

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Doug and Geri Boyer,

Complainants,

v.

MRB Development, LLC d/b/a
Copper Fire; Renae Eichholz; and
Mark Eichholz,

Respondents.

PCB _____

(Enforcement)

NOTICE OF FILING

TO: RESPONDENTS RENAE AND MARK EICHHOLZ, 200 E MAIN STREET, BELLEVILLE, ILLINOIS 62220; AND RESPONDENT MRB DEVELOPMENT, LLC D/B/A COPPER FIRE, BY AND THROUGH ITS ATTORNEY, PAUL E. PETRUSKA, GREENSFELDER, HEMKER & GALE, P.C., 12 WOLF CREEK DRIVE, SUITE 100, BELLEVILLE, ILLINOIS 62226.

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board Complainants Doug and Geri Boyer's enforcement complaint, a copy of which is herewith served upon you.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. You may also be required to attend a hearing in this proceeding at a date set by the Board. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

Dated: September 30, 2021

LATHROP GPM LLP



Matthew Jacober (IL #6256140)
7701 Forsyth Boulevard, Suite 500
Clayton, MO 63105
(314) 613-2845
Matthew.Jacober@LathropGPM.com

**ATTORNEY FOR COMPLAINANTS
DOUG AND GERI BOYER**

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MRB Development, LLC d/b/a
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APPEARANCE

I hereby file my appearance in this proceeding, on behalf of Complainants Doug and Geri Boyer.

Dated: September 30, 2021

LATHROP GPM LLP



Matthew Jacober (IL #6256140)
7701 Forsyth Boulevard
Suite 500
Clayton, MO 63105
(314) 613-2845
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(Enforcement)

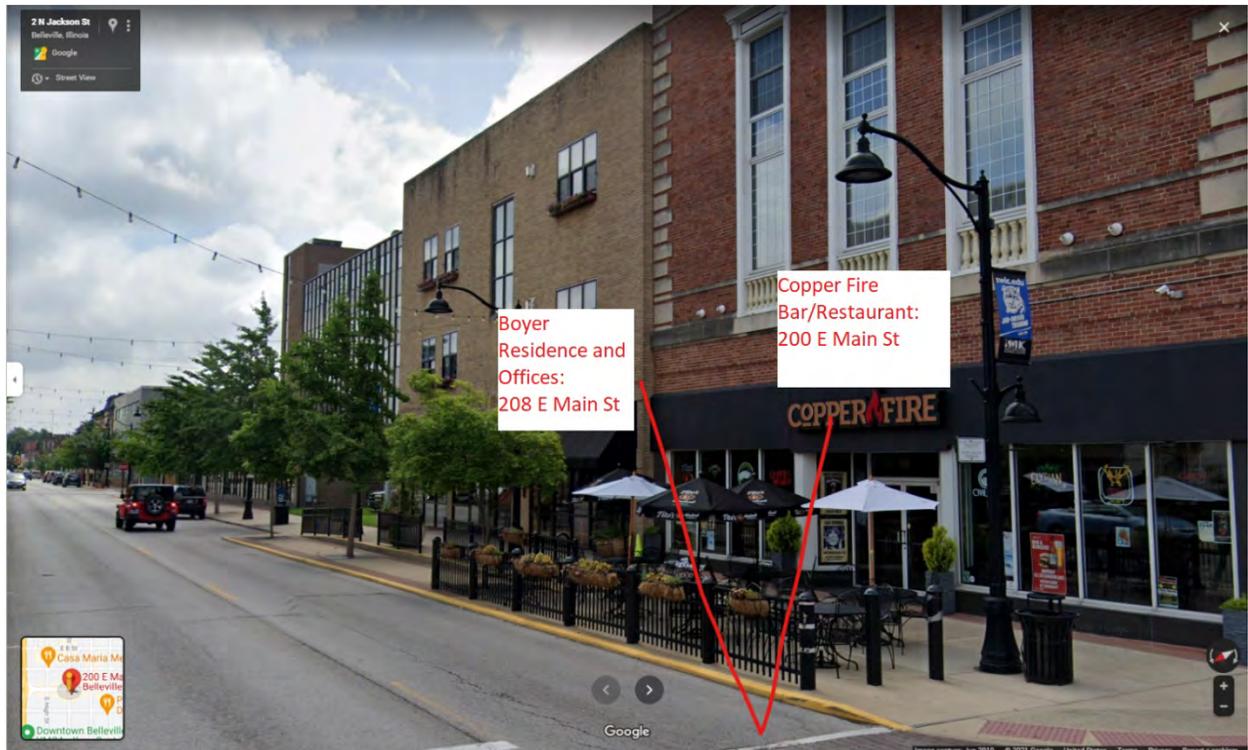
THE PARTIES

1. Complainants Doug and Geri Boyer (“the Boyers”) are a married couple who live and work at 208 East Main Street, Belleville, St. Clair County, Illinois 62220.
2. Respondent MRB Development, LLC is an Illinois limited liability company with its principal office address at 6950 Reinneck Road, Belleville, Illinois 62221. Respondents Renae and Mark Eichholz are both managers of MRB Development, LLC. Respondents own and operate a bar/restaurant called Copper Fire, located next door to the Boyers’ residence at 200 East Main Street, Belleville, St. Clair County, Illinois 62220.

FACTUAL BACKGROUND

3. 208 East Main Street is a historic, three-story brick building in downtown Belleville. The Boyers purchased and moved into the building more than a decade ago, in 2010.
4. Since then, the Boyers have leased the first floor of 208 East Main Street to Kaskaskia Engineering Group, LLC (“KEG”)—a full-service civil engineering, environmental, and contracting firm founded, owned, and managed by Geri Boyer.

5. The upper floors of 208 East Main Street contain eight residential lofts. The Boyers live in one of the second-story lofts, and rent out the remaining units.
6. As shown in the Google Maps Street View screenshot below, 208 East Main Street is directly adjacent to 200 East Main Street, with the properties sharing a wall along their eastern and westernmost edges, respectively:



7. Since the Boyers moved into their home in 2010, numerous different businesses have occupied 200 East Main Street, including a sandwich shop and a coffee shop. None of those businesses interfered with the Boyers' ability to live and work at their home.
8. However, that changed when Respondents began using the property at 200 East Main Street to operate a bar/restaurant in 2016.
9. Copper Fire is a bar and restaurant whose website touts an "environment filled with laughter and music." The restaurant has gone from taking orders and delivering to tables to order and pick up at the bar. Over the past two years, it has regularly hosted live music

events, with a variety of musical acts performing both indoors and outside using an adjacent street closure permit.

10. The live music events at Copper Fire are frequent, and take place on weeknights as well as weekends. For example, Copper Fire hosted live music events on 20/30 days in June 2021 and 21/31 days in July 2021. The events take place at varied times, usually beginning in the late afternoon on weeknights and continuing until the restaurant closes, often past midnight. On weekends, the events can begin in the morning and last all day.
11. In order to use the property at 200 East Main Street as a bar/restaurant, Respondents were required to obtain a Special Use Permit from the Belleville Zoning Board. Once this permit was granted, Respondents performed extensive renovations to prepare the building for this special use. However, despite the fact that the restaurant would be regularly hosting live music performances, Respondents did not install any sound mitigating equipment to attempt to prevent this noise from disturbing neighboring properties.
12. Making matters worse, the indoor stage that Respondents provide for their musical guests is directly in front of the wall the restaurant shares with the Boyer residence. This dividing wall consists of brick on both sides, with an air space between the walls. No additional plaster or other sound dampening material is on the brick wall. This wall does not do enough to attenuate the sound of live music being played directly in front of it.
13. As a result, each time Copper Fire hosts a live music event, the Boyers can both hear and feel the noise from within their home. The live music events at Copper Fire not only subject the Boyers to frequent, unpredictable noise, but also cause vibrations that can be felt throughout the Boyers' home and office space.

14. This noise pollution materially and unreasonably interferes with the Boyers' use and enjoyment of their home. For example, the loud sounds coming from Copper Fire drown out other sounds, making it impossible for the Boyers to watch television, listen to their own music, or engage in conversation with each other. Even silent activities, such as reading, are impracticable as the vibrations in addition to the loud music make it difficult to concentrate.
15. Likewise, the noise emanating from Copper Fire often starts by late afternoon and continues well past midnight, making it difficult for the Boyers to fall asleep at a reasonable hour and stay asleep throughout the night. This inability to establish regular sleep schedules and get sufficient sleep is detrimental to the Boyers' physical health and well-being. On top of this, the Boyers have had to refrain from inviting their grandchildren for overnight visits, since the loud, unpredictable sounds emanating from Copper Fire interfere with the children's ability to fall and stay asleep. Being unable to enjoy this time with their grandchildren causes additional mental distress on top of the physical effects.
16. Respondents' noise pollution also materially and unreasonably interferes with the Boyers' ability to operate their engineering business from its first-floor offices. Geri Boyer and the other KEG employees are unable to work from their offices in the afternoons and evenings once the music begins at Copper Fire because the noise impedes their ability to concentrate on their highly technical engineering work, which requires careful attention to detail. Moreover, the noise from Copper Fire makes it difficult to talk with clients and colleagues, either in person or over the phone. As a consulting firm, this inability to provide a professional environment for effective client communication is highly detrimental.

17. The Boyers have attempted to discuss their concerns with Respondents numerous times, in the hopes that the parties might be able to find a mutually acceptable solution to this problem. However, even when Respondents have agreed to turn down the music, they have failed to follow through on their promise. They have refused to engage in meaningful discussions with the Boyers, and have failed and refused to change their behavior in any way.
18. After these attempts to discuss the matter with Respondents proved unsuccessful, the Boyers sent a cease-and-desist letter to Respondents on March 19, 2021, requesting that they temporarily delay future live music events until sound mitigation equipment could be installed. A true and correct copy of this letter is attached as **Exhibit 1**. When Respondents failed to respond, and continued scheduling and hosting live music events, the Boyers followed up on March 26, 2021 with a second letter making the same request. A true and correct copy of this letter is attached as **Exhibit 2**.
19. Respondents finally responded on March 29, but denied the existence of any problem and refused to make any changes to their behavior. A true and correct copy of this letter is attached as **Exhibit 3**. Respondents continued to host live music events without any effort to mitigate the detrimental effects on their neighbors. For example, Copper Fire hosted such events on 16/30 days in April 2021.
20. In fact, Respondents made it clear that they did not take the Boyers' concerns seriously and had no intention of even attempting to amicably resolve the situation when they posted the sign below in their window on approximately April 15, 2021:



21. In April 2021, the Boyers engaged the services of acoustics expert Mark Biffignani of Sondare Acoustics to measure the amount of unwanted noise from Copper Fire that could be heard in the Boyers' second-story apartment (the "Sound Study"). The Sound Study conformed to the measurement techniques required by Illinois Pollution Control Board regulations and confirmed what the Boyers have been experiencing since Copper Fire moved in—that Respondents allow considerable noise to emanate beyond their property

line into the Boyers' home. A copy of Mr. Biffignani's report and analysis is attached as **Exhibit 4**.

22. Notably, the Sound Study also concluded that this noise pollution could be prevented by installing sound mitigation material, such as a layer of gypsum drywall. This underscores the unreasonableness of Respondents' refusal to take action to prevent this unnecessary interference with the Boyers' lives.

23. The Boyers sent a copy of the Sound Study to Respondents on May 10, 2021, again hoping that they might be able to encourage Respondents to engage in discussions toward finding a mutually acceptable solution to the problem. A true and correct copy of this letter is attached as **Exhibit 5**. However, Respondents continued to deny the magnitude of the problem and failed and refused to engage in any meaningful negotiations. A true and correct copy of Respondents' May 11, 2021 response is attached as **Exhibit 6**.

24. By operating their business in a way that causes such substantial, unreasonable and unnecessary interference with the Boyers' use and enjoyment of their home, Respondents have violated and continue to violate numerous state and local statutes, ordinances, and regulations implemented to protect residents from noise pollution.

VIOLATION OF ILLINOIS POLLUTION CONTROL BOARD NOISE REGULATIONS

25. 35 Ill. Adm. Code § 900.101 defines "noise pollution" as "the emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity."

26. Illinois Pollution Control Board ("IPCB") regulations strictly prohibit such behavior. 35

Ill. Adm. Code § 900.102 provides:

A person must not cause or allow the emission of sound beyond the boundaries of that person's property, as defined in Section 25 of the Environmental Protection Act, that causes noise pollution in Illinois or violates any provision of this Chapter.

27. The measurements taken during the Sound Study confirm that “unwanted sound, noise, is being created across the business property line” between Copper Fire and the Boyer residence. (*See* Exhibit 4 p. 5).
28. This noise constitutes noise pollution because, as described above, it unreasonably interferes with the Boyers’ enjoyment of life by depriving them of their right to the quiet enjoyment of their home, preventing them from establishing a regular sleep schedule and getting sufficient sleep, and causing both physical and emotional distress. This noise also interferes with the Boyers’ ability to operate their lawful engineering business by disturbing employees and interfering with their ability to concentrate, and by impeding their ability to provide effective customer service by creating a noisy, unpredictable environment.
29. In addition, the noise emanating from Copper Fire exceeds the acceptable levels established by 35 Ill. Adm. Code § 901.102(b). Pursuant to 35 Ill. Adm. Code § 901.101, the Boyer residence and KEG offices are categorized as “Class A Land,” while Respondents’ bar/restaurant is categorized as “Class B Land.” 35 Ill. Adm. Code § 901.102(b) establishes the maximum allowable octave band sound pressure levels for sound emanating from Class B land onto Class A land. As shown by the chart below, the Sound Study demonstrated that the noise emitted from Respondents’ property exceeds these limits:

| Octave band center frequency | Maximum decibel level allowed by IPCB regulations | Decibel level recorded at Boyers' home after 10pm on April 23, 2021 ¹ | Decibel level recorded at Boyers' home after 10 pm on April 24, 2021 |
|------------------------------|---|--|--|
| 32 | 63 | 68 | 67 |
| 63 | 61 | 64 | 52 |
| 125 | 55 | 49 | 53 |
| 250 | 47 | 45 | 46 |
| 500 | 40 | 38 | 45 |
| 1000 | 35 | 34 | 42 |
| 2000 | 30 | 27 | 39 |
| 4000 | 25 | 22 | 34 |
| 8000 | 25 | 18 | 30 |

VIOLATION OF 415 ILCS 5/24

30. 415 ILCS 5/24 provides:

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 [Illinois Pollution Control] Board under this Act.

31. As detailed above, Respondents emit noise beyond the boundaries of their property that exceeds the levels allowed under IPCB regulations.

32. In addition, as detailed above, this noise unreasonably interferes with the Boyers' enjoyment of life, as well as with their lawful business activities.

VIOLATION OF BELLEVILLE CODE OF ORDINANCES § 110.31

33. Section 110.31(A) of the Belleville, Illinois Code of Ordinance provides:

No business, trade or occupation shall be carried on in any manner which will create a public or private nuisance, nor shall such operation be carried on in a manner which will produce noise, odor, or other physical disturbances beyond the property line of the premises at which such operations take place, or otherwise threaten the public health, safety, morale, or welfare.

¹ In his report, the acoustics expert noted that he chose the more conservative of two options for measuring the decibel level in the Boyers' home on both April 23 and April 24. His report states that the actual decibel levels may be 3-5 decibels higher.

34. As detailed above, Respondents operate their business in a manner which produces noise beyond their property line.

35. Moreover, this noise constitutes a private nuisance because it unreasonably interferes with the Boyers' enjoyment of life and use of their property.

VIOLATION OF ST. CLAIR COUNTY ZONING CODE §§ 40-8-1 AND 40-8-2

36. Section 40-8-1 of the St. Clair County, Illinois Zoning Code provides:

Hereafter, it shall be unlawful: to erect, use, occupy, enlarge, alter, relocate, or reconstruct any structure or part thereof; to create any lot; or to use, occupy, or develop any lot or part thereof except in conformity with the provisions of this Code.

37. Section 40-8-2(B) of the St. Clair County, Illinois Zoning Code provides:

Noise emanating from any use shall not be of such volume or frequency as to be unreasonably offensive at or beyond the property lines. Unreasonably offensive noises, due to intermittence, beat frequency, or shrillness shall be muffled so as not to become a nuisance to adjacent uses.

38. Respondents are in violation of Section 40-8-1 because their use of their property causes noise to emanate beyond their property line at such volume and frequency as to be unreasonably offensive, and Respondents have failed to muffle that noise so as to avoid causing a nuisance, thereby failing to conform with the provisions of Section 40-8-2.

REQUEST FOR RELIEF

WHEREFORE, Complainants respectfully request that the Illinois Pollution Control Board enter an Order:

1. Temporarily enjoining Respondents from hosting live music events or engaging in other behavior in violation of state and local noise laws and regulations pending resolution of this enforcement action;

2. Permanently enjoining Respondents from hosting live music events or engaging in similar noise-producing behavior unless and until sound mitigation equipment is installed or measures are implemented that reduce the noise emanating from their property to non-nuisance levels; and
3. Providing such other and further relief that the Board deems just and equitable.

Dated: September 30, 2021 **LATHROP GPM LLP**



Matthew Jacober (IL #6256140)
7701 Forsyth Boulevard
Suite 500
Clayton, MO 63105
(314) 613-2845
Matthew.Jacober@LathropGPM.com

**ATTORNEYS FOR COMPLAINANTS
DOUG AND GERI BOYER**

CERTIFICATION

On oath or affirmation, I state that I have read the foregoing and it is accurate to the best of my knowledge.



Doug Boyer



Geri Boyer

09/17/2021
Date

9/17/2021
Date

COMPLAINANT

COMPLAINANT

EXHIBIT 1

STEVEN E. KATZMAN
CHRISTINA M. SUGDEN
DANIEL C. KATZMAN

KATZMAN & SUGDEN, LLC
ATTORNEYS AT LAW
300 SOUTH CHARLES STREET TELEPHONE: (618) 235-2110
BELLEVILLE, ILLINOIS 62220 FACSIMILE: (618) 235-2117

Licensed in Illinois and Missouri

EMAIL: dkatzman@katzmanlaw.net

--- IMMEDIATE DEMAND TO CEASE AND DESIST ---

March 19, 2021

PERSONAL AND CONFIDENTIAL

Renaë Eichholz
Copper Fire Bar and Eatery
200 E. Main St.
Belleville, IL 62220

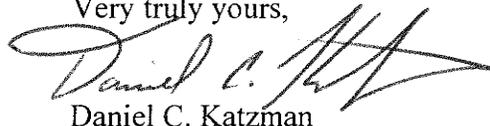
RE: Geri Boyer v. MRB Development, LLC d/b/a Copper Fire

Dear Ms. Eichholz:

Please be advised that I have been retained to represent the interests of Geri Boyer related to her excessive noise complaints against Copper Fire Bar and Eatery. As you are aware, my client both lives and works next door to your establishment. The excessive noise emanating from Copper Fire endangers my client's physical and emotional health and well-being; interferes with legitimate business and recreational activities; depresses property values; offends the senses; creates a public nuisance; and reduces the overall quality of the area, which we believe to be in violation of local ordinances and Illinois law. My client has attempted to amicably resolve this matter with you on numerous occasions with no success. **As such, we are hereby demanding that you IMMEDIATELY cease and desist playing all music, including but not limited to live and recorded, inside the premises of Copper Fire Bar and Eatery located at 200 E. Main St. in Belleville, until proper sound mitigation equipment is installed.**

Should you fail to immediately cease and desist playing such music in violation of this letter, my client has authorized me to pursue any and all legal recourse on her behalf. Please consider this our good faith effort to amicably resolve this matter without the need for law enforcement and/or court intervention. If you have any questions, please do not hesitate to contact me. On behalf of my client, thank you for your courtesy and prompt attention to this matter.

Very truly yours,


Daniel C. Katzman

DCK:dk

cc: Mayor Mark Eckert (via email only)
Chief Col. William G. Clay III (via hand-delivery)
Assistant Chief Lt. Col. Matthew Eiskant (via hand-delivery)
Belleville City Attorney Garrett Hoerner (via email only)
Belleville Assistant City Attorney Brian Flynn (via email only)
Mark Eichholz (via regular mail)

EXHIBIT 2

STEVEN E. KATZMAN
CHRISTINA M. SUGDEN
DANIEL C. KATZMAN

KATZMAN & SUGDEN, LLC
ATTORNEYS AT LAW
300 SOUTH CHARLES STREET TELEPHONE: (618) 235-2110
BELLEVILLE, ILLINOIS 62220 FACSIMILE: (618) 235-2117

Licensed in Illinois and Missouri

EMAIL: dkatzman@katzmanlaw.net

--- FINAL DEMAND TO CEASE AND DESIST ---

March 26, 2021

PERSONAL AND CONFIDENTIAL

Renaë Eichholz
Copper Fire Bar and Eatery
200 E. Main St.
Belleville, IL 62220

RE: Geri Boyer v. MRB Development, LLC d/b/a Copper Fire

Dear Ms. Eichholz:

As I believe you are aware, my office has been retained to represent Geri Boyer related to her excessive noise complaints against Copper Fire Bar and Eatery. We previously served you with a Cease and Desist Letter on March 19, 2021. However, you intentionally failed to comply with the terms of our demand. It is our understanding that you are planning to have music again this weekend in direct violation of our previous letter. We are hereby reiterating our demand that you cease and desist playing all music, including but not limited to live and recorded music, inside the premises of Copper Fire until proper sound mitigation equipment is installed.

It is also our position that operating your business as advertised, without a functioning kitchen, is in direct violation of both your liquor and video gaming licenses from the City of Belleville. For your information, a copy of this letter is also being sent to Mayor Mark Eckert.

The excessive noise emanating from Copper Fire endangers my client's physical and emotional health and well-being; interferes with legitimate business and recreational activities; depresses property values; offends the senses; creates a public nuisance; and reduces the overall quality of the area. My client has attempted to amicably resolve this matter with you on numerous occasions with no success. **As such, we are, once again, hereby demanding that you IMMEDIATELY cease and desist playing all music, including but not limited to live and recorded, inside the premises of Copper Fire Bar and Eatery located at 200 E. Main St. in Belleville, until proper sound mitigation equipment is installed.**

Should you once again fail to immediately cease and desist playing such music in violation of this letter, I will be filing a lawsuit on my client's behalf at the St. Clair County Courthouse. Please consider this our final good faith effort to amicably resolve this matter without the need for law enforcement and/or court intervention. If you have any questions, please do not hesitate to

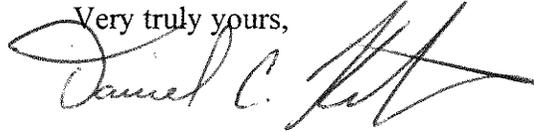
Ms. Renae Eichholz

Page 2 of 2

March 26, 2021

contact me. On behalf of my client, thank you for your courtesy and prompt attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Daniel C. Katzman". The signature is fluid and cursive, with a large initial "D" and "K".

Daniel C. Katzman

DCK:dk

cc: Mayor Mark Eckert (via email only)

EXHIBIT 3

Paul E. Petruska
E-mail: ppetruska@greensfelder.com
Direct Dial: (618) 239-3607

March 29, 2021

Daniel C. Katzman
Katzman & Sugden, LLC
300 South Charles Street
Belleville, IL 62220

Re: Geri Boyer v. MRB Development, LLC d/b/a Copper Fire

Dear Mr. Katzman:

I am the attorney for MRB Development, LLC d/b/a Copper Fire. I am acknowledging receipt of your March 19 and March 26 letters. My client is well aware that Mrs. Boyer has complaints, but your client has offered no clarity to the extent of the problem. My client has been asked to cease all music while your client has not provided any evidence there are any noise violations. If you want compliance with a specific ordinance, please identify with specificity which noise or gaming ordinance you believe my client is violating.

Your client serves on a commission dedicated to inviting business to downtown generally, and main street specifically. That committee approved my client's business three years ago. My client has had live music the entire time. Your client's decision to pursue her complaints now is questionable. My client, who spent a year fighting to survive under COVID-19 restrictions, and then suffered a property casualty when the restrictions eased, now has the additional trauma of dealing with your client's threats and accusations of depressing property values, creating a public nuisance and reducing the overall quality of the area with absolutely no facts.

My client is well aware of your client's special relationship with the Mayor. This is the Mayor that also serves at the Liquor and Gaming Commissioner. The fact that you carbon copied the Mayor on both letters cannot be interpreted in any way other than an intimidation tactic. If my client's liquor license is threatened in any way by the Mayor, we will know why.

If you want to talk about the exact ordinances my client is violating and present any facts your client may have, then I am willing to discuss a possible resolution to this dispute. Thank you.

Sincerely,

GREENSFELDER, HEMKER & GALE, P.C.



Paul E. Petruska

PEP/tlc
#92471

EXHIBIT 4

Sondare Acoustics

May 5, 2021
Rev A- May 21, 2021

Geri Boyer
President
Kaskaskia Engineering Group

Reference: Sound Study

Geri,

This report was revised on May 21, 2021 to update information from the Belleville Code of Ordinances and St Clair County Code.

Per the estimate dated April 14, 2021, a sound study was performed to assess a perceived noise annoyance created by Copper Fire restaurant at 200 E Main St, Belleville, IL. The sound study included sound level measurements in the second story loft adjacent to the restaurant on Friday April 23, 2021 from 3:55-4:00pm and 7:30pm to Saturday 2:33am and on Saturday April 24 from 10:51am to Sunday 1:51am.

To characterize the measured sound levels, the following is a list of and type of music performed during the measurement period;

Friday April 23 night- Steel Creek- 6 member acoustic country band

Saturday April 24 Day, 11:00 am- Billy Barnett- solo acoustic guitarist;

3:00pm Moonbuzz Acoustic- two person acoustic band

Saturday April 24 night – DJ - 80s playlist

General Information-

The dividing wall between the restaurant and the loft is a brick wall consisting of brick on both sides with an airspace of 10-12 in. Neither side is plastered. It is estimated that this wall has an $STC=55$ and a field or $ASTC=48$. Although the STC rating of a partition is to estimate blocking of speech, it can be used to estimate the sound blocking of music.

In order to ensure that sounds created for various purposes don't become noise annoyances for the community, ordinances and guidelines are in place that provide specific limits for daytime and nighttime sound levels. Ordinances can be in place at the local, regional or state level. Guidelines are provided by the World Health Organization (WHO), federal agencies, the Acoustical Society of America, the Institute of Noise Control Engineering and others.

Terms:

Noise – unwanted sound

SPL-Sound Pressure Level - This is usually stated as un-weighted unless specified.

SPL (A) – The A-weighted sound pressure level. This is the SPL with a weighting applied which corresponds with human hearing.

Leq, T – The equivalent sound level measured over the measurement period, T.

Leq, A, T- The A weighted sound level measured over the measurement period T.

LA, max – The A weighted max sound level.

Ordinances-

1. The City of Belleville, IL. Code of Ordinances includes a restriction on noise under Title XI: Business Regulations, Chapter 110 General Licensing Provisions
§ 110.31 PROHIBITION AGAINST NUISANCES.
 - (A) No business, trade or occupation shall be carried on in any manner which will create a public or private nuisance, nor shall such operation be carried on in a manner which will produce noise, odor or other physical disturbances beyond the property line of the premises at which such operations take place, or otherwise threaten the public health, safety, morale or welfare.

2. The St Clair County Code, Chapter 40 – Zoning Code, also addresses noise annoyance in Article VIII (p.170), General Requirements and Standards, Section 40-8-2
 - (B) Noise emanating from any use shall not be of such volume or frequency as to be unreasonably offensive at or beyond the property lines. Unreasonably offensive noises, due to intermittence, beat frequency, or shrillness shall be muffled so as not to become a nuisance to adjacent uses.

3. The State of Illinois provides a regulation governed by the Illinois EPA referred to as:
Noise Free Regulation
Title 35: Environmental Protection
Subtitle H: Noise
Chapter 1: Pollution Control Board Part 900
General Provisions Part 901: Sound Emission Standard and Limitation for Property Line Noise Sources.

The regulation limits sound received in a Class A Land (residential) emitted by a Class B Land (restaurant/bar). The allowable un-weighted octave band frequency sound pressure levels (dB) are provided for daytime 7am to 10pm and nighttime 10pm to 7am as summarized in Fig. 1 below.

| SPL (dB) Limits measured in Land Use A, Emitted by Land Use B | | |
|--|------------------|--------------------|
| Octave Band center frequency(Hz) | SPL (dB) Daytime | SPL (dB) Nighttime |
| 32 | 72 | 63 |
| 63 | 71 | 61 |
| 125 | 65 | 55 |
| 250 | 57 | 47 |
| 500 | 51 | 40 |
| 1000 | 45 | 35 |
| 2000 | 39 | 30 |
| 4000 | 34 | 25 |
| 8000 | 32 | 25 |

Fig. 1

Community Guidelines

The WHO provides guidelines for acceptable sound levels including for understanding speech and for sleep. The guideline provided for nighttime is an equivalent A-weighted sound level Leq A= 30dBA and a max sound level Lmax= 45dBA in order to provide a good environment for sleep.

In addition, Noise Criteria (NC) is provided as guidelines for different living spaces. The NC values are determined by comparing un-weighted measured octave band sound levels in a space and comparing them to a set of NC curves. For a bedroom, the NC rating should be between 25-35 and for a general living space between 30-40.

Sound Level Measurements of the Boyer Second Story Loft

The measurements were conducted over the time periods stated above capturing sound levels covering both daytime and nighttime hours. Although the equivalent sound level for the entire measurement period was measured, the sound level for any given time was also measured. In addition sound levels were measured by octave band for the entire measurement periods, and were also captured for a specific time period. This allowed for analysis of measurements for the daytime and nighttime periods of time.

In addition, per the EPA regulation the measurement microphone can be placed anywhere in the receiving room as long as it is no less than 25ft from the sound source. Due to the sound in the restaurant being spatially distributed, it was difficult to determine the actual 25ft distance from the source. It was assumed that the band or DJ was located on a stage on the outside glass wall adjacent to the brick dividing wall on the first floor. The distance from a source sound 3ft in front of the stage to the second story microphone placed 6 ft from the wall was estimated to be about 30ft. **It should be noted that if the microphone was placed 3ft from the wall and still within 25 ft from the sound source, the measured sound levels would be expected to be 3-5 dB higher.**

The Daytime ambient level measured Friday afternoon was about SPL (A) =30dBA.

The Nighttime ambient level measured both Friday and Saturday night at 1:00 am was SPL (A) =29dBA.

In order to determine if sound levels in the loft exceeded the levels shown in Fig 1, the measurements were separated between the daytime and nighttime hours. Although music was played during daytime hours on both Friday and Saturday, they did not exceed the daytime criteria. The measured levels during the nighttime, after 10pm, were captured and compared to the criteria as shown in Fig.2. The nighttime measurement periods were for 1 hour or more. The octave band sound levels shown occurred one or more times during the measurement period and were adjusted for octave band ambient levels.

| Octave Band Frequency (Hz) | EPA REG Nighttime not to exceed dB level | Loft -Friday night after 10pm (dB) | Loft- Saturday night after 10pm (dB) |
|----------------------------|--|------------------------------------|--------------------------------------|
| 32 | 63 | 68 | 67 |
| 63 | 61 | 64 | 52 |
| 125 | 55 | 49 | 53 |
| 250 | 47 | 45 | 46 |
| 500 | 40 | 38 | 45 |
| 1000 | 35 | 34 | 42 |
| 2000 | 30 | 27 | 39 |
| 4000 | 25 | 22 | 34 |
| 8000 | 25 | 18 | 30 |

Fig. 2

The average sound levels during the 10pm – 11:30pm time periods on both Friday and Saturday are shown in Fig.3 below

| WHO Recommended sound level for sleep | Loft- Friday | Loft Saturday |
|---------------------------------------|---|--|
| LeqA=30dBA | 10:26-11:00pm(band on break 10-10:26) LeqA (.5hr)=38 dBA | 10:00pm-11:25pm LeqA(1.5hr)=39dBA |

Fig. 3

Analysis-

1. Unwanted sound, noise, is being created across the business property line, which does not meet both the Belleville or St.Clair County referenced codes.
2. As shown in Figure 2, the octave band sound level measurements exceed the Illinois EPA Noise Regulation.

An example of the measured octave band levels for a specific time is shown in Appendix A. (As noted, if the microphone is moved closer to the property line, but still within 25ft from the source, the levels would increase resulting in several more octave bands not meeting the criteria.)

3. Although the daytime measured sound levels did not exceed the EPA limits, given that they were continuous for a long duration, they can be perceived as a noise annoyance.
4. As shown in Fig.3, the average nighttime sound levels do not meet the WHO guidelines.

Given that the WHO recommendation for sleep in a quiet environment is LeqA=30dBA and LAm_{ax}=45, the measured LeqA=39dBA and LAm_{ax}=48 would not provide a good environment for sleep. For reference the sound level at 1am was about LeqA=28dBA.

5. The NC rating of 45 does not meet the recommended NC ratings for a bedroom and for a living space.

6. The daytime and nighttime ambient sound levels are very low at 28-30dBA indicating that in general the loft is a very quiet living space when music is not being played in the restaurant.
7. A general estimate of the sound level in the loft from music in the restaurant can be calculated as follows. Live music or a DJ can create a sound level of about 94dBA. Assuming the sound is spatially distributed in the room, but may also decrease with distance, and the brick wall provides about 48dB of sound blocking, the expected sound level in the loft would be $94 - 9$ (for distance) $- 48$ (wall) = 37dBA. This correlates with the measured average sound level of $L_{eqA}=39$ dBA.
8. In order to reduce the sound levels in the loft and meet the local, county and state regulations, it is recommended that the sound levels in the restaurant be reduced by 10dB or more and managed to provide less of a noise annoyance during the daytime and provide a quiet environment for sleep during nighttime hours.

In addition sound blocking provided by the brick wall could be increased by adding mass to the inside of the restaurant brick wall. This could be a layer of gypsum drywall over the brick wall. An analysis would be needed to estimate the thickness of the drywall and the resulting transmission loss and field ASTC.

9. It should be noted that the measured sound levels corresponded with the types of music played during the measurement period.

The sound levels were-

Lowest during the Saturday morning and afternoon time periods when 1-2 person acoustic music was played.

Higher Friday night with an acoustic band.

Highest Saturday night with a DJ.

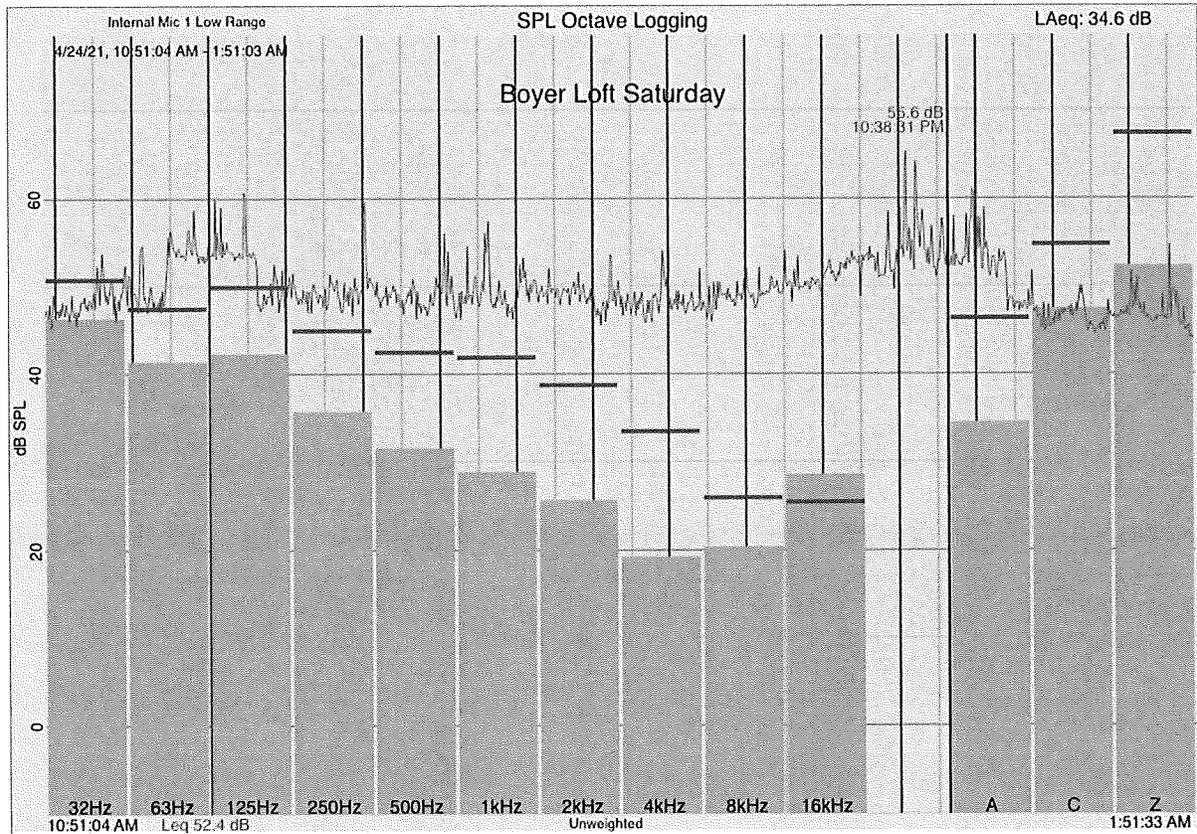
It is expected that when a larger member, amplified rock band plays in the restaurant, the measured sound levels in the loft would be much greater than those measured during this measurement period.

Please let me know if you have any questions about the above.

Thanks

Mike Biffignani
President Sondare Acoustics
3145688042

Appendix A



Notes;

1. The solid red line is the un-weighted sound level measured over the time period. The sound level starts to increase at about 8pm and until about 11:25pm. There is also an increased sound level earlier in the day for about an hour.
2. The solid, wide blue bars are the average un-weighted sound levels for each octave band over the entire time period.
3. The black lines are the un-weighted octave band levels for the specific time selected by the cursor. In this example the cursor is at 10:38pm Saturday. The octave band levels are considerably higher at this time when the music is being played.

EXHIBIT 5

KATZMAN & SUGDEN, LLC

STEVEN E. KATZMAN
CHRISTINA M. SUGDEN
DANIEL C. KATZMAN

ATTORNEYS AT LAW
300 SOUTH CHARLES STREET TELEPHONE: (618) 235-2110
BELLEVILLE, ILLINOIS 62220 FACSIMILE: (618) 235-2117

Licensed in Illinois and Missouri

EMAIL: dkatzman@katzmanlaw.net

May 10, 2021

VIA EMAIL ONLY: ppetruska@greensfelder.com

Paul Petruska
Attorney at Law
12 Wolf Creek Dr.
Suite 100
Belleville, IL 62226

RE: Geri Boyer v. MRB Development, LLC d/b/a Copper Fire

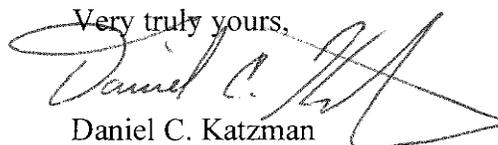
Dear Mr. Petruska:

Hope this letter finds you well. As I am sure you are aware, not only have your clients failed to cease and desist from playing loud music, they have actually increased the excessiveness of the noise. This was made obvious by the sign inside Copper Fire stating “[m]y neighbors are listening to great music whether they like it or not.” My client recently retained the services of an acoustic engineer to test the noise levels inside her loft, which is attached to this letter. As you will note, the sound level measurements exceed the Illinois EPA Noise Regulations, the World Health Organization Guidelines, and the Noise Criteria for different living spaces.

The expert report states that it “is expected that when a larger member, amplified rock band plays in the restaurant, the measured sound levels in the loft would be much greater.” This was indeed the case over this past weekend. As evidenced by the attached photograph, at 11:35 p.m. on May 8, 2021, my client’s loft was reading 55.1 dBA for a continuous period of time, in violation of the governing excessive noise laws. It is my understanding that another Belleville Main Street restaurant owner came into my client’s loft and was in disbelief by the excessive noise level. My client’s tenants, who live in the building, have threatened to move out if the situation with Copper Fire is not remedied. The blatant disregard for the governing law has created a nuisance, which has had and will continue to have a devastating effect on my client, mentally, physically, and monetarily.

With that being said, my client would still like to reach an amicable resolution with Copper Fire. However, given your client’s conscious disregard of our complaints and my client’s well-being, we are prepared to pursue action either through the Illinois EPA or St. Clair County Circuit Court. A copy of the sound study was provided by my client to the Belleville Police Department, which is currently investigating the situation. If your client wishes to discuss an amicable resolution, please do not hesitate to contact me. Thank you for your courtesy.

Very truly yours,



Daniel C. Katzman

DCK:dk
Attachments

EXHIBIT 6

Paul E. Petruska
E-mail: ppetruska@greensfelder.com
Direct Dial: (618) 239-3607

May 11, 2021

Daniel C. Katzman
Katzman & Sugden, LLC
300 South Charles Street
Belleville, IL 62220

Re: Geri Boyer v. MRB Development, LLC d/b/a Copper Fire

Dear Mr. Katzman:

This will acknowledge receipt of your letter and sound engineering report. I wish this whole situation would have started in this manner. The engineering report is helpful in many ways. In my very first letter to you, I asked what noise ordinances we were allegedly violated. Yesterday, was the first time I received a response to that question. I was unaware of any local ordinance my client could possibly be violating, and it is helpful to know there is no local ordinance at issue. With respect to the Illinois EPA standards, I am willing to discuss compliance issues with respect to those standards.

The report also indicates, but does not directly state, that your client wishes to put the full burden on my client to make your client's apartment perfect for sleep. This is not the law, and you know it. In the end, this goes back to my original question of what your client is willing to do. Even the Illinois EPA standard (which defines noise pollution) does not require my client to keep noise at 30 dBA with a maximum of 45 dBA. It actually isn't even close. Your client has some responsibility here also.

In a good faith effort to resolve this dispute, I would like to sit down with you to see if there is a path to some resolution. Normally, I would recommend we include our clients in that discussion, but I think it has to be the next step. If you and I establish a possible pathway to a resolution, I think we can get our clients to sit down to discuss the details.

Sincerely,

GREENSFELDER, HEMKER & GALE, P.C.



Paul E. Petruska

PEP/tlc

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | |
|--|--------------------------------|
| Doug and Geri Boyer, Complainants, v. MRB Development, LLC d/b/a Copper Fire; Renaë Eichholz; and Mark Eichholz, Respondents. | PCB _____ (Enforcement) |
|--|--------------------------------|

CERTIFICATE OF SERVICE

I, Matthew Jacober, state as follows:

1. I am one of the attorneys representing Complainants Doug and Geri Boyer in the above-captioned enforcement matter.
2. As of the filing of this document, service of the complaint and supporting documents as listed below upon Respondents MRB Development, LLC; Renaë Eichholz; and Mark Eichholz has been initiated but not yet completed.
3. On September 30, 2021 at 11:20 a.m., at the offices of Lathrop GPM LLP, 7701 Forsyth Boulevard, Suite 500, Clayton, Missouri 63105, and having prepaid all necessary delivery charges, I delivered the following documents to a process server employed by Metro Legal Services for personal service on Respondents:
 1. Complaint;
 2. Notice of Filing;
 3. Notice of Appearance of Matthew Jacober; and
 4. A copy of this Certificate of Service.

4. The process server was instructed to serve Respondent MRB Development, LLC d/b/a Copper Fire via personal service upon its attorney, Paul E. Petruska, at the law offices of Greensfelder, Hemker & Gale, P.C., 12 Wolf Creek Drive, Suite 100, Belleville, Illinois 62226.
5. The process server was instructed to personally serve Respondents Renae and Mark Eichholz at 200 E Main Street, Belleville, Illinois 62220.
6. I state that I will file and serve the process server's signed declaration of service within seven days after it becomes available to me, in accordance with the requirements of Title 35, Section 101.304(d)(1)(B) of the Illinois Administrative Code.

Dated: September 30, 2021

LATHROP GPM LLP



Matthew A. Jacober (IL # 6256140)
7701 Forsyth Boulevard
Suite 500
Clayton, MO 63105
(314) 613-2845
Matthew.Jacob@LathropGPM.com

**ATTORNEY FOR COMPLAINANTS
DOUG AND GERI BOYER**