

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

MAR 11 2004

STATE OF ILLINOIS
Pollution Control Board

David and Jacquelyn McDonough,)	
)	
Complainants,)	
)	
vs.)	PCB No. 00-163
)	(Citizens Enforcement-Noise)
Gary Robke,)	
)	
Respondent)	

COMPLAINANTS RESPONSE TO MOTION TO EXTEND STAY

Pursuant to the Opinion and Order of the Board dated September 4, 2003, the complainants hereby request that Respondent's Motion to Extend the Stay beyond March 1, 2004, be denied and, further, that the Board order construction of the noise barrier in an alternate reasonable and necessary location within 90 days, and in support thereof state as follows:

1. On February 6, 2003, The Illinois Pollution Control Board issued an Order for respondent to construct a noise wall between respondent car wash and complainants property. The noise wall, in the form of a fence on top of dirt berm, structure was to be completed in 180 days and run continuously on the southern and western property line of the car wash. The order allowed that if respondent encountered insurmountable difficulties with the City of Mascoutah during construction of the noise wall that respondent could attempt to modify the Board order as required. Order at 6.
2. In the order, the Board found against complainants request for the noise wall to be constructed as close to the car wash as possible to maximize the effective noise reduction from a 12-foot wall, as recommended by the noise expert Mr. Zak. Citing respondents plans for future expansion, the Board found that a noise wall totaling 12-feet from the ground, and located on the southern and western property line, was sufficient to reduce the noise from the car wash. Order at 4,5,7.
3. The Order stated that it would not be reasonable or necessary to locate the noise wall near the car wash, since it would limit future expansion potential. Order at 5.
4. Subsequent to the Order, the City of Mascoutah, in a letter to Mr. Wigginton on June 16, 2003, indicated that underground utilities and electrical pedestals in the area could prohibit construction of the noise wall in the location ordered by the Board. In that letter, the City indicated a willingness to work with all parties to find a solution.
5. On August 10, 2003, the complainants, the respondent and his partner, and Mr. Wigginton met with the City manager to discuss options. The City agreed to develop a plan for constructing the noise barrier to minimize interference with the City's utilities.
6. On September 4, 2003, the Board ordered a stay on construction of the noise wall until March 1, 2004, pending resolution of construction issues with City of Mascoutah.

7. On December 14, 2003, the City of Mascoutah proposed an approved plan for the noise wall. The City's plan requires construction of the noise wall in the general location previously requested by the complainants.

8. The available land proposed for future expansion at the car wash is limited. Site plan previously submitted as evidence showed "future" expansion potential for an additional bay on the north end of the property, plus two bays and a vacuum station added at the south end of the car wash. PCB: 00-163 Exhibit C3.

9. Future expansion potential on the north side of the car wash will be unaffected by the location of the noise wall.

10. In Respondent's Motion to Extend Stay, the respondent indicates a willingness to have City of Mascoutah buy south expansion property and share costs in the project. The options being discussed would eliminate future expansion potential on the south end of the car wash.

11. The effectiveness of a noise wall, as previously submitted in the report, Noise Emissions From The Mascoutah Car Wash To An Abutting Residential Area, by Mr. Zak, will be diminished for low frequency sounds associated with engine combustion, radios, and voices. The complainants are concerned that expansion on south side of car wash would bring the unreasonable noises closer to their property, home, and bedroom.

12. The complainants are concerned that the location of the 12-foot noise wall is critical for effective reduction of the unreasonable noise from the car wash.

13. It is unclear that expansion at the car wash would provide any significant benefits to the car wash or community. Expansion, as planned, would enlarge capacity but provide no new customer services. The added capacity would be of potential value only when the car wash is operating at relatively high rates of activity. It is the complainants opinion, given the observed willingness of customers to wait in line at the existing car wash, and their option to return at a time that the facilities are less crowded, that expansion could have little economic impact on the car wash.

14. It is the complainants opinion that the primary benefactors, as a result of expansion, would be customers due to slightly reduced wait times during busy periods. Customers, however, could more effectively minimize their wait time by choosing to use the car wash during frequently available periods when less customer traffic is present.

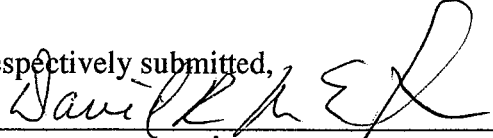
15. The complainants believe that the wide base requirements for a fence on top of berm type noise wall likely would have precluded future south expansion, as planned, even had the noise wall been located on the southern property line of the car wash.

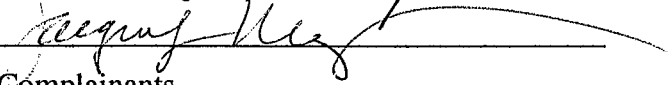
16. In light of new findings the complainants respectively request the Board to reconsider the decision that it would not be reasonable or necessary to locate the noise wall near the car wash. The complainants contend that any additional delay in completing the noise barrier would, particularly with the long, peak business season at the car wash approaching, be extremely detrimental to their quality of life.

WHEREFORE, based on the foregoing, the complainants respectfully request that extended stay be denied, and the Board order the respondent to construct, within 90 days, the noise wall as previously ordered, but in a location north of the southern property line

as approved by the City of Mascoutah. Any agreements between the respondent and the City regarding cost sharing for the project can be decided during the permit and construction process.

Respectively submitted,





Complainants

David McDonough

Jacquelyn McDonough

751 North Jefferson
Mascoutah, IL 62258
(618) 566-8065

PROOF OF SERVICE

The undersigned certifies that on the 9th day of March, 2004, a copy of the foregoing pleading was served upon the following attorney(s) of record and interested parties to the above cause by the method indicated below:

Stephen R. Wigginton
3201 West Main Street
Belleville, IL 62226

Dorothy M. Gunn
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Ste. 11-500
Chicago, IL 60601

Carol Sudman
Hearing Officer
Illinois Pollution Control Board
600 South Second Street, Suite 402
Springfield, IL 62704

- U.S. Mail
- Personal Delivery
- Facsimile
- Overnight Courier

