

ILLINOIS POLLUTION CONTROL BOARD
August 30, 1990

ROBERT J. KVATSAK and)
ALICE JOAN KVATSAK (deceased),)
)
Complainant,)
)
v.) PCB 89-182
) (Enforcement)
ST. MICHAEL'S LUTHERAN CHURCH,)
)
Respondent.)

MR. ROBERT J. KVATSAK, APPEARED PRO SE.

MR. ALFRED L. SCHUBKEGEL, JR., AND MR. CARL J. ELITZ, LORD,
BISSEL & BROOK, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board on a citizen's complaint filed by Robert J. Kvatsak and Alice Joan Kvatsak (now deceased) ("Kvatsak") charging that St. Michael's Lutheran Church ("St. Michael's") in LaGrange Park, Illinois has caused noise pollution in violation of Section 24 of the Environmental Protection Act ("Act") and Section 900.102 of the Board's regulations, 35 Ill. Adm. Code 900.102, in the operation of its electronic carillon system.

Procedural History

The complaint was filed on November 9, 1989. St. Michael's filed a motion to dismiss on December 21, 1989 alleging that the complaint was frivolous and the Board lacked jurisdiction due to the form of filing. The Board denied the motion to dismiss on January 11, 1990. Hearing was held on March 19, 1990. Complainant's brief was filed on April 12, 1990. Respondent's brief was filed April 27, 1990 and Complainant's reply brief was filed on May 7, 1990.

On May 10, 1990, the Board issued an Order which provided that respondent's motion to exclude certain evidence, filed on April 27, 1990, would be taken with the case in chief. The Board hereby denies Respondent's motion to exclude two letters in support of complainant's position, which were admitted by the hearing officer. See Transcript (Tr.) at p. 53. The Board affirms the hearing officer's finding that the letters are relevant. While admissible pursuant to the standard of 35 Ill. Adm. Code 103.204, the Board notes that the weight of this

evidence is reduced accordingly, due to the inability of Respondent to cross-examine the authors of the letters.

The Facility

St. Michael's Lutheran Church is located at 500 East 31st Street, LaGrange Park, Illinois. The location is on a busy street, within a few blocks of railroad tracks. Other sources of noise in the vicinity of St. Michael's include street and rail traffic, as well as considerable noise from airplanes passing above.

The carillon sounds are transmitted from four speakers attached at roof level on the church. The speakers point in four different directions to cover the area in all directions from the church. Since 1983 when the system was installed, the volume has generally been set at about 60% of full capacity.

The Complaint

The complaint filed by the Kvatsaks alleges that noise pollution is "caused by the use of an electronic carillon, amplified through loudspeakers mounted on the roof of St. Michael's Lutheran Church." Compl., para. 4. The noise allegedly violates Section 24 of the Act in that it "unreasonably interferes with the enjoyment of life or with any lawful business or activity." Section 24 of the Act. Section 900.102 of the Board's regulations is also allegedly violated by the emission of sound beyond St. Michael's property which causes noise pollution. The sound emissions consist of "[t]he amplification of chimes, songs and gongs emitted from the loudspeakers on top of St. Michael's..." Compl., para. 6. The complaint alleges that since 1983 chimes have been sounded hourly from 9 a.m. to 6 p.m. and that songs are played for 7-10 minutes daily, 7 days per week at 12:30 p.m. and 5:30 p.m. Additionally, on Sundays, the following schedule was alleged: songs are played at 7:45 a.m., 10:30 a.m. and 11:30 a.m.; a gong is rung at 8:00 a.m., 9:30 a.m., and 10:45 a.m. Compl., para. 7.

The Kvatsaks describe the effect of the alleged noise pollution as follows:

The use of these loudspeakers destroys the peace and tranquility of our home both inside and out. Our sleep is disturbed, normal conversation is impossible and average volume on TV and radio is not enough to over ride the noise. This amplification system serves no useful purpose, does not improve the quality of our environment and offends the senses.

Compl., para. 8.

Applicable Regulations

Title VI of the Act establishes procedures and standards for noise control. Section 23 sets forth the legislature's purpose of preventing noise which causes a public nuisance. Section 24 prohibits emitting noise beyond one's property which unreasonably interferes with the enjoyment of life or lawful activities in violation of Board rules or standards. The Board's authority to adopt noise regulations is found in Section 25.

Sections 23 and 24 of Title VI provide as follows:

Section 23

The General Assembly finds that excessive noise endangers physical and emotional health and well-being, interferes with legitimate business and recreational activities, increases construction costs, depresses property values, offends the senses, creates public nuisances, and in other respects reduces the quality of our environment.

It is the purpose of this Title to prevent noise which creates a public nuisance.

Section 24

No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act.

The Board has implemented these sections of the Act in two ways. First, the Board has adopted specific numerical limitations on the characteristics of sound that may be transmitted from source to receiver. As no numerical test data were presented in this matter, those portions of the regulations are not at issue. The second method of implementing the noise provisions of the Act are found in 35 Ill. Adm. Code 900.101 and 900.102.

Section 900.101 Definitions

Noise pollution: the emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity.

Section 900.102 Prohibition of Noise
Pollution

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

In effect, these two sections adopt a regulatory public nuisance provision for noise control using the statutory phrase "unreasonable interference with the enjoyment of life or with any lawful business or activity" as the standard. The pleadings, testimony and exhibits of the complainant, regarding noise, are founded in this public nuisance theory, rather than in terms of noise levels which exceed specific sound emissions levels. Various noise enforcement cases, which the Board has previously decided, include: James Kaji, Dorothy Kaji v. R. Olson Manufacturing Co., Inc., PCB 80-46, 41 PCB 245 (1981); Citizens of Burbank v. Overnite Transportation Company, PCB 84-124, 65 PCB 131, (1985), 88 PCB 285 (1988); Citizens of Burbank and People of the State of Illinois, ex. rel., Richard M. Daley v. Clairmont Transfer Company, PCB 84-125, 74 PCB 255 (1986); John W. Eilrich v. James Smith, d/b/a Maywood Shell Car Wash, PCB 85-4, 77 PCB 245 (1987); Thomas & Lisa Annino v. Browning-Ferris Industries of Illinois, PCB 87-139, 91 PCB 349 (1988); Anthony W. Kochanski v. Hinsdale Golf Club, PCB 88-16, 101 PCB 11 (1989); William E. Brainerd v. Donna Hagan, David Bromaghim and Phil Robbins, d/b/a The Gables Restaurant, PCB 88-171, 98 PCB 247 (1989); and Brian J. Peter v. Geneva Meat and Fish Market and Gary Pikulski, PCB 89-151, March 22, 1990; Will County Environmental Network v. Gallagher Asphalt, PCB 89-64, July 19, 1990.

Section 900.101 and 900.102 were given judicial interpretation in the case of Ferndale Heights Utilities Company v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, 41 Ill.App.3d 962, 358 N.E.2d 1224 (1st Dist. 1976). In that case, the First District Court held the regulatory language to be constitutional since sufficient standards could be comprehended from reading Section 24, the Board's regulations, and the guidelines for enforcement cases found in Section 33(c) of the Act. The Court affirmed the Board's finding of unreasonable interference with the enjoyment of life, in light of adequate testimony describing the noise; explaining the type and severity of the interference caused by the noise; and indicating the frequency and duration of the interference. Despite conflicting testimony, the Court upheld the Board's finding that the interference was unreasonable.

The Board has adopted the Ferndale Court's approach to noise pollution in cases which involve unreasonable interference rather than numeric limitations. In a 1985 case finding a violation of Section 24 of the Act and of Section 900.102 of the Board's rules, the Board reached this conclusion:

This testimony meets the Ferndale standard of providing a description of the noise, explaining the type and severity of interference caused by the noise (sleep interruption) and providing information on the frequency and duration of the interference. This type of testimony must be provided in any proceeding for the Board to make a finding regarding interference with the enjoyment of life.

* * * * *

Based on the above-cited evidence, the Board finds that noises emanating from Overnite's facility, specifically from vehicle movement, maintenance, horns and the public address system, are causing interference with the sleep and normal leisure time activities of adjacent residents. Further, the Board finds this interference is frequent and severe.

Citizens of Burbank v. Overnite Trucking, PCB 84-124, 65 PCB 131, 136, 138 (1985).

Section 33(c) Factors

As the Ferndale Court noted, in order to make a determination concerning the reasonableness of the noise emissions, the Board must consider the statutory factors found in Section 33(c) of the Act. That Section provides as follows:

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:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;

3. 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;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any economic benefits accrued by a non-complying pollution source because of its delay in compliance with pollution control requirements;
6. any subsequent compliance.

Section 33(c) of the Act.

These factors guide the Board in reaching a decision on whether or not noise emissions rise to the level of noise pollution, which, by definition, unreasonably interferes with the enjoyment of life, and which is proscribed by the Act and regulations. The Illinois courts have held that the reasonableness of the interference with life and property must be determined by the Board by reference to these statutory criteria. Wells Manufacturing Company v. Pollution Control Board, 73 Ill.2d 225, 383 N.E. 2d 148 (1978); Mystic Tape, Div. of Borden, Inc. v. Pollution Control Board, 60 Ill.2d 330, 328 N.E.2d 5 (1975); Incinerator, Inc. v. Pollution Control Board, 59 Ill.2d 290, 319 N.E.2d 794 (1974); City of Monmouth v. Pollution Control Board, 57 Ill.2d 482, 313 N.E.2d 161 (1974). However, complainants are not required to introduce evidence on each these points. Processing & Books v. Pollution Control Board, 64 Ill.2d 68, 351 N.E.2d 865 (1976).

Discussion

At the hearing held on March 19, 1990, Mr. Kvatsak testified as to the nature and frequency of the noise emissions from St. Michael's electronic carillon system. Mr. Kvatsak testified that he lives four houses from St. Michael's. He first complained of the noise to St. Michael's pastor, Reverend Bakewicz in 1983. Mr. Kvatsak then approached the village manager, who arranged a meeting between the pastor and Mr. and Mrs. Kvatsak. Mr. Kvatsak reported that no changes were forthcoming as a result of the meeting. Tr. pp. 15-17.

Mr. Kvatsak indicated that other noises in the area were considerable, but that the carillon noises were most disturbing to him.

Now besides the church amplifying, we have other noises in the area which I can well accept. We have very heavy air traffic out of O'Hare Field, we have a railroad train two blocks away. 31st Street is very heavily traveled, plus we have noise from ambulances, fire trucks and police cars, which is acceptable. But these amplifying noises are highly not acceptable, and its just been overbearing that you can't enjoy the privacy of your home, when I feel we, myself and other people who have objected to this, as taxpayers must have some rights of some privacy. We have nothing, and they refuse to cooperate in any way.

Tr. p. 17.

* * *

The only thing that will drown out the church is the airplanes, which I wish they would continue to fly over.

Tr. p. 24

The frequency and duration of the noise were described at hearing. The chimes sound the time hourly from 9:00 a.m. to 6:00 p.m. and hymn sessions lasting eight-to-ten minutes are played twice daily. Additionally, on Sundays the carillon is first played at 7:45 a.m., and a call to worship is played before the services. Tr. p. 18; See also Tr. pp. 68,69.

Mr. Kvatsak described the nature of the interference with his enjoyment of life. Mr. Kvatsak indicated that his conversations, television watching, and listening to the stereo were interrupted by the carillon. Tr. p. 25. This was not a problem indoors during the winter, but was a problem indoors during the summer when the storm windows were removed. Tr. p. 22. With respect to physical or mental problems, Mr. Kvatsak testified that the carillon had interrupted the daily noon-time rest of his wife who, preceding her death, was very ill with arthritis. It also prevented him from hearing her call him over the intercom when he was outdoors. Mr. Kvatsak himself did not suffer from medical problems as a result of the noise.

Mr. Kvatsak presented a witness, Mr. Pauli, a friend, who visits a couple of times a week, whose home is not within the sound of the carillon. Mr. Pauli testified that during his visits conversation is disrupted by the carillon and that this noise is quite loud in the house. Tr. p. 57.

As noted earlier, Mr. Kvatsak introduced into evidence two letters from two area residents, who were not at hearing, indicating that each resident found the carillon annoying or disturbing.

Mr. Kvatsak also presented as evidence a homemade audiotape of the carillon sounds in the summertime as recorded inside and outside his home. The hearing officer denied admission of the tape into evidence but accepted it as an offer of proof for the Board's decision. Tr. pp. 8-13. Counsel for St. Michael's heard part of the tape before the hearing and objected to its admission, citing Annino v. Browning-Ferris Industries, PCB 87-139, 91 PCB 349 (1988). As the Board observed in that case, the key issue is the accuracy of the homemade tape's representation of actual noise levels at relevant locations on complainant's property. For this reason, the Board hereby affirms the Hearing Officer's denial of the tape's admission into evidence.

On behalf of St. Michael's, its pastor, Reverend Bakewicz, testified. Rev. Bakewicz stated that the carillon system was professionally installed in 1983 with four speakers which were positioned to project sound over as wide a range as possible and with the intention to avoid directing the sound at any specific structures. Tr. pp. 65-67. After Mr. Kvatsak complained of the noise, St. Michael's personnel went on the roof to investigate redirecting the speakers, but concluded that the original installation was still best. Tr. p. 67. Rev. Bakewicz also testified that an immediately adjacent two-story structure and several dense trees might provide some interruption of the direct transmission of sound to Mr. Kvatsak's home. Tr. pp. 67, 68. See also testimony of Mr. & Mrs. Babiari, Tr. pp. 86-88, 104, 105. Rev. Bakewicz stated that the carillon has been played at about 60% of its possible maximum volume continuously since 1983. Tr. p. 63. He has received no other complaints of noise, and, in fact, reportedly has received many positive comments since installing the system. Tr. pp. 72-74.

St. Michael's presented two witnesses, Mr. and Mrs. Babiari, who live next door to St. Michael's, between the church and Mr. Kvatsak's house. The Babiars each testified that although the speakers are very near their home, they are not disturbed at all by the carillon, even during afternoon naps in a bedroom which faces St. Michael's, and their normal activities are not disrupted. Tr. pp. 78-110. The Babiars fully described their property, including trees which might act as a sound barrier. Each testified that he or she was not in any way affiliated with Rev. Bakewicz or St. Michael's and was unaware of any complaints by neighbors other than Mr. Kvatsak.

Section 33(c) Analysis

The Board must consider the six statutory criteria of Section 33(c) in reaching a determination on whether the carillon unreasonably interferes with life and property.

Section 33(c)(1) directs the Board to consider the character of the interference caused by the noise emissions from St. Michael's. The standard to which the Board refers is that the noise substantially and frequently interferes with the use and enjoyment of life and property, beyond minor or trifling annoyance or discomfort. See, e.g., Brainard, PCB 88-171, p. 4. In this regard the record presents conflicting evidence in that some neighbors experience no discomfort and Mr. Kvatsak is disturbed by the noise. Unlike the Ferndale case, 41 Ill.App.3d 962 (1976), and the Overnite Transportation case, 65 PCB 131 (1985), nighttime interference is not at issue in this proceeding. Normal sleeping hours are not interrupted by St. Michael's carillon and the disturbance which Mr. Kvatsak experiences is not extreme, such as with medical consequences. Furthermore, the alleged adverse impact of the sounds is limited to daytime hours in warm weather, and is of brief duration. The Board finds that the record does not support a finding of substantial interference with life and property, but, rather, reveals minor annoyance in a physical setting which already is beset with several significant sources of noise.

With respect to Section 33(c)(2), St. Michael's Church, including the traditional use of the carillon, clearly has social value. As Mr. and Mrs. Babiar's testimony suggests, this may extend beyond St. Michael's own membership, since the Babiar's enjoy the carillon and they are not members.

Section 33(c)(3)'s focus on the suitability of the alleged pollution source to its locale would not favor a finding of violation, as churches would typically be located in a residential or mixed use area. The record presents no support for the proposition that St. Michael's is inappropriately located. Although Mr. Kvatsak occupied the area prior to the installation of the carillon system, the record does not support a conclusion that the 1983 installation would be inappropriate for the locale.

Section 33(c)(4) directs that the Board consider the technical practicability and economic reasonableness of reducing the emissions. The Board can infer from the testimony of Rev. Bakewicz, that the system is operated at 60% of its potential volume, that further sound reduction is technically possible at no economic cost. However, this factor does not warrant requiring such action, particularly since the practical effect would be that some persons, who may enjoy the carillon, might not hear the carillon at all.

Section 33(c)(5) addresses the economic benefits from non-compliance. A failure to comply has not been established in this case, but even if shown, no economic benefits would have accrued to St. Michael's.

Section 33(c)(6) involves the issue of any subsequent compliance. St. Michael's has not changed the volume at which the carillon sounds are transmitted. The record does not suggest that the alleged violation has been cured, and, therefore, this factor is inapplicable.

Conclusion

When considering all the facts and circumstances as required by Section 33(c), the Board finds that the record does not support a finding that St. Michael's' has caused noise pollution pursuant to the Act and the Board's regulations.

This Opinion represents the Board's findings of fact and conclusions of law in this matter.

ORDER


For the foregoing reasons, the Board finds that St. Michael's Lutheran Church is not in violation of Section 24 of the Illinois Environmental Protection Act and of 35 Ill. Adm. Code 900.102. This matter is dismissed.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987, ch. 111 $\frac{1}{2}$, par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

Board Member J.D. Dumelle dissented and Board Member J. Marlin concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 30~~th~~ day of August, 1990, by a vote of 6-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board