

ILLINOIS POLLUTION CONTROL BOARD
July 12, 2012

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

PETER AREDOVICH APPEARED ON BEHALF OF HIMSELF; and

ROBERT T. LANE APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J.A. Burke):

On April 28, 2009, Peter Arendovich filed a citizen's enforcement complaint against the Illinois State Toll Highway Authority (ISTHA). *See* 415 ILCS 5/31(d) (2010); 35 Ill. Adm. Code 103.204. The complaint alleges that ISTHA failed to prevent noise pollution from reaching Mr. Arendovich's home. The alleged noise is created by cars traveling across the Interstate Route 355 (I-355) extension between the 135th Street bridge and Archer Avenue in Lemont, DuPage County. Mr. Arendovich alleges that ISTHA has violated Section 900.102 (35 Ill. Adm. Code 900.102) of the Board's noise regulations.

The Board finds that Mr. Arendovich has established that the noise from the I-355 extension constitutes a substantial interference with his enjoyment of life. However, he has not established that the interference is unreasonable under all of the facts and circumstances of this case. The record demonstrates that ISTHA has met with Mr. Arendovich and his neighbors at various times during the planning and construction phase of the I-355 extension, has made responsive changes in noise abatement strategies, and has spent about \$1.3 million to mitigate noise impacts on just over 20 properties, including Mr. Arendovich's. Finding that no unreasonable noise nuisance has been proven, the Board dismisses this action.

PROCEDURAL HISTORY

On April 28, 2009, Mr. Arendovich filed a citizen's enforcement complaint (Compl.) against ISTHA pursuant to Section 900.102 (35 Ill. Adm. Code 900.102) of the Board's regulations. On May 27, 2009, ISTHA filed a motion for an extension of time in which to respond. The Board granted this motion on June 18, 2009, giving ISTHA until July 15, 2009 to file a reply.

On July 15, 2009, ISTHA filed a motion to dismiss Mr. Arendovich's complaint, alleging that the complaint was frivolous. Thirteen exhibits accompanied ISTHA's motion. On July 29, 2009, Mr. Arendovich requested an extension of time to respond to the motion to dismiss. The Board granted this motion and extended the response deadline to September 15, 2009.

On September 9, 2009, Mr. Arendovich filed an amended complaint (Am. Compl.) adding new allegations under 23 CFR Part 772.13(c) and 23 USC § 109(h). The amended complaint included four exhibits. On October 19, 2009, ISTHA moved to dismiss the amended complaint because the Board did not have jurisdiction over the alleged violations of federal law. On October 29, 2009, Mr. Arendovich filed a motion for an extension of time to respond to the motion to dismiss. The Board granted this motion and set a response date of December 2, 2009. Mr. Arendovich filed a response to ISTHA's motion to dismiss the amended complaint on November 24, 2009.

On December 17, 2009, the Board granted ISTHA's motion to dismiss the portions of Mr. Arendovich's amended complaint that alleged violations of federal rules and statute. However, the Board accepted for hearing the other parts of the complaint relating to ISTHA's alleged violation of Section 900.102 of the Board's noise regulations.

On February 5, 2010, ISTHA filed its answer to Mr. Arendovich's amended complaint. On June 4, 2010, Mr. Arendovich filed a response to the hearing officer's order of May 6, 2010, which directed Mr. Arendovich to answer interrogatories from ISTHA that he had not yet addressed.

On November 11, 2010, ISTHA filed a letter construed as a motion for an extension of time to file a motion for summary judgment. The Board granted this motion and set a filing deadline of December 17, 2010. On December 23, 2010, the Board received ISTHA's Motion for Summary Judgment. Also on December 23, 2010, ISTHA submitted a letter requesting that its motion for summary judgment be filed *instanter* and noted that Mr. Arendovich did not object to the filing. On December 30, 2010, the hearing officer granted ISTHA's request to file the motion for summary judgment *instanter*. On March 28, 2011, Mr. Arendovich responded by filing a Motion for Judgment. On April 29, 2011, ISTHA filed a reply in support of its motion for summary judgment.

On July 21, 2011, the Board denied ISTHA's motion for summary judgment and denied Mr. Arendovich's motion for judgment. The Board also denied ISTHA's motion to strike Mr. Arendovich's motion for judgment in its entirety. The Board directed the hearing officer to proceed to hearing.

A hearing was held before Board Hearing Officer Brad Halloran on October 25, 2011, at the Village Hall Board Room in Lemont. The Board received the transcript of the hearing on November 3, 2011 (Tr.). Mr. Arendovich and Constantino Nitchoff testified on behalf of Mr. Arendovich. Rocco Zuccherro testified on behalf of ISTHA. The Board also heard public comments from Linda Palmer and David Larson. At hearing, Mr. Arendovich moved to admit 16 exhibits into evidence (Compl. Exh. 1-16). ISTHA moved to admit six exhibits into evidence (Resp. Exh. 1-6). Mr. Arendovich filed a post-hearing brief on January 4, 2012 (Compl. Br.).

ISTHA filed its post-hearing brief on February 7, 2012 (Resp. Br.). Mr. Arendovich was granted until February 29, 2012, to file a reply brief. To date, no reply brief has been filed.

APPLICABLE STATUTES AND BOARD REGULATIONS

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 [Act] so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter. 35 Ill. Adm. 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 complainant’s enjoyment of life. Zivoli v. Prospect Dive & Sport Shop, Ltd., PCB 89-205 (March 14, 1991). Next, the Board looks to whether the interference is unreasonable, 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 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) (2010).

PARTIES' UNDISPUTED FACTS

History of the I-355 Extension

The I-355 extension connects Interstate Route 55 (I-55) to Interstate Route 80 (I-80) and travels through Cook, Will and DuPage Counties. It allows people in the southwest suburbs to commute to DuPage County and other western suburbs. Comp. Br. at 3, Resp. Br. at 16. The Illinois Department of Transportation (IDOT) completed an Environmental Impact Study (EIS) on the proposed I-355 extension in February 1996, and the EIS was later approved by the Federal Highway Authority (FHWA). Compl. Br. at 3, Resp. Br. at 2. The EIS included a plan for a sound abatement wall along the I-355 extension near Mr. Arendovich's home. Comp. Br. at 3, Resp. Br. at 3. Conservation groups successfully challenged the EIS and on November 12, 1998, the U.S. District Court invalidated FHWA's approval of the EIS. Compl. Br. at 3-4. Resp. Br. at 2, citing Sierra Club, Illinois Chapter v. U.S. Dept. of Transp., 962 F.Supp. 1037 (N.D. Ill. 1997).

To address the Court's concerns, a Supplemental Environmental Impact Study (SEIS) was prepared. Comp. Br. at 4, Resp. Br. at 2, citing Resp. Exh. 1. The FHWA approved the SEIS and signed the record of decision on February 25, 2002. *Id.*

The I-355 extension officially opened on November 11, 2007 and carries an average 65,000 vehicles daily. Compl. at 3., Res. Br. at 16.

Sound Barriers

Throughout the construction phase of the I-355 extension, Mr. Arendovich was in contact with Rocco Zucchero, ISTHA's Deputy Chief of Engineering. Comp. Br. at 4, Tr. at 108. Mr. Arendovich also attended ISTHA public hearings regarding the construction project. *Id.*

The EIS recommended a sound barrier near Mr. Arendovich's home, as well as a wall along the 135th Street bridge toward Archer Avenue. Compl. Br. at 3 (stating the wall as being 25-feet high), Resp. Exh. 5 at 2 (stating the wall at 14-feet high). After approval of the SEIS, a 14-foot high sound barrier was included for the area near Mr. Arendovich's home. Compl. Br. at 4, Resp. Br. at 3 and Resp. Exh. 5 at 2. This sound barrier was not required by the SEIS, but was included by ISTHA based on its inclusion in the original EIS. Resp. Br. at 3, Resp. Exh. 5 at 2. Following discussions between Mr. Arendovich and ISTHA, the proposed sound barrier was increased by two feet in height to 16 feet and an additional 70 feet in length were added. Compl. Br. at 4, Resp. Br. at 3.

A 4-foot high concrete wall was put on the 135th Street bridge. Compl. Br. at 5. At the final meeting between Mr. Arendovich and Mr. Zucchero, Mr. Zucchero proposed putting a 10-foot high and 240-foot long wall across the 135th Street bridge. Compl. Br. at 5, Resp. Exh. 5 at 2.

Mr. Arendovich's home is currently protected from the noise of the I-355 extension by 2,632 feet of concrete wall that averages 15.8 feet in height. Resp. Exh. 5 at 2. This concrete

wall ends south of Mr. Arendovich's property, near the start of the 135th Street bridge. Resp. Exh. 2. A 10-foot high wooden wall that continues from the south end of the concrete wall for 240-feet over the 135th Street bridge south of Mr. Arendovich's property and towards Archer Avenue is also in place. *Id.*, Resp. Exh. 5 at 2. The current noise wall along the I-355 extension near Mr. Arendovich's home is 2,872 feet, which is 422 feet longer than proposed in the EIS. Resp. Exh. 5 at 2.

Mr. Arendovich's Complaint

Mr. Arendovich owns and resides at property on Gordon Lane in Lemont. Compl. Br. Exh. 12. Mr. Arendovich purchased his property in 1988 and, after building his residence, moved into the property in the summer of 1990. Compl. Br. at 3, Resp. Br. at 2. Mr. Arendovich is complaining of noise pollution impacting his home caused by the I-355 extension, specifically the area of the extension that ranges from the 135th Street bridge and Archer Avenue. Compl. at 2, Resp. Br. at 1. Mr. Arendovich's property is approximately 150-feet from the I-355 Extension and his bedroom wall is approximately 350-feet away. Am. Compl. Exh. C at 3.

In 2009, Mr. Arendovich retained S & V Solutions, an acoustical engineering firm, to study noise from the I-355 extension. Am. Compl. at 2. David Larson, an acoustical consultant with S & V Solutions, concluded that "it is very unlikely the noise [generated from the I-355 extension] would dissipate to legal levels 150 ft. away, nor at 350 ft. by [Mr. Arendovich's] bedroom where the reading were (sic) taken." Am. Compl. Exh. C at 3.

PARTIES' DISPUTED FACTS

Complainant's Statement of Facts

Mr. Arendovich states that a study proposing the I-355 extension was initiated by IDOT, but that citizens in the area only became aware of the proposed I-355 extension when a public hearing was scheduled following initiation of the project by IDOT. Compl. Br. at 3. The preliminary plan for the proposal, including a center line, was shown to the public in the fall of 1991. *Id.*, citing Comp. Exh. 1 and 2. Residents of Gordon Lane, including Mr. Arendovich, submitted a petition to IDOT requesting that the road be moved 1800 feet west, where fewer residents would be affected, as opposed to the extension running parallel to Gordon Lane. *Id.*

In a letter dated February 2, 1996, then-Governor Jim Edgar assured the area residents that they would not suffer noise or water pollution as a result of the I-355 extension. Compl. Br. at 3, citing Comp. Exh. 13. The IDOT preliminary plans included a 25-foot high noise abatement wall near Mr. Arendovich's home and his adjacent neighbor, as well as a wall beyond the 135th Street bridge toward Archer Avenue. *Id.* This initial proposal was "stopped by the court" for not including alternate roads. *Id.* at 3-4.

The SEIS modified the noise abatement proposals. Comp. Br. at 4. Under the SEIS, the proposed noise barrier was lowered from 25 feet to 14 feet in height, lengths of walls were

reduced, and additional walls were added in different locations. *Id.* These additions included “one mile for IDOT project located at I-55, between I-355 extension and Lemont Road.” *Id.*

Following complaints on the height of the noise abatement wall and a letter addressed to state Senator Christine Radogno and Mr. Zuccherero inquiring if a wall could be built on the 135th Street bridge, the proposed wall height was extended 2 feet for a total height of 16 feet. Comp. Br. at 4. However, this height still remained below the EIS proposal of 25 feet. *Id.*

Mr. Arendovich states that excessive noise from vehicles travelling along the extension has reached his property since the extension opened. Compl. Br. at 4. In December 2007, Mr. Arendovich attended an ISTHA Board meeting where the ISTHA Board assigned Mr. Kovacs, an ISTHA Chief Engineer, to investigate the noise problem. *Id.* at 4-5.

Several meetings were held that included Mr. Arendovich and another resident, Mr. Nitchkoff. Comp. Br. at 5. During the meetings, Mr. Nitchkoff proposed an additional 600-foot wall from the 135th Street bridge to Archer Avenue. *Id.* Mr. Zuccherero had proposed putting a 540-foot wall on the 135th Street bridge. *Id.*

Mr. Arendovich presented his and Mr. Larson’s findings regarding noise pollution to ISTHA and its Chairman, Mr. Mytola. Compl. Br. at 5. At Mr. Arendovich’s final meeting with Mr. Zuccherero, Mr. Zuccherero proposed putting up a wall that would be 10 feet high and 240 feet long. *Id.* At the time, a 4-foot high concrete wall was already in place. *Id.* At this point, the meetings between Mr. Arendovich and ISTHA were discontinued. *Id.*

Because of a failure to resolve the noise concerns, Mr. Arendovich filed his case with the Board on April 28, 2009. Comp. Br. at 6. At hearing, Mr. Arendovich briefed the Board on his expenditures combating the noise problem, including: installing double sets of sliding doors, covering the western wall of his home with 3 inches of Styrofoam and installing an additional $\frac{3}{4}$ inch of soft foam within the wall, building a glass enclosure on the southern bedroom balcony, and covering the ceiling with “addition of 29 R insulation to make a total 56 R.” *Id.*, citing Comp. Exh. 5. Mr. Arendovich states that he has spent over \$17,000 to combat noise. *Id.*

At the hearing, Mr. Arendovich’s acoustic engineer, David Larson, stated that the noise levels measured from the I-355 extension “violated the Illinois numerical noise emission standards.” Comp. Br. 6, citing Comp. Exh. 6. According to Mr. Arendovich, Mr. Larson also testified that the noise levels “constituted an unreasonable interference to the Complainants daily lives.” *Id.* at 7. Mr. Arendovich also cites to Comp. Exh. 10 and 11 in stating that other communities have had similar struggles with noise complaints to ISTHA in the past. *Id.*

Respondent’s Statement of Facts

ISTHA states that the I-355 extension (also referred to by ISTHA as FA Route 340) has been contemplated and studied since the early 1960s. Resp. Br. at 1, citing Resp. Exh. 1. A centerline was recorded in 1968 that provided the public with notice of the planned tollway. *Id.* at 1-2. Mr. Arendovich purchased his property approximately 20 years later. *Id.* at 2.

The Illinois State Legislature approved the project in 1993 and ordered ISTHA to examine the feasibility of constructing the I-355 extension. Resp. Br. at 2, citing Resp. Exh. 1. IDOT completed an EIS in February, 1996, which was later approved by the FHWA. *Id.* Prior to the start of construction, the Illinois Chapter of the Sierra Club filed suit against the project and on November 12, 1998, the U.S. District Court declared the proposed I-355 extension invalid. *Id.*, citing Sierra Club, Illinois Chapter v. U.S. Dept. of Transp., 962 F.Supp. 1037 (N.D. Ill. 1997).

The SEIS was prepared to address the court's concerns and update the 1996 study. Resp. Br. at 2, citing Resp. Exh. 1. After holding public hearings, the SEIS was published and on February 25, 2002, the FHWA determined that the National Environmental Protection Act was satisfied, approved the SEIS and signed the record of decision. *Id.*, citing Resp. Exh. 1. Other public entities also supported the project, including IDOT, ISTHA's Board of Directors, and "various municipalities including Complainant's home Village of Lemont, Illinois." *Id.*

ISTHA states that, while the EIS recommended noise abatement at six locations, including a sound wall near Mr. Arendovich's home, the 2002 record of decision approving the SEIS did not include a sound wall in this area. Resp. Br. at 3. However, ISTHA continued with its plans to build the sound wall. *Id.* At the request of Mr. Arendovich, the wall was extended by 70 feet and increased an additional two feet in height. *Id.* The constructed wall is currently 16 feet high and cost ISTHA approximately \$1.2 million to build. *Id.*

ISTHA contends that the 135th Street bridge was not designed to carry a wall and was never intended to do so. Resp. Br. at 4. However, after further discussions between Mr. Arendovich and Mr. Zuccherro, a 240-foot wooden wall was constructed on the portion of the bridge nearest to Mr. Arendovich's home. *Id.* The wall cost approximately \$70,000. *Id.* ISTHA states that it has spent nearly \$1.3 million on sound barriers in the area to protect approximately 20 homes. *Id.*

HEARING

Public Comment of Linda Palmer

Ms. Palmer, a resident of Gordon Lane, offered a public comment at the Board hearing on October 25, 2011. Ms. Palmer stated that "the noise is really intense" and that it has become "even worse" since the speed limit increased. Tr. at 48. Ms. Palmer resides at the top of a hill as opposed to in a valley like Mr. Arendovich, and noted that she believes the sound is coming from Archer Avenue. *Id.* She also stated that the sound is "really not bad where the wall is" but that she believes the sound "carries there and it's coming from when they come down the hill." *Id.* Ms. Palmer also noted that she does not know if anything can be done about it. *Id.*

Ms. Palmer further stated that, before the I-355 extension went in, "you could hear a pin drop." Tr. at 51. Ms. Palmer indicated that her realtor showed her a map when purchasing the property in 1987 of the proposed I-355 extension that traveled through her property, but that when she contacted ISTHA she was informed that "it's been on the books since the '60s" and "[i]t will probably never happen." *Id.* Ms. Palmer stated that, following the construction of the

I-355 extension, the noise has become progressively worse with the traffic. *Id.* at 52. Ms. Palmer did note that, at a meeting with ISTHA, it was decided that the I-355 extension would be moved 500 feet behind her property. *Id.* at 52-53.

Public Comment of David Larson

Mr. Larson is an acoustic noise consultant who has been measuring noise in the greater Chicagoland area for the past 25 years. Tr. at 62. He has worked for the State, for individuals, for counties and for cities. *Id.* Mr. Larson prepared noise graphics for Mr. Arendovich and stated in both his personal and professional opinion that “there is a considerable noise impact” and “a very significant nuisance and noise impact” on Mr. Arendovich’s property. *Id.* at 62-63.

Testimony of Constantino Nitchoff

Mr. Nitchoff, a resident of 135th Street, stated that “everyone knew about the toll was coming in but we were promised a wall from Archer all the way down to 127th Street.” Tr. at 53-54. Mr. Nitchoff stated that during construction, the wall was stopped at 135th Street and that, because he lives in a valley about 18 feet below the I-355 extension, the noise “just echoes all the way down the valley where we live.” *Id.* at 54.

Mr. Nitchoff performs soundproofing for the airport authority and stated that he performs insulation work for homes near Midway and O’Hare airports. *Id.* at 55. He also stated that he does not open his windows because he is unable to speak in his home and that sound levels have become “ridiculous” since the speed limit was increased to 65 miles per hour along that stretch. *Id.* at 54, 55. Mr. Nitchoff stated that, when he approached ISTHA with his concerns, he was informed that there are not enough people living in the valley to justify putting in a wall. *Id.* at 55-56.

Under cross-examination, Mr. Nitchoff indicated that he knew about the I-355 extension when he built his home in 1995 because of blueprints that he had in his possession. Tr. at 56-57. He also stated that he is only able to enjoy his backyard on the east side of the home because he uses the home to block the noise. *Id.* at 59.

Testimony of Rocco Zuccherro

Mr. Zuccherro is the Deputy Chief of Engineering at ISTHA. Tr. at 100. In this capacity, Mr. Zuccherro’s responsibilities include all planning for tollway projects, including environmental issues such as noise, locations of roads, impacts on roads, traffic impacts, and economic impacts. *Id.* Mr. Zuccherro has performed these responsibilities since joining the Tollway in 2000. *Id.* at 101. Prior to employment at ISTHA, Mr. Zuccherro held a position at IDOT since 1992 where his responsibilities were first in construction and then as an environmental specialist from 1993 until 1998. *Id.* at 102. At hearing, Mr. Zuccherro reiterated a number of points already summarized in ISTHA’s post-hearing brief above.

Mr. Zuccherro testified that the center line for the I-355 south extension was recorded in 1968. Tr. at 105. The center line was later shifted to the west “maybe 100 feet” to “have less

environmental impact” and to avoid going through homes that were located along the original line. *Id.* at 106, 110. Mr. Zucchero noted that he first came into contact with Mr. Arendovich while he was working at IDOT sometime in the middle to late 1990s. *Id.* at 108.

Mr. Zucchero testified that the purpose of the EIS is to describe the intent, purpose and need of the project. Tr. at 114. Further, the EIS documents any environmental impacts, whether they be to wetlands, threatened or endangered species, residential impacts, noise, air, and the like. *Id.* Ultimately, FHWA or another lead agency would sign a record of decision indicating that the project meets all of the federal requirements. *Id.*

Mr. Zucchero stated that noise walls were recommended as part of the 1996 EIS. Tr. at 116. However, following a lawsuit filed in 1997, the record of decision approving the 1996 EIS was invalidated. *Id.* at 118. Therefore, in 1999, IDOT took the lead on developing the SEIS. *Id.* A record of decision on the SEIS was signed off by FHWA in 2002. *Id.* at 119.

Prior to 2002, FHWA changed the noise modeling software from what everyone was using to software referred to as Traffic Noise Measurement software. Tr. at 121. FHWA found that the prior software had been over-predicting traffic noise, and the new software was developed based on national comparisons of all areas. *Id.* at 121, 190. This software is the prescribed software used across the nation for all traffic studies. *Id.* at 191. With regards to the sound wall along 135th Street, the SEIS recommended that no sound wall be built. *Id.* at 122. However, ISTHA put the sound wall back in because of “common sense” considering the wall had been included at one time. *Id.*

Mr. Zucchero noted that, while the sound wall was originally designed to end “just shy of the bridge-approach pavement,” ISTHA extended the wall “70 feet or so” following discussions with Mr. Arendovich. Tr. at 123. At the same time, ISTHA increased the height of the wall by two feet. *Id.* at 124. Mr. Zucchero testified that the wall cost around \$1.2 million to construct. *Id.*

Following the opening of the tollway, an additional wooden wall was constructed on the 135th Street bridge that stretched around 240 to 250 feet, and stood 10 feet high from the pavement. Tr. at 125. This was intended to provide additional noise abatement in the area. *Id.* Mr. Zucchero testified that the 135th Street bridge was never intended to have a wall on it. *Id.* at 126. Mr. Zucchero further stated that the wall was stopped at 240 feet because ISTHA was “concerned about . . . putting too much weight on top of the bridge or building more of a wall on top of the bridge.” *Id.* at 127, 145.

Mr. Zucchero also testified that ISTHA attempted to keep its cost within an amount that could be reasonably justified. Tr. at 127. ISTHA has historically considered a cost-effectiveness benefit of about \$35,000 per resident. *Id.* at 128. Therefore, ISTHA determined that it could spend about \$70,000. *Id.* Mr. Zucchero stated that ISTHA, consistent with its traffic noise and abatement policy, tries to design noise abatement that would reduce traffic noise by 8 to 10 decibels. *Id.* at 131.

Mr. Zucchero testified that, on January 27, 2009, he presented to ISTHA's Board of Directors a summary of what has been done by ISTHA to alleviate Mr. Arendovich's concerns. Tr. at 135-136 and Resp. Exh. 5. Mr. Zucchero noted that the number of affected homes at 135th Street range "in the 20s," stretching about a half mile north and south away from the I-355 extension. *Id.* at 137. Of those neighbors, Mr. Zucchero testified that Mr. Arendovich was the primary complainant, with only one other neighbor raising concerns regarding the noise. *Id.* at 138. Mr. Zucchero also stated that the I-355 extension was approved by the Illinois General Assembly, FHWA, US Department of Transportation, IDOT, the ISTHA Board of Directors, as well as a resolution of support from the surrounding communities, including Lemont. *Id.*

Mr. Zucchero stated that the sound barriers constructed by ISTHA "went beyond what was required from [FHWA]." Tr. at 145. The barriers, which were not required by the 2002 SEIS record of decision and were built consistent with ISTHA's policies, cost in the range of \$1.3 million. *Id.* at 146-147.

Under cross-examination, Mr. Zucchero testified that the "rule of thumb" for noise abatement was that, for every 2 feet of wall, you reduce the noise level by one decibel. Tr. at 158. However, due to diminishing returns, at some point the increase in wall height will not reduce the noise levels. *Id.* Further, the reduction in sound level also depends on other factors including the source of the noise and the terrain. *Id.* at 189. Mr. Zucchero also stated that all noise walls are designed for first floor ground level protection. *Id.* at 159. Mr. Zucchero noted that the intent of constructing a wall "is not about the height of the wall." *Id.* at 183. Rather, "[t]he goal of the wall is to reduce traffic noise" and such a goal can be done with a 14-foot wall. *Id.*

At Mr. Arendovich's request, Mr. Zucchero visited his property and took measurements in accordance with FHWA criteria. *Id.* at 162. According to Mr. Zucchero, the measurements acquired at the time "showed that [ISTHA was] pretty much dead-on in conformance with exactly where [its] traffic studies said [it] would be." *Id.* at 162-163. Mr. Zucchero concluded that the sound walls were "doing exactly what they were intended to do." *Id.* at 164. Mr. Zucchero also noted that, contrary to what was required by the SEIS, ISTHA "went further and spent additional funding" to add height, length and then additional length to the sound barriers. *Id.* at 192.

Mr. Zucchero states that the initial estimate of \$20 to \$25 per square foot for the cost of the wall was done back in 1996. However, inflation and 14 years drove that price up to \$35 per square foot. Tr. at 197. He also notes that, while the wooden wall costs may have initially been estimated at around \$50,000, costs beyond the physical wall itself (such as mobilizing crews and closing lanes) pushed the price of constructing the wall up to around \$70,000. *Id.* at 198.

Mr. Zucchero did speak with Mr. Arendovich regarding building the walls out of materials lighter than wood. Tr. at 200. On redirect examination, Mr. Zucchero indicated that the reason wood was used for the wall was because wood and concrete are the two materials that have been proven to work. *Id.* at 226. The lightweight material that he had discussed with Mr. Arendovich "was blown to pieces by the wind off the Lake Forest Oasis" when ISTHA tried using them. *Id.*

During Mr. Zucchero's visit to Mr. Arendovich's property on January 20 and 22, 2009, noise decibel readings were taken. Tr. at 215, 219. The readings read 58 decibels on January 20 at 9:22 a.m., 62 decibels on January 22 at 5:53 a.m., and 62 decibels on January 22 at 5:00 p.m. *Id.* at 219 (referring to Resp. Exh. 5). This differs from measurements taken by Mr. Zucchero on January 20, 2009 at 8:48 a.m. in an area unprotected by a wall that measured 69 decibels. Tr. at 227. Mr. Zucchero states that these measurements were done with an A-weighting, which is intended to simulate the response to the human ear. *Id.* at 220.

Evidence Submitted at Hearing

The Board's procedural rules at 35 Ill. Adm. Code 101.626 "Information Produced at Hearing" provides that, unless otherwise provided, "the hearing officer will admit evidence that is admissible under the rules of evidence as applied in the civil courts of Illinois." The rule goes on to provide that "[t]he hearing officer may admit evidence that is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless the evidence is privileged." 35 Ill. Adm. Code 101.626(a). The rule discusses various particular types of evidence.

At the October 25, 2011 Board hearing, Mr. Arendovich attempted to offer into evidence a total of 16 exhibits. ISTHA objected to allowing the majority of these exhibits into evidence for various reasons. The Board Hearing Officer admitted seven of the exhibits into evidence and accepted the remaining nine as an offer of proof. The Board addresses Mr. Arendovich's hearing exhibits below.

As stated, seven exhibits were admitted. These include IDOT Map-FAP Route 340, sheet #5, dated September 4, 1990 (Compl. Exh. 2); IDOT Map FAP Route 340, sheet #6, dated September 4, 1990 (Compl. Exh. 3); an undated letter from Mr. Arendovich to Mr. Zucchero (Compl. Exh. 7); a letter dated October 30, 1995, from ISTHA to Mr. Arendovich (Compl. Exh. 12); a February 2, 1996 letter from former Governor Jim Edgar (Compl. Exh. 13); an excerpt from the Environmental Impact Study labeled "I-355 south extension (FAP 340) traffic noise re-evaluation" (Compl. Exh. 14); and a November 4, 2010 letter from ISTHA to Mr. Arendovich (Compl. Exh. 16).

The Board will address each of the remaining nine exhibits individually.

Complainant's Exhibit 1 is a map entitled FAP Route 340 and dated July 10, 1991. ISTHA objects on grounds that the map had not been made available to it prior to hearing. Tr. at 20. The Hearing Officer admitted two similar maps based on their containing an IDOT stamp, which is not present on Compl. Exh. 1. Based on the lack of proof regarding the map's origins and the Board's possession of two similar exhibits, the Board declines to admit Compl. Exh. 1 into evidence.

Complainant's Exhibit 4 is a five page document allegedly containing receipts for sound-proofing work done on Mr. Arendovich's property. ISTHA objects to the extent that there is no evidence that the work has been paid for, and to the extent that it is unclear if the work was for

sound remediation. Tr. at 64. The Board admits Complainant's Exhibit 4 into evidence as demonstrative evidence that is cumulative to other evidence in the record.

Complainant's Exhibit 5 is a three-page document containing photographs of Mr. Arendovich's home. ISTHA objects to admitting the exhibit because there is no evidence that the contents of the photographs are related to noise remediation. Tr. at 67. The Board admits Complainant's Exhibit 5 into evidence as demonstrative evidence that is cumulative to other evidence in the record.

Complainant's Exhibit 6 is a noise level graph dated June 5, 2008. ISTHA objects to the graph because there was no proper foundation for the exhibit. Tr. at 68. Complainant's Exhibit 6 is identical to an attachment to the Amended Complaint's Exhibit C, which ISTHA received when it was served with the Amended Complaint. The Board admits Complainant's Exhibit 6 into evidence.

Complainant's Exhibit 8 is a June 15, 2009 letter to Mr. Arendovich from S&V Solutions. ISTHA contends that no foundation was established for the letter, including at the deposition of Mr. Larson, the author of the letter. Tr. at 70-71. Mr. Arendovich states that the letter is offered to illustrate "that there is a bridge and they put a . . . wall over here, that 240 feet." *Id.* at 71. The Board admits Complainant's Exhibit 8 into evidence as demonstrative evidence that is cumulative to other evidence in the record.

Complainant's Exhibit 9 is a June 27, 2008 letter from Mr. Arendovich to Paul Kovacs, Chief Engineer at the Illinois Tollway. ISTHA again objects based on foundation. Tr. at 72. The Board admits Complainant's Exhibit 9 into evidence as demonstrative evidence that is cumulative to other evidence in the record.

Complainant's Exhibit 10 is an internet print-out of a February 11, 2001 newspaper article from the *Daily Southtown*. ISTHA objects because of a lack of foundation and because the article is hearsay. Tr. at 73. The Board admits Complainant's Exhibit 10 into evidence as demonstrative evidence that is cumulative to other evidence in the record.

Complainant's Exhibit 11 is a May 5, 2005 letter from William Murphy, the Mayor of the Village of Woodridge, addressed to Leanne Redden, who at the time was ISTHA's Chief of Planning. ISTHA objects because the letter was not disclosed pursuant to discovery, and the letter is related to a proposed sound wall on I-55 east of Woodward Avenue, which is not on the tollway. Tr. at 74. The Board admits Complainant's Exhibit 11 into evidence as demonstrative evidence that is cumulative to other evidence in the record.

Complainant's Exhibit 15 is an October 24, 2011 noise impact graph from S&V solutions directed to Mr. Arendovich. ISTHA objects because the graph was not included as part of Mr. Larson's report and it appears to be an attempt to correct an error in the original study. Tr. at 77. The graph appears to be based on data that was previously presented to ISTHA, only in a different format. The Board admits Complainant's Exhibit 15 into evidence as demonstrative evidence that is cumulative to other evidence in the record.

The Board therefore sustains ISTHA's objection to Complainant's Exhibit 1, but overrules ISTHA's objections to Complainant's Exhibits 4, 5, 6, 8, 9, 10, 11, and 15 and admits them into evidence.

COMPLAINANT'S ARGUMENTS

Mr. Arendovich agrees that the I-355 extension is beneficial and does not ask that the extension be moved. Comp. Br. at 7. However, Mr. Arendovich asks "for help to make his life more bearable." *Id.* Specifically, Mr. Arendovich requests that ISTHA "build a wall so it will alleviate the noise stress that I-355 extension causes on his and his family and the neighbors life." *Id.* at 7-8.

Mr. Arendovich contends that the noise emanating from the I-355 extension violates 35 Ill. Adm. Code 901.102 and 900.102, as well as Section 24 of the Act. Comp. Br. at 8.¹ Mr. Arendovich also notes that, at hearing, his expert testified that the noise level emanating from the I-355 extension to his home violates the acceptable decibel level for noise emanating from Class C land to Class A land, as defined by the Board's Land Based Classification Standards at 35 Ill. Adm. Code Subtitle H. *Id.* at 8-9.

Interference

Mr. Arendovich states that, for 17 years, he was able to enjoy his bedroom balcony, but now he is unable to open the sliding door out to the balcony and has installed a second sliding door to buffer noise emitted from the I-355 extension. Comp. Br. at 9. He further states that the noise is "taxing" on his electricity budget because he is unable to open any windows in his bedroom. *Id.*, citing D'Souza v. Marraccini, PCB 96-22 (May 2, 1996)².

Mr. Arendovich states that the noise "objectively affect[s his] life" and therefore it constitutes an interference. Comp. Br. at 9. Specifically, Mr. Arendovich testified at hearing that the I-355 extension affects the use of his outdoor property and adversely affects his sleep, causing him to take sleeping medication "at least two night[s] per week" in order to sleep. *Id.* at 10. He is also unable to entertain guests at his home and feels that he has to "live a different way of life than other people." *Id.* Mr. Arendovich notes that two other homeowners commented at hearing that the noise creates an economic burden from having to run an air conditioner all day due to keeping the windows closed, and that the noise level has adversely impacted the use of their outdoor property, respectively. *Id.*

¹ While Mr. Arendovich contends in his post-hearing brief that ISTHA is in violation of 35 Ill. Adm. Code 900.102, 901.102 and Section 24 of the Act, the Board only addresses his claims in relation to 35 Ill. Adm. Code 900.102, which is the only section alleged to have been violated under Mr. Arendovich's amended complaint.

² In its response brief, ISTHA contends that it is unclear if this case exists because it is not present on the Board's website. Resp. Br. at 3. The case is present on the Board's website under PCB 96-22, but was erroneously labeled as "Wells Manufacturing Co." The Board has since corrected this error.

Section 33(c) Factors

Character and Degree of Injury or Interference

Mr. Arendovich states that the noise from the I-355 extension clearly impacts him and his neighbors, as well as their property values. Comp. Br. at 11. He believes that the number of potential buyers for his property has been reduced and that daily use of his yard has been lessened. *Id.* Mr. Arendovich requests that ISTHA be ordered to commit to reduce substantially the noise that reaches “adjacent residential areas.” *Id.*

Suitability or Unsuitability of the I-355 Extension Area

Mr. Arendovich states that the primary sources of excessive noise from the I-355 extension are buses and trucks that drive along it. Comp. Br. at 11. As traffic usage on the I-355 extension increases, so too does traffic noise. *Id.* Mr. Arendovich does not seek the “elimination of I-355 extension operations,” but rather seeks “a reduction in the roadway noise reaching the residential area.” *Id.* at 12. He argues that this can be accomplished “through the installation of additional noise mitigation, in the form of higher and longer noise barrier walls.” *Id.*

Mr. Arendovich notes that he has attempted numerous noise mitigation efforts since building his residence, including

seeking medical assistance in the form of prescription sleeping aids[,] adding more noise insulation to the home where possible, adding 3/8 glass into windows on the bedroom, double sliding doors enclosing the balcony, covering the second floor with 3 inch Styrofoam plus ¾ inch soft foam, . . . adding additional 10 inch of blown in cellulose material to insulate possible sound coming from roof.
Comp. Br. at 12.

Mr. Arendovich states that these efforts have not “reduced the noise penetration to an acceptable level in our second floor level.” *Id.*

Mr. Arendovich states that, according to the EIS, the noise level in the area was 41 dBA³ prior to construction of the I-355 extension. The SEIS noted that the noise level would raise to 64 dBA once the I-355 extension was built. Comp. Br. at 12. The height of the wall was reduced from 25 feet in the EIS to 14 feet in the SEIS. *Id.* Mr. Arendovich cites IDOT as stating that “[a] noise wall that breaks the line of sight between the traffic noise source and noise receiver reduces traffic noise up to 5 dbA. Each additional two feet of noise wall improves the traffic noise reduction by approximately 1 dBA.” *Id.* at 13. At hearing, Mr. Zucchero stated that the reason for the drop in wall height was because “they obtained a new software from [the Federal Highway Administration (FHWA)].” *Id.* Mr. Arendovich believes that FHWA approved the I-355 extension construction project but did not verify the data once the I-355 extension opened. *Id.*, citing Comp. Exh. 9.

³ dBA refers to an octave band, the dB, with an A-weighting. Tr. at 220. An A-weighting on noise is intended to closely simulate the response to the human ear. *Id.*

Mr. Arendovich understands that “the road provides a convenience for the greater public.” Comp. Br. at 14. He notes that the I-355 extension is used by a variety of vehicles, over 10% of which are heavy trucks, which produce the loudest noises according to the FHWA, reaching 84 dBA when travelling at 60mph. *Id.* Mr. Arendovich states that his property is 350 feet from the I-355 extension and that, according to an FHWA chart, the noise level upon reaching his home is about 73 dBA. *Id.*, citing Comp. Exh. 6, 8 and Resp. Exh. 4.

Mr. Arendovich states that, between the time of the EIS and the SEIS, the I-355 extension proposal extended from a four lane road to a six lane road. Comp. Br. at 14. He believes that this increase in lanes has led to an increase in traffic and, subsequently, an increase in the noise level. *Id.* at 15. Mr. Arendovich further states that incentives offered to truck drivers to use the road at night has produced more disturbances during sleeping hours. *Id.*

Remedy

Mr. Arendovich requests “that [ISTHA] be ordered to cease and desist violating numerical emissions standards set forth at [35 Ill. Adm. Code § 901.102], and from violating the nuisance noise standards of [35 Ill. Adm. Code § 900.102].” Comp. Br. at 15. Mr. Arendovich further requests that ISTHA “undertake substantive steps to address the excessive noise originating from the I-355 extension.” *Id.* These steps include completing construction of a barrier on the 135th Street bridge of 14 feet high, and the installation of additional noise barriers from the south of the 135th Street bridge to Archer Avenue. *Id.* Mr. Arendovich notes that “[t]he Board has previously ordered the installation of noise barriers in order to guarantee compliance with noise regulations.” *Id.*, citing Zarlenga v. Partnership Concepts, PCB 89-169, and Thomas v. Carry Companies, PCB 91-195. Mr. Larson testified that the installation of additional noise wall at the site would significantly reduce the noise impacts originating from the I-355 extension. Comp. Br. at 15-16.

Mr. Arendovich lists two reasons why the current noise barrier is insufficient. First, he states that noise from truck tires coming off the I-355 extension bridge is a “significant source of noise” and that the portion of the bridge that is not protected by a sound barrier “allows for an unrestricted stream of noise to [Mr. Arendovich’s] bedroom.” Comp. Br. at 16. This noise consists of “tire noise, engine noise, jack brakes, exhaust tail pipe from heavy trucks and trucks hitting holes in the road surface.” *Id.* Second, the current 240-foot long, 10-foot high wall is insufficient to achieve noise reduction. *Id.* Mr. Arendovich notes that the length of the wall leaves the homes of two of his neighbors mentioned in the formal complaint exposed to noise from the I-355 extension. *Id.*

Mr. Arendovich believes “that additional noise barrier wall is a necessity, which is technically feasible, and economically reasonable.” Comp. Br. at 16. Mr. Arendovich states that “the rate . . . heavy trucks pay for usage, . . . gives over \$3,000,000.00 per year, above what is generated by regular automobile[s].” *Id.* at 17. He also contends that the cost of constructing an additional 740 foot wall with a height of 15 feet would be around \$250,000. *Id.* Mr. Arendovich bases this amount on Mr. Zuccherò’s testimony at hearing that the current 240-foot long and 10-

foot high wall cost \$60,000, which Mr. Arendovich states averages out to around \$25 per square foot. *Id.*

Mr. Arendovich states that he does not ask for a continuous noise monitoring program following any changes made to the existing noise barrier wall at this time. Comp. Br. at 17.

Conclusion

Mr. Arendovich states that the evidence presented at hearing and in his post-hearing brief clearly depicts that the sound generated by the I-355 extension violates 35 Ill. Adm. Code 901.102 and 900.102. Comp. Br. at 17. Mr. Arendovich specifically seeks the installation of a noise barrier wall that is 14 feet high and continues “across the bridge of 135 street bridge.” *Id.* at 18. Mr. Arendovich also requests that ISTHA add a wall between the Nitchoff and Garb residences and the I-355 extension. *Id.* Mr. Arendovich believes that such an installation is economically feasible. *Id.* Mr. Arendovich again states that he does not ask for a continuous noise monitoring program at this time but that he reserves the right to request such if necessary. *Id.* Mr. Arendovich concludes by stating that he does not seek any civil penalties or require a performance bond at this time. *Id.*

RESPONDENT’S ARGUMENTS

ISTHA cites the Board’s July 2011 order stating that the applicable law in this case is Sections 24 and 33(c) of the Act and Section 900.102 of the Board’s regulation. Resp. Br. at 5. ISTHA contends that Mr. Arendovich has not established that sound generated from the tollway has unreasonably interfered with his life. Resp. Br. at 6.

ISTHA’s Response to Complainant’s Statement of Facts

History of I-355 Extension

ISTHA refutes Mr. Arendovich’s claim that it has done nothing to address his concerns regarding noise from the tollway. Resp. Br. at 6. ISTHA voluntarily agreed to build a sound wall and later increased the size and height of the wall at the request of Mr. Arendovich. *Id.* ISTHA further built a second wooden wall on the 135th Street bridge, none of which was required by the Record of Decision approving the SEIS. *Id.*

ISTHA refutes a number of other claims in Mr. Arendovich’s brief. ISTHA notes that Mr. Arendovich’s claim that ISTHA “recognized [it’s] misjudgment in planning to comply with noise pollution numerical values” was not raised at hearing, is without basis and is false. Resp. Br. at 6. ISTHA further states that two other neighbors at hearing only offered public comment and that Mr. Arendovich’s sound expert, David Larson, refused to be put under oath and testify as a witness. *Id.* at 7.

ISTHA states that the centerline for the tollway was recorded in 1968, and not in 1991 as claimed by Mr. Arendovich. Resp. Br. at 7, citing Tr. at 22. ISTHA notes that both neighbors who offered public comment were well aware of the plans to build the tollway. *Id.*, citing Tr. at

53-54. This includes the comment of one neighbor, Mrs. Palmer, who stated that her realtor showed her a map with the proposed right of way going through her property before purchasing the property in 1987. *Id.*

ISTHA disputes Mr. Arendovich's interpretation of Governor Edgar's letter as stating that Mr. Arendovich and his neighbors will not have any problem with noise or water pollution. Resp. Br. at 7. Instead, ISTHA states that the letter indicated that, prior to the road being constructed, "studies will be completed and appropriate remediation will be incorporated." *Id.*

ISTHA states that nothing in the record supports Mr. Arendovich's assertion that ISTHA took advantage of the invalidation of the EIS by reducing the size of the wall from 25 feet high to 14 feet high in the SEIS. Resp. Br. at 8. Rather, ISTHA notes that, while the SEIS completely eliminated the 135th Street wall, ISTHA voluntarily reinstated the sound wall back into its construction plans "[s]ince the sound wall was included in the original study" and "out of fairness to the Tollway's 135th Street neighbors." *Id.*

ISTHA disagrees with Mr. Arendovich's claimed history of discussions with its Board of Directors and staff, noting that none of Mr. Arendovich's neighbors testified at hearing and that there were no sound studies introduced as evidence. Resp. Br. at 8. ISTHA again points out that it also built a 10-foot high wall an additional 240 feet on the 135th Street bridge. *Id.*, citing Tr. at 125, 27.

ISTHA states that there is no evidence in the record that the receipts Mr. Arendovich presented at hearing regarding noise abatement construction around his home totaled \$17,000. Resp. Br. at 8. ISTHA also states that there was no evidence presented that the improvements "were paid for, were solely for the purpose of reducing sound, or that they helped or resolved the noise issue." *Id.* at 8-9.

ISTHA disputes Mr. Arendovich's position that it ignored noise concerns of Governor Quinn and other communities, noting that Mr. Arendovich's only evidence of this was a letter from the Village of Woodridge demanding that a sound wall be constructed on I-55 east of Woodward Avenue. Resp. Br. at 9. ISTHA states that I-55 is under the jurisdiction of IDOT, not ISTHA, and that the letter is of no relevance. *Id.* at 10.

Hearing

ISTHA refutes Mr. Arendovich's interpretation of Mr. Larson's comments at hearing. Resp. Br. at 9. ISTHA notes that Mr. Larson did not testify, did not present any evidence, and did not provide any technical testimony or expert opinion. *Id.* Rather, Mr. Larson stated that "[i]t's my personal opinion there is a considerable noise impact on Mr. Arendovich's property." *Id.*, citing Tr. at 62. ISTHA believes that the two neighbors who offered public comment at hearing are situated differently from Mr. Arendovich based on their home locations. Resp. Br. at 10. ISTHA notes that one of these neighbors, Ms. Palmer, indicated that she believed the noise comes from Archer Avenue and is not sure if anything can be done to correct the situation. *Id.* ISTHA states that the other neighbor, Mr. Nitchoff, is located 18 feet below the road and that, while the noise bothers him, he is not sure if the current 10-foot wall reduces the noise or if

additional walls would be effective. *Id.* ISTHA states that, since Mr. Nitchoff is located 28-feet below the top of the sound 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.” *Id.*

Sound Barriers

ISTHA states that Mr. Arendovich, without citing expert testimony or any technical evidence, concludes that the noise can be reduced through the installation of higher and longer noise barrier walls. Resp. Br. at 11. ISTHA continues that Mr. Arendovich

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 [he] would be satisfied. *Id.*

ISTHA disagrees with Mr. Arendovich’s claim that the wall height was reduced between the EIS and SEIS because of a change in sound analysis software. Resp. Br. at 11. Rather, ISTHA claims that the 135th Street wall was not included at all in the updated SEIS. *Id.* ISTHA also cites Mr. Zuccherro’s testimony at hearing regarding Mr. Zuccherro’s measurement readings taken at Mr. Arendovich’s home. *Id.* Mr. Zuccherro stated that readings at the home measured 58 and 62 decibels two days apart, and another reading at a different location unprotected by sound barrier read 69 decibels. *Id.* ISTHA states that these readings prove that the sound walls around Mr. Arendovich’s home have been “somewhat effective and have reduced the noise level approximately 9 decibels.” *Id.* at 12.

ISTHA addresses two cases cited by Mr. Arendovich in which the Board “ordered what appeared to be reasonable remedial measures in light of the circumstances.” Resp. Br. at 12, citing Zarlenga and Thomas. ISTHA states that, in both of these cases and unlike the circumstances present here, the ordered relief appeared to be reasonable, cost effective measures to address a complainant’s concerns. *Id.* However, ISTHA states that Mr. Arendovich has not cited any relevant cases or circumstances where IDOT, ISTHA or any other roadway organization was required to abate noise to the degree Mr. Arendovich insists. *Id.* at 12-13. ISTHA states that the issue here is further complicated by

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 [Mr. Arendovich] will even be satisfied. *Id.* at 13.

ISTHA states that, while Mr. Arendovich cited early cost estimates for constructing the wall at \$20 to \$25 per square foot, the actual cost was closer to \$35 per square foot. Resp. Br. at 13, citing Tr. at 144, 197. Mr. Zuccherro also testified at hearing that, in addition to the bridge not being designed to support a wall, “there is a point of diminishing returns with sound wall height.” *Id.*, citing Tr. at 158, 199. ISTHA states that Mr. Arendovich did not present any evidence or testimony to contradict Mr. Zuccherro’s position. *Id.*

ISTHA states that it has spent nearly \$1.3 million on sound walls to reduce the sound received by Mr. Arendovich but that there is no wall big and tall enough to get rid of all the noise. Resp. Br. at 13, citing Tr. at 146 and 199. ISTHA states that, consistent with its sound wall policy, it measures the costs against the benefit received by the receptor. *Id.* at 14, citing Resp. Exh. 1 and Tr. at 199. ISTHA believes that it has satisfied its Sound Wall Policy (Resp. Exh. 1) and its legal and neighborly obligations. *Id.*

Increased Traffic Lanes

ISTHA states that Mr. Arendovich's contention that the expansion of the I-355 extension from four lanes to six lanes is a new argument that is irrelevant, because "[n]oise is not generated by the roadway or the lanes of traffic, but instead it is the traffic that generates noise." Resp. Br. at 12, citing Illinois State Toll Highway Authority v. Karn, 293 N.E.2d 162, 166, 9 Ill.App.3d 784, 790 (2nd Dist. 1973).

Section 33(c) Factors

Character and Degree of Injury

ISTHA states that the EIS and record of decision "determined that the I-355 extension was the least environmentally damaging alternative." Resp. Br. at 15, citing Resp. Exh. 1 and Tr. at 142. Specifically, the EIS and SEIS studied and addressed impacts to wetlands, water quality, threatened and endangered species, salt spray, revegetation and air quality. *Id.* Potential noise issues were also studied and remedial measures were prescribed where appropriate. *Id.* ISTHA states that, "while there were impacts, the health and general welfare of the public were considered and to the extent practically (sic) possible steps were taken to reduce the impacts." *Id.*

Social and Economic Value of the Pollution Source

ISTHA describes the social and economic value of the I-355 extension as "enormous" and "substantial." Resp. Br. at 15, 16. In 2002, 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. *Id.* at 15, citing Resp. Exh. 1 at 24.

ISTHA further describes the I-355 extension as a convenient link for people in the southwest suburbs and beyond to travel to DuPage County and the western suburbs, noting that approximately 65,000 vehicles cross the I-355 extension near 135th street every day. *Id.*, citing Tr. at 140. The I-355 extension also alleviated traffic on local roads by relocating truck traffic in the area. *Id.*, citing Tr. at 141-142. ISTHA states that the SEIS compared the benefits of the I-355 extension to four 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.” *Id.*

Suitability of the Source to the Area in which it is Located

ISTHA states that the centerline for the tollway extension was recorded in 1968, 25 years prior to when Mr. Arendovich moved into the area sometime after 1988. Resp. Br. at 16, citing Tr. at 82, 105. ISTHA notes that five transportation alternatives were examined and evaluated in the draft and final SEIS, including (1) no-action, (2) mass transit alternative, (3) Lemont bypass alternative, (4) enhanced arterial alternative, and (5) tollway/freeway alternative. *Id.* at 17, citing Resp. Exh. 1 at 2-3. The tollway alternative “maximized access to regional job centers by achieving the greatest reduction in year 2020 travel times.” *Id.*, citing Resp. Exh. 1. The tollway alternative was also the most consistent with local land planning, growth management and transportation goals, and avoided and minimized environmental impacts to the extent practicable. *Id.*, citing Resp. Exh. 1 at 5-6.

ISTHA states that the FHWA approved the construction of the highway because it found the tollway (1) satisfied the purpose and need contained in the SEIS, (2) posed the least impact on the environment, and (3) satisfied the National Environmental Protection Act requirements. Resp. Br. at 17, citing Resp. Exh. 1 at 24.

Technical Practicability and Economic Reasonableness of Reducing Emissions

ISTHA contends that “[i]t is not technically practical or economically reasonable to construct another sound wall or re-locate the tollway,” stating that the 135th Street bridge “was simply not designed to support the weight or absorb the wind shear associated with a sound wall.” Resp. Br. at 18. ISTHA further states that no evidence was presented that the bridge could support the new sound wall sought by Mr. Arendovich, or if the wall would significantly reduce the noise complained of. *Id.*

ISTHA also notes that there is a “diminishing value to adding height” to the wall, stating that as the wall goes higher, the sound mitigation benefit gets smaller. Resp. Br. at 18, citing Tr. at 158, 199. ISTHA states that it has spent \$1.3 million to mitigate noise generated near 135th Street, that the tollway cost nearly \$800 million, and that “even [Mr. Arendovich] agrees that moving the tollway is not a real option.” *Id.*, citing Tr. at 143, 146 and Compl. Br. at 7.

Any Subsequent Compliance

ISTHA restates that it was not required to build a sound wall, but incorporated one into its construction plan “[o]ut of fairness.” Resp. Br. at 19. Later, at the request of Mr. Arendovich, the height of the wall was increased by two feet and lengthened 70 feet. *Id.*, citing Tr. at 123, 124. Finally, a wooden wall was constructed on the 135th Street bridge. *Id.* ISTHA believes that these sound walls and corresponding expenditures “constitute significant efforts to reduce sound in the area near 135th Street and to satisfy [Mr. Arendovich] and his neighbors.” *Id.*

ISTHA REQUESTS TO STRIKE

ISTHA has made four requests to strike in its post-hearing brief. First, ISTHA has moved to strike Mr. Arendovich's post-hearing brief in its entirety because "the majority of the included arguments were not raised at hearing and are without evidentiary support" and because Mr. Arendovich "fails to cite to the Record to support representations contained in his brief." Resp. Br. at 6. Second, ISTHA has moved to strike portions of the brief that cite facts, allegations, arguments and opinions not in evidence. *Id.* Third, ISTHA moves to strike Mr. Larson's public comment offered at the hearing. *Id.* at 9. ISTHA states that Mr. Larson is not an expert on the matter, was not available for cross-examination, was not qualified to present any expert testimony on the matter, and that the public comment offered by Mr. Larson "does not amount to an expert opinion based on a degree or reasonable certainty." *Id.* Lastly, ISTHA has moved to strike the remedy section of Mr. Arendovich's brief, contending that the section contains inaccurate, irrelevant, unsupported facts and legal conclusions. *Id.* at 14. Alternatively, ISTHA has moved to strike statements relating to relief for the Garb family and Mr. Nitchoff since neither party testified at hearing. *Id.*

The Board denies ISTHA's requests to strike. Mr. Arendovich includes allegations throughout his post-hearing brief that are relevant to his claims. The Board will not consider claims in the post-hearing brief that the Board deems to be irrelevant. With regards to Mr. Larson's public comment, the Board will weigh the comment appropriately against the other testimonies and evidence before the Board.

BOARD FINDINGS OF FACT

After reviewing the entire record, the Board finds that plans for the I-355 extension were available to the public at the latest in 1987, one year prior to Mr. Arendovich purchasing his property. Tr. at 51. As a result of noise emanating from the I-355 extension, Mr. Arendovich has taken sleeping medication and has been unable to enjoy the exterior of his property, requiring him to keep his windows closed and preventing him from entertaining guests. Comp. Br. at 9, 10, Tr. at 51, 54. He has also undertaken numerous building projects at his home to alleviate the noise. *Id.* at 12.

Mr. Arendovich attended a number of ISTHA public hearings where he met with various ISTHA employees, including Mr. Zuccherro. Compl. Br. at 5, Resp. Br. at 3, Tr. at 135-136. Based in part on these meetings, ISTHA performed corrective measures to alleviate the noise interference on Mr. Arendovich's property, including the installation of a 10-foot high and 240-foot long wooden wall along the 135th Street bridge. Comp. Br. at 5, Resp. Br. at 4. ISTHA further extended the height of the concrete wall by 2 feet and extended it by 70 feet. Resp. Br. at 3.

ISTHA has spent around \$1.3 million in improving the noise level in the area of Mr. Arendovich's home. Resp. Br. at 4, 18. The installation of further sound barriers along the 135th Street bridge is not technically practicable, given that the bridge was not designed to support a sound wall. Resp. Br. at 18, Tr. at 127.

DISCUSSION

Mr. Arendovich states that ISTHA has violated Section 900.102 of the Board's regulations by causing or allowing the emission of sound beyond the boundaries of the I-355 extension so as to unreasonably interfere with the enjoyment of his life and property. Compl. Br. at 8. 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 complainant's enjoyment of life. Zivoli, PCB 89-205. Next, the Board looks to whether the interference is unreasonable, determined by using Section 33(c) of the Act. The Board breaks down its discussion into this two-part inquiry.

Interference with Mr. Arendovich's Enjoyment of Life

Mr. Arendovich states that he is unable to open the balcony door in his bedroom and that he has to take sleeping medication at least twice a week because the noise adversely affects his sleep. Comp. Br. at 9, 10. He has also undertaken numerous projects at his home to alleviate the noise, including

adding more noise insulation to the home where possible, adding 3/8 glass into windows on the bedroom, double sliding doors enclosing the balcony, covering the second floor with 3 inch Styrofoam plus 3/4 inch soft foam, . . . adding additional 10 inch of blown in cellulose material to insulate possible sound coming from roof. *Id.* at 12.

Mr. Arendovich states that he has spent over \$14,000 to reduce the sound levels in his bedroom, and \$17,000 in total in noise abatement measures in and around his home. Tr. at 29, Compl. Br. at 6. Prior to the construction of the tollway, Mr. Arendovich had enjoyed use of his bedroom balcony for 17 years. Comp. Br. at 9.

Mr. Nitchoff, who resides on 135th Street, testified at hearing that noise from the tollway echoes through the valley where his home is located and that he is only able to enjoy his backyard on the east side of his home, when using his home as a noise buffer. Tr. at 54, 59. Ms. Palmer, who resides on Gordon Lane, described the noise as "really intense." Tr. at 48. While Ms. Palmer believes that the noise came from Archer Avenue and not from the I-355 extension, she also testified that "you could hear a pin drop" prior to construction of the I-355 extension. Tr. at 51.

Mr. Larson, an acoustic noise consultant for 25 years, offered comment at hearing that there is a "considerable noise impact" and "a very significant nuisance" on Mr. Arendovich's property. Tr. at 62-63. Mr. Larson also prepared a number of graphs detailing the sound levels in and around Mr. Arendovich's home, some of which were offered at hearing and others which were attached to Mr. Arendovich's amended complaint. *See* Compl. Exh. 6, 15 and Am. Compl. Exh. C. Mr. Larson concluded that, based on his readings and acoustic distance law, "it is very unlikely the noise will dissipate to legal levels . . . by your bedroom where the reading were (sic) taken." Am. Compl. Exh. C at 3.

ISTHA does not dispute that noise from the I-355 extension can be heard at Mr. Arendovich's home. Rather, ISTHA contends that Mr. Arendovich has not established that sound generated from the I-355 extension has unreasonably interfered with his life. Resp. Br. at 6. ISTHA contends that Mr. Larson's public comment does not amount to an expert opinion based on a degree or reasonable certainty and that the two neighbors who appeared at hearing are situated differently from Mr. Arendovich based on their home locations. *Id.* at 9, 10.

The Board must determine whether the noise described above has interfered with Mr. Arendovich's enjoyment of life. Charter Hall Homeowner's Association and Jeff Cohen v. Overland Transportation System, Inc. and D.P. Cartage, Inc., PCB 98-81, slip op. at 20 (Oct. 1, 1998). "If there is no interference, no 'nuisance noise' is possible." Zivoli, PCB 89-205, slip op. at 9. In order to constitute an interference, sounds from a source must objectively affect enjoyment of life. Hoffman v. City of Columbia, PCB 94-146, slip op. at 2 (Oct. 17, 1996).

In this case, the noise generated from the I-355 extension has disrupted Mr. Arendovich's sleep, required him to keep his windows closed, and restricted his ability to use his outdoor space and entertain guests. Compl. Br. at 10. The Board has previously held these types of noise disruptions to be interferences with the enjoyment of life. Charter Hall, PCB 98-81, slip op. at 20 (additional citations omitted). Therefore, the Board finds that the noise emitting from the I-355 extension has caused interference with Mr. Arendovich's enjoyment of life at his property.

Section 33(c) Factors

Having found that the I-355 noise has interfered with Mr. Arendovich's enjoyment of life, the Board next addresses the issue of whether or not that interference is unreasonable. Petrosius v. ISTHA, PCB 04-36, slip op. at 18 (Jan. 4, 2007). Sounds do not violate the Act or Board regulations unless they cause unreasonable interference with the enjoyment of life or lawful business or activity. Zivoli, PCB 89-205, slip op. at 10. In determining whether an interference is unreasonable under the Act or Board rules, the Board considers the facts of the case in light of the factors outlined by Section 33(c) of the Act. *Id.*

A complainant is not required to introduce evidence on each of the Section 33(c) factors. Charter Hall, PCB 98-81, slip op. at 21. Further, the Board need not find against a respondent on each factor to find a violation. *Id.* (citations omitted). The Board will discuss each factor in the sections below.

Character and Degree of Interference

In assessing the character and degree of interference, "the standard applied by the Board is whether the noise 'substantially and frequently interferes' with the enjoyment of life, 'beyond minor or trifling annoyance or discomfort.'" Charter Hall, PCB 98-81, slip op. at 21, citing Kvatsak v. St. Michael's Lutheran Church, PCB 89-182, slip op. at 9 (Aug. 30, 1990). The Board has previously stated that

more serious or frequent health effects and more serious impacts on the enjoyment of life and the pursuit of any lawful business or activity favor a finding

that the noise constitutes an unreasonable interference. Zivoli, PCB 89-205, slip op. at 11.

The record does not indicate that any illness has occurred as a result of the noise from the I-355 extension. However, the noise has interfered with Mr. Arendovich's life and at least one other neighbor, Mr. Nitchoff, who offered public comment. Noise from the I-355 extension has limited Mr. Arendovich's and Mr. Nitchoff's normal activities in and around their homes. As stated previously, the noise generated from the I-355 extension has disrupted Mr. Arendovich's sleep, required him to keep his windows closed, and restricted his ability to use his outdoor space and entertain guests. Compl. Br. at 10. The Board has previously considered interference with sleep patterns in weighing this factor. Petrosius, PCB 04-36, slip op. at 18.

The Board finds that this level of interference goes "beyond minor or trifling annoyance or discomfort" and, therefore, this factor favors a finding that the interference is unreasonable.

Social and Economic Value of Source

ISTHA describes the social and economic value of the I-355 bridge extension as "enormous" and "substantial," noting that it provided a convenient link for travelers between the southwest suburbs and DuPage County and the western suburbs. Resp. Br. at 15, 16. ISTHA states that approximately 65,000 vehicles cross this portion of the tollway every day. *Id.* at 15, Tr. at 140. The SEIS, when comparing the tollway to four alternative transportation improvements, held that the tollway "improved access between residential areas and regional job centers, improved regional mobility, addressed local system deficiencies and furthered land use planning goals." *Id.*, Resp. Exh. 1 at 3-4.

Mr. Arendovich admits that "the road provides a convenience for the greater public." Comp. Br. at 14.

The record does not indicate any evidence of monetary value regarding the tollway, and the Board will not make any specific findings of its value absent such. But, there is no reason to discount ISTHA's characterization of the I-355 extension as having "enormous" and "substantial" value.

When taking the positions of both parties into account, the Board finds that this factor does not support a finding that the noise generated by the I-355 bridge extension is unreasonable.

Suitability of the Source to the Area

The Board has previously looked to the surrounding area to determine the suitability of the sound source. Zivoli, PCB 89-205, slip op. at 12. At hearing, Mr. Zucchero testified that the number of residents within a half mile to the north and south of the I-355 extension ranges "in the 20s." Tr. at 137. Given the suburban nature of the surrounding residential properties and Gordon Lane, the I-355 extension containing daily traffic of around 65,000 vehicles appears somewhat inconsistent with the area. But, the record also reflects ISTHA's determination, after extensive studies, that the I-355 extension was necessary to more conveniently allow people in

the southwest suburbs to commute to DuPage County and other western suburbs. And, ISTHA notes that the centerline for the tollway was recorded and made available to the public in 1968. Resp. Br. at 16. Mr. Arendovich purchased his property around 1988. Compl. Br. at 3. According to Mr. Arendovich's testimony, he became aware of the planned tollway a few years after purchasing the property, during a discussion with Ms. Palmer in either 1990 or 1991. *Id.* at 82-83. Ms. Palmer stated that she became aware of the proposal when her realtor notified her of it prior to purchasing her property in 1987. Tr. at 51. The evidence therefore indicates that plans for the proposed tollway were readily available at least one year prior to Mr. Arendovich purchasing his property.

Regardless of ISTHA's "first in time" contention, the Board has previously held that "priority of location is only one aspect of suitability and it is not necessarily determinative of the Board's finding under this Section 33(c) factor." Charter Hall, PCB 98-81, slip op. at 24. Furthermore, the Illinois Supreme Court has held that a party

cannot, of course, substantially increase its [] emissions and simultaneously rely on its priority of location in the area as a mitigating factor. This sort of changed circumstance would . . . undermine the [party's] priority-of-location argument. *Id.*, citing Wells Manufacturing v. Pollution Control Board, 73 Ill. 2d 226, 233, 383 N.E.2d 148, 151 (1978).

Ms. Palmer and Mr. Nischoff stated at hearing that the noise levels from the I-355 extension have become less bearable since the speed limit in the area was increased to 65 miles per hour and as traffic has increased. Tr. at 48, 55. The extent of the noise interference increase following the increase in the speed limit is not quantified in the record and the Board is unable to adequately determine such. The record also does not identify when the speed limit increase went into effect, what studies were undertaken prior to the increase, or what part the local residents may have had in those studies. Additionally, Mr. Arendovich claims that incentives for truck drivers travelling at night have further disrupted his sleeping habits. Compl. Br. at 15. However, this claim is unsupported by any facts in the record. Therefore, while it is true that residents were or should have been aware of the proposed tollway, claims made at hearing indicate that changes have been made in the operation of the tollway since its actual construction that have intensified the level of noise interference in the area. But no specific evidence has been presented to the Board to allow a Board finding on these claims.

ISTHA states that five transportation alternatives were examined and evaluated in the draft and final SEIS, including (1) no action, (2) mass transit alternative, (3) Lemont bypass alternative, (4) enhanced arterial alternative, and (5) tollway/freeway alternative. Resp. Br. at 17. The SEIS determined that the tollway alternative maximized access to regional job centers by achieving the greatest reduction in year 2020 travel times, was the most consistent with local land planning, growth management and transportation goals, and avoided and minimized environmental impacts to the extent practicable. Resp. Br. at 17, citing Resp. Exh. 1 at 3-6. Mr. Zucchero testified that the I-355 extension was the "least environmentally damaging" of the alternatives that were explored. Tr. at 142. Both Ms. Palmer and Mr. Zucchero stated at hearing that the I-355 extension was moved from its originally proposed location to accommodate concerns posed by the area residents and to have less environmental impact. Tr. at 52-53, 106.

After considering the findings of the SEIS, the recording of the tollway location prior to Mr. Arendovich's arrival in the area, the surrounding area and the intensified operations since the tollway's original proposal, the Board finds that this factor weighs against a finding that the interference is unreasonable.

Technical Practicability and Economic Reasonableness

In considering this factor, the Board "must determine whether technically practicable and economically reasonable means of reducing or eliminating noise emissions from the [source] were readily available to [the respondent]." Charter Hall, PCB 98-81, slip op. at 24. Further, as previously stated by the Board,

[t]he focus of inquiry into the technical practicability and economic reasonableness of control is what can be done about the purportedly offensive sounds. The focus of inquiry into any subsequent compliance is what has been done about the purportedly offensive sounds. Zivoli, PCB 89-205, slip op. at 12.

ISTHA notes that the I-355 extension cost nearly \$800 million to construct. Resp. Br. at 18. Both Mr. Arendovich and ISTHA agree that moving the tollway is not an option. Compl. Br. at 7, Resp. Br. at 18.

Mr. Arendovich requests that the Board order ISTHA to undertake substantial steps to address the excessive noise originating from the I-355 extension. Compl. Br. at 15. These steps include completing construction of a barrier on the 135th Street bridge of 14 feet high, and the installation of additional noise barriers from the south of the 135th Street bridge to Archer Avenue. *Id.*

ISTHA contends that it is neither technically practical nor economically reasonable to construct another sound wall because the 135th Street bridge "was simply not designed to support the weight or absorb the wind shear associated with a sound wall." Resp. Br. at 18. Mr. Zucchero testified that there was concern "about the ability of putting too much weight on top of the bridge or building more of a wall on top of the bridge." Tr. at 127. At hearing, Mr. Arendovich brought up the use of lightweight materials instead of wood or concrete for building the wall. Tr. at 200. However, Mr. Zucchero testified that these lightweight materials were not used because they were previously "blown to pieces" when ISTHA tried using them. *Id.* at 226. While Mr. Zucchero attested to not being a bridge or structural engineer (Tr. at 126), Mr. Arendovich did not provide the Board with any arguments as to why the lightweight materials would be suitable to the 135th Street bridge, and the record does not contain any evidence supporting this position.

Mr. Arendovich also claims that the price of extending the wall would be around \$25 per square foot. Compl. Br. at 17. ISTHA contends that this price would be closer to \$35 per square foot. Resp. Br. at 13, Tr. at 197. Mr. Arendovich has not presented any evidence outside of the 1996 EIS that the cost of the sound wall is \$25 per square foot. Further, Mr. Arendovich states that construction of an additional 740 foot wall with a height of 15 feet would cost around

\$250,000, which Mr. Arendovich believes to be economically reasonable. Compl. Br. at 16-17. However, there is no evidence in the record why this amount is reasonable. As Mr. Zucchero stated at hearing, the construction of sound barriers along the I-355 extension was “not a federally funded project.” Tr. at 231. The record does not include any information relating to the finances of ISTHA and the Board cannot make any such assumption without evidence to base it on.

ISTHA further states that there is a “diminishing value to adding height” to the wall, contending that the sound mitigation benefit grows smaller as the wall gets higher. Resp. Br. at 18. Mr. Zucchero testified that, while the wall accounts for a portion of the noise reduction, other factors such as the time and change in traffic may also play a role. Tr. at 228-229. Considering that part of Mr. Arendovich’s request is for expansion of the sound wall into the portion of the I-355 extension bridge unprotected by a sound wall, ISTHA’s own evidence seems to suggest that such an expansion would, to some extent, help mitigate the noise.

Mr. Nitchoff testified that ISTHA informed him that the reason the sound wall was not extended past 135th Street was because there are not enough people living in the area to justify putting in a wall. Tr. at 55-56. Mr. Nitchoff did not indicate that he was told the extension of a sound wall was not possible, and ISTHA did not refute Mr. Nitchoff’s position.

Mr. Arendovich requested an increase in the height of the sound wall, but he offered no evidence that a height increase would alleviate the noise interference at all. Given the lack of evidence that a higher wall would alleviate the noise level, coupled with ISTHA’s position that the further expansion of a wall is not possible (and no evidence was presented stating otherwise), this factor favors a finding that the interference is not unreasonable.

Subsequent Compliance

Under this factor, “the Board must determine whether [ISTHA] has subsequently come into compliance with the requirements allegedly violated.” Charter Hall, PCB 98-81, slip op. at 25. The Board also considers whether ISTHA has made any attempts to address the emissions that have led to the alleged violations of the Board’s regulation. Petrosius, PCB 04-36, slip op. at 21.

According to the SEIS, a sound wall was not required to be built. Resp. Br. at 8. However, since such a wall existed in the EIS, and “[o]ut of fairness” to the area residents, ISTHA incorporated a sound wall into its construction plan. *Id.* at 19. As Mr. Zucchero stated at hearing, ISTHA “went beyond what was required from [FHWA].” Tr. at 145. At the request of Mr. Arendovich, the sound wall was later increased by two feet and lengthened 70 feet. Resp. Br. at 19. Later, ISTHA constructed a wooden wall along the 135th Street bridge. *Id.* ISTHA indicated that it has spent \$1.3 million to mitigate noise generated near 135th Street. *Id.* at 18. ISTHA believes that these additional sound walls and corresponding expenditures “constitute significant efforts to reduce sound in the area near 135th Street and to satisfy [Mr. Arendovich] and his neighbors.” *Id.*

The record is not entirely clear on what effect the sound walls have had on preventing the noise interference from reaching the property. Mr. Arendovich stated at his deposition that the 16 foot wall in front of his home has, to some extent, been effective. Tr. at 96. This Board has previously held “[t]hat sounds are clearly perceived or even subjectively objectionable is not enough to warrant a finding of violation.” Zivoli, PCB 89-205, slip op. at 16, fn 11. Mr. Arendovich has continued to complain about the noise entering his property from the I-355 extension following construction of the sound walls. Further, Mr. Arendovich states that the many mitigating efforts he has undertaken around his home have not “reduced the noise penetration to an acceptable level in our second floor level.” Comp. Br. at 12. However, as stated by Mr. Zucchero at hearing, all noise walls are designed for first floor ground level protection. Tr. at 159.

Even though the interference has continued, the record indicates that ISTHA continued to accommodate Mr. Arendovich’s concerns far beyond what was required under the SEIS, and ISTHA has spent around \$1.3 million in improving the noise levels in the area. Following continued communications with Mr. Arendovich, ISTHA prepared an internal report on the noise levels in the area surrounding Mr. Arendovich’s home. Resp. Exh. 5. This report indicates that the current sound barrier is 422-feet longer than was originally proposed in the EIS. Resp. Exh. 5 at 2. These improvements do not appear to have alleviated the interference that the noise is imposing on Mr. Arendovich. However, Mr. Zucchero testified at hearing that the number of residents in the area within half a mile north and south of the I-355 extension numbered “in the 20s” and that, out of those neighbors, only Mr. Arendovich and one other neighbor have approached ISTHA to complain about the noise level. Tr. at 137-138. As noted by ISTHA, Mr. Arendovich does not address, “assuming the longer and higher wall could be built on the bridge, that [he] would be satisfied.” Resp. Br. at 11.

Taking into account the considerable improvements performed by ISTHA to this point, this factor favors a finding that the interference is not unreasonable.

CONCLUSION

The Board finds that the noise emanating from the I-355 extension constitutes a substantial interference with Mr. Arendovich’s enjoyment of his property. However, after evaluating the Section 33(c) factors, the Board finds that the noise interference is not unreasonable under 35 Ill. Adm. Code 900.102.

This opinion constitutes the Board’s findings of fact and conclusions of law. The Board dismisses this case and closes the docket.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2010); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The

Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on July 12, 2012, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board