:22-108:10, 110:11-15, 219:10-220:7.) They also have significantly altered their participation in activities in Belleville on the weekends. (Day 1 Tr., at 111:12-15.)

This Board has found this type of constant and intrusive inference with sleep and normal activities, such as watching television and having normal conversations, is a substantial and frequent interference weighing the character and degree of injury Section 33(c) factor in favor of the complainants. *See, e.g., Charter Hall Homeowner’s Assoc’n*, 1998 WL 714214, *18–20 (finding the character and degree of the injury was substantial, frequent, and severe when the

disturbances occurred regularly and disrupted sleep and limited normal activities in the complainants' homes for nearly three years); *Pawlowski v. Benchwarmers Pub, Inc.*, 2000 WL 381837, at *6 (determining the sound from Benchwarmers Pub substantially and frequently interfered with lives of the complainants based on evidence the noise caused a 10 decibel increase inside the complainants' bedroom, caused the complainants to leave home to obtain a good night's sleep, and interfered with the complainants' ability to watch television over a year and half period). The same is true here. Therefore, the degree of injury and interference strongly favors finding the music from Copper Fire is an unreasonable interference and therefore a nuisance.

B. Section 33(c)(ii): Social and Economic Value of the Pollution Source.

The social and economic value of the pollution source does not weigh in favor of Respondents and is, at best, neutral. To assess this factor, the Board looks at the number of persons employed by Respondents and whether Respondents are important to the particular market, which may be done by reviewing taxes and wages. *Charter Hall Homeowner's Ass'n*, 1998 WL 714214, at *20. While the Board has recognized small businesses such as bars, nightclubs, and restaurants generally have both some social and economic value to an area, *see Manarchy v. JJJ Assocs., Inc.*, 1996 WL 419475, at *10, Respondents did not present substantial evidence of this benefit at the final hearing. While Respondents assert Copper Fire is helping redevelop downtown Belleville, Respondents have not conclusively established the social and economic value of loud live music at Copper Fire. Further, Respondents have not provided specific evidence, such as employment or tax revenue, to conclusively demonstrate the positive financial impact created by Copper Fire for the community.

Moreover, Complainants' themselves stepped in, purchased, and completed renovations of the entire 208 East Main Street building when the developer ran out of money and went bankrupt.

(Day 1 Tr., at 50:5-51:11, 52:16-54:19.) Complainants own small business is on the first floor and numerous members of the Belleville community rent from Complainants and are employed by Complainants. (Day 1 Tr., at 76:1-15.). Therefore, to the extent Copper Fire may have social and economic value to the community, the value does not outweigh the value Complainants established in their building and small business.

C. Section 33(c)(iii): Suitability or Priority Location.

The third factor weighs against Respondents. The evidence conclusively establishes Complainants purchased and moved into their loft in 2008. (Day 1 Tr., at 48:13-18, 49:25-50:4, 128:20-23, 207:8-10; Ex. C-1.) At the time, Quiznos and a coffee shop occupied the first floor of the adjacent building which is now occupied by Copper Fire. (Day 1 Tr., at 24:8-20, 44:22-45:2, 209:19-210:1, 102:19-22.) Respondents did not establish MRB Development, LLC until 2016 and Copper Fire did not open until March 2018. (Day 2 Tr., at 100:22-25, 101:12-22; Day 2 Tr., at 102:5-10, 119:6-18; Ex. C-22.) There is no question Complainants have priority at the location.

Additionally, for almost a decade Complainants did not experience any noise pollution from their neighbors. (Day 1 Tr., at 24:21-25, 210:2-7; Day 2 Tr., at 102:19-103:1.) To the extent Respondents argue Copper Fire is suitable for the location because there are other restaurants and bars in the area, Respondents failed to establish the loud music from Copper Fire is suitable for the location. Copper Fire is not like other bars and restaurants in Belleville. Instead, Copper Fire is the only bar and restaurant with amplified acts, including large bands, performing five nights per week directly adjacent to a residential living space. (Day 2 Tr., at 122:1-15, 184:12-190:24; Ex. C-43; Ex. C-44; Ex. C-45.) According to Renae Eichholz, she can't stop the sound from traveling uncontrollably because Copper Fire is a two-story building. (Day 2 Tr., at 176:7-9.)

Indeed, Renae Eichholz admits at least for a period of time Copper Fire “was . . . more like the Wild West” which is not an appropriate bar or restaurant for the area. (Day 2 Tr., at 229:23-230:1.)

D. Section 33(c)(iv): Technical Practicability and Economic Reasonableness of Eliminating Noise Pollution.

The fourth Section 33(c) factor also weighs against Respondents. There are several practical and economically feasible measures Respondents have refused to implement or explore in order to reduce the effect of their sound pollution. The best and easiest way to reduce intrusive noise in Complainants’ loft and business is to turn the music down at Copper Fire. In fact, there is no inherent charge or cost associated with this remediation. (Day 2 Tr., at 67:19-25, 68:9-10.) Respondents also agree turning down the music makes it quieter. (Day 2 Tr., at 120:17-22.)

Respondents also admit they did not consider the impact Copper Fire might have on its neighbors, did not discuss sound mitigation with their architect and did not install any sound mitigation, sound deadening or absorption materials inside Copper Fire. (Day 2 Tr., at 104:23:105:9.) While Respondents installed some foam tiles around the perimeter of the ceiling in 2019, this did not mitigate the noise emanating from Copper Fire to its neighbors. (Day 2 Tr., at 105:10-14, 106:6-9.) Further, while Renae Eichholz claims Respondents looked up the cost of installing sound paneling, Respondents did not provide evidence of a bid at the final hearing and have not installed sound paneling or any other sound mitigation or deadening device. (Day 2 Tr., at 122:16-123:10.)

While Renae Eichholz testified she does not think the business would survive with a “no noise standard” and Copper Fire “would be out of business” if decibels had to be kept below 85 decibels, (Day 2 Tr., at 213:17-21, 229:10-21), this assertion is self-serving and nothing but speculation without any evidentiary support. Indeed, this is precisely the type of evidence this Board did not find persuasive in *Manarchy v. JJJ Assocs., Inc.*, 1996 WL 419475. In *Manarchy v.*

JJJ Assocs., residential neighbors brought a nuisance action against the owner of a nightclub due to loud music interfering with their ability to sleep. Like here, the nightclub owner testified he did not lower the sound levels because if he turned the music down clientele would leave the nightclub. *Id.* at *11. In its assessment of the Section 33(c)(iv) factor the Board noted while the owner testified about this belief, the nightclub owner did not attempt to reduce the music level to a point where both clientele and neighbors would be simultaneously content. Ultimately, the Board determined the most technically practicable and economically reasonable option would be to turn the music down as it is the simplest and least expensive method to reduce noise. *Id.* The same is true here.

E. Section 33(c)(v): Subsequent Compliance.

The record does not demonstrate Respondents have subsequently come into compliance and instead noise continues to unbearably and unreasonably interfere with Complainants' lives.

While Respondents installed some foam tiles around the perimeter of the ceiling in 2019, this did not mitigate the noise emanating from Copper Fire to its neighbors. (Day 2 Tr., at 105:10-14, 106:6-9.) Respondents also claim they now created a policy to keep sound emissions under a certain decibel limit, but Respondents have not established their self-proclaimed decibel levels are, in fact, appropriate.² (Ex. C-17; Ex. C-18; Day 2 Tr., at 153:10-22.) Further, there is no evidence bands comply with this written policy at all times. In fact, Respondents concede there are still instances where bands decibel levels are too high. (Day 2 Tr., at 136:19-25.) Renae Eichholz also testified on Friday and Saturday nights bands exceed the 92-decibel limit and she "feel[s] like they're still in our limits." (Day 2 Tr., at 153:23-154:3.) Therefore, Respondents' purported policies are not policies and are, at most, suggestions.

² In fact, Renae Eichholz believes she would be complaint with the law if the music at Copper Fire was over 100 decibels. (Day 2 Tr., at 233:12-20.)

Moreover, the bands control their own sound (Day 2 Tr, at 155:20-156:1), and even after these policies were allegedly implemented, the nuisance has continued. According to Respondents sound travels “uncontrollably” at Copper Fire since it’s a two-story building making sound “a beast to control.” (Ex. C-21, at Google-4(B), Google-13; Day 2 Tr., at 175:2-9, 178:5-14.) Respondents struggle to get the sound right. (Ex. C-21, at Google 2(C); Day 2 Tr., at 179:1-16.) Respondents have not remediated these sound issues and instead tell people who don’t like the noise to not patron the business when live music is playing. (Day 2 Tr., at 159:9-160:3, 181:1-10; Ex. C-19, at Facebook-1; Ex. C-20, at Yelp-2, Yelp-3; Ex. C-21, at Google-1, Google-2(C), Google-4(B), Google-6, Google-7, Google-12(B), Google-13.) Complainants have no way to avoid the noise because they live and work next door. Instead, according to Respondents, “[Copper Fire’s] neighbors are listening to great music whether they like it or not.” (Ex. C-10.)

Therefore, Respondents have failed to subsequently remedy their violations demonstrating the unreasonable nature of their noise pollution.

In sum, the evidence supports a determination the noise emissions from Copper Fire interfere with Complainants enjoyment of life and the interference is unreasonable when weighing the Section 33(c) factors. Respondents violated and continue to violate Section 24 of the Act and 35 Ill. Adm. Code 900.102.

III. RESPONDENTS MUST BE ORDERED TO IMMEDIATELY CEASE AND DESIST ALL NOISE VIOLATIONS.

The record demonstrates Complainants have been subjected to Respondents’ nuisance for over six years. Respondents must be enjoined immediately and permanently from violating Section 24 of the Act and 35 Ill. Adm. Code 900.102. Complainants deserve peace and quiet in their home. Complainants request an immediate and permanent order be entered enjoining Respondents from playing live music which can be heard from inside Complainants’ loft or business.

To the extent the Board enters an interim order to allow Respondents to examine and present the Board with economically reasonable and technically feasible control options, including soundproofing, reduction of volume, and restricted use of sound amplification, until control options are presented, Respondents must be enjoined from causing a nuisance, including by not playing any live music. However, Complainants must note, this matter has been pending since September 30, 2021, and Respondents have been on notice since the day Copper Fire opened on March 17, 2018 the sound was a nuisance, over six years ago. During this time span, Respondents have done virtually nothing, and certainly nothing effective to control the “beast” they are creating. Additional time merely subjects Complainants to more nuisance and rewards Respondents for not addressing their nuisance.

A. The Board Should Impose a Civil Penalty.

Moreover, Complainants request the Board enter an order which will properly motivate Respondents to comply with the order and deter them from future violations, including appropriate penalties pursuant to 415 ILCS 5/42(h).

In addition to Section 33(c), Section 42(h) sets forth factors the Board should consider in determining the appropriate amount of a civil penalty for a violation of the Act. These factors include: (i) the duration and gravity of the violation; (ii) whether the respondent showed due diligence in attempting to comply; (iii) any economic benefits the respondent accrued from delaying compliance; (iv) the need to deter further violations by the respondent and others similarly situated; and (v) whether the respondent voluntarily self-disclosed the violation. 415 ILCS 5/42(h).

As set forth above, at least four of the five Section 33(c) factors favor Complainants. Additionally, the Section 42(h) factors favor imposition of a civil penalty. The nuisance has

continued for over six years and Respondents refused to take reasonable and inexpensive, if not free, measures to remedy the nuisance, and instead decided not to believe Complainants. (Day 2 Tr., at 201:8-14.) Respondents have no regard for Copper Fire's neighbors, and believe "[Copper Fire's] neighbors are listening to great music whether they like it or not." (Ex. C-10.) Given the gravity of the violations, the substantial and continuous duration of the violations, and Respondents' admission they did not explore sound remediation measures and do not strictly follow their own purported noise policies, there is a strong need to deter future violations.

Under Section 42(a), the Board shall impose a maximum penalty of \$50,000 for a violation and up to \$10,000 for each day during which the violation continues. 415 ILCS 5/42(a). However, the Board must bear in mind no formulae exists, and all facts and circumstances should be reviewed. *See Shelton v. Crown*, PCB 96-53, 1997 WL 621473, at *14, (Oct. 2, 1997).

Respondents have been in violation of Section 24 of the Act and 35 Ill. Adm. Code 900.102 since the day Copper Fire opened. On March 17, 2018, Geri Boyer notified Renae Eichholz "the sound is very loud in our 2nd floor loft" and asked Renae to "talk to [her] architect about acoustical remediation immediately." (Ex. C-3.) Respondents did no such thing and ignored and chose not to believe Complainants. The nuisance and violations have continued since this date, at an average rate of five days per week based on Copper Fire's live music schedule. Even taking a conservative estimate, and eliminating an entire year for the COVID-19 pandemic, Respondents have violated Section 24 of the Act and 35 Ill. Adm. Code 900.102 at least 1,200 times. This means the Board could impose a \$12,050,000 penalty. However, Complainants propose under the circumstances the Board should impose a \$80,000 penalty (\$20,000 for the violation + \$50 per day for each continued

violation). Notably, this is only twice the cost of installing sound paneling, which according to Ms. Eichholz's testimony is \$40,000.³ The costs of turning down the music is free.

It has never been Complainants goal to close Respondents' business. Complainants just wish to live as they did before Copper Fire opened, in a peaceful and quiet space where they can have normal conversations, watch television, read a book, work, and sleep. Therefore, a \$80,000 penalty is both appropriate under the circumstances to deter future noncompliance.

CONCLUSION

The evidence demonstrates Respondents have unreasonably interfered with Complainants' enjoyment of life for over six years. Despite numerous requests for Respondents to simply mitigate the sound and turn the music down, Respondents chose not to do so. Respondents violated Section 24 of the Act and 35 Ill. Adm. Code 900.102, and the Board should permanently enjoin Respondents and order them to cease and desist all future violations, and impose a \$80,000 penalty given the nature and duration of Respondents' repeated violations and to deter future violations.

Dated: December 18, 2024

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DOUG AND GERI BOYER

³ Respondents also benefitted from their violations. Renae Eichholz testified about the success of Copper Fire during the ongoing nuisance period. (Day 2 Tr., at 227:3-228:5.)

CERTIFICATE OF SERVICE

It is hereby certified true and correct copies of the foregoing was served via email on December 18, 2024, upon the following:

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