

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

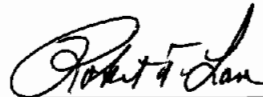
PETER AREDOVICH)
)
 Complainant,)
)
 v.) PCB 2009-102
)
 ILLINOIS STATE TOLL)
 HIGHWAY AUTHORITY,)
)
 Respondent.)

NOTICE OF FILING

To: Mr. Peter Arendovich
1388 Gordon Lane
Lemont, Illinois 60439

Mr. Bradley P. Halloran
Hearing Officer
Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Please take notice that on the 7th day of February, 2012, RESPONDENT ILLINOIS STATE TOLL HIGHWAY AUTHORITY'S POST HEARING BRIEF was electronically filed with the Clerk of the Pollution Control Board, James R. Thompson Center, 100 W. Randolph Street, Suite 11-500, Chicago, IL 60601.



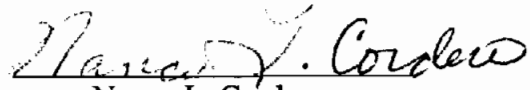
ROBERT T. LANE
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Illinois Toll Highway Authority
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Attorney General of Illinois

CERTIFICATE OF SERVICE

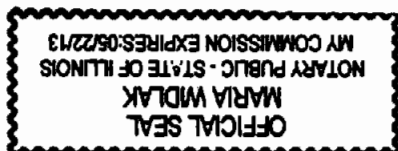
The undersigned, being first duly sworn upon oath, deposes and states that a copy of this Notice and RESPONDENT ILLINOIS STATE TOLL HIGHWAY AUTHORITY'S POST HEARING BRIEF were served upon the above named at the above address by depositing the same in the United States mail chute located at 2700 Ogden Avenue, Downers Grove, Illinois 60515 on the 7th day of February, 2012 with proper postage prepaid.

I, Nancy L. Cordero, hereby certify to the foregoing subject to penalty for perjury in accordance with Section 1-109 of the Illinois Civil Practice Act.


Nancy L. Cordero

Subscribed and Sworn to before
Me this 7th day of February, 2012


NOTARY PUBLIC



ILLINOIS POLLUTION CONTROL BOARD

PETER AREDOVICH,)	
)	
Complainant,)	
)	
v.)	PCB 09-102
)	(Enforcement-Noise)
THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY,)	
)	
Respondent.)	

**RESPONDENT ILLINOIS STATE TOLL HIGHWAY AUTHORITY'S
POST HEARING BRIEF**

On October 25, 2011, Hearing Officer Bradley P. Halloran presided over an evidentiary hearing in the above captioned matter. In support of its position, the Respondent, Illinois State Toll Highway Authority (“Tollway”), submits the following post-hearing brief.

Statement of Facts and Summary of the Evidence

Complainant Peter Arendovich filed a Private Enforcement Action with the Illinois Pollution Control Board (hereinafter referred to as the “Board”). Complainant alleges that the Tollway is causing noise pollution in violation of Board regulations, specifically 35 Ill. Adm. Code, Subtitle H, Chapter I, Section 900.102. Complaint at paragraph 5. Complainant suggests that the noise pollution is caused by vehicles traveling near his residence located near the I-355 extension (Veterans Highway) between the 135th Street Bridge and Archer Avenue. Id. at paragraphs 3, 4 and 6.

I. Background

FAP Route 340 (I-355 South Extension) has been contemplated and studied in the Chicago Metropolitan Region since the early 1960’s and a centerline, putting the world on notice

of the planned tollway, was recorded in 1968. See copy of Record of Decision (ROD) at Respondent's Exhibit 1 and October 25, 2011 Hearing Transcript (hereinafter referred to as "Record") at page 105. Approximately twenty years later, in 1987 or 1988, Complainant purchased the property at issue and built his home. Record at 81.

In 1993, the Illinois State Legislature approved the project and authorized the Tollway to examine the feasibility of constructing the I-355 extension. Exhibit 1 and Record at 138. In February 1996, IDOT completed an Environmental Impact Statement (EIS) which was later approved by the FHWA. Exhibit 1. However, before construction began, the Illinois Chapter of the Sierra Club, *et al.* filed suit against the project. Id. and Sierra Club, Illinois Chapter v. U.S. Dept. of Transp., 962 F.Supp. 1037 (N.D. Ill. 1997). On November 12, 1998, the proposed I-355 extension was declared invalid by the U.S. District Court. Id.

As a result of the Court's invalidation, a Supplemental Environmental Impact Study was prepared to address the Sierra Club Court's concerns and update the data in the 1996 study. Respondent's Exhibit 1. After public hearings were conducted, the Final Supplemental Environmental Impact Study (hereinafter referred to as the "SEIS") was published and on February 25, 2002, the FHWA determined that NEPA was satisfied and approved the SEIS and signed the Record of Decision. Id. and Record 140. The project was also supported and approved by various other public entities including, but not limited to the Illinois Department of Transportation, the Tollway's Board of Directors, and various municipalities including Complainant's home Village of Lemont, Illinois. Record 138.

II. Complainant's Arguments

Complainant attempts to over-dramatize issues by inappropriately posing questions such as "why does the Complainant's neighbors have to endure physical punishment . . ." These are

not issues presented in this matter, are not supported by the record and are an inappropriate. Furthermore, this and other questions posed by the Complainant are irrelevant to the issues of this case.

On page 9 of the Brief, Complainant cites D'Souza v. Marraccini, (PCB 96-22)1996. However, it is unclear as to why this case is referenced. Further, it is unclear if the case even exists. It was not available on the Pollution Control Board's website.

III. I-355 South Extension Noise Abatement

The 1996 EIS recommended noise abatement at six locations, including a sound wall near the Complainant's residence at 135th Street along the I-355 extension. Record at 116. However, upon further analysis, the 2002 Record of Decision approving the SEIS did not include a sound wall at 135th Street. Record at 122. The change was a result of updated traffic projections and a federally mandated change in the software used to calculate anticipated sound levels. Record at 121. It was believed that the prior software was not as reliable and that it sometimes over predicted sound levels. Id.

Notwithstanding the fact that the sound wall at 135th Street was not mandated by the 2002 Record of Decision, out of fairness to the Complainant and his neighbors¹, the Tollway continued with its initial plans to build a sound wall in the area. Record at 122. At the request of Mr. Arendovich, the originally planned sound wall was extended an additional 70 feet in length and increased an additional two feet in height. Record at 123 and 124. The constructed wall is 16 feet in height and cost the Tollway approximately \$1.2 million to build. Record at 124. Mr. Arendovich was, and continues to be satisfied with this masonry wall enhanced at the request of he and his neighbors. Record at pages 92, 94, 96. However, he demanded that an additional sound wall be constructed across the 135th Street Bridge. Record at 123. Complainant's claims

¹ Arendovich's neighbors are not parties to this action.

that the Tollway has done nothing to alleviate his concerns flies in the face of Respondent's undertakings as supported in the Record and as noted herein.

Notwithstanding the Complainant's request, the bridge was not designed to carry a wall. Record 144, 199. If a wall were to be constructed on the bridge, it would have to be able to support not only the weight of the wall, but also associated wind loads and torque. Record 127. The bridge at 135th Street was never intended to support a sound wall. Record at page 126-27.

Even though the bridge was not designed to carry the load of a sound wall, Zuccherio in working with Complainant and his neighbors agreed to recommend that a wooden wall be constructed on the portion of the bridge nearest Arendovich's home. The wooden wall was limited to 240 feet due to concerns about overloading the bridge and to stay within reasonable dollar amounts. Record 127. This additional wall on the bridge cost the Tollway and its patrons approximately \$70,000. Record at 134. The total spent on sound walls constructed at or near 135th Street total approximately \$1.3 million dollars. Record 146. These sound walls protect about 20 homes. Record 137.

Despite the Tollway's efforts, Mr. Arendovich is still not satisfied. He now wants, without any evidence to support his contention, the existing wall on the bridge razed and a new wall constructed across the entire 135th Street bridge to extend to Archer Avenue at an unspecified height that will minimize noise entering his property. Complaint at paragraph 3.

IV. Applicable Statutes and Board Regulations

In its July 2011 Order denying the parties Motions for Summary Judgment, the Pollution Control Board outlined the applicable law including the considerations to be applied if and when determining whether noise pollution is unreasonable. Illinois Pollution Control Board Order of July 21, 2011 pages 6-7. The Order re-states the applicable law as follows:

Section 24 of the Environmental Protection Act (Act) provides that:

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 Board under this Act. 415 ILCS 5/24.

Similarly, the Board's noise nuisance prohibition is found at Section 900.102 and provides:

No person shall cause or allow the emission of sound beyond the boundaries of his property, as property is defined in Section 25 of the Illinois Environmental Protection Act, so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter. 35 Ill.Admn.Code 900.102.

The term "noise pollution" is defined in 35 Ill.Adm.Code 900.101 as "the emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity."

In determining whether noise pollution has unreasonably interfered with a person's enjoyment of life, the Board follows a two-part inquiry. First, the Board must find that some type of sound has caused an interference with the complaints' enjoyment of life. Zivoli v. Prospect Dive & Sport Shop. Ltd. (March 14, 1991), PCB 89-205. Next, the Board looks to whether the interference is unreasonable, which is determined using Section 33(c) of the Act, which states:

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:

- (i) the character and degree of injury to, or interference with 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).

V. Argument.

- a) The Complainant has not established that the sound generated from the Tollway unreasonably interferes with his enjoyment of his life or interferes with his health, general welfare and physical property as required by 415 ILCS 5/33(c).**

The Complainant has submitted a post-hearing brief (hereinafter referred to as "Brief"). However, the vast majority of the included arguments were not raised at hearing and are without evidentiary support. Further, Complainant fails to cite to the Record to support any representations contained in his brief. Therefore, the Tollway moves to strike Complainant's brief in its entirety. In the alternative, to the extent the Brief cites facts, allegations, arguments and opinions not in evidence that they be stricken from the Record and not considered by the Pollution Control Board. Notwithstanding its objection, the Tollway will address the Complainant's assertions and representations.

Without any reference to the hearing transcript, the Complainant begins his Brief by suggesting that the Tollway did nothing to address his concerns about noise coming from the Tollway. This allegation is simply untrue. As indicated above, the Tollway voluntarily agreed to build a sound wall and later increased the size and height of the initial wall at the request of the Complainant. In a further attempt to satisfy Mr. Arendovich, the Tollway built a second wooden wall on the 135th Street Bridge. These sound walls were not mandated by the Record of Decision approving the SEIS. Instead, they were voluntarily built for the benefit of Arendovich and his neighbors in effort to mitigate sound generated from the Tollway.

Next, Complainant states "[t]he Tollway recognized their misjudgment in planning to comply with noise pollution numerical values (sic). This representation was not raised at hearing, is without basis and is false.

He also incorrectly represents that Complainant presented evidence from sound expert David Larson, two local residents and others by letter signed at first hearing. Brief at page 2. The fact of the matter is two area residents offered public comment (Nitchoff and Palmer). Record 47. They did not testify in this matter that is before the Pollution Control Board. While initially identified as a witness, David Larson, the Complainant's purported sound expert, refused to be put under oath and testify as a witness. Record 61. He did not testify regarding any sound evaluations or studies, did not offer any opinions, and was not available for cross examination. Larson stated that "I've been time off (sic) from work. I'd like to go back to my job. The sooner the better." Record 61. Instead of testifying, Mr. Larson offered a short public comment in support of the Complainant and left the hearing.

Complainant then, without support, represents that the Tollway's plan for the centerline was first introduced to the public in 1991. Brief at page 3. The Complainant is presumably referring to the IDOT drawing/map published in 1991 that included the recorded centerline of the planned I-355 extension. See Complainant's Exhibit 1. However, the centerline was actually recorded in 1968. Record page 22. Both of the neighbors offering public comment indicated that they were well aware of the plans to build the Tollway. Record at 53-54. Ms. Palmer indicated that when she bought her property in 1987, the realtor showed her a map with the proposed right of way going right through her property. Record 51.

Mr. Arendovich then represents that Governor Edgar assured him in a letter introduced at hearing, that he and his neighbors "will not have any problem with noise pollution nor water pollution." Brief at page 3. However, this is a mischaracterization of the contents of the letter. See Governor Edgar's letter offered as Complainant's Exhibit 13. Instead, the 1996 letter indicates that prior to the road being constructed, studies will be completed and appropriate

remediation will be incorporated. Id. It stops far short of guaranteeing that Mr. Arendovich will not have any issues with noise.

Arendovich next contends that a 25 foot wall was planned by the Tollway in the initial EIS and that the Tollway took advantage of the eventual invalidation of the study and reduced the size of the wall to 14 feet in the SEIS. Brief at pages 3-4. There is nothing in the record to support this assertion. In fact, the 135th Street wall was completely eliminated in the SEIS. Record page 122. Since the sound wall was included in the initial study, out of fairness to the Tollway's 135th Street neighbors, the Tollway voluntarily reinstated the sound wall back into its construction plans. Id.

Next, without any reference to the Record, the Complainant discusses the purported history of his and his neighbor's discussions and negotiations with the Tollway's Board of Directors and Tollway staff, including purported sound studies presented to the Tollway. Arendovich then concludes that the Tollway "was going to erect an additional six feet of wooden wall, which does not cover the exhaust tail pipe of a trailer truck. The meetings were discontinued because (sic) refused do any more work on the noise abatement." Id. However, none of the Arendovich neighbors testified at hearing and there were no sound studies introduced as evidence. Furthermore, contrary to Complainant's representation, the Tollway built a ten foot high wall an additional 240 feet on the 135th Street Bridge. Record page 125, 127.

Next, the Complainant addresses how the noise generated from the Tollway impacts his daily life. Brief at page 6. He lists the various remedial measures he has purportedly taken to reduce the sound received in his home as well as his alleged expenses totaling over \$17,000. Id. First, there is no evidence in the Record that the receipts, produced for the first time at trial, totaled \$17,000. Second, there was no evidence presented that the purported improvements were

paid for, were solely for the purpose of reducing sound, or that they helped or resolved the noise issue. Record 64. Finally, the receipts were not accepted into evidence. Record page 68.

The Complainant next states that at hearing the acoustic engineer made a statement, with data in hand stating that sound levels measured near Complainant's property violated the Illinois numerical noise emission standards. Brief at page 6. He also states that Larsen testified that the noise levels constituted an "unreasonable interference to Complainant's daily lives". Brief at page 7. Arendovich further represents that the "Complainant's noise expert testified that his interpretation of the IBCS would classify the I-355 extension with a designation of Class C under 35 IAC 901 land class." Brief at page 8-9. Arendovich's synopsis of Larsen's purported testimony is a misrepresentation of the evidence actually presented.

David Larsen did not testify. Instead, he provided public comment. Furthermore, he did not present any evidence, and he did not provide any technical testimony or expert opinion. Instead, Mr. Larsen indicated "It's my personal opinion there is a considerable noise impact on Mr. Arendovich's property." Record at 62. This public comment does not amount to an expert opinion based on a degree of reasonable certainty. Mr. Larson is not an expert in this matter, was not available for cross examination, is not qualified to present any expert testimony. Therefore, his commentary and his opinion should be stricken and not considered by the Pollution Control Board.

Mr. Arendovich then refers to a letter from Governor Quinn addressed to the Tollway that was allegedly ignored by the Tollway. Brief at page 7. He also represents that the Tollway ignores noise concerns of other communities. Id. However, the only evidence remotely related to these issues that was presented at hearing was a letter that was disallowed from the Village of Woodridge demanding that a sound wall be constructed on I-55 east of Woodward Avenue.

Record pages 74-75. However, this letter was of no relevance. As noted by Mr. Zuccherro, I-55 is under the jurisdiction of the Illinois Department of Transportation and outside of the Tollway's jurisdiction. Record 157.

The Complainant next refers to the Public Comment made by some of his neighbors. Brief page 10. However, based on the locations of their homes, their circumstances are somewhat different than the Complainant's. Mrs. Palmer stated that her situation is different than Arendovich's because she lives on the top of the hill and Arendovich lives in the valley. Record at 48. She indicated that the noise actually comes from Archer Avenue and is not sure if anything can be done to correct the situation. Id. at 50.

Mr. Nitchoff also made a Public Comment. He stated that he lives on 135th Street (Arendovich lives on Gordon Lane). Record 53. He indicated that at 135th Street, the road is about 18 feet off of the ground and the noise echoes all the way down the valley where he lives. Record 54. While Nitchoff makes clear he is bothered by the noise from the highway, based on his Public Comment, it doesn't seem like the constructed sound wall is of much help in reducing noise or that additional sound walls would be any more effective. First, he is 18 feet below the roadway. Record 54. Then on top of the 135th Street Bridge, there is a 10 foot wall. Record 125. If Nitchoff's 135th Street home is a total of 28 feet below the top of the wall, common sense seems to suggest that even if a taller or longer wall were constructed on the bridge, it may be of little help in reducing the noise levels which Ms. Palmer believes actually originate from Archer Avenue and not the Tollway.

Next, the Complainant seems to suggest that he will address the Section 33(c) considerations. Brief at page 10. However, instead of addressing the five factors, the Complainant discusses possible remedies. Brief at pages 10-18. Without offering expert

testimony, citing to any technical or other evidence, he concludes that noise can be reduced through the installation of higher and longer noise barrier walls². Brief at page 12. He does not address whether the bridge can support a longer or higher wall, whether the proposed wall would have any real impact on reducing the noise, or assuming the longer and higher wall could be built on the bridge, that Complainant would be satisfied.

Next, without a citation to the hearing transcript, the Complainant states that he asked Mr. Zucchero why there was a change in height in the wall. Brief at page 13. Again without reference to the transcript, he further mischaracterizes the evidence when he represents that Zucchero said the wall was reduced in height because of a change in sound analysis software. Id. As discussed above, the SEIS did not prescribe a change in the height of the wall. Instead, while the 135th Street sound wall was included in the 1996 EIS, as a result of a change in federal sound analysis software, it was not included in the updated SIES. Record 121-22.

The Complainant goes on cite to various sound measurements taken at locations in proximity to some of his neighbors' homes. Brief at page 14. David Larson, the Complainant's sound expert did not testify about these readings. However, Complainant did question Rocco Zucchero, the Tollway's Deputy Chief of Engineering for Planning about the measurements. Record at 219.

Zucchero testified that the measurements taken at Complainant's home, at the request of and in the presence of Mr. Arendovich, taken two days apart were 58 decibels and 62 decibels respectively. Id. at 216, 219. Mr. Zucchero also discussed the sound measurements of 69 decibels. These measurements were taken at a different location than Arendovich's home. Zucchero explained that the higher reading is a result of the tested area being unprotected by a

² Complainant is satisfied and has no issue with the masonry wall constructed up to the 135th Street Bridge. Record 92, 94, 96.

sound wall. Record 227. The differing measurements provide evidence that the sound walls installed near Complainants home have been somewhat effective and have reduced the noise level approximately 9 decibels. Record at 227.

The Complainant next argues that the original proposal for I-355 was for 4 lanes, but the FHA signed off for 6 lanes. Brief at 14. This argument was not raised at hearing and as such it cannot now be raised. Furthermore, it is otherwise irrelevant. Noise is not generated by the roadway or the lanes of traffic, but instead it is the traffic that generates noise. See Illinois State Toll Highway Authority v. Kam, 293, N.E.2d 162, 166, 9 Ill.App.3d 784, 790 (2nd Dist. 1973) also See Board's July 25, 2011 Opinion at page 11.

The Complainant then references prior PCB cases Zarelenga v. Partnership Concepts et al., (July 30, 1992) PCB 89-169 and Thomas v. Carry Companies, (May 19, 1994) PCB 91-195 as authority for the Board to order remedial measures. In these twenty-year old cases, after finding violations of the Act, the Board ordered what appear to be reasonable remedial measures in light of the circumstances.

In Zarelenga, the Board ordered that an air conditioner be relocated and that the chassis and compressors be replaced on certain individual apartment unit air conditioners. In Thomas, the Board ordered a commercial enterprise to close its doors when certain circumstances were present, repair the brakes on a noisy truck and install a fence along one side of their property. In view of the circumstances, unlike the relief requested here, the ordered relief in Complainant's relied upon cases appear to be reasonable, cost effective measures to address the Complainants' concerns. More significant than the cases offered, are the cases not introduced by Complainant. He has not provided a single case on point and has not provided any

circumstance where IDOT, the Tollway or other roadway organization was required to abate noise to the degree Complainant insists.

Here, the Complainant requests demolition of the existing 240 foot sound wall currently in place on the bridge to be replaced with a new sound wall to extend the length of the entire bridge and beyond. Further complicating the issue in this case is the considerable expense involved with the demanded sound wall, the uncertainty as to whether the bridge could support a larger sound wall, the effectiveness of the requested relief, or whether Complainant will even be satisfied. A noise wall will never fully eliminate noise.

Next, Complainant alleges that the Tollway "short changed the area near the 135th Street Bridge." Brief at page 17. In support of his conclusion, he offers calculations based on the originally estimated cost of \$25 per square foot. Brief at 17. When questioning Mr. Zucchero at hearing about the costs, he indicated that there were early estimates that the wall might cost \$20 to \$25 per square foot; however, the actual real numbers to construct the walls at issue were closer to \$35 per square foot. Record at 144, 197. Mr. Zucchero testified that the Tollway always tries to be as cost effective as possible when spending its limited construction dollars. Record at 196. However, in addition to the bridge not being designed to support a wall, Zucchero noted that there is a point of diminishing returns with sound wall height. Record at 158, 199. Complainant did not provide any evidence or testimony to contradict the testimony of Mr. Zucchero.

In effort to reduce the sound received by the Complainant and his neighbors, the Tollway has spent nearly \$1.3 million dollars on sound walls. Record 146. In reality, there is no sound wall big enough and tall enough, that will ever get rid of all noise. Record at 199. The Tollway,

consistent with its sound wall policy, measures the costs against the benefit received by the receptor. See Tollway Sound Wall Policy at Respondent Exhibit 1 and Record at 199.

Finally, in his Remedy section, the Complainant offers various inaccurate, irrelevant, unsupported facts and legal conclusions. Respondent moves to have all such inaccurate, irrelevant, unsupported facts and legal conclusions stricken.

Complainant requests that the Tollway “finish construction of the barrier on the 135th Street bridge of 14 feet height” and represents that the “Garb family and Nitchoff seek the installation of additional noise barriers from the south of the 135th street bridge to Archer Avenue”. Brief at 15. Given there was no testimony presented by the Garb family and Nitchoff, the purported statements are hearsay and should not be considered by the Pollution Control Board. To reiterate, the Tollway has voluntarily built two sound walls at a cost of \$1.3 million dollars in effort to mitigate the sound near Complainant’s and his neighbors’ homes. The Tollway has satisfied its published Sound Wall Policy as well as its legal and neighborly obligations.

V. When applying the Law to the Facts, the Board must Rule in Favor of the Tollway.

In its July 11, 2011 Opinion and Order, the Board outlined the applicable law and the various issues governing this matter, including the Section 33(c) nuisance considerations. However, at hearing and in his loosely related post hearing brief, the Complainant barely addressed these issues. As discussed below, the Section 33(c) considerations used to determine if an interference is unreasonable weigh heavily in favor of the Tollway.

(i) The character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people.

The Environmental Impact Study and Record of Decision determined that the I-355 extension was the least environmentally damaging alternative. Respondent's Exhibit 1 and Record at 142. As part of the effort to minimize environmental impacts, the Tollway and IDOT prescribed and committed to mitigation measures. Record at 142-43. As part of the EIS and SEIS, potential environmental impacts of the tollway extension were studied and where appropriate, mitigating measures were implemented. Respondent's Exhibit 1. Specifically, the EIS and SEIS studied and addressed impacts to wetlands. Id. at page 7. In addition, water quality impacts were studied and addressed. Id. The SEIS also studied and prescribed methods to minimize environmental impacts to threatened and endangered species, salt spray, revegetation and air quality. Exhibit 1.

Finally, while the Complainant obviously is not satisfied, potential noise issues were also studied and where appropriate, remedial measures were prescribed. Respondent's Exhibit 1. While there were impacts, the health and general welfare of the public were considered and to the extent practically possible steps were taken to reduce the impacts.

(ii) The social and economic value of the pollution source.

The social and economic value of the I-355 extension is enormous. The project has enjoyed the longtime support of our elected officials. In 1993, the Illinois State Legislature passed legislation authorizing the Illinois State Tollway to study the feasibility of constructing the roadway at issue. Record at 138, Respondent's Exhibit 1 at page 1. Similarly, in its 2002 approval, the FHWA noted that the public was provided ample, innovative and manifestly reasonable access to the planning process and found that the project satisfied the transportation purpose and need, posed the least impact on the environment, and satisfied the National Environmental Protection Act. Exhibit 1 at page 24.

The extension has provided a convenient link for people in the southwest suburbs and beyond to travel to schools and workplaces in DuPage County and the western suburbs. Approximately 65,000 vehicles cross the Tollway near 135th Street every day. Record 140. These people are traveling for their jobs, school or for commercial or business purposes. The I-355 extension also alleviates existing arterials. Record 141. The new tollway extension took trucks off of local roads and put them on to the interstate. Record 142. Trucks perform better on interstate facilities as opposed to local roads. Record at 142.

The SEIS studied the benefits of the Tollway as compared to four other alternate transportation improvements and found that the extension of I-355 improved access between residential areas and regional job centers, improved regional mobility, addressed local system deficiencies and furthered land use planning goals. Respondent's Exhibit 1 at pages 3 and 4. As a result of the above and other benefits, the social and economic benefits associated with the I-355 extension are substantial.

(iii) The suitability or unsuitability of the pollution sources to the area in which it is located, including the question or priority of locating the area involved.

The I-355 extension at issue has been planned and studied extensively. According to FHWA's Record of Decision approving the construction of the I-355 South Extension, it was noted that the Tollway extension was in the planning since 1962. Respondent's Exhibit 1. A centerline putting the world on notice that a highway would likely be built in the area was recorded in 1968. Record 105. Mr. Arendovich did not move into the area until sometime after he purchased the property in 1988. Record 82. More than 25 years passed between the time the center line was recorded, initial planning for the I-355 extension had begun and the date Complainant bought the property and moved into the area. While the actual construction of the

road did not start until after Complainant bought his home, the planned roadway was a known or easily discoverable fact.

Further, the need for the I-355 extension, including its location, has been researched, deemed appropriate and approved. Prior to the construction of the Tollway extension, a variety of engineering and environmental studies were completed. See Record of Decision submitted as Respondent's Exhibit 1. Five transportation alternatives were examined and evaluated in the Draft and Final SEIS. The alternatives included 1) no-action; 2) mass transit alternative; 3) Lemont bypass alternative; 4) enhanced arterial alternative; and 5) Tollroad/Freeway alternative. Exhibit 1 at pages 2-3.

The Tollway alternative maximized access to regional job centers by achieving the greatest reduction in year 2020 travel times. Exhibit 1. This alternative surpassed travel time reductions achieved by the Lemont bypass alternative by 33 percent and the enhanced arterial alternative by 185 percent. Respondent Exhibit 1 at pages 3, 4. It concluded that the Tollway maximized access to regional job centers by achieving the greatest reduction in travel times. Id. The tollway alternative was also determined to be most consistent with local land planning, growth management and transportation goals. Id. at 5. It was also determined that the final alignment avoided and minimized environmental impacts to the extent practicable. Id. at 6.

In the end, the FHWA approved the construction of the highway because it found that the Tollway 1) satisfied the Purpose and Need contained in the Supplemental Environmental Impact Study; 2) posed the least impacts on the environment; and 3) satisfied the National Environmental Protection Act requirements. Id. at page 24.

Therefore, based on the Tollway's recording of the centerline, the Tollway was first in time. In addition, the EIS, SEIS and resulting ROD determined that there was purpose and need for the highway extension and that its location is appropriate.

- (iv) **The technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source.**

It is not technically practical or economically reasonable to construct another sound wall or re-locate the Tollway. There was no evidence presented that the bridge could support the new sound wall sought by the Complainant. The 135th Street Bridge was simply not designed to support the weight or absorb the wind shear associated with a sound wall. Record 126, 27.

Further, there has been no evidence presented that a sound wall of any height or length will necessarily satisfy the Complainant. There was no evidence presented that another longer sound wall would significantly reduce the noise complained of by Mr. Arendovich. The Tollway's sound wall expert testified that there is no sound wall that will completely eliminate sound. Record 199. Further, there is a diminishing value to adding height. Record 158, 199. The increased height of the wall does not equate to a corresponding reduction in sound. *Id.* As the wall goes higher, the sound mitigation benefit gets smaller. Record 158.

Sound walls are an expensive proposition. The Record shows that the Tollway has spent public funds approximating nearly \$1.3 million dollars to mitigate noise generated near 135th Street. So far, Complainant has not been satisfied. Record 146.

Finally, the I-355 extension cost nearly \$800 million dollars. Record at 143. Even the Complainant agrees that moving the Tollway is not a real option. Brief at 7.

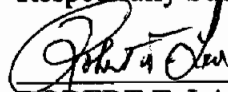
(v) **Any subsequent compliance.**

As noted above, the Tollway was not required to construct a sound wall in this location. Out of fairness, the Tollway reincorporated the sound wall into its construction plan. Record 122. Then, again without any legal obligation and at the request of the Complainant, the height of the wall was increased by two feet and lengthened 70 feet. Record 123, 24. As a final effort to satisfy the Complainant, the Tollway constructed a wooden wall on the 135th Street Bridge. Mr. Arendovich was and is still is not satisfied. The aforementioned sound walls and corresponding expenditures constitute significant efforts to reduce sound in the area near 135th Street and to satisfy the Complainant and his neighbors.

VI. **Conclusion**

WHEREFORE, for the above stated reasons, the Respondent Illinois State Toll Highway Authority, respectfully requests that the Pollution Control Board find in its favor and against the Complainant.

Respectfully Submitted,



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