

RECEIVED
CLERK'S OFFICE

SEP 29 2003

STATE OF ILLINOIS
Pollution Control Board
James R. Thompson Center
100 West Randolph Street - Suite 11-500
Chicago, Illinois 60601

STATE OF ILLINOIS
Pollution Control Board

L. ERICKSON,)
Complainant,)
v)
CHARLESTON CLASSIC)
HOMES and LAWRENCE E.)
VAN SOMEREN, JR.,)
Respondent.)

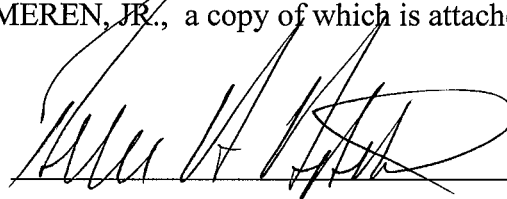
PCB

04-26

NOTICE OF FILING

TO: L. Erickson
317 East Hawthorne Boulevard
Wheaton, Illinois 60187

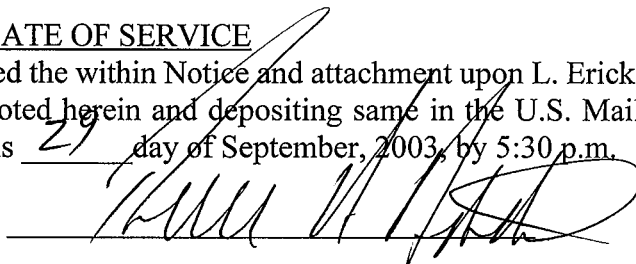
PLEASE TAKE NOTICE that on September 29, 2003 I filed with the Illinois Pollution Board, Motion to Dismiss Complaint filed on behalf of Respondent, CHARLESTON CLASSIC HOMES and LAWRENCE E. VAN SOMEREN, JR., a copy of which is attached and hereby served upon you.



Thomas A. Appel - #06182514
APPEL & APPEL, LTD.
18607 Torrence Avenue - Suite 2A
Lansing, Illinois 60438
708-474-8800

CERTIFICATE OF SERVICE

I, THOMAS A. APPEL, on oath state I served the within Notice and attachment upon L. Erickson by mailing copies of same to the address noted herein and depositing same in the U.S. Mail of Lansing, Illinois, proper postage prepaid, this 29 day of September, 2003, by 5:30 p.m.



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

RECEIVED
CLERK'S OFFICE

SEP 29 2003

STATE OF ILLINOIS
Pollution Control Board

**BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD**

L. ERICKSON

Complainant,

v.

**CHARLESTON CLASSIC HOMES,
INC., and LAWRENCE E. VAN
SOMEREN, JR.**

Respondent.

PCB 04-26

MOTION TO DISMISS COMPLAINT

Now Comes Respondents CHARLESTON CLASSIC HOMES and LAWRENCE E. VAN SOMEREN, JR. (hereinafter referred to as "Respondent"), by and through their attorneys, APPEL & APPEL, LTD., pursuant to Section 31(d) of the Environmental Protection Act, 415 ILCS 5/31(d), and submit herein their Motion to Dismiss the Complaint of violations of the Environmental Protection Act (noise pollution) filed herein by Complainant L. ERICKSON (hereinafter referred to as "Complainant").

1. The complaint filed by Complainant is frivolous. The Complainant seeks relief for which the Board does not have the authority to grant. Complainant has also failed to allege a cause of action for which the Board can grant relief.

2. The Respondent owns the property at 311 East Hawthorne Boulevard in Wheaton,

Illinois. Currently, the property is under construction. A single family residence is being built on this property. Only normal demolition and construction of a new home has and is being performed at this site. Respondent has done nothing more on the subject property than demolish an existing home, and construct a new home. No activities have taken place on the property other than those associated with routine construction, and all such construction activity has occurred during normal daytime hours.

3. The Respondent's activities are specifically exempted under the Act. Specifically, under §901.107(d) of Title 35, Subtitle H, Chapter I, Part 901 of the Illinois Administrative Code, the construction activities of Respondent are an exception to the Noise Pollution Act. Section 901.107(d) provides:

“Sections 901.102 through 901.106 inclusive shall not apply to sound emitted from equipment being used for construction.”

Sections 901.102 through 901.106 apply to sound emission standards and limitations for property line noise sources. As such, Respondent has not violated any chapter of the Act.

4. The immediate neighbor to the west of the property has affirmed that the noise involved is nothing more than ordinary construction noise, and that such noise has not been disruptive to her family activities. See Affidavit of Jean Van Wyk, attached hereto as Exhibit “A”.

5. The Complaint alleges that the noise in question occurs only Monday through Saturday during the hours of 7:00 a.m. to 5:00 p.m. See ¶¶6,7 of Complaint. These work times are in full compliance with Section 25.4(3) of the the Municipal Code of the Village of Naperville, which exempts noise “between the hours of 7:00 a.m. and sunset, noises customarily

resulting from construction work". A copy of the relevant part of such Code is attached hereto as Exhibit "B".

WHEREFORE, Respondent CHARLESTON CLASSIC HOMES and LAWRENCE E. VAN SOMEREN, JR. pray that the underlying Complaint be dismissed.

CHARLESTON CLASSIC HOMES and
LAWRENCE E. VAN SOMEREN, JR.

BY:

One of their attorneys

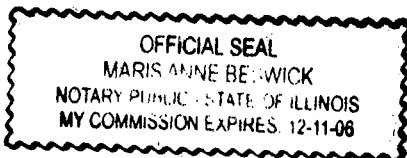
STATE OF ILLINOIS)
)SS:
COUNTY OF COOK)

LAWRENCE E. VAN SOMEREN, JR., being duly sworn on oath states that he is the Owner of CHARLESTON CLASSIC HOMES, the Respondent herein; that he is familiar with the facts relating to the allegations made heretin, that he has read the foregoing Response and that the facts set forth therein are true and correct.

Lawrence E. Van Someren, Jr.

SUBSCRIBED AND SWORN TO before me
this 15th day of September, 2003.

Notary Public



CERTIFICATE OF SERVICE

I certify that a copy of the within instrument was served on all parties of record.

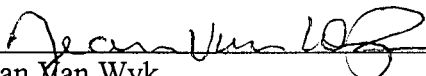
Thomas A. Appel, Attorney

AFFIDAVIT

JEAN VAN WYK, being duly sworn and under oath, states as follows:

1. I reside at 1503 Scott Street in Wheaton, Illinois.
2. My residence is immediately west and next door to the building under construction by Charleston Classic Homes at 311 East Hawthorne Boulevard in Wheaton, Illinois.
3. The noise from the demolition and construction of a new home at 311 East Hawthorne Boulevard is nothing more than the ordinary building noises which one would expect in the construction of a new home.
4. The construction activities have not been disruptive of our family activities.

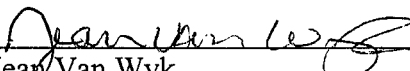
Further affiant sayeth not.



Jean Van Wyk

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that (s)he verily believes the same to be true.



Jean Van Wyk

25.4 Noise Limitations

No operation or activity directly under the control of the property user shall cause or create noise in excess of the sound levels prescribed below or the standards established by the Illinois Environmental Protection Agency or state statute. In case of conflict the most restrictive standard shall apply.

1. Permitted Sound Levels: Sound levels in the applicable district may not exceed the following values at the specified times when measured at the adjoining lot lines or zoning area district boundary:

	Residential District	Other District
7 A.M. to 7 P.M.	55 dB (A)	62 dB (A)
7 P.M. to 7 A.M.	50 dB (A)	55 dB (A)

2. Measurement: Sound levels shall be measured with a standard sound level meter calibrated to the standards of the United States Bureau of Mines. The "A" network "slow" meter response of the sound level meter shall be used. Impulsive type noises shall be subject to the performance standards herein prescribed, provided that such noises shall be capable of being accurately measured with such equipment. Noises capable of being so measured shall be those noises which cause fluctuation of the needle of the sound level meter with a variation of no more than plus or minus (+ or -) two (2) decibels.
3. Exemptions: The following uses and activities shall be exempt from the noise level regulations:
 - a. Between the hours of 7:00 a.m. and sunset, noises customarily resulting from construction work and from the maintenance of grounds.
 - b. The noises of safety signals, burglar alarms, emergency valves, warning devices, aircraft and railroads, emergency generators, snow plowing, mosquito abatement, and emergency equipment used only during times of public emergency such as flooding, tornadoes, or other natural causes.
 - c. Church bells, chimes, and carillons.
 - d. The normal and intended use of recreational facilities within property of schools, colleges, and public parks; between the hours of 9:00 A.M. and 10:00 P.M.
 - e. Musical performances on any property within the City when approved by the City Council at least fourteen (14) days in advance of the performance. The City Council may place time limitations upon the approval.