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ILLINOIS POLLUTION CONTROL BOARD
October 07, 2024

DOUG AND GERI BOYER,)	
)	
Complainants,)	
)	
v.)	PCB 22-9
)	
MRB DEVELOPMENT, LLC)	
d/b/a COPPER FIRE,)	
RENAE EICHHOLZ AND MARK)	
EICHHOLZ)	
)	
Respondents.)	

Belleville City Hall Council Chambers
101 S. Illinois St.
Belleville, Illinois

(Starting time of the hearing: 09:27 a.m.)

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HEARING OFFICER WEBB: Good morning. My name is Carol Webb, and this is the hearing for PCB 22-9, Doug and Geri Boyer versus MRB Development, LLC, doing business as Copper Fire, Renae and Mark Eichholz.

It is October 7th, and we are beginning at 9:30 a.m. There are no members of the public present to comment but written public comment may be filed with the clerk by October 21st. This case involves a nuisance noise claim at Copper Fire located at 200 East Main Street in Belleville, St. Clair County. The Pollution Control Board members will make the final decision in this case.

My purpose is to conduct the hearing in a neutral and orderly manner, so that we have a clear record of the proceedings. This hearing was noticed pursuant to the acts and the Board's rules and will be conducted pursuant to Sections 101.600 through 101.632 of the Board's procedural rules.

At this time, I will ask the parties to please make their appearances on the record.

MR. JACOBBER: Good morning. Matthew

1 Jacober of behalf of the Complainants, Doug
2 and Geri Boyer.

3 HEARING OFFICER WEBB: Thank you.

4 MS. ROBBINS: Good morning. Brooke
5 Robbins on behalf of the Complainants, Doug and
6 Geri Boyer.

7 HEARING OFFICER WEBB: Thank you.

8 MR. PETRUSKA: Paul Petruska on behalf of
9 the Respondents, MRB Development, Renae
10 Eichholz and Mark Eichholz. And just for the
11 record, my address has changed. I was with
12 Greensfelder for most of this proceeding. I'm
13 now with Family Fortress Law Firm. I'll give
14 you the address when we're done.

15 HEARING OFFICER WEBB: Maybe also file a
16 correction of address with the clerk, so that
17 they understand --

18 MR. PETRUSKA: Sure.

19 HEARING OFFICER WEBB: -- that your
20 address has changed. Okay, great.

21 Are there any preliminary matters that you
22 want to discuss on the record before we begin
23 with opening statements?

24 MR. JACOBBER: None on behalf of
25 Complainant.

1 MR. PETRUSKA: None on my side.

2 HEARING OFFICER WEBB: Okay, great. Would
3 the Complainants like to make an opening
4 statement?

5 MR. JACOBBER: Yes, Your Honor. Is it okay
6 to call you Your Honor?

7 HEARING OFFICER WEBB: Sure.

8 MR. JACOBBER: Okay, thank you.

9 OPENING STATEMENT BY MR. JACOBBER:

10 MR. JACOBBER: Thank you. We would like to
11 start by thanking you for your time today. As
12 you're aware, this has been long time and at
13 times a contentious fight. The Boyers have
14 been resolute in their position. They can
15 coexist with Copper Fire if Copper Fire were to
16 simply take the steps we would all expect our
17 neighbors to take, so their use does not impact
18 their neighbors in a negative way. While you
19 hear from the Boyers today, as well as Mike
20 Biffignani in relation to this level of sound
21 emanating from Copper Fire, the daughters --
22 the Boyer's daughter, Becca, and another
23 neighbor of Copper Fire's, Julie Orlet, and the
24 impact it has on them, both in their enjoyment
25 of their home and in the day-to-day life

1 outside of their home, the more impactful the
2 evidence we intend on presenting will include
3 video clips from Copper Fire's Facebook page
4 and sound recordings from the Boyer's loft.
5 And the diagram that we'll show you will help
6 you visualize all of that.

7 As Your Honor is aware, the relevant law
8 in Illinois sets forth the standards for you to
9 consider or the Board to consider. In making
10 its orders and determinations, the Board shall
11 take into consideration all the facts and
12 circumstances bearing upon the reasonableness
13 of the admissions, discharges or deposits
14 involved, including but not limited to, the
15 character and degree of injury to or
16 interference with protection of the health,
17 general welfare and physical property of the
18 people; the social and economic value of the
19 pollution source; the suitability or
20 unsuitability of the pollution source to the
21 area in which it is located, including the
22 question of priority of location in the area
23 involved. And you'll hear today that the
24 Boyers were there first. They lived in the
25 Writers' Loft well before Copper Fire opened.

1 The technical practicability and economic
2 reasonableness of reducing or eliminating the
3 emissions and discharges or deposits resulting
4 from such pollution source, and any subsequent
5 compliance.

6 These are all important for you to
7 consider. But the most damning evidence we
8 will present comes from Copper Fire's patrons
9 and Copper Fire itself. We've all learned
10 online reviews tell the public a lot about a
11 business. People are generally more willing to
12 make a complaint and address concerns behind
13 the safety of their keyboard as opposed to
14 speaking directly to the business, thus
15 creating a pretty good record. Copper Fire has
16 countless online reviews. We're not going to
17 present all of them. But we do intend to
18 present reviews of Copper Fire through
19 Ms. Eichholz' direct response. These reviews
20 are on Facebook, Yelp and Google. They stand
21 from the time Copper Fire opened to as recently
22 as a couple of weeks ago.

23 The pattern is clear, unique space, decent
24 pub grub, plus a volume that's way too loud to
25 enjoy the environment. To give you a preview

1 and set the stage, some of Mr. Eichholz'
2 responses include: "So everything was good
3 except the music was too loud. I know that
4 drives us crazy because we have to work with
5 each group on their song levels."

6 Another one. "As much as we love life and
7 music, we have a hard time controlling the
8 musicians. The bar is two stories and the
9 sound travels uncontrollably."

10 Continuing on in this response,
11 in response to this review, Ms. Eichholz's
12 asked the customer to join them when they don't
13 have live music until we quote "get this under
14 control." This review was from two years ago.

15 From just four months ago, in response to
16 a customer who stated: "Copper Fire is an
17 obnoxiously loud bar." Ms. Eichholz responded:
18 "The two story room has been a beast to control
19 sound."

20 What is clear, the sound level for bands
21 has been a beast from the time Copper Fire
22 opened until today. For six years, Copper Fire
23 has been trying to control the sound but to
24 this date has been unable or unwilling to do
25 so. They installed no sound deadening or sound

1 mitigation efforts. They have not
2 significantly reduced the sound level. But
3 freely admit the sound is a beast to control.
4 Copper Fire is creating a nuisance. The Boyers
5 simply want to get their peace back. They
6 aren't looking to shut down Copper Fire or even
7 prevent them from having live music, but are
8 simply seeking what any person wants, peace in
9 their own home; to go to sleep when they would
10 like; the ability to have their grandkids spend
11 the night and not have their sleep schedules
12 impacted; have friends over for a dinner party
13 or just sit on the couch and relax while
14 watching TV or reading a book. Copper Fire has
15 stolen their peace for the last six years and
16 we're asking the Illinois Pollution Control
17 Board to right this wrong, thank you.

18 HEARING OFFICER WEBB: Would the
19 Respondent like to make an opening statement?

20 MR. PETRUSKA: Yes, Your Honor.

21 OPENING STATEMENT OF MR. PETRUSKA:

22 I am here today representing Renae
23 Eichholz, Mark Eichholz and MRB Development,
24 doing business as Copper Fire. What you're
25 going to hear today is their story about how

1 Copper Fire started, why it was started, how it
2 fits in with the community around there, and
3 what they've been doing to address the
4 neighbor's complaints. And it is not a short
5 story.

6 It is a long story because they have been
7 attempting to deal with this from 2018 when the
8 first complaint was raised about banging on
9 walls and until today. They have numerous
10 online reviews, most of which are extremely
11 favorable. The fact that there may be a few
12 people who talk about sound level, is an issue
13 to be addressed in this hearing today, but it
14 is not the sole source of this.

15 We will explain that there have been
16 experts retained and hired and decibel levels
17 have been measured. And those decibel levels
18 are an objective number for the Board to
19 review and determine whether or not those
20 levels could possibly be a nuisance under the
21 law of Illinois. When you have a standard, if
22 it is a completely subjective standard, it is
23 too vague to be enforced. The Board has
24 recognizing this in past decisions and has
25 suggested that it must be -- to determine

1 whether something is a nuisance, it's a
2 reasonable person's standard. That reasonable
3 person's standard would suggest that the noise
4 must be doing -- must be loud enough to be
5 heard and to interfere with the enjoyment of
6 life. What you will find out in this case is
7 that the noise levels are well below most
8 common appliances.

9 You will hear about the long story of what
10 Renae and Copper Fire have done to moderate the
11 noise, including moving bands around to see
12 what helped and establishing policies,
13 establishing devices to measure an objective
14 level. Changing those policies as she goes.
15 Talking to bands, telling the bands that you
16 have a limit that you cannot go above and if
17 you do go above, you will not be welcomed back.
18 All of this had been done in order to ensure
19 that we can have live music at Copper Fire and
20 still not create a nuisance.

21 This court has recognized that if there is
22 a nuisance, not this court but the Board has
23 recognized, that it is a nuisance, you still
24 have to look into Section 33 factors to
25 determine whether or not the -- any remedial

1 measures should be taken. The first thing is
2 the character and degree of injury to or
3 interference with the protection of the health,
4 general welfare and physical property. I
5 believe the evidence in this case will show
6 that the character and degree of injury is
7 minimal. That Geri Boyer has increased her
8 complaints to a point where they cannot be
9 credibly believed by a reasonable person.

10 Furthermore, you'll find out that all of
11 the complaints against Copper Fire have been
12 from one source, Geri Boyer. You may hear from
13 Julie Orlet. You will also hear from Julie
14 Orlet, she's talked to my client about it and
15 Julie has never said a thing to my client about
16 it. And even since, has apologized for
17 speaking bad about it.

18 So this is all the Boyers versus MRB
19 Development and my clients. There will be
20 evidence to suggest that my client feels like
21 she's being bullied by the Boyers. That should
22 be relevant to the 33 -- the Section 33 factors
23 as to why she's taking steps that she's taking
24 or why she isn't taking other steps. There
25 will be evidence and an admission from the

1 Boyers that they're not looking for less sound,
2 they're looking for no sound. And that is not
3 the law.

4 You will also find out from the Boyers
5 themselves that to determine whether it's too
6 loud, they often walk by Copper Fire to hear
7 the sound and have suggested to my clients that
8 they should walk outside and see if they can
9 hear noise. And if they can, they're violating
10 the law. Well, this Board knows that's not the
11 law. This Board knows what the standards are.
12 And this Board cannot possibility tell Copper
13 Fire that simply because music can be heard
14 that that becomes a nuisance. But Geri Boyer
15 has admitted in writing that she's not going
16 for not loud, she's going for no sound. And
17 that cannot be the law of Illinois. If it is
18 unconstitutionally vague and cannot be
19 enforced.

20 So looking at the factors about the level
21 itself, you're also looking at social and
22 economic value of the pollution source, as we
23 say, the noise source. One of the things --
24 we're actually right off the area where Copper
25 Fire is. It's down the street on Main. And

1 around the Copper Fire are multiple bars and
2 restaurants because Belleville has decided that
3 they wanted to redevelop, redevelop Main
4 Street. In fact, the City of Belleville asked
5 someone to serve on the Board to help redevelop
6 downtown. They wanted activity. They wanted
7 bars and restaurants, and that the person
8 was Geri Boyer. You will also hear from Geri
9 Boyer that she, herself, moved downtown to show
10 people that you can run a business and still be
11 downtown and she wanted activity downtown.
12 You'll find out that Geri Boyer served on the
13 commission that actually approved Copper Fire
14 being put in next to her place.

15 All of this suggests that bars and
16 restaurants with live music are perfectly
17 socially and economically valuable for the
18 redevelopment of Belleville, and you will also
19 find out that the suitability or unsuitability
20 of a bar and restaurant is not even a question.
21 That we will have police officers talk about
22 what's been going on on Main Street and that
23 there are bars, that there is live music and
24 that is common place in the area.

25 We also will hear evidence that there are

1 routinely community events downtown directly on
2 Main Street. That these big events are for the
3 social and economic development of Belleville.
4 There is a value to this.

5 Another factor that's reviewed is the
6 technical practicality and economic
7 reasonableness of reducing or eliminating
8 noise. When this court looks at -- or when
9 this Board looks at what can or can't be done,
10 another factor that must be looked at with
11 respect to a nuisance is whether or not the
12 Boyers have done anything, anything, in the six
13 years to resolve these issues on their side of
14 the wall. Because you will see that their wall
15 is part of the problem. They removed the
16 plaster on their wall to expose the brick. In
17 doing so, they created multiple holes and Geri
18 Boyer has testified that she's not going to do
19 anything on her side of the wall. Nothing.
20 This Board can then look at that and determine
21 what a reasonable person who claims a six-year
22 nuisance do nothing, do nothing, to resolve
23 that nuisance, other than file this complaint
24 and yell at my client. But my client has
25 looked at it, the technical practicalities and

1 economic reasonableness of reducing and
2 eliminating noise.

3 You will hear from Tim Albert, who's
4 consulted with her. You will hear from the
5 police who have reviewed the noise complaints
6 and found no problem. You will hear from my
7 client who will tell you about all of the steps
8 she has taken, all of the steps she has taken,
9 to reduce it. What she has not done is install
10 noise mitigating panels, completely. Because
11 she looked at that and it was not economically
12 reasonable. And furthermore, she will tell
13 you, that if she were to do that without the
14 Boyer's consent beforehand that that's
15 sufficient, she expects that it will just
16 continue. That if it does not eliminate the
17 noise, eliminate, then she will have spent \$50-
18 to \$100,000 attempting to remediate something
19 which will not end the problem. Because Geri
20 Boyer wants no sound then she can't be living
21 in downtown Belleville. And it is not the law.

22 The fifth factor is any subsequent
23 compliance, and that's where Renae will talk
24 about all of her attempts to comply. She will
25 tell you that she's a rule follower, and she's

1 looked at the numbers and she has hired someone
2 to look at the numbers to find out whether she
3 is in compliance. And even with that, even
4 though she is in compliance, which this Board
5 has already accepted, there is not a violation
6 of the noise standards. It's already been
7 established by law. She's still doing things
8 to reduce the sound. That will be the evidence
9 in front of the Court today and I look forward
10 to presenting our witnesses.

11 HEARING OFFICER WEBB: Okay. Thank you.
12 You may call your first witness.

13 MR. JACOBBER: Thank you.

14 MS. ROBBINS: Complainant calls Rebecca
15 Boyer.

16 HEARING OFFICER WEBB: Ms. Boyer, if
17 you'll please come sit here up. And would the
18 Court Reporter please swear in the witness.

19 (Rebecca Boyer sworn.)

20 DIRECT EXAMINATION

21 BY MS. ROBBINS:

22 Q Ms. Boyer, can you state your full name
23 for the record?

24 A **Rebecca Boyer.**

25 Q And what's your relationship to Doug

1 and Geri Boyer?

2 **A They're my parents.**

3 Q What's your highest level of education?

4 **A I have a Master's degree.**

5 Q What's your degree in?

6 **A International Relations.**

7 Q What do you do for a living?

8 **A I'm the vice president of Kaskaskia**
9 **Engineering.**

10 Q And how long have you worked for
11 Kaskaskia?

12 **A Since 2009.**

13 Q And where is Kaskaskia's office located?

14 **A 2008 East Main Street.**

15 Q And how long has Kaskaskia's office been
16 located at 208 East Main Street?

17 **A Since 2012.**

18 Q And where do you live?

19 **A I live at 208 East Main Street, Suite 220.**

20 Q And how long have you lived there?

21 **A I lived in Suite 220 since 2012.**

22 Q Do you own or rent your lot?

23 **A I own.**

24 Q Did your parents move into their loft
25 before you?

1 **A Yes.**

2 Q And is your loft in the same building as
3 their loft?

4 **A Yes.**

5 Q And where is your loft in relation to
6 their loft?

7 **A It's across the hall.**

8 Q And is your loft along the same wall as
9 the Copper Fire bar?

10 **A It is not.**

11 Q How many units are along the same wall as
12 the Copper Fire bar?

13 **A Two.**

14 Q And where are those two lofts located?

15 **A At 208 East Main. It's all same building
16 but there's two buildings that are faced together.**

17 Q And I'm just going to point to
18 Demonstrative 1. Does this look like a rendering of
19 the lofts in Copper Fire?

20 **A Yes.**

21 Q Okay. And which loft is it that your
22 parents live in?

23 **A The middle one on the right. Yes.**

24 Q Sure.

25 HEARING OFFICER WEBB: Just so I can be

1 clear, you know, when the Court is reading the
2 transcript, is this a numbered exhibit?

3 MS. ROBBINS: Demonstrative 1. We'll
4 submit it. It's not in the binder.

5 HEARING OFFICER WEBB: Okay, it's not in
6 the book but you'll submit it as --

7 MS. ROBBINS: A Plaintiff's demonstrative.

8 HEARING OFFICER WEBB: Okay.

9 MS. ROBBINS: And it will be all three of
10 these.

11 Q (By Ms. Robbins) So this one, 230.

12 **A Correct.**

13 Q And then the other suite that you were
14 talking about is along the same wall as Copper Fire?

15 **A Directly above it, yes.**

16 Q Where is your suite located?

17 **A You can't see in this image, so.**

18 Q So continuing on, this rendering in
19 Demonstrative 1, so this is that 230 suite?

20 **A Correct.**

21 Q Correct. Which is where your parents
22 live. And where is the suite that you live?

23 **A This whole area.**

24 Q And where is it that the bands play at
25 Copper Fire?

1 **A Up here.**

2 Q Okay.

3 HEARING OFFICER WEBB: Okay. I just want
4 to make it more clear for people reading the
5 transcript. We're looking at the second floor
6 plan. The witness lives in the lower left
7 corner and the band is in the upper right
8 corner?

9 **THE WITNESS: Correct.**

10 HEARING OFFICER WEBB: Okay. Correct.

11 Q (By Ms. Robbins) The bottom left corner is
12 labeled Suite 220, which is your suite, correct?

13 **A Correct.**

14 Q And then Suite 230 is the loft your
15 parents reside in?

16 **A Yes.**

17 Q And then there is a notation at the top
18 where the band set up is located. Okay. So your
19 apartment is located, and specifically your bedroom,
20 is on the complete opposite?

21 **A Yes, it's about as far away as it can be.**

22 Q Okay. And then this is the first floor
23 plans. And is this Kaskaskia's offices?

24 **A Yes.**

25 Q Okay. So just like the lofts on the first

1 floor, along this wall would be shared with -- would
2 be --

3 **A Correct.**

4 Q -- Copper Fire would be on the other side?

5 **A Yes.**

6 Q And then bands would be set up and you
7 could see the notation of where they're set up.

8 So, before Copper Fire opened next
9 door, what was in the 200 East Main Street building?

10 **A It was a Quiznos sandwich shop.**

11 Q And at the time that Kaskaskia moved into
12 the offices on the first floor of the building, what
13 was next door?

14 **A Quiznos.**

15 Q And at the time your parents moved into
16 their loft, what was next door?

17 **A Quiznos.**

18 Q And at the time you moved into your loft,
19 what was next door?

20 **A Quiznos.**

21 Q And did Quiznos ever play live music?

22 **A No.**

23 Q To your knowledge, are you aware of any
24 noise complaints about the Quiznos next door?

25 **A Not to my knowledge.**

1 Q Did that change when Copper Fire moved in?

2 A Yes.

3 Q How did that change?

4 A The noise both at the ground level and in
5 the -- in Geri's suite, it can be heard very
6 clearly. Not the noise, the music. There's not
7 really any other noise that you can hear besides the
8 music.

9 Q Have you ever been in Kaskaskia's offices
10 when the live music is playing?

11 A Yes.

12 Q Can you hear the music?

13 A Yes.

14 Q How clearly can you here the music?

15 A Incredibly clearly.

16 Q Can you identify the songs?

17 A Yes.

18 Q When are the times that live music is
19 played at Copper Fire?

20 A Evenings. I think it's Thursday, Friday,
21 and then all day Saturday and all day Sunday.

22 Q And what impact does the noise have on
23 your ability to work from Kaskaskia's office during
24 those times?

25 A Anyone that works on that side of the

1 **office could not work late or on the weekend.**

2 Q Do you try to avoid working from the
3 office during those times?

4 **A Yes.**

5 Q Can you hear the music playing from Copper
6 Fire inside your loft?

7 **A No.**

8 Q As we discussed, your loft is across the
9 hall and at the back of the building, correct?

10 **A Correct. Yes.**

11 Q The Copper Fire bands play at the front of
12 the building and next to the wall, correct?

13 **A Correct.**

14 Q Have you ever been in Doug and Geri
15 Boyer's loft when Copper Fire has live music
16 playing?

17 **A Yes.**

18 Q Has that happened on multiple occasions?

19 **A Regularly.**

20 Q Can you hear the music?

21 **A Yes.**

22 Q How often can you hear the music when
23 you're in their loft and live music is playing?

24 **A Any time live music is playing.**

25 Q Can you identify the songs?

1 **A Yes.**

2 Q Can you identify what instruments are
3 playing?

4 **A Yes.**

5 Q How loud is the music inside the loft?

6 **A It's loud. It's very loud.**

7 Q Can you speak?

8 **A Yes, you can speak but it's -- you have to
9 raise your voice.**

10 Q Have you ever tried watching TV while the
11 bands are playing?

12 **A Yes.**

13 Q Can you hear the sound of the TV?

14 **A You have to turn it up.**

15 Q Based on your experience hearing the music
16 in the loft, would you be able to sleep in Doug
17 and Geri Boyer's loft when the bands are playing at
18 Copper Fire?

19 MR. PETRUSKA: Objection, calls for
20 speculation.

21 HEARING OFFICER WEBB: Sustained.

22 MS. ROBBINS: It was based on whether or
23 not her experience and whether she thought she
24 would be able to sleep.

25 MR. PETRUSKA: I'm going to object to lack

1 of foundation. There's been no evidence that
2 she's --

3 HEARING OFFICER WEBB: Well, I mean, you
4 know, can you just ask her if she can hear it
5 or how loud it is. I mean, I don't know if
6 she'd be able to sleep or not.

7 MS. ROBBINS: She would know if she could
8 sleep based off of the sound, which I'm trying
9 to establish how loud it is based on her
10 experience.

11 HEARING OFFICER WEBB: Okay. All right.
12 Go ahead.

13 MR. PETRUSKA: Well, no. I still object,
14 and if you've already ruled that we're looking
15 at speculation here about whether she can and
16 no foundation has been laid that she's
17 attempted to sleep there at any point in time.

18 HEARING OFFICER WEBB: Yeah, I mean, if
19 you want to get to how loud is it, why don't
20 you just ask how loud it is.

21 MS. ROBBINS: Right. And I asked how loud
22 it is and I'm trying to compare it to her
23 ability -- like would she be able to do certain
24 things in the loft based off of the sound.

25 **THE WITNESS: I would say typically you**

1 **can't fall asleep if you're hearing words to a**
2 **song. And that you would not be able to sleep**
3 **knowing you can hear every word to every song.**

4 HEARING OFFICER WEBB: Okay.

5 **THE WITNESS: It's not background.**

6 MS. ROBBINS: Right.

7 **THE WITNESS: Buzzing.**

8 Q (By Ms. Robbins) In addition to your
9 parents, at one point in time your great aunt lived
10 in Doug and Geri's apartment, correct?

11 **A Correct.**

12 Q And why was your aunt staying in that
13 apartment?

14 **A She was on hospice.**

15 Q And while she was on hospice staying in
16 your parent's apartment, did Copper Fire continue to
17 play music five nights a week?

18 **A Yes.**

19 Q And did you witness the impact of the
20 music on your aunt at all?

21 **A Yes. It would make her very restless.**

22 Q And we've discussed that there's also a
23 second loft that is also along that same wall where
24 Copper Fire is located; is that correct?

25 **A Correct.**

1 Q And do you know who owns that loft?

2 A Well, Geri Boyer owns it but it's rented
3 by Julie Orlet.

4 Q Have you ever been in Julie's loft when
5 the music is playing at Copper Fire?

6 A Yes.

7 Q Can you hear the music in her loft?

8 A Yes.

9 Q Have you ever walked by Copper Fire when
10 the live music is playing?

11 A Yes.

12 Q And how would you describe the noise from
13 the street?

14 MR. PETRUSKA: I'll object as irrelevant.
15 There's nothing to do with whether there's a
16 nuisance in Geri Boyer's apartment.

17 MS. ROBBINS: It has to do with whether --
18 the level of noise coming from the bar.

19 HEARING OFFICER WEBB: I'd say it's
20 relevant, too, in a sense. Go ahead.

21 THE WITNESS: Yeah, it's very regular I'm
22 out downtown regularly.

23 Q (By Ms. Robbins) So can you hear the noise
24 from the street?

25 A Yes.

1 Q Can you have a normal conversation outside
2 the bar?

3 A Not typically. I was there for
4 Oktoberfest and we were trying to have a
5 conversation, and we had to move.

6 Q Have you ever complained about the noise?

7 A Yes.

8 Q To the police?

9 A Yes.

10 Q And to your knowledge, did Copper Fire
11 install any sound deafening devices?

12 A Not to my knowledge.

13 Q To your knowledge, did Copper Fire stop
14 playing amplified bands?

15 A Not to my knowledge.

16 Q And based on your experience, has Copper
17 Fire reduced the sound coming from the music playing
18 inside the restaurant?

19 A Like in general?

20 Q Yes.

21 A No.

22 MS. ROBBINS: No further questions.

23 CROSS-EXAMINATION

24 BY MR. PETRUSKA:

25 Q So, I want to make sure I understand your

1 testimony. You swore under oath that the music is
2 so loud in the apartment that you have to raise your
3 voice to have a conversation; is that correct?

4 **A Correct.**

5 Q You're an engineer, correct?

6 **A I'm not an engineer.**

7 Q You work for an engineering company?

8 **A I do.**

9 Q Have you ever heard what decibel levels
10 are?

11 **A I have.**

12 Q Okay. Your mother hired an expert,
13 correct?

14 **A Correct.**

15 Q You know what those decibel levels are,
16 right?

17 **A I do not know what the decibel levels are.**

18 Q Your testimony is it's so loud that you
19 have to turn up the TV; is that correct?

20 **A Correct.**

21 Q Okay. And it's your testimony that when
22 your aunt was dying, Geri decided to move her into
23 this place where every single night there's noise
24 that's so loud, that's so loud that you can't even
25 talk? That was her decision?

1 **A That was her decision. That's a**
2 **compassionate decision.**

3 Q Knowing that there's going to be a noise
4 that is so loud that irritates you all, you're going
5 to move in a dying woman?

6 **A Where else was she supposed to go?**

7 Q Well, where do you live?

8 **A I live down the hall.**

9 Q Right next -- Julie Orlet will testify
10 today, correct?

11 **A I do not know what the plan is.**

12 Q I think I saw her. But she has an
13 apartment upstairs, doesn't she?

14 **A She does.**

15 Q And she doesn't stay there very often,
16 correct?

17 **A She stays there regularly.**

18 Q Okay. We'll talk to her about how often
19 she's there. That could have been an option also?

20 **A You don't move a family member in with a**
21 **neighbor.**

22 Q If the neighbor is not there, could you
23 put her there?

24 **A She was there.**

25 Q Your mother's apartment, you've been in it

1 numerous times, correct?

2 **A Yes.**

3 Q Let me show what's been marked as Exhibit
4 R-31, 32, 33, 34, 35 and 36.

5 (Respondents' Exhibits R-31, R-32, R-33, R-34, R-35
6 and R-36 marked.)

7 Q (By Mr. Petruska) Have you seen the walls
8 in her apartment?

9 **A I have.**

10 Q How do those walls get exposed?

11 **A They were like that when they moved in.**

12 Q Really? You don't think your mother's
13 going to testify that they took off the plaster?

14 **A That's the only way I've ever seen the
15 walls.**

16 Q Okay. But if your mother testifies that
17 they removed the plaster and exposed the walls, you
18 won't disagree with your mother, will you?

19 **A I don't believe there's any cause for a
20 disagreement.**

21 Q Okay. In the process, if they created --
22 do you agree there's numerous holes in the brick
23 wall on your mother's side of the apartment?

24 **A There are -- I don't think they're holes,
25 no. It's plaster or mortar that's not there but it**

1 **doesn't go all the way through.**

2 Q And have you investigated whether any of
3 those holes go all the way through?

4 **A I have not.**

5 Q Okay. Had your mother done anything in
6 the six years to correct these pictures and fix the
7 holes in her wall?

8 **A Not -- that's not my purview. I have no
9 idea. But our office does have plaster and there's
10 no exposed brick on that wall.**

11 Q Okay. And in that office, there was --
12 were you there when the sound testing was done with
13 the jukebox playing?

14 **A I don't know what you're referring to.**

15 Q Okay. There was -- just want to make
16 sure. When you're in the office with the lights --
17 overhead lights on and with the plaster walls, can
18 you hear anything going on over at Copper Fire?

19 **A When there's music playing.**

20 Q So when your people are -- you're talking
21 about just the jukebox too, the jukebox playing or
22 just live music?

23 **A I've never -- I don't know that I've ever
24 heard a jukebox.**

25 Q Okay.

1 **A I believe we've had one problem with March**
2 **Madness TVs being too loud and I think during the**
3 **day. And also I think St. Patrick's Day, but those**
4 **were the only anomalies to normal business.**

5 Q Okay. So for six years your mother has
6 lived with noise that is so loud that they can't
7 speak and they can't listen to TV. She's done
8 nothing to fix the apartment, correct?

9 **A Not to my knowledge.**

10 MS. ROBBINS: Objection. Misstates the
11 testimony.

12 Q (By Mr. Petruska) Is that correct?

13 HEARING OFFICER WEBB: Pardon me?

14 MS. ROBBINS: I said objection, misstates
15 testimony.

16 HEARING OFFICER WEBB: Could you repeat
17 the question.

18 MR. PETRUSKA: Yes.

19 Q (By Mr. Petruska) For six years, your
20 mother has lived in an apartment where she claims
21 that the noise is so loud that she has to raise her
22 voice to speak and she can't watch TV. But she's
23 done nothing to fix her side of the apartment.

24 MS. ROBBINS: Objection. Mistakes the
25 testimony.

1 Q (By Mr. Petruska) Is that correct?

2 HEARING OFFICER WEBB: Well, I think you
3 have a couple of questions there. Can you --
4 do you want to split them up?

5 Q (By Mr. Petruska) For six years, your
6 mother has lived in an apartment where you're saying
7 the noise is so loud that you have to raise your
8 voice to speak, correct?

9 A **Well, she doesn't live in an apartment.**
10 **But you do have to raise your voice to speak.**

11 Q And for six years, she's lived in a
12 residence where the music from Copper Fire is so
13 loud that you have turn up the TV to watch TV,
14 correct?

15 A **Correct.**

16 Q And in that six years, are you aware of
17 one thing that your mother has done to address the
18 sound in her apartment?

19 MS. ROBBINS: Objection. He said six
20 years, she's lived in the apartment for more
21 than six years.

22 HEARING OFFICER WEBB: For more than six
23 years?

24 MS. ROBBINS: Yes. We've established
25 through Ms. Boyer's testimony that the Boyers

1 have lived in the loft for more than six years.

2 HEARING OFFICER WEBB: Can you just
3 rephrase the question?

4 Q (By Mr. Petruska) For the six years that
5 your mother claims that the noise is so loud that
6 she can't watch TV and she can't talk, are you aware
7 of one thing she's done on her side to address the
8 sound?

9 A I'm not aware of anything.

10 Q And do you think that's reasonable?

11 A Well, it's not -- the sound isn't coming
12 from her.

13 Q But if it's interfering with her life,
14 would she really move in a dying aunt? Would she do
15 that?

16 A Again, she -- when people are on their
17 death bed, there's not a lot of choices of where
18 you're going to put them.

19 Q There's no -- there was no other choice
20 other than her apartment?

21 A No.

22 Q Okay. Does your mother have a place she
23 goes to on the weekends?

24 A Now she does, yes.

25 Q Oh, she's had that for awhile, hasn't she?

1 **A A couple of years.**

2 Q When the aunt was dying, did Geri have a
3 place she could go on weekends?

4 **A I don't know. I don't have the time frame**
5 **of when the house was completed.**

6 Q Okay. Would that have been an option if
7 she had another place?

8 **A Well, she doesn't live there regularly.**

9 MS. ROBBINS: Objection. Calls for
10 speculation.

11 **A So you can't leave a dying person alone.**

12 Q (By Mr. Petruska) If she were to go with
13 her to that place, would that be an option to move
14 the dying aunt?

15 **A It was not at the time.**

16 Q Okay. Furthermore, this is downtown. Are
17 there other restaurants and bars downtown?

18 **A There's a lot of restaurants and bars**
19 **downtown.**

20 Q When you walk around, do you hear music
21 playing?

22 **A Not to the level that Copper Fire's music**
23 **plays.**

24 Q But do you hear music?

25 **A Yes.**

1 Q Okay. In fact, you hear cars roll by?

2 A **All the time.**

3 Q And when those cars roll by, are some of
4 them blaring music?

5 A **They are.**

6 Q Do you hear that when you're walking down
7 the street?

8 A **Yes. But it is not constant.**

9 Q Have you been to the Big Daddy's?

10 A **Yes.**

11 Q Have you heard the music there?

12 A **Yes.**

13 Q It is loud?

14 A **Yes.**

15 Q Have you been to --

16 A **But I cannot hear their music from my
17 house.**

18 Q Oh, you can't? Really?

19 A **Big Daddy's music? No, it's a block away.**

20 Q Fascinating. That's all the questions I
21 have.

22 MS. ROBBINS: Ms. Boyer, I just have a few
23 follow-up questions.

24 REDIRECT EXAMINATION BY MS. ROBBINS:

25 Q Did your aunt have any other place to go

1 other than living with your parents?

2 **A She did not, no.**

3 Q And to be clear, the office, the Kaskaskia
4 office, does have plaster on the wall, correct?

5 **A Correct.**

6 Q And in the office, the band -- when live
7 music was playing, you can hear the music in the
8 office?

9 **A Correct.**

10 MS. ROBBINS: Okay. No further questions.

11 HEARING OFFICER WEBB: Okay.

12 MR. PETRUSKA: None from me.

13 HEARING OFFICER WEBB: You may call your
14 next witness.

15 MR. JACOBBER: Thank you. We will call
16 Geri Boyer at this time.

17 HEARING OFFICER WEBB: Would the Court
18 Reporter please swear in the witness?

19 (Geri Boyer sworn.)

20 DIRECT EXAMINATION

21 BY MR. JACOBBER:

22 Q Good morning.

23 **A Good morning.**

24 Q Could state your name for the record,
25 please?

1 **A Geri Ellen Boyer.**

2 Q Could you spell your last name?

3 **A B-O-Y-E-R.**

4 Q Okay if I call you Geri?

5 **A Yes, of course.**

6 Q What's your highest level of education,
7 Geri?

8 **A Master's degree.**

9 Q In what?

10 **A Pastoral study.**

11 Q Okay. What is your current occupation?

12 **A I'm a civil engineer.**

13 Q So you have an engineering degree as well?

14 **A Yes.**

15 Q Are you a licensed engineer?

16 **A Yes.**

17 Q Where do you hold engineering licenses?

18 **A Oh Lord, all over the place. Minnesota,**
19 **Missouri, Illinois, Indiana, Kentucky, Iowa, maybe**
20 **Nebraska to name a few. Wherever we work or we have**
21 **a project that we need it.**

22 Q Okay. And have your professional licenses
23 ever been the subject of any disciplinary
24 proceedings?

25 **A No.**

1 Q Sorry, have to ask.

2 A **That's fine.**

3 Q It's part of the deal. What is it that
4 you do for a living?

5 A **Well, right now, I manage an engineering**
6 **company that I own. I do a little bit of roadway**
7 **design still, but mostly just oversee staff and**
8 **offices.**

9 Q Okay. You have a laser pointer there if
10 you want to use it.

11 A **Oh yeah, I see it.**

12 Q Yeah. I'm showing you what's -- what will
13 be marked as Demonstrative Exhibit 3. Is that a
14 floor plan of your engineering company?

15 A **Yes.**

16 Q What's the name of your engineering
17 company?

18 A **Kaskaskia Engineering Group.**

19 Q Is Kaskaskia Engineering Group a
20 minority-owned business?

21 A **It's a woman-owned business.**

22 Q A woman-owned business. Thank you. So
23 can you point on there and show us where Main Street
24 runs on that picture?

25 A **Okay. Let's see. So Main Street is**

1 **right -- right here.**

2 Q Okay.

3 HEARING OFFICER WEBB: I can't read from
4 that far away but I assume it says Main Street
5 on there somewhere?

6 MR. JACOBBER: It doesn't. That's why --

7 HEARING OFFICER WEBB: Oh, it doesn't.

8 MR. JACOBBER: You know what, I'll --

9 **THE WITNESS: So here's all the doors.**

10 **This goes into the office, this goes into the**
11 **stairwell to get to the loft. And this is a**
12 **private entrance into the office from Main**
13 **Street.**

14 HEARING OFFICER WEBB: Okay. So Main
15 Street is the far right side.

16 **THE WITNESS: Yes.**

17 HEARING OFFICER WEBB: The road on the far
18 right side of the Exhibit?

19 **THE WITNESS: Correct. There's a really**
20 **wide sidewalk between Main Street pavement and**
21 **the building.**

22 Q (By Mr. Jacobber) So when you bought the
23 building that Kaskaskia Engineering occupies and
24 renovated it, what was next door where it's noted on
25 the upper right-hand corner of Demonstrative 3 that

1 the Copper Fire band sets up?

2 **A Quiznos restaurant was there.**

3 Q So is the wall along the top portion of
4 Kaskaskia, is that a brick wall?

5 **A It is a brick wall with plaster.**

6 Q With plaster over it?

7 **A Uh-huh, uh-huh.**

8 Q When the building was renovated, did you
9 do anything in the way of sound mitigation in that
10 renovation?

11 **A No, I mean, we have -- we put carpet in so
12 that it would absorb some of the sound. We have LED
13 lighting so it doesn't emit that sound that old
14 lighting used to. But no, we didn't -- we made sure
15 there was carpet instead of tile so that it would
16 absorb some of the sound.**

17 Q But you didn't put any special insulation
18 in along that wall to absorb any sound?

19 **A No, because it was -- you know, when we
20 were renovating that building, you could see how
21 quiet that building was. I mean, it's really a well
22 constructed building.**

23 Q Is it an old building?

24 **A It is. I mean, the two buildings, the
25 building to the top is older than the building**

1 that's at the -- on the bottom. So you can see like
2 here is the chase of where there was two brick walls
3 with an air space in between. So this is a
4 different building than this. This building is
5 definitely older than this building.

6 Q Okay. And perhaps to help try to
7 visualize it, I'm going to hold up Demonstrative 1.
8 This is the street elevation of the front of the
9 Kaskaskia Engineering building and the Writer's
10 Lofts. And then this is where Copper Fire is,
11 correct?

12 A Correct. And so you can see this roof
13 change. So, this is the wall, that wall chase
14 between the two buildings.

15 Q And was this -- this -- you're saying this
16 building is older?

17 A I'm saying this building right here is an
18 older building than this building. This building
19 was built like late 1700s and this was built in the
20 1800s.

21 HEARING OFFICER WEBB: So, let me just sum
22 up for people reading the transcript. The
23 portion of the building that is next to Copper
24 Fire is the older portion and the part on the
25 left side of the exhibit that's away from

1 Copper Fire is the newer portion of the
2 building.

3 **THE WITNESS: Correct.**

4 Q (By Mr. Jacober) And, at some point in
5 time, did these become one building or did you join
6 them into one building?

7 A No. Some time, way before I owned the
8 building, they faced the building with brick to make
9 it look like one building and they opened up in some
10 areas the building in between, you know, the wall in
11 between these two buildings.

12 Q Okay. So, there's a brick facade across
13 the front of it?

14 A Correct.

15 Q To make it look like it's one building
16 but --

17 A **It's really two buildings.**

18 Q -- in actuality, it's two buildings. Is
19 there one address or two addresses?

20 A **Just one.**

21 Q Thank you. Now, you currently live in a
22 building that you own, correct?

23 A **Correct, my husband and I own it.**

24 Q And you've named it The Writers' Lofts?

25 A **It was named The Writers' Loft before we**

1 **purchased it, so we kept the name.**

2 Q Okay. I'm showing you Demonstrative 2 and
3 want to kind of talk through this a little bit. And
4 the orientation of this is different than the other
5 one.

6 A **It's actually not. It's exactly the same**
7 **orientation.**

8 Q Oh, it is?

9 A **Yeah, Main Street is right up here.**

10 Q Oh, yeah. I guess you're right. I'm not
11 a spatial person.

12 A **Yeah.**

13 Q Not an engineer. If you could, point on
14 Demonstrative 2 with the laser pointer and show us
15 where you live?

16 A **So we live -- this would be the upper part**
17 **of the building here. We live in Loft -- or Suite**
18 **230. That's next to the Copper Fire wall.**

19 Q So does The Writers' Loft suites, and
20 specifically your suite, the wall to -- I guess,
21 that's the south, right?

22 A **This is the west wall.**

23 Q The west wall. Okay. Does the west
24 wall -- does that share a wall with the building
25 that Copper Fire is located in?

1 A Right. It shares an entire wall the
2 entire length of our wall, of our loft, is shared
3 with -- it shares a wall with Copper Fire. I mean,
4 I'm not really sure because we never opened up -- I
5 mean, we didn't open up this wall. So I'm just
6 assuming -- I'm just assuming that this is just like
7 this because all I can do is go for how they used to
8 build buildings in that time period, is that there
9 was a -- there was a wall and then there was space
10 and then there was another wall. But I do know that
11 in Julie's loft there is a truss system that was
12 built to hold up the wall of our building when they
13 tore the old building down that was -- that is not
14 Copper Fire that used to be there. When they tore
15 that building down and then they built the Copper
16 Fire building. So I'm assuming that that -- this
17 is -- it's a shared -- it's the same wall. I don't
18 know for sure.

19 Q So, it could have an air space in between
20 there?

21 A It could or it may not. I don't know.

22 Q But to the best of your knowledge, no one
23 has drilled through walls to figure that out?

24 A No.

25 Q Okay. When did you move in to Suite 230?

1 A In 2008.

2 Q And you live there with your husband,
3 Doug, correct?

4 A Correct.

5 Q What was the building like in 2008 or I
6 guess a little bit before then when you were
7 renovating to move in?

8 A So, we bought our loft from a developer
9 that was renovating this building. So, we didn't
10 own the building when we moved in. So, the
11 developer was renovating this building. We bought
12 this loft within the building. And so when we moved
13 in, we had one finished loft, ours, and the rest of
14 the building was just a disaster. It still looked
15 like -- it was torn up. It was an old building. It
16 didn't have any walls or anything so. And he was in
17 the process of renovating the rest of the building.

18 Q And did he eventually run out of money?

19 A Yeah, he was struggling with money. So,
20 my brothers are contractors, so my brothers and I --
21 so we lived in this loft, in Loft 230, which is on
22 the top of this drawing. So, my brothers and I
23 bought this entire space. It was not finished. So
24 we bought this entire space and we finished off
25 these three lofts so that we could infuse him with

1 some money so that he would have enough money to get
2 out of trouble. But then he ended up still going
3 bankrupt. But he had finished three of the four
4 lofts upstairs at that time.

5 Q When say upstairs, do you mean the third
6 floor?

7 A Third floor, yeah.

8 HEARING OFFICER WEBB: So, you renovated
9 the entire second floor except for Suite 230?

10 THE WITNESS: Yes. This was done for us
11 by the developer. Yeah.

12 HEARING OFFICER WEBB: Okay.

13 Q (By Mr. Jacober) So, did you purchase
14 Suite 230 when it was finished or when it was being
15 constructed?

16 A When it was finished. We got to have a
17 say in what went in there, in the layout.

18 Q Were you in the space before it was --
19 before construction started?

20 A Did I walk in the space?

21 Q Yes?

22 A Of course, yes.

23 Q This brick wall, this is the exposed brick
24 wall that we've already seen some pictures of,
25 correct?

1 **A Correct.**

2 **Q What was that wall like before renovation**
3 **began?**

4 **A It was an exposed brick wall. We didn't**
5 **do anything to the wall.**

6 **Q Is that part of the esthetics --**

7 **A Obviously.**

8 **Q -- of your loft?**

9 **A Obviously, I mean, that's why the loft is**
10 **so stunning is that you walk in and there's this big**
11 **exposed brick wall. And, you know, it looks like a**
12 **New York loft. I mean, when pizza delivery people**
13 **come, they say, gee, this looks like it's New York**
14 **City. Yeah, it does. It's a really beautiful**
15 **space.**

16 **Q And at some point after the original**
17 **developer had financial problems, did you buy the**
18 **entire building?**

19 **A Right. He declared bankruptcy and the**
20 **attorney that I was working with at the time had on**
21 **another case bought a building straight from the**
22 **bankruptcy judge. And so that's what we did. We**
23 **ended up -- the chief federal bankruptcy judge for**
24 **this region was an investor in this building, and**
25 **she wasn't crazy about this building, this all going**

1 out to the public. So, they all agreed that we
2 could buy it straight from the bankruptcy judge,
3 which is what we did.

4 Q And then you finished the renovation?

5 A We finished the renovation.

6 Q How many loft units are or suites are in
7 this building total?

8 A There is eight in the building total. But
9 not all eight function as lofts anymore. Only seven
10 function as lofts because at -- at, you know, a
11 couple years ago, we closed down this Airbnb. This
12 Suite 215 was an Airbnb. I actually built it out
13 for my mother and then she died like six months
14 after we built this out. So we turned this into an
15 Airbnb. We closed it down a couple years ago when
16 we were building the lake house so that I could
17 leave on the weekend. So, there was no way to keep
18 it up. And then Rebecca bought this loft, too, and
19 joined it with hers.

20 Q Okay. So, Suite 215 no longer exists?

21 A It exists as part of 220.

22 Q 220?

23 A Yeah.

24 Q What about Suite 210? Is that an existing
25 loft?

1 **A Yes.**

2 Q Does someone live there?

3 **A Yes.**

4 Q Do you own it and rent to them or do they
5 own it?

6 **A 210 is actually owned by my brothers.**

7 Q And do they rent it out?

8 **A Yes. They rent it.**

9 Q Okay. And then on the third floor, how
10 many suites are there?

11 **A We have four suites. And they're all**
12 **owned by me and we rent -- by Doug and I, and we**
13 **rent them all.**

14 Q You rent them all. And are there any on
15 the first floor?

16 **A No, just the office.**

17 Q The ground floor is where Kaskaskia is,
18 correct?

19 **A Yeah.**

20 Q So where did you live before 2008?

21 **A We lived on Signal Hill Boulevard, an old**
22 **neighborhood in Belleville on the very West End in**
23 **an old brick house.**

24 Q And what prompted you and Doug to want to
25 move to downtown Belleville?

1 A Actually, I had just finished walking
2 across Spain. I backpacked across Spain on the
3 Camino de Santiago, and I had this revelation on 30
4 days on this trail that with only a backpack, that
5 we didn't really need all the stuff that we had and
6 that we should simplify our lives. So, I convinced
7 Doug that we should sell our big house and move
8 downtown into a loft. And I had an office in
9 downtown in another building, and I was really
10 active in Main Street and developing, you know,
11 downtown. We did lot of streetscape work as
12 an engineering firm. So, I believe in developing
13 downtown.

14 Q And I apologize for doing this to you, but
15 I want to go back to this brick wall. You said that
16 it's stunning when you walked in. And I've been
17 there, it is. It grabs your attention. Is there
18 anything you could do without destroying that
19 esthetic of your loft to install sound deadening
20 devices in your loft to prevent the sound from
21 Copper Fire from coming into your loft?

22 A I don't believe there's anything that I
23 can do that wouldn't hurt the esthetic of it. So,
24 Julie's loft is all brick wall, too. So, on the
25 loft right above us, which is 330. So, the reason

1 that we didn't entertain covering with it with
2 drywall is because the downstairs office is a brick
3 wall covered with plaster, so it's got a covering
4 and it's just as loud down there as it is up in our
5 loft. So, what good is that going to do us? It
6 doesn't seem, like, logical.

7 Q Thank you.

8 A You know, can I add something else?

9 Q Please.

10 A So, I actually -- I do noise analysis on
11 highways. And, so, when we do noise analysis on
12 highways, the noise that comes from a highway and we
13 determine what all the receptors are, what home
14 along the highway is going to hear that noise.
15 Noise is mitigated at the source. It's not
16 mitigated at the receptors. So, you know, I mean,
17 that's -- an engineering analysis is always done at
18 the source. And so when we are trying to mitigate
19 noise on a highway, we say what can we do on the
20 highway to mitigate this noise so it doesn't bother
21 the receptors. We don't go to every receptor and
22 say, like, what can you do to your house so that
23 you're not impacted by this highway noise. You
24 mitigate noise at the source.

25 Q Is that why when you drive along the

1 highway that goes through a densely populated area
2 you see those really tall fences with --

3 **A Noise --**

4 Q -- kind of louvers on them?

5 **A Right. Or a noise wall. Something that's**
6 **going to break -- that's going to break the sound.**

7 Q That breaks the wave patterns up so it's
8 not as loud?

9 **A Right.**

10 Q If you recall, when did Copper Fire move
11 in next door?

12 **A I think it was sometime in 2018. I don't**
13 **remember what part of the year.**

14 Q And at the time Copper Fire moved in, were
15 you living in Suite 230?

16 **A Yes.**

17 Q And was Kaskaskia Engineering occupying
18 the ground floor?

19 **A Yes.**

20 Q Directly below it. And did you have
21 renters on the top floor?

22 **A Julie, she's been -- I don't know how long**
23 **she's been renting from me, but it's been a long**
24 **time.**

25 Q Been a long time.

1 **A Yeah.**

2 Q And actually, I think what I want to do
3 here is have you look in that binder in front of
4 you.

5 **A Can I go get my glasses?**

6 Q Sure.

7 **A Or can you -- do you see them sitting out?**

8 **Sorry, I can't see without them. Do you see them**
9 **there?**

10 Q I don't see them and I don't want to go
11 through your bag.

12 **A Okay. Where am I looking?**

13 Q Turn to Exhibit 1, first Tab 1, in your
14 book.

15 (Complainants' Exhibit 1 marked.)

16 **THE WITNESS: Okay.**

17 Q (By Mr. Jacober) And is this the warranty
18 deed for The Writer's Loft?

19 **A Yes.**

20 Q And it's granted by the GLK Development,
21 LLC, to Doug Boyer and Geri Boyer; is that correct?

22 **A Correct.**

23 Q And this shows that you bought the
24 building or the deed was purported, at least, on
25 December 26th of 2007. Does that sound right?

1 A This -- let me make sure that this isn't
2 when we bought our loft and not the whole -- this
3 was not the whole building, I don't think.

4 Q That's when you bought Suite 230?

5 A Right. Because that parcel number,
6 permanent index number, that's the number just for
7 our loft.

8 Q Okay.

9 A So, this is when we bought our loft.

10 Q When you bought your loft?

11 A Uh-huh, uh-huh. In 2007, we moved in in
12 December; so, we moved in in 2008.

13 Q Great. Thank you. So, you think Copper
14 Fire opened for business sometime in 2018?

15 A I think so because I know at the end of
16 2017 that I was talking to my attorney about please
17 send a letter to the city saying that we have
18 concerns about this -- this restaurant going in
19 here.

20 Q What were your concerns?

21 A Well, we were concerned that there was
22 going to be noise that we could hear and that it
23 would disturb, not only the office, but it would
24 disturb us. And just are they looking at noise
25 mitigation, are they thinking about this kind of

1 **stuff.**

2 Q Did you try to talk to them about noise
3 mitigation?

4 A I don't think I ever talked to Renae about
5 it.

6 Q Before -- before they opened?

7 A I don't -- the only time that I ever
8 talked -- we ever had a thing before they opened is
9 that at one point they were going -- trying to take
10 the plaster off of their brick wall and the office
11 was in -- you know, it was daytime. And my staff is
12 like, you gotta make that stop. Like, I
13 mean, engineers have to think. So, like, you got to
14 make that stop, we can't think. So, then I went
15 over and said could you do this at night? Is there
16 a way to do it at night because it's too loud for my
17 staff.

18 Q What were they doing?

19 A They were chipping the plaster off of the
20 walls or something. They were working on our common
21 wall.

22 Q Understood. And was -- it's going to
23 sound like an odd question. Are you aware of
24 whether Copper Fire knew you were next door?

25 A Oh, I mean, yeah, they obviously knew.

1 The Writers' Loft, I mean, the Writers' Loft is the
2 first loft building downtown. So, there's articles
3 in the paper about it, you know, everybody knew that
4 that loft building was there. They -- Renae owns
5 the building next door, she knew what it was.

6 Q Okay. So, you've talked about some
7 construction noise. Did that go away?

8 A Yeah, they were -- I think it was their
9 son and he was very nice to say, yeah, I'll stop.

10 Q And that -- it wasn't a problem again?

11 A We -- no, it wasn't a problem again.

12 Q After the bar opened, was there noise --
13 were there noise problems pretty much immediately?

14 A There's never been -- there wasn't noise
15 problems until they started having bands, with the
16 live bands there. And I don't remember when that
17 was -- I mean, when Copper Fire is operating without
18 a band, even though it's loud in there, it's -- we
19 can't hear anything. It's just the bands that we
20 can hear. And I don't remember when those bands
21 started.

22 Q And Geri, there's already been some
23 argument from the Respondents that your goal is
24 to -- is for Copper Fire to make no noise; is that
25 true?

1 A I would like to not hear the bands.

2 That's true.

3 Q In your loft?

4 A In my loft. In my loft, in my bedroom --
5 even if it was just in the bedroom. I would love
6 not to hear the bands. But as far as, like,
7 noise -- I mean, we live downtown. Although it's a
8 very solid building so we don't hear a lot of noise
9 inside if the windows are shut, obviously. It's not
10 a loud building. It's a pretty quiet place to live,
11 believe or it or not. But like, you know, when we
12 talk about, like, is there -- yeah, you can hear the
13 cars go by here. You can hear cars go by then but
14 it's a fleeting sound. So, we know we're going to
15 hear some sound. We just don't want to hear -- we
16 don't want to be able to sing along with a band
17 every Wednesday, Thursday, Friday, Saturday Sunday.

18 Q And can you sign along with the band
19 Wednesday, Thursday --

20 A Of course.

21 Q -- Friday, Saturday, Sunday?

22 A Yeah. I really used to love '70s music
23 but I seriously hate it now.

24 Q So, the noise nuisance that comes into
25 your loft, that started once the live bands started,

1 not just when Copper Fire opened?

2 A No. Nuh-uh. It just started when the
3 live bands started. Again, we can't -- like at
4 lunch, their lunchtime crowd, they don't have a band
5 at the lunchtime crowd. I mean, if you walk in
6 there, I mean, the stereo's still playing and
7 everything or whatever it is. But music is still
8 playing. We can't hear any of that. It's just the
9 bands.

10 Q Amplified bands that they have --

11 A Right.

12 Q -- Wednesday through Sunday?

13 A Right.

14 Q So, when those bands are playing and
15 you're in your loft, can you have a normal
16 conversation with someone who's in the loft?

17 A No, you can't.

18 Q Do you have to --

19 A You just have to talk like this. Like I'm
20 talking to you right now. You can't just say, like,
21 hey honey, how's it going. No. No, you can't do
22 that because he -- you can't hear each other.

23 Q You have to project your voice.

24 A You have to project your voice. Which is
25 why everybody thinks I'm yelling now at the office.

1 It's, like, sorry, I just have to project all the
2 time.

3 Q Can you watch TV at what you would
4 consider a normal level?

5 A I don't even know what a normal level is.
6 No, you have to turn the television -- I mean, like,
7 let's say 30, in the 30s on your TV. And it's, you
8 know, it's not really a great way to watch
9 television, where the television is battling music.
10 That's why you don't run the stereo and the -- or
11 Alexa playing music and your TV at the same time.
12 It's maddening.

13 Q And then you have commercials that are
14 exceptionally loud, aren't they?

15 A Yeah.

16 Q I don't know how they do that. Can you
17 listen to your own music?

18 A Oh, no. I mean, I've tried to, like -- I
19 have really tried to find ways around it. So I
20 started wearing headphones to bed. So, that
21 listening -- maybe listening to a podcast or my own
22 music would block out their music. It doesn't block
23 it out, it just makes you madder, you know.

24 Q Can you sit and read a book?

25 A No, I can't -- no, I mean, it's just

1 constant. It's just constant music. I mean, I
2 think some people probably can. I mean, my office
3 doesn't even have music on. You know how some
4 offices have like music going in the background or
5 somebody will have -- no, we don't -- because, you
6 know, we don't play music because we're engineers
7 and everybody's thinking, you know. But I can't, I
8 just can't do that.

9 Q Now, speaking of your office, and I see
10 that you have a study in your suite, is that set up
11 as a home office for you?

12 A No, it is not. It actually is a study.
13 It's got bookcases from floor to ceiling with books
14 and everything, but right now, it's got also bunk
15 beds for boys, so.

16 Q Those boys your grandkids?

17 A Yeah, my grandsons.

18 Q So, we're back to Demonstrative Number 3,
19 and this is the schematic drawing of Kaskaskia
20 Engineering?

21 A Uh-huh.

22 Q With Copper Fire being set up in the upper
23 right hand corner. Can you show where your
24 individual office is in Kaskaskia on here?

25 A Mine?

1 Q Yes.

2 A Well, I used to be here in the front; and
3 now, I'm back here. I've taken these three offices,
4 I've take this whole space. Because it's quiet back
5 there.

6 Q And, so, if you need to work in the
7 evening or on the weekends in your home, you go down
8 to your office?

9 A Right. I go to the office. I don't -- on
10 Wednesday, Thursday, I don't go home. Like I just
11 stay at the office. It's quiet there. I mean, it's
12 not great for our marriage but it helps my sanity.
13 It's super quiet, and I work down there.

14 Q And when say you don't go home, how late
15 do you stay in on the office on Wednesday and
16 Thursday nights?

17 A 9:00 o'clock.

18 Q Go home and try to go bed?

19 A No, I go home and I get the dogs, I can go
20 for a really long walk to try to tire all of us out
21 and then go to bed.

22 Q Is that different than what you did before
23 Copper Fire had music playing on Wednesday and
24 Thursday nights?

25 A Yeah. I mean, I would go home and we'd

1 make dinner. We don't eat dinners or anything
2 anymore. We don't have dinners.

3 Q Has the music at Copper Fire that you hear
4 in your loft, has that altered your sleep schedule?

5 A Well, I stay up later, obviously, than I
6 used to. I mean, it's affected my sleep schedule.
7 I don't sleep nearly as well as I used to. Mainly
8 because I got so used to -- now, I'm now so used to
9 having earphones in to try to block it, and that's
10 just terrible for your sleep. So, I mean, I'm a
11 meditator. I teach meditation. So, I meditate
12 every morning. I used to meditate every evening,
13 but I don't meditate any evenings any more. I
14 actually could in the office, but for some reason,
15 I'm just like -- knowing what the situation is and
16 everything, I'm just like forget it.

17 Q So, I think we've talked about most
18 everything, but I want to make sure we hit on all of
19 it. Can't have a normal conversation in your loft
20 while the music is playing at Copper Fire. You
21 can't watch TV at a normal level. You can't listen
22 to your own music. You can't sit and read a book.
23 You can't go to sleep without having to work around
24 it. You mentioned your grandchildren; you have two
25 grandsons?

1 A **Three.**

2 Q Three. How old are they?

3 A **Let's see they are: seven, eight, and --**
4 **no, they're six, seven and nine.**

5 Q Are they with you and Doug a lot?

6 A **They're with us every weekend. Every**
7 **Friday night to sometime on Saturday.**

8 Q Can they sleep in your loft?

9 A **I mean, they can't go to sleep before the**
10 **music stops. They can't fall asleep. Now, okay,**
11 **there's a first grader, a second grader and fourth**
12 **grader, okay? So, they go to bed now with their**
13 **tablets. I mean, it's terrible, and their parents**
14 **knew that I would get in a lot of trouble, but it's**
15 **the only way they can stay there. Their parents**
16 **know we have a problem with Copper Fire noise, but**
17 **they have no idea. But I want to make sure I have**
18 **them, and they're yeah -- they just stay up a late,**
19 **and I don't keep them a lot there anymore. I take**
20 **them to our -- the lake house that we built to get**
21 **away from this.**

22 Q And we'll get to the lake house in a
23 little bit.

24 A **But, I mean, when this all started, they**
25 **were little. And, so, yeah, it was -- it was real**

1 hard to have little ones with the noise, you know.

2 It's like they want to go -- they're tired; they
3 want to go to sleep; and, you know, there's noise.

4 Q And they're not able to go sleep, and does
5 that impact them the next day?

6 A Oh, yeah, they're like crazy people.

7 Q Anything else of how the sound or the live
8 music you hear in your loft from Copper Fire, is
9 there any other impact on your life?

10 A I mean, I can tell you that -- to me, it
11 feels like Chinese water torture. I mean, a drip of
12 water, that's no big deal, right? But if it's
13 constant and it never stops, it becomes torture,
14 right? That's how I feel about our loft. Doug is
15 the same way. He'll be here later, of course,
16 because he's teaching high school, but it's just --
17 I mean, I don't like our loft anymore. Like, I
18 loved living downtown, and I do believe in small
19 business, and I don't want anything to happen to
20 Copper Fire except that I just want -- I just want
21 some peace in our house.

22 We'll really miserable. It's hard
23 for me to even clean this place anymore, because I
24 just -- I hate it. I don't want to live there
25 anymore, and I can't sell a building that has noise;

1 and there's no way to even not know about it because
2 it's everywhere on Facebook and everything that it's
3 so loud over there, so.

4 Q So, it's taken away your love of your
5 home?

6 A Oh, of course.

7 Q Now, at some point in time -- I'm sorry, I
8 skipped one thing. Have you tried to host a dinner
9 party?

10 A We don't host --

11 Q Since the music started at Copper Fire?

12 A No.

13 Q Could you, if you wanted to?

14 A No. The thing is that that we have had
15 people over. And this is why don't we host dinner
16 parties or anything. We do -- we have had people
17 over and this is what happens. Oh my God, it is
18 loud. That music is loud. I know. Why don't you
19 call the police? Tried to call the police. Why
20 don't you complain to them? Have. It's like people
21 don't understand, like, we have no power in this at
22 all. No power to make it better. There's just no
23 power in it. So, like, you just feel like an idiot,
24 yeah, I know we're living with this, and we have
25 no -- we have nothing else we can do. We can

1 have -- like we do sell large parties at auctions,
2 like Becca went to the Memorial Foundation Auction
3 and golf tournament today. We'll sell a big party
4 there. You can have a big party if you get people
5 in before the music starts. Because then, you know,
6 you invite 50 to 75 people, they can be loud enough
7 where you can't hear the noise next door. So, you
8 can do that but have to be strategic about it.

9 Q You got to time it right?

10 A Yeah, uh-huh.

11 Q Now, at some point in time, your aunt,
12 regrettably, became very ill?

13 A It's actually Doug's aunt, but, yeah, my
14 aunt as well.

15 Q Okay. Doug's aunt become very ill. Did
16 she have any family in the area besides you guys?

17 A She's never married. She never -- of
18 course, didn't have any children. No, there was no
19 place for her to go. Doug's mom was still alive,
20 but Doug's mom lives with Doug's sister, so she's
21 like, we cannot take her. I'm, like, I know. No, I
22 can definitely take her, but it was she moved in
23 late November, I think, early December. So, it is
24 at Christmas time. So, yeah, there's no place for
25 her to go. Of course, we took her. We had hospice

1 bring -- we ordered a hospice bed right away. But I
2 know that the question was asked, like, why couldn't
3 we -- I don't know if the lake house was done then
4 or not. I can't put the timeframe together.

5 But she was living with us because I
6 still had to work. It's a year in. So, like,
7 bonuses had to be determined. We are still
8 finishing annual reviews. So, I could like get her
9 set and run down stairs and do whatever and then
10 come back and forth and check on her. Make sure she
11 was fed, when she got her meds and when she needed
12 them. And, plus, at the beginning, she was still
13 having chemo therapy for the -- just to relieve pain
14 in her spine, so, you know, we would have to take
15 her to St. Louis; and it was -- there's no way we
16 could do it from anywhere else.

17 Q Where did you situate her inside of your
18 suite?

19 A Well, the only place we could put her is
20 right up here in the window. And I want to tell
21 you, she did love that. Because the Christmas tree
22 was up, and that was one thing she asked when we
23 were, like, what do you think about coming to live
24 with us; and she said do you have a Christmas tree
25 up? And then the trolley runs on Main Street at

1 Christmas time; she could hear the trolley, and she
2 really did love it. And I actually thought, like,
3 she's on enough drugs that maybe she won't hear the
4 noise. Like, I actually thought that it was going
5 to work pretty well, except that not quite enough
6 drugs until the end.

7 Q When did she eventually pass?

8 A Christmas Eve.

9 Q She was with you for about a month?

10 A Just a month, yeah.

11 Q Now, did your aunt eventually comment
12 about the music?

13 MR. PETRUSKA: Objection, hearsay.

14 MR. JACOBBER: It's not being offered for
15 the truth of the matter asserted, Your Honor.

16 HEARING OFFICER WEBB: Okay, go ahead.

17 THE WITNESS: I mean, yes. She asked if I
18 could turn the music down. I'm like, I don't
19 control the music. It's in the building next
20 door, so there's nothing we can do. Like, we
21 would try to turn the TV up loud for her, and
22 she was sitting really close -- or her bed was
23 very close to it, but she would be like too
24 much, just turn it off.

25 Q (By Mr. Jacobber) So, I want to talk you

1 about a little bit. Because you mentioned now a
2 couple of times, it's not that you can't turn the TV
3 up loud enough to hear it; my understanding is, it's
4 not that you can't turn your TV loud to hear it over
5 the music, it's that when you do that, you also have
6 this competing noise that just starts to kind of
7 overwhelm --

8 **A Your senses.**

9 Q -- your brain a little bit? There's just
10 too much going on?

11 **A There's too much going on, yeah. I mean,**
12 **it's like no one listens to music and watches TV, I**
13 **don't think. I mean, I couldn't do it. I mean, my dad**
14 **would never allow that either, so.**

15 Q Most parents won't allow that. Okay, we
16 talked a lot about hearing the noise. Can you feel
17 the noise?

18 **A You can.**

19 Q Can you explain how it feels?

20 **A It's like a vibration. It's definitely a**
21 **vibration. It vibrates -- it does vibrate I don't**
22 **know if it's -- I don't know if it's vibrating the**
23 **wall or if it's just the vibration coming through**
24 **the wall; I don't know exactly what it is, but you**
25 **can feel it.**

1 Q Do your dishes rattle in your cupboard?

2 A No, no.

3 Q So not that much but you can feel the air
4 move a little bit?

5 A Right, it's like Doug and I were talking
6 about this last night, because I'm, like, we need to
7 really think about this. And he's like -- and I'm
8 not -- and I know you're going to get to it a later,
9 but I'm not there as much as I used to be but Doug
10 is. He's, like, it's -- even if you couldn't hear
11 it, you could feel it. Yeah, it's -- there is a
12 vibration; and I don't know, you know, like, for
13 instance, one time we had Benny who own Benny's
14 Pizza Pub come over. He was out on the street, and
15 he's just like, hey, Copper Fire's music is really
16 loud, let me come up. I heard it's loud in your
17 space; let me come up. So, he's just, like, holy
18 shit. Like this is vibrating the wall. It feels
19 like the wall is vibrating, but I don't know if the
20 wall is really vibrating.

21 Q How about in the Kaskaskia space? Can you
22 feel it in there?

23 A You know what? I don't know -- I don't
24 know if I ever sat down there and felt it. I just
25 walk in, I'm, like -- and, gone, you know.

1 Q Understood. How many people does
2 Kaskaskia employ?

3 A About 75. They're not all in this office.

4 Q I understand. And do -- mostly
5 engineering or in this office is it kind split
6 between administrative and engineering?

7 A It's split between administrative and
8 engineering in this office.

9 Q This is your headquarters?

10 A It's our headquarters, yeah.

11 Q And is it most of where your
12 administrative staff sits?

13 A All.

14 Q All administrative staff sits?

15 A Yeah.

16 Q Okay. So, of your engineers -- strike
17 that. Is it safe for us to assume or conclude that
18 your administrative staff doesn't really have a lot
19 of required weekend work time?

20 A Yeah. They -- I don't require any, but
21 they -- everybody works on the weekend, obviously,
22 because everybody is trying to meet deadlines. But
23 the administrative staff, which is all over here in
24 these offices so they have, like, some privacy,
25 okay, you know, if they're going to work on the

1 weekends, they're going to work from home now.

2 Q Okay.

3 A Unless we're doing work together, like,
4 you know, working on bonuses and all that, we try to
5 do that together and we try to do that on the
6 weekend, but then we just work in my office where
7 it's quiet.

8 Q Understood. Are these cubes up here that
9 I see --

10 A Right.

11 Q -- along the west side of the building?

12 A Yeah.

13 Q Are those all your engineers?

14 A Yeah, so you can see that, like, we had --
15 instead, putting cubs in, we just had these walls
16 built when we were putting in our office, so we
17 would create a cube-like type experience. So, this
18 is all -- this is the whole engineering side.
19 Transportation-engineering. This is geotechnical
20 engineering back here.

21 Q Now, did these engineers have deadlines
22 that sometimes might require them to work over the
23 weekend?

24 A Of course.

25 Q Are they able to come in and work on the

1 weekend in the office?

2 **A They -- they don't.**

3 Q So, they've all have to develop a home
4 system?

5 **A Yeah, of course, at first, I mean, that**
6 **they were all developed a home system during Covid**
7 **obviously, okay? So, then they just continued to**
8 **work in there -- on weekends. This whole staff**
9 **comes in. They're all back in the office, because**
10 **it's more collaborative for engineers to be in the**
11 **office. Not everywhere -- all my offices are like**
12 **that. My environmental staff all work from home,**
13 **but this is group, the work that they do there**
14 **together, that they work on the -- they work at home**
15 **on the weekends, accept for Bob. Bob, who sits up**
16 **here, don't really have a place to work at home**
17 **because he's got grandkids and everything. So,**
18 **he'll come in on the weekends.**

19 Q Do you know if -- has he commented to
20 you --

21 **A Oh yeah.**

22 Q -- about the noise?

23 **A Bob, a martyr. So he's comments every --**
24 **every time he does it, he has to tell me about it.**

25 Q Does he maybe try move to a different

1 station?

2 **A No, because everybody has got their**
3 **workstations the way they want them.**

4 Q Sure.

5 **A You know?**

6 Q Now, we'd have talked about this a little
7 bit; your goal isn't to prohibit or restrict Copper
8 Fire from playing live music at all, is it?

9 **A No, it's if they could get the noise down.**

10 Q Get the noise --

11 **A Get the sound level down.**

12 Q And more specifically, get it to where you
13 weren't hearing inside your loft, right?

14 **A Right, we would love that. If we -- if we**
15 **even heard muffled music, it would be better than**
16 **what we're hearing now. But we would love it if we**
17 **were not hearing music all time in our loft.**

18 Q What is that -- so you said "muffled".
19 let's make sure we're clear on the record. What do
20 you mean by muffled?

21 **A You know, there's like -- you can tell**
22 **something is going on, you know? There's -- but not**
23 **like every single -- you know, like, you can sing**
24 **along with every single word.**

25 Q So, you can hear the words? You can hear

1 the melody? You can hear the beat?

2 **A Absolutely.**

3 Q Can you hear the crowd?

4 **A You can hear the crowd when it gets --**
5 **mostly later in the evening because the crowd gets**
6 **really loud. Or you can hear sometimes, like, the**
7 **band on the mic like talking. That's how we know**
8 **it's like last song. We'll be like, oh, great, the**
9 **last song.**

10 Q How about when they play Sweet Caroline?

11 **A Oh, Jesus, don't even -- do you know how**
12 **many times they do that that? Sweet Caroline,**
13 **everybody sings with it, of course.**

14 Q Right, so then you hear the crowd --

15 **A Yes.**

16 Q -- and the band?

17 **A Right.**

18 Q Any songs like that --

19 **A Right.**

20 Q That kind of have, like, a singalong
21 component.

22 **A That's the only time, you know, we hear**
23 **the crowd is when they're singing this Sweet**
24 **Caroline or something; they're singing with it.**

25 Q Sure. Now, you've made attempts, outside

1 of filing this action, to resolve this with
2 Ms. Eichholz, correct?

3 **A Yes.**

4 Q Okay. We're going to go through
5 communications that you had with her. We're going
6 to start with Exhibit C-3, which is in your book
7 there.

8 **A It's under 3?**

9 Q Yeah, I'm sorry, it's just under 3.

10 **A Okay.**

11 Q I'll be referring to them as C-3 because
12 we're the Complainant.

13 (Complainants' Exhibit C-3 marked.)

14 Q (By Mr. Jacober) So, let me know when you
15 have it.

16 **A I have it, sorry.**

17 Q Okay. This is an e-mail string from
18 March 17 of 2018, correct?

19 **A Yes.**

20 Q Does that refresh your reflection when
21 Copper Fire opened up?

22 **A Yep.**

23 Q And --

24 **A It's interesting because it is right at
25 St. Patrick's Day. That time period.**

1 Q Right, St. Patrick's Day is March 17th.
2 So, you instantly said -- talk to your architect
3 about acoustical remediation. To the best of your
4 knowledge, did Copper Fire follow up with you and
5 say that they've inquired about acoustical
6 remediation?

7 A No.

8 Q We would move C-3 into evidence as well as
9 C-1.

10 HEARING OFFICER WEBB: Any objections to
11 either of those?

12 MR. PETRUSKA: No, no objection.

13 HEARING OFFICER WEBB: Okay, C-1 and C-3
14 are admitted.

15 (Complainants' Exhibits 1 and 3 are admitted onto
16 the hearing record.)

17 Q (By Mr. Jacober) So, on March 17th, Geri,
18 do you recall if Copper Fire had a live band?

19 A Yes.

20 Q And everything you explained already about
21 the live band, could you hear it in your loft?

22 A Yes. And this is -- this is actually --
23 this was actually at 3:47. So, this is in the
24 afternoon. So, this was heard -- I mean, we were in
25 the office, obviously. And, yes, we could hear it

1 in the office and we could hear it up in the loft.

2 Q Okay. You understand that there could be
3 a couple times a year when they have -- when it's a
4 holiday, and there are larger parties, that it might
5 be louder than the rest of the year, don't you?

6 A Absolutely. I think that this just caught
7 us so off guard. So, if, yes, we realize that, and
8 if it was even, like, hey, it's -- we're going to
9 have a big party during the day, can we work
10 something out? Obviously, I would just tell my
11 staff, hey, everybody work from home tomorrow
12 because Copper Fire is going to have a large band.
13 We can actually work together like that, but it
14 can't be like, you know, like KSHE outside in the
15 morning at 6:00 o'clock. It's just, like, hey, we
16 got to have some kind of warning because I got to
17 let my tenants know what's going on.

18 Q Sure. Okay. If you could turn to
19 Exhibit 4.

20 (Complainants' Exhibit C-4 marked.)

21 Q (By Mr. Jacober) Let me know when you've
22 had a chance to review it.

23 A Yes, I have it, yes.

24 Q This is an e-mail string between you and
25 Ms. Eichholz in May of 2018, correct?

1 **A Correct.**

2 Q And do you recall what prompted
3 Ms. Eichholz e-mailing you on May 2nd? Looks like
4 you called her?

5 **A Yes, I must have, uh-huh.**

6 Q Do you remember --

7 **A I mean, I don't recall calling her, sorry.**
8 **But it sounds like it.**

9 Q You don't recall -- so you don't recall
10 what you called her about it?

11 **A I'm sure I called her about noise. That's**
12 **the only thing we talked about.**

13 Q You and Ms. Eichholz aren't social friends
14 or anything?

15 **A No.**

16 Q You don't have anything else to talk
17 about? So, then you responded on May 3rd, and you
18 said that your office manager was there on Friday,
19 which I guess would be the very end of April 2018.
20 So, that's about a month or so into them being open,
21 correct?

22 **A Correct.**

23 Q She measured the sound, I guess, on a
24 phone decibel meter --

25 **A Yeah.**

1 Q -- at 112 decibels. Do you recall being
2 in your loft on that Friday night? I know it's a
3 long time --

4 A Yeah, I don't know. I mean, yes, I'm sure
5 I was, but I don't -- yeah.

6 Q Okay.

7 A I am sure that I was because I didn't have
8 anywhere else to go.

9 Q Okay. We would move Exhibit 4 into the
10 record?

11 MR. PETRUSKA: No objection.

12 HEARING OFFICER WEBB: Exhibit 4 is
13 admitted.

14 (Complaints' Exhibit C-4 admitted onto the hearing
15 record.)

16 Q (By Mr. Jacober) In Exhibit 4,
17 Ms. Eichholz's e-mail to you -- looking at it
18 specifically, she says "We want to look at taverns
19 tomorrow night and then make a decision."

20 A Where is that? Are we C-4? Or we're in
21 4?

22 Q I'm sorry, yeah, we're still on 4, and
23 I'll read the e-mail for the record?

24 A Okay.

25 Q "I'm sorry I didn't call you back. I was

1 as for Copper Fire for administrative assistants
2 celebration and then received a call from client and
3 then went back to my staff. I went home, made
4 dinner and I'm just sitting down to work with them.
5 We think we may have found something, although not
6 cheap. We want to look at Taverns tomorrow night
7 and then make a decision. We didn't have music last
8 Saturday. How was the sound?" What is Taverns, if
9 you know?

10 **A That is Tavern's on Main. It's another**
11 **restaurant and bar.**

12 Q Is it close to Kaskaskia?

13 **A It's -- it's about a half a block away on**
14 **the other side of the street.**

15 Q Okay. Not connected to Kaskaskia?

16 **A No.**

17 Q Or not connected to the Writers' Loft?

18 **A No.**

19 Q Can you hear Tavern?

20 **A Tavern doesn't have bands. Every now and**
21 **then, they have an old guy out on the -- outside**
22 **playing and singing but they don't -- maybe they do**
23 **by, like, bands out now and then, but they don't**
24 **have music inside.**

25 Q Okay. Not a live music place?

1 **A Uh-huh.**

2 Q It's just a bar?

3 **A It's a nice restaurant, and it has bars,**
4 **too. It's got a couple bars with it.**

5 Q Okay. If you could turn to Exhibit 5.
6 (Complainants' Exhibit C-5 marked.)

7 Q (By Mr. Jacober) This is an e-mail dated
8 May 18, 2018 from you to Ms. Eichholz. Did you --
9 to the best of your knowledge, did you receive
10 a response to this e-mail?

11 **A I don't remember. I'm sorry.**

12 Q And in this, you're addressing the noise
13 and asked her to set up a meeting or asked her to
14 attend a meeting with you and the Mayor's Office to
15 discuss that problem. And then you also said there
16 were issues with the employees hanging out in the
17 back of the building. Do you know if that issue was
18 addressed?

19 **A Yeah, I think so, because I think they**
20 **moved around to the side for a while. Like the back**
21 **or to other side.**

22 Q Is that a problem --

23 **A I think she talked them.**

24 Q Is that a problem today?

25 **A I mean, this also was a lot of pot smoking**

1 going on back there. We have -- there is decks on
2 the back of our building, so people like to be
3 outside; and little boys -- or my grandkids are out
4 on Friday evening. So, no one wants to hear vulgar
5 language, and there's a kid that lives on the third
6 floor on the back as well, but I do think she got
7 that resolved because we don't have that problem
8 anymore.

9 Q Do you know if that meeting with the
10 Mayor's Office happened? You reference a time on
11 May 29th?

12 A I don't -- I don't actually remember,
13 sorry.

14 Q That's okay.

15 A I don't remember. I mean, it's hard for
16 me to remember 2018, sorry.

17 Q I understand. We would move Exhibit 5
18 into the record.

19 MR. PETRUSKA: No objection.

20 HEARING OFFICER WEBB: Exhibit 5 is
21 admitted.

22 (Complainants' Exhibit C-5 is admitted onto the
23 hearing record.)

24 MR. JACOBBER: Thank you.

25 Q (By Mr. Jacobber) Now, there's a little bit

1 of gap in communication from, oddly enough, April of
2 2020 until sometime in 2021; is that right?

3 **A Yes.**

4 Q What was that gap?

5 **A The pandemic, yeah.**

6 Q And during the pandemic, was Copper Fire,
7 like most places, restricted to takeout food and no
8 big gatherings?

9 **A Correct.**

10 Q Eventually that relaxed and eventually it
11 was gone?

12 **A Yeah, but at some point through this,**
13 **the -- I think they were -- we were having**
14 **outside -- we were -- the Mayor closed off the**
15 **streets, a lot of the side streets and let**
16 **restaurants with, you know, paper menus have seating**
17 **outside. So, I don't know, March 2021, that might**
18 **be before that or right at the same time. I don't**
19 **know.**

20 Q Okay. When those rules were instituted,
21 they could have outside seating, do you know if they
22 had live bands?

23 **A I think they did have some live bands --**
24 **have live bands. It was awesome, because it was**
25 **outside. So, then we don't hear it at all.**

1 Q You weren't able to hear the live bands on
2 the street inside your loft at all?

3 A No.

4 Q But they weren't set right up there, were
5 they?

6 A No, they were on the street, so it would
7 be -- on this drawing, on that, are you going to get
8 the other one?

9 Q I think this one --

10 A Yeah. They would be, like, there's a side
11 street over here, so they were set up over here
12 somewhere. And I think most of the time -- no, I
13 think right in the front, though. But we can't -- I
14 mean, if our windows are closed, we can't hear
15 anything that goes on on the street.

16 Q Okay. If your windows were open, were you
17 able to hear the bands?

18 A We could hear the bands if the window was
19 open.

20 Q Okay, but closed, band is gone --

21 A Problem is gone, yeah. But, I mean, the
22 only thing that happened during this time is there
23 was -- they were having, at least one in particular
24 time, when they were having some kind of party
25 during Covid that was so loud. So, I went over -- I

1 **tried to call; nobody answered the phone. So, I**
2 **went and actually, like, went into Copper Fire,**
3 **because the door was unlocked and tried to get**
4 **Rena's attention. I had -- it was so loud that I**
5 **had to tap her on the shoulder to say, like, please**
6 **turn the music down, and that really -- that ended**
7 **up being an altercation where I had to call the**
8 **police.**

9 **Q So, what -- describe that altercation for**
10 **the record.**

11 **A Well, I mean -- I mean, everybody was**
12 **partying so, like, there was some namecalling, and**
13 **then I went out and she followed me. Then, her**
14 **husband came out, and I called the police, and they**
15 **were like get in your building and lock the door.**
16 **So, I was in my building, and he was yelling at me**
17 **through the window; the police were on the phone.**
18 **The police did come.**

19 **Q Did that result in anyone getting**
20 **arrested --**

21 **A No.**

22 **Q -- or charged with anything?**

23 **A No, just talk. Really the great thing**
24 **about the police in Belleville, the great or not**
25 **great thing, is that they really try to work out.**

1 **They don't want to hurt any business. They really**
2 **don't.**

3 Q Do you want to hurt Copper Fire?

4 **A No, no, we just want some peace.**

5 Q Now, eventually you had prior counsel send
6 two cease and desist letters to Copper Fire; is that
7 correct?

8 **A Correct.**

9 Q And those are found in Exhibit C-6 and
10 C-7.

11 (Complainants' Exhibits C-6 and C-7 marked.)

12 Q (By Mr. Jacober) Do you see those?

13 **A Yes.**

14 Q We would move into the record C-6 and C-7?

15 MR. PETRUSKA: No objection.

16 HEARING OFFICER WEBB: C-6 and C-7 are
17 admitted.

18 (Complainants' Exhibits C-6 and C-7 admitted onto
19 the hearing record.)

20 Q (By Mr. Jacober) And then eventually or
21 soon after, the two letters were sent, Mr. Petruska
22 for MRB Development and Copper Fire did respond, and
23 that's in Exhibit C-8; is that correct?

24 **A Yes.**

25 Q We would also move C-8 into the record?

1 **THE WITNESS: C-8.**

2 MR. PETRUSKA: No objection.

3 HEARING OFFICER WEBB: C-8 is admitted.

4 (Complainants' Exhibit C-8 marked and admitted
5 onto the hearing record.)

6 Q (By Mr. Jacober) Okay. If you could take
7 a moment to look through the e-mail string on
8 Exhibit C-9.

9 (Complainants' Exhibit C-9 marked.)

10 Q (By Mr. Jacober) Okay. This is an e-mail
11 string, and I am sorry there's probably a picture in
12 there that doesn't bring back great memories of your
13 aunt laying in the hospital bed inside your loft.
14 This is kind of that whole issue summed up, correct?

15 **A Correct.**

16 Q Now, there's an e-mail, I just had it,
17 apologies, that you responded to from, and this
18 e-mail is -- let's go back. Your e-mail to
19 Ms. Eichholz was on December 11th at 8:22 in the
20 morning, correct? It's the very first e-mail in the
21 string on the last page.

22 **A What -- did you say -- what's the date and
23 time?**

24 Q December 11th?

25 **A Yeah, 8:22?**

1 Q At 8:22 in the morning.

2 A Yeah.

3 Q That's when you let them know that your
4 great aunt is on hospice and living with you. And
5 Mr. Petruska says, "This sucks. It is a set up.
6 However, it is a good setup. Is there any
7 possibility in your mind that this is a lie? If
8 yes, I think you should talk to the attorney and get
9 specifics however you get the specifics and if it is
10 true, we will need to make some changes. I'm not
11 suggesting any music. I'm suggesting some lower
12 level temporarily." Was there any lower level of
13 music temporarily while your aunt was dying?

14 A No, and I think I was accidentally sent
15 that.

16 Q And you responded in that fashion, didn't
17 you. Almost immediately thereafter?

18 A Yes.

19 Q "Thank you for including me and my
20 attorney on this e-mail -- on this e-mail. My aunt
21 has terminal cancer. She has no children and could
22 go not go home. She will live with us until she
23 passes. The music that started at 7:00 p.m. in the
24 evening is too loud. She's trying take her mind off
25 this terrible situation, and the music is competing

1 with the TV." That's been your testimony all along
2 today, right? It's the competition?

3 A Right, and, like, I don't want anyone to
4 think, like, this wasn't a problem the whole time
5 that we weren't going and back forth, but you
6 can't -- it doesn't -- it didn't do any good. For
7 Doug and I, we just decided, like, obviously,
8 this -- this text me every time the music is too
9 loud, that would be every single day so that just is
10 not an effective solution. But this was like --
11 this isn't affecting us; when she was affected by
12 it, we had to speak up again.

13 Q And we're going to go through some text
14 messages here in a second. But, eventually, if you
15 could turn to -- I'm sorry getting ahead of myself.
16 Your Honor, we would move for C-9 to be admitted
17 into the record?

18 MR. PETRUSKA: I object, Your Honor, that
19 under the rules of ethics of Illinois that
20 document was withdrawn. I sent it to them and
21 said it just be withdrawn and that they were
22 not allowed to use it and they were supposed to
23 remove it and not include it in any exhibits,
24 but now they've brought it up. But I am
25 objecting on the fact that that was a mistake,

1 an attorney-client privileged communication,
2 and it never should have been brought up at all
3 in this hearing.

4 MR. JACOBBER: The problem is, Your Honor,
5 before that withdrawal occurred,
6 Ms. Boyer responded to the e-mail. It was
7 within --

8 **THE WITNESS: It was probably minutes**
9 **because I was so angry.**

10 MR. JACOBBER: It wasn't minutes.
11 Ms. Petruska's e-mail was at 6:18 p.m. on
12 December 11th, 2021, and Ms. Boyer responded at
13 8:09 p.m. before this was any -- any
14 acknowledgement that sending that e-mail was a
15 mistake. I believe, at the very minimum, given
16 that Ms. Boyer's e-mail back in 2021 mirrors
17 everything she's been saying about this morning
18 about how sound is in competition with the TV
19 and destroys your ability to sit and enjoy
20 watching TV, because you have this background
21 sound constantly, that should be admitted into
22 the record. The reason why that e-mail was --

23 MR. PETRUSKA: Can -- can we say for the
24 record that you received an e-mail from me
25 saying it was a mistake and that was

1 attorney-client privilege?

2 MR. JACOBBER: Well, that's -- that's in
3 this e-mail string.

4 HEARING OFFICER WEBB: I'm going to do
5 that. I will accept this exhibit -- it's kind
6 of lengthy, and I'm kind of confused because
7 it's looks like there's some repetitive -- I
8 don't really have time to go through this all
9 right now. I'm going to accept it as an offer
10 of proof, and you can argue to the Board, okay?
11 I just don't have time to figure this out right
12 now. It's quite a few pages, and I'm a little
13 confused by it, so.

14 (Complainants' Exhibit C-9 admitted onto the hearing
15 record.)

16 MR. JACOBBER: Thank you.

17 Q (By Mr. Jacobber) If you could turn to
18 C-10.

19 (Complainants' Exhibit C-10 marked.)

20 Q (By Mr. Jacobber) Could you, for the
21 record, tell us what that is?

22 A It's a sign that says, "My neighbors are
23 listening to great music whether they like it or
24 not." That was in the window of Copper Fire, and if
25 you're looking at the building, it was on the, like,

1 the left hand side as close to Kaskaskia
2 Engineering's building or our building as you could
3 put it.

4 Q Let's help have a visual for the record --

5 A So it would have been, like, in the window
6 right here.

7 Q Okay. For purposes of the record, you're
8 referencing the --

9 A Copper Fire.

10 Q -- far left corner of Copper Fire?

11 A Correct.

12 Q It's in their window?

13 A Correct.

14 Q How long was it in the window then?

15 A Man, I don't remember how long it was,
16 but, like, it got a lot of attention by people in
17 the community even. Are they taunting you? Is this
18 about Kaskaskia, and I'm, like, obviously, it's
19 about us.

20 Q I would move for C-10 to be admitted into
21 the record?

22 MR. PETRUSKA: No objection.

23 HEARING OFFICER WEBB: C-10 is admitted.

24 (Complainants' Exhibit C-10 admitted onto the
25 hearing record.)

1 Q (By Mr. Jacober) So, you referenced text
2 communications, and you did text with Ms. Eichholz
3 quite a bit, didn't you?

4 A At the beginning, yeah.

5 Q Okay. When you say, at the beginning, the
6 text message we have in Exhibit C-11 begins on
7 November 6th of 2020; is that correct?

8 (Complainants' Exhibit C-11 marked.)

9 A Correct.

10 Q (By Mr. Jacober) And they go through
11 February 12th; is that correct?

12 A Let me look real quick. Yeah, but so
13 February 12th, I'm thinking that's got to be
14 February 12th of 2021, or when this is that? Do you
15 know?

16 Q These are the production from
17 Ms. Eichholz's. Frankly, I'm not sure, but I
18 believe it has to be 2021.

19 A Okay.

20 Q Because eventually those text messages
21 stopped, correct?

22 A Correct, uh-huh.

23 Q Do you know why they stopped?

24 A I mean, well, I don't think they stopped
25 immediately on my end. I think that she ended up

1 blocking them, which is fine, because it didn't do
2 any good anyway.

3 Q Okay.

4 A I mean, we just -- it was -- it just all
5 was a futile attempt at, to be like, do you realize
6 how bad this is and we're still over here?

7 Q Well, what was it futile at first?

8 A You know, what? I mean, we had, like, met
9 with these attorneys, with the Belleville's
10 attorneys and Mr. Petruska, and we were, like, okay,
11 can you hear -- I think that everybody -- I think
12 they were surprised that we couldn't hear their --
13 just the recorded music that they played during the
14 day. Like, we can't hear that so you're fine.
15 Because I think they thought it was going to, like,
16 because we were adjusting the volume at first and we
17 can't hear that music. And, at first, it was okay,
18 like, yeah, we can hear that; okay, we'll try to
19 turn it down.

20 But I think in the end what happened
21 is that I think there wasn't enough understanding
22 about noise and noise frequencies. It's just not
23 attributed to decibels, that it has to do with the
24 frequently of the noise as well, because it was
25 just -- I know how frustrating it had to be for

1 Renae, because it was frustrating for me, because
2 she'd be, like, well, it is a low decibel than
3 yesterday. I know, but we can hear it and it sounds
4 louder, so I don't -- I'm sure that was because the
5 frequency was different. It's -- I mean, noise is
6 complicated, and, obviously, we can tell from this
7 you can't -- it's not simple.

8 Q And it's not linear?

9 A It's not linear, that's right.

10 Q It's not there's just a cut off and after
11 that, we know where levels exist that hearing can be
12 harmed.

13 A Right.

14 Q We know it's safe below that level but
15 other than that, it's very difficult --

16 A It is.

17 Q -- to know exactly how to fix that?

18 A It doesn't, you know, even though, the
19 police chief was, like, Geri call and complain;
20 that's the only way we have documentation that this
21 is bothering you. But after a while, you're just
22 like this is stupid, because the police don't
23 understand how -- they don't understand decibels and
24 frequencies and how they work together. I mean,
25 none of it -- it was all a futile attempt.

1 Q But -- but on June 11th of 2020, you
2 texted in the evening at 9:40, you texted
3 Ms. Eichholz, "We can hear the music tonight." She
4 responded, "How loud? What is your reading? We
5 will ask them to turn it down but your reading is
6 lower than last night."

7 A Right.

8 Q And you said, "I'm just hearing it. We
9 heard it last night, too, but forgot I was supposed
10 to text." Ms. Eichholz responded, "We asked them to
11 turn it down, better?" You responded, "Yes, thank
12 you." So, it worked for a while, right, and then
13 eventually what happened? Ms. Eichholz refused to
14 turn the music down?

15 A Yeah, I think it's because it gets -- it
16 got -- it's too much. I get it because for us, it's
17 every single time they have a band, and it just
18 seems like we're being nitpicky, but we just
19 don't -- we just want to have our lives. So, it's
20 like, yeah, we can hear it. Can you turn it down,
21 and, at some point, it's like it's too much.

22 Q Have you taken a moment to review the text
23 messages in Exhibit 11?

24 A You want me to -- but I did read through
25 them last night, yeah.

1 Q Yes, please. Take a moment?

2 A Oh, God. I hope I'm at the end of this
3 soon. Okay, sorry.

4 Q Okay. To the best of your knowledge, does
5 this represent the text communication between you
6 and Ms. Eichholz?

7 A Yes.

8 Q Now, the one I'm curious about, and it's
9 sometimes difficult to decipher when the text
10 messages are actually from, but it looks like it is
11 from June 13th. And you comment on June 13th, "We
12 can hear music. It's not offensive since we're just
13 working around the house, but for your
14 understanding, we can hear Take a Load Off Benny
15 now." So, you can hear the song enough to
16 distinguish what's --

17 A Oh, not, no, you can't just distinguish
18 it. You can sing every word with the music.

19 Q So, a little bit, if you can continue on
20 that -- that text chain about -- thank you, I didn't
21 see the page number. Page 4 in there. You see on
22 the bottom --

23 A That helps, yeah.

24 Q I'm sorry, not page 4. Page 5?

25 A Okay.

1 Q In this text, Ms. Eichholz says, "Decibels
2 are lower than any of the last three days. We're
3 using a consistent testing method. One person
4 acoustics can be heard through the windows with the
5 doors closed and it's not too loud. If you want to
6 record and send it to me so I can hear how loud it
7 is on your side that might help me understand."

8 You respond, "That doesn't work.
9 We're aren't going for loud. We're going for not
10 hearing your music."

11 And she responded, "Mark is on his
12 way up and would like access to hear it." To your
13 knowledge, is she referring to Mark Eichholz, her
14 husband?

15 **A Correct.**

16 Q Okay. "Tell him to come to the front and
17 text me when he gets here." Did he come up into the
18 unit?

19 **A We did it in the downstairs. In the first
20 floor.**

21 Q Inside of Kaskaskia?

22 **A Kaskaskia.**

23 Q Okay. And you can hear the music in
24 there?

25 **A Yeah.**

1 Q Okay. We would move for Exhibit 11 to be
2 entered?

3 MR. PETRUSKA: No objection.

4 HEARING OFFICER WEBB: Exhibit 11 is
5 admitted.

6 (Complainants' Exhibit C-11 admitted onto the
7 hearing record.)

8 **THE WITNESS: That's quite a speaker.**

9 MR. JACOBBER: We're going to play audio
10 clips.

11 HEARING OFFICER WEBB: Should we take a 10
12 minute recess?

13 MR. JACOBBER: That would be great.

14 HEARING OFFICER WEBB: Let's do that.
15 Let's take 10 minutes.

16 (Wherein, a short recess was taken.)

17 HEARING OFFICER WEBB: We are back on the
18 record, and, Ms. Boyer, you are still under
19 oath; and you may continue your direct
20 testimony.

21 Q (By Mr. Jacobber) Geri, at some point in
22 time, you and Doug built a lake house somewhere; is
23 that correct?

24 **A Right, yes, correct.**

25 Q Where is this located?

1 **A It's in Ste. Genevieve county. From here,**
2 **it would be an hour and 15 minutes south.**

3 Q Is that across the bridge in Missouri?

4 **A Right, it's in Missouri.**

5 Q Okay. Do you recall when you first bought
6 that property?

7 **A I've owned that property -- I mean, my dad**
8 **built that lake and then gave all of his kids, there**
9 **was 10 of us, a lot so I always had that lot there,**
10 **you know. It's just after so much, you know,**
11 **struggle with the music, I just said let's build a**
12 **house here so at least I have some place to go.**

13 Q So, you just own the lot --

14 **A Yeah.**

15 Q There wasn't a house on the lot?

16 **A Correct.**

17 Q Did I hear you say you're one of 10
18 children?

19 **A Yes.**

20 Q So, you grew up in a noisy house.

21 **A Yes.**

22 Q You're used to a lot of noise around you?

23 **A Yes.**

24 Q And this noise was not something you could
25 live with?

1 A This is isn't, like, noise, like, a noise
2 sound. It's a wave. It's, like, constant.

3 Q Is there any -- strike that. Let's finish
4 with the lake house. Once you built that, did you
5 alter your life because of the -- because of the
6 noise?

7 A Yes. We decided to, I mean, I decided.
8 Poor Doug. He didn't decide to build the lake
9 house. He went along with it, because I'm, like, I
10 can't do it anymore. So, we built a lake house.
11 We're just finishing the garage now, so it's been a
12 long construction period. But I started -- I quit
13 everything I was doing on the weekends here, singing
14 at church, all that, I gave it all up. I closed the
15 Airbnb down so I didn't have to be here on the
16 weekends. And, so, then I can leave on the weekend
17 and at least have that time away.

18 Q So, when you -- when do you leave
19 Belleville to go to Ste. Genevieve?

20 A Right around 4:00 o'clock on Fridays. I
21 pick up the little boys if I'm going to have them
22 and then take them to the lake. Usually, Doug,
23 like, goes with us on Friday -- doesn't go with us,
24 but takes another car; and then he bring the boys
25 back on Saturday afternoon; because he has to be

1 back for church. Doug's a deacon in a Catholic
2 church, so he's going to be here for all the masses.
3 So he comes back -- is here for Saturday night mass.

4 Q Okay, so he gets back by 4:30 or so?

5 A Well, he's usually back by 3:00. He has
6 to get ready, make sure he's prepared and all that.

7 Q Understood. And he deacons at two masses
8 on Friday evening -- on Saturday evening --

9 A One mass on Saturday evening. Then
10 three -- I think three on Sunday.

11 Q Where is he a deacon at?

12 A At -- at Saint Luke's and then Saint
13 Theresa.

14 Q Okay, both Catholic churches here --

15 A Yeah, uh-huh.

16 Q -- in the Belleville area? So, we've
17 talked about a lot of ways that this has impacted
18 your life. And kind of the list I have is: you
19 built this house in Missouri that you otherwise
20 might not have built?

21 A It's not where we dreamed of; that's part
22 of the stress between Doug and I. We wanted to
23 build a retirement home somewhere. It was every
24 time we traveled to California, you know, Arizona,
25 all over the place, where we're going to have a

1 retirement home, and we spent our money and built it
2 an hour and 15 minutes away in Missouri.

3 Q You've stopped your cantoring at the
4 church. How long have you done before?

5 A Since I was 16 years old.

6 Q So pretty much your entire adult -- or
7 your entire adult life?

8 A Uh-huh.

9 Q And you quit it just recently?

10 A Yes, I think I quit it in like in 2022.

11 Q Okay.

12 A Ish.

13 Q And is that because once you had the lake
14 house, you left and you couldn't -- that drive was
15 too far to also do the cantoring?

16 A Oh, yeah. I mean, I'm not going to come
17 back for Saturday night, when, you know, when it's
18 noisy. You know I just stay down there where it's
19 quiet.

20 Q So, if the music is turned off, say
21 midnight on a Saturday night, it is as simple that
22 the noise is off so you can roll in bed and go to
23 sleep?

24 A First of all, we don't stay up until
25 midnight. Doug has to be up at 6:00 o'clock on

1 **Sunday morning for church, okay? But, no, because**
2 **you're just angry. I mean, you got -- there's no,**
3 **like, settling down and relaxing before you go to**
4 **bed, so.**

5 Q So, it's you have to start that process at
6 midnight, not at 10:00 o'clock when you would like
7 to go to bed?

8 **A Right.**

9 Q Or need to go to bed?

10 **A Yeah, true.**

11 Q You talked about how you stayed in your
12 office longer on Wednesday and Thursday nights than
13 you normally would; and that's had an impact on your
14 marriage?

15 **A Yes.**

16 Q You just generally avoid being at home?

17 **A Correct.**

18 Q At your primary residence?

19 **A Correct.**

20 Q You no longer enjoy your home. On
21 Wednesday and Thursday night, does this alter your
22 sleep schedule as well?

23 **A Yeah, of course. Like, normally, I would**
24 **be in bed -- I mean, I would be asleep at 10:00**
25 **o'clock. If my choice would be, I would go to sleep**

1 before the news. That would be my choice. I mean,
2 I get up early. That's the only way I can meditate;
3 get the dogs out to be walked; get to the office on
4 time; and a lot of time I have early meetings. So,
5 yeah, I would want to be in bed -- I would to be
6 asleep by 10:00 o'clock.

7 Q Okay.

8 A I mean, that's what you need for good
9 health.

10 Q And you can't do that?

11 A No.

12 Q Has there been any change attending social
13 events?

14 A I'm not here on the weekends. I don't go
15 to anything on the weekends anymore.

16 Q Were you involved before this in
17 Belleville?

18 A Obviously, I used to run Belleville Main
19 Street, helped start some of the festivals. And I
20 like the festivals, don't get me wrong. It's just
21 way -- before we would have a festival, there's
22 noise on the street, but when you went home, as long
23 as the windows were closed, it was quiet inside.
24 But it's not -- it's even louder than normal now
25 because Copper Fire's got music inside, loud music,

1 and I get it but, yes, I used to be involved in all
2 the merchants. But, no, I leave every weekend.

3 Q And you referenced the festival down the
4 street. Can you hear those inside of your loft?

5 A If the windows are closed, we can't hear
6 anything from the festivals inside.

7 Q So --

8 A If there's a band playing outside, we
9 don't hear that inside.

10 Q The band that you hear inside is the band
11 that's playing inside of Copper Fire next door?

12 A Correct.

13 Q Do you avoid live music in general now?

14 A We don't -- yeah, if I go somewhere. I
15 mean, Julie and I were at a fundraiser, like, a year
16 ago for the high school, and there was a live band,
17 and we were both, like, we must have PTSD from this.
18 We both were, like, let's get out of here. No, I
19 can't -- I can't listen to live bands any. And I
20 love music; I really do. I realize I don't even
21 listen to music anymore at all. Not even in my car.
22 It's just -- I'm just overwhelmed by it all.

23 Q Were you recently at a family wedding?

24 A We were at, actually, Julie's daughter got
25 married in Colorado.

1 Q Okay. A friend's wedding?

2 A Yeah, we all went out there.

3 Q Did they have a DJ or a band?

4 A They have a real lovely band.

5 Q Did you stay for the band?

6 A As soon as the band started, Doug was,
7 like, I got to get out of here.

8 Q And you went back to your hotel room --

9 A Yeah.

10 Q -- and retired for the night?

11 A Luckily it had a brewery underneath it, so
12 it wasn't a total loss.

13 Q Sorry, say that again?

14 A The hotel had a brewery on the first
15 floor, so it wasn't a total loss of an evening.

16 Q Understood, understood. Any other impact
17 that this has on your life that we haven't talked
18 about so far?

19 A No. It just -- I don't -- I mean, my
20 health isn't as good -- I mean I feel like I just
21 had, like, I am -- again, like, I have been trained
22 to be a health coach and everything else and I feel
23 like my life is in shambles at this point. I hate
24 my place. I'm -- I'm a wreck. I want to -- I just
25 want some peace.

1 Q You want peace in your home?

2 A Yes.

3 Q And that peace that you want in your home
4 is not hearing the music at the bar that is
5 connected to your home?

6 A Correct. I mean, I'm planning on retiring
7 now. I wasn't going to retire until I was, like,
8 67, 68. I'm 62. I'm, like, I got to retire and get
9 out of here. I really can't take it anymore, and
10 Doug won't retire. I'm going to live down there by
11 myself. I don't care. I just got to get out of
12 here.

13 Q We're going to play some sound recordings,
14 and we tried to get the sound right when we were on
15 our break. But let us if it needs to go up or down
16 a little bit. These are sound recording that you
17 made inside your loft on your cell phone, correct?

18 A Yes.

19 Q The first one we're going to play is from
20 April of 2021. Go ahead, Brooke. This is Exhibit
21 C-12 that's contained on the thumbdrive that we
22 presented to hearing officer and the Respondent?
23 (Complainant's Exhibit C-12 marked. An excerpt was
24 played in the hearing room.)

25 HEARING OFFICER WEBB: How long are these?

1 Oh, okay.

2 **THE WITNESS: I didn't want to listen to**
3 **it that long.**

4 Q (By Mr. Jacober) Okay. Let's first start
5 by explaining on Demonstrative Number 1 where you
6 were in your suite at the time you recorded that on
7 your cell phone.

8 **A I don't remember exactly where I was. So,**
9 **I would say that I was either --**

10 MR. PETROSKA: I'm going to object, calls
11 for speculation.

12 HEARING OFFICER WEBB: You can go ahead.

13 **THE WITNESS: I'm thinking I was in the**
14 **bedroom. It was either in the bedroom or I was**
15 **right here in the living room. So, somewhere**
16 **along the wall.**

17 Q (By Mr. Jacober) Somewhere along the brick
18 wall?

19 **A Right.**

20 Q How did you record that?

21 **A Just on my cell phone.**

22 Q Just placed your cell phone down, or did
23 you hold it the whole time?

24 **A Oh, I don't know, sorry.**

25 Q You don't know?

1 **A I didn't lay it down. I just held it in**
2 **front of it the whole time.**

3 Q Okay. and you could hear that music pretty
4 clearly, right?

5 **A Yeah, I mean --**

6 Q And that's what you hear Wednesday through
7 Sunday night?

8 **A When there's a band.**

9 Q When there's a bend, and all day on
10 Saturday and Sunday when there's a band playing?

11 **A Correct. I mean, it does vary because it**
12 **could be a different type of band, and, you know,**
13 **the music is clearer, you know.**

14 Q It's not always the exact same music?

15 **A Right.**

16 Q Exact same level of sound, but that's
17 represented of what you hear in your loft?

18 **A Correct.**

19 Q We'll play another one, and how long is
20 this one, Brooke?

21 MS. ROBBINS: Thirty-five seconds.

22 MR. JACOBBER: How long?

23 MS. ROBBINS: Thirty-five seconds.

24 MR. PETRUSKA: What's the number?

25 MR. JACOBBER: C-14, apologies.

1 (Complainants' Exhibit C-14 marked for
2 identification. An excerpt was played.)

3 MR. JACOBBER: Okay.

4 Q (By Mr. Jacobber) Same questions, do you
5 recall where you were in your loft when you recorded
6 this? And I'm sorry, for purposes of this record,
7 this was recorded on May 8th of 2021.

8 **A In the --**

9 HEARING OFFICER WEBB: Oh, wait, was this
10 the April 10, 2021?

11 MR. JACOBBER: We skipped --

12 HEARING OFFICER WEBB: Oh.

13 MR. JACOBBER: We're not going to admit
14 into evidence C-13 and C-14.

15 HEARING OFFICER WEBB: This is 15?

16 MR. JACOBBER: C-14.

17 HEARING OFFICER WEBB: This is 14, okay.

18 **THE WITNESS: So, right here, sitting in**
19 **bed. (Indicating)**

20 Q (By Mr. Jacobber) You were laying in bed?

21 **A Sitting.**

22 Q Sitting on your bed. That was in evening,
23 correct?

24 **A Yes.**

25 Q And that level was representative of the

1 sound that you heard in your loft at that time?

2 **A Correct.**

3 Q Okay. We would move C-12 and C-14 into
4 the record?

5 MR. PETRUSKA: No objection.

6 HEARING OFFICER WEBB: C-12 and C-14 are
7 admitted.

8 (Complainants' Exhibits C-12 and C-14 admitted
9 onto the hearing record.)

10 Q (By Mr. Jacober) Geri, we're obviously
11 here today due to the lawsuit that you and Doug have
12 filed. We've talked throughout the day about
13 different ways that you tried to have Copper Fire
14 resolve the noise issues, correct?

15 **A Yes.**

16 Q Is there anything that you did to try to
17 get Copper Fire to resolve the noise issues that we
18 didn't talk about?

19 **A I mean, I actually worked with the chief
20 of police in writing a noise ordinance for the City.**

21 Q And was that ordinance eventually passed
22 by the City?

23 **A Yes.**

24 Q Have you tried to have it enforced?

25 **A Yes.**

1 Q And has the City been able to enforce it?

2 A No.

3 Q Do you recall what that ordinance says?

4 A I don't. Do you have it somewhere?

5 Sorry.

6 Q I don't believe we have it.

7 A I am sorry. I meant to read it before I
8 came.

9 Q That's okay. Give me one second. If you
10 could turn to tab 22 in your book. This is a report
11 from Sound Air Acoustics, correct?

12 A Yes.

13 Q This references the Belleville -- the
14 updated Belleville code of ordinances in
15 St. Clair -- St. Clair county code, correct?

16 A Oh, I see, okay.

17 Q So, if we look on page two of that report,
18 it references City of Belleville, Illinois, code of
19 ordinances including a restriction on noise under
20 Title 11: Business Regulations, Chapter 110, General
21 Licensing Provisions. Do you see that?

22 A Yes.

23 Q Is that the new noise ordinance that you
24 worked with the City to get passed?

25 A Yes.

1 Q If you could take a moment to review that?

2 A Okay.

3 Q And that ordinance provides that no
4 business shall produce noise, disorder or other
5 physical disturbance beyond their property line?

6 A Correct.

7 Q And is this -- are C-12 and C-14
8 representative of noise coming into your loft?

9 A Right, the property line is the common
10 wall.

11 Q And has that continued after the passing
12 of this new ordinance in May of 2021?

13 A Yes.

14 Q Continued up until today?

15 A Yes.

16 Q To the best of your knowledge, has Copper
17 Fire ever stopped playing amplified bands since you
18 began complaining to them?

19 A No.

20 Q To the best of your knowledge, did Copper
21 Fire install any sound mitigation devices inside of
22 Copper Fire?

23 A I'm not aware of any.

24 Q At some point in time, Copper Fire was
25 willing to work with you in turning the music down,

1 correct?

2 **A Correct.**

3 Q Did that eventually end?

4 **A Yes.**

5 Q And then you kind of gave up on contacting
6 them when they didn't respond anymore?

7 **A Correct.**

8 Q When was the most recent time that you
9 heard noise at that volume in your loft?

10 **A Yesterday.**

11 Q Yesterday when?

12 **A Yesterday afternoon.**

13 Q For how long?

14 **A I mean, I wasn't home. I was just coming**
15 **back from the lake, and my -- Doug was there working**
16 **and cooking; he was just mad, because he's, like,**
17 **all afternoon, I've listened to this.**

18 Q As he -- and cooking, he was in your
19 kitchen?

20 **A Yeah, which is --**

21 Q That shares the wall as well, correct?

22 **A Right. The kitchen, you know, this wall**
23 **is full of cabinets and everything, but, I mean,**
24 **it's right next to all of this, so.**

25 Q Sure. It's -- this an open space, right?

1 There's no wall here?

2 **A Correct. There's no wall that goes s to**
3 **the ceiling except these walls at the bathroom and**
4 **closet.**

5 Q Even the bedroom wall doesn't go to the
6 ceiling?

7 **A No.**

8 Q And is this a door here?

9 **A No.**

10 Q Is a door there?

11 **A There's a sliding door there.**

12 Q Sliding door there, okay.

13 **A We didn't want our kids to move back. We**
14 **didn't want them to move in with us, so we set it up**
15 **like that.**

16 Q So you designed a space that was not kid
17 friendly?

18 **A Correct.**

19 Q By kids, you mean adult children.

20 **A Adult children, yeah.**

21 Q I may have to keep that in the back of my
22 mind.

23 **A I mean, they moved into another loft in**
24 **our building that was empty, but at least it wasn't**
25 **with us.**

1 Q So, why did you file this lawsuit before
2 the Illinois Pollution Control Board?

3 A I mean, with counsel, with you, because
4 it's a sound problem. It's a noise pollution
5 problem. All -- every noise problem I've ever
6 worked on as a professional, was through the EPA,
7 you know, after I realized, like, the City and
8 the -- the police department, they don't even know
9 how to measure noise. They don't understand noise.
10 That this was just a more appropriate police to file
11 it. And I didn't, you know, I didn't -- we don't
12 want any, like, anything for this. We're not
13 claiming damages or anything; we're just -- we don't
14 want anything from them. We want their business to
15 be successful. We just want the noise pollution to
16 go away.

17 Q So, a measure of damages, a monetary award
18 with the sound continuing actually would not fix
19 your issue, would it?

20 A No.

21 Q Why is that?

22 A Because as long there's -- as long there's
23 bands next door, we're going to have the same
24 problem.

25 Q You can't put money on your piece of mind?

1 A No. And we are concerned about -- I mean,
2 getting close to retirement, we are concerned about
3 not being able to ever sell this building. It's
4 public knowledge that it's loud next door.

5 Q Is your goal to get the volume of the
6 music in Copper Fire at a level where you don't hear
7 it inside of your living quarters?

8 A That would be our ultimate goal.

9 Q How do you think that could be done?

10 A I think they could turn the music down.
11 Do a little mitigation on their side. I mean, I
12 think it's totally doable, because when the stereo
13 is on, it's loud in there still, and we can't hear
14 it.

15 Q Now, when you say the stereo what --

16 A Piped.

17 Q Mr. Petruska referenced the jukebox?

18 A I don't know if that's where it's coming
19 from. I mean, I don't -- so maybe it's when the
20 jukebox is on, if that's the only way they have
21 music. It's loud in there. I mean, people tell me,
22 like, and we -- at first, when Copper Fire first
23 opened, we would go in for lunch and take our staff
24 because we wanted them to be successful. We were
25 just, like, this is it's too loud in here. We

1 couldn't hear that in our place. So, it's not like
2 they can't have music.

3 Q And I don't know we don't have the
4 schematics of Copper Fire, but you've been -- this
5 is the footprint of it, correct?

6 A That would be, like, a section through it,
7 yes.

8 Q Okay. What the testimony is that the band
9 is kind of set up right here, correct?

10 A Correct. In the -- let's see. It would
11 be the left -- as you looking Copper Fire, it would
12 be -- would be the left hand corner closest to
13 Kaskaskia Engineering.

14 Q Okay. And from your observation and
15 seeing the bands set up, do they bring their own
16 speakers in?

17 A I don't know. I mean, the bands carry a
18 lot of stuff in. I mean -- I mean, I think so. I
19 do think so. I'm not sure.

20 Q Okay. And did you happen to pay attention
21 when you were in there, do they just have speakers
22 all over for the -- for the jukebox?

23 A You know what? I don't know because I was
24 just in there for lunch.

25 Q Okay.

1 **A Sorry.**

2 Q That's okay.

3 **A And, at that point, we weren't dealing**
4 **with band noise yet, so I wouldn't have thought to**
5 **look at all that.**

6 Q Do you believe it's okay for Copper Fire
7 to have live music?

8 **A I do.**

9 Q Do you believe it's okay for Copper Fire
10 to have live music that comes into your living
11 quarters?

12 **A No, I do not.**

13 Q And you've been to other locations in
14 downtown Belleville that play live music, correct?

15 **A Correct.**

16 Q Are they as loud at Copper Fire?

17 **A I don't --**

18 MR. PETRUSKA: Objection, calls for
19 speculation.

20 **THE WITNESS: I can tell you that if**
21 **you're, like, in -- if you're, I'm going to**
22 **use --**

23 HEARING OFFICER WEBB: I'll -- go ahead
24 and answer it.

25 **THE WITNESS: If you use Benny's Pizza as**

1 **an example, I've been in Benny's Pizza before**
2 **where they've have a band and it's been loud**
3 **and people can't talk; and then people just**
4 **say, hey, Benny, can you turn down the music,**
5 **we can't even talk? And he just turns it down.**

6 Q (By Mr. Jacober) So, let's use Benny's
7 Pizza. Does Benny's Pizza have a building that is
8 attached to it where people live?

9 **A No.**

10 Q Do any of the other locations in downtown
11 Belleville, that you're aware of, have a building
12 attached to them people live?

13 **A I mean, the -- I think it's called The**
14 **Groove that used to be the Wine Tap; it has next**
15 **door to it, it has somebody living upstairs there.**
16 **But they don't have a lot -- I don't think they have**
17 **live music. But no one has a loft building next to**
18 **a venue like Copper Fire.**

19 Q And I know the record is clear on this but
20 let's just make sure: you lived in these lofts
21 before Copper Fire was even was a business at all,
22 correct?

23 **A Correct, we moved in in 2008.**

24 Q You lived there for about 10 years --

25 **A Yeah.**

1 Q -- with no noise issues, whatsoever?

2 A Correct.

3 Q Why haven't you done anything inside of
4 your loft to stop the noise?

5 A Well, like I said before, noise is
6 mitigated at the source and what can we do? So,
7 downstairs, the brick wall is covered, it's -- you
8 can still hear it. So, I don't know what to do
9 that's not going to, you know, turn our loft into
10 something that's not going to have the value that it
11 has today. I don't think that you can mitigate at
12 our end. I think the noise has to be mitigated at
13 their end at the source.

14 Q And you're not basing that just on
15 speculation. That's based on your education as an
16 engineer.

17 A Absolutely.

18 Q So, going back to your example of
19 highways. We talked about the sound barriers that
20 are along highways in populated areas. They don't
21 forego -- engineers don't recommend foregoing the
22 sound barriers and putting thicker walls and thicker
23 windows in the homes that are along or the buildings
24 that are along a highway to deaden the sound. They
25 recommend the sound barrier, correct?

1 A Right. We'll build a million dollar sound
2 wall for two homes, because you mitigate at the
3 source. Because the source is going to change. The
4 source noise could be louder. Well, then what's
5 going to happen at the receptor? That's why you
6 have to mitigate at the source.

7 MR. JACOBBER: Give me one second. At this
8 time, we'll pass the witness, Your Honor.

9 HEARING OFFICER WEBB: Do you want to go
10 ahead and take lunch?

11 MR. PETRUSKA: Yes.

12 HEARING OFFICER WEBB: Let's do that.
13 Let's go off the record.

14 (Wherein, a lunch recess was taken.)

15 HEARING OFFICER WEBB: We'll go back on
16 the record. I just to want announce where we
17 are at. It is 1:00 o'clock. We are back from
18 lunch.

19 The parties have agreed to postpone the
20 cross-examination of Geri Boyer, in order to
21 accommodate one of Respondent's witnesses.

22 So with that -- oh, and call the witness,
23 then I have -- ask the court reporter to swear
24 him in.

25

1 (Matt Eiskant sworn.)

2 DIRECT EXAMINATION

3 BY MR. PETRUSKA:

4 Q Can you state your name for the record?

5 A **Yes, Matt Eiskant.**

6 Q Can you spell the last name?

7 A **Yes, it's E-i-s-k-a-n-t.**

8 Q I don't expect to ask you a lot of names
9 but if I do ask you some names, I may ask you to
10 spell it. It is not a spelling test, but it's going
11 to put something down for the record.

12 A **Sure.**

13 Q Okay. Can you tell us what your job title
14 is?

15 A **Yeah, I'm the chief of police for the
16 Belleville Police Department.**

17 Q As a chief of police for the Belleville --
18 how long have you been with the Belleville Police
19 Department?

20 A **Twenty-three years.**

21 Q Okay. Are familiar with what Main Street
22 was like before it was redeveloped?

23 A **I am.**

24 Q Can you explain what Main Street was like
25 before?

1 A Yeah, when I got on in 2001, Main Street
2 had a lot of resell shops. There were some bars and
3 restaurants. But Belleville has, in my opinion, has
4 gotten a lot better. It's more vibrant downtown.
5 It's a go-to-location. I know many people from many
6 communities, it's a destination spot now. Very
7 vibrant community.

8 Q Is that because of the redevelopment
9 incorporating bars and restaurants?

10 A Yeah, I don't know when that occurred,
11 but, yeah, it's -- we got a lot of nice restaurants,
12 a lot of nice bars. Just a lot of places to go to
13 downtown.

14 Q As the chief of police, can you say that
15 whether it's been positive to have these restaurants
16 and bars for downtown Belleville?

17 A Oh, absolutely. It's probably one of our
18 nicest areas ins Belleville.

19 Q And the fact that you have more people
20 coming down there, has that created any problems for
21 you as a police officer?

22 A Not the bars and restaurants and
23 businesses, we do have problems when we have
24 festivals with juveniles. But the bars and
25 restaurants, we have minimal problems with any of

1 our businesses downtown. All the owners -- I mean,
2 I talk to them on a regular basis with the downtown
3 Main Street and they take good care of their
4 establishment.

5 Q Are you familiar with Copper Fire?

6 A I am.

7 Q Okay. What is Copper Fire in your mind?

8 A It's a restaurant bar.

9 Q Are there other -- there are other
10 restaurant bars also on Main Street?

11 A Sure, many.

12 Q Have you been in all of them?

13 A I have.

14 Q Do you notice any significant difference
15 on noise levels between Copper Fire and any of the
16 other restaurants and bars?

17 A Some of the bars down there, I don't know
18 if they have music or anything, so some of them
19 might be lessor noise. However, the bars that are
20 like Copper Fire, let's say, Big Daddy's, Benny's,
21 what's the other one?

22 Q Mariachis?

23 A That one. There are some others that are
24 pretty much identical to Copper Fire.

25 Q Okay. And all of them have live music?

1 **A Yes.**

2 **Q Okay. One of the reasons I asked you to**
3 **come is because you actually worked with the**
4 **complainant, Geri Boyer, on a noise ordinance; is**
5 **that correct?**

6 **A Yes.**

7 **Q Okay. Can you explain just how that came**
8 **about?**

9 **A Yeah, so back in 2020 is when I got**
10 **involved in this. I spoke to Geri; I spoke to**
11 **Rena; and I was just trying to incorporate**
12 **everybody into finding a solution. And we had an**
13 **ordinance on the books that basically said that if**
14 **noise would emit over a property line that it was**
15 **against ordinance. I disagreed with that, as I**
16 **brought up before the council, to get it changed. A**
17 **lawnmower goes across a property line.**

18 **Q Yes.**

19 **A A conversation goes across a property**
20 **line. I felt that ordinance was unconstitutional.**
21 **I brought it to my city attorney, Garrett Hoerner,**
22 **and then I met with Geri Boyer; and there was many,**
23 **many other people in the room to draft a new**
24 **ordinance.**

25 **Q And you got her input on the new**

1 ordinance, correct?

2 **A I did.**

3 Q Okay. I'm going to show you something,
4 and I'll mark it in my hand. Can I ask you what
5 this document is?

6 **A So, this is the new ordinance that I**
7 **drafted after the meeting that I had with Geri and**
8 **some other individuals from the City. And this is**
9 **what I showed my city attorney. I took it to Legal**
10 **and Ordinance, I believe, the committee, and then**
11 **the council passed it on 10/18/2021. This is the**
12 **newest ordinance.**

13 Q And you have a copy of it right up there;
14 is that correct?

15 **A Yes, I do.**

16 Q I'm going to mark this as R-38, and let
17 you have a copy of it.

18 (Respondents' Exhibit R-38 marked.)

19 Q (By Mr. Petruska) Just for the record, I'm
20 showing it to Complainant's counsel. That's the new
21 ordinance that was passed with Geri's input,
22 correct?

23 **A That's correct.**

24 Q What I just marked and what you have in
25 front of you?

1 **A That's correct.**

2 Q And any suggestion that the old one, which
3 you said went across the property line, noise stuff,
4 that's the old ordinance?

5 **A That's correct. That was the one**
6 **pre-2021.**

7 Q Okay. Anyone who testified here today
8 saying that new ordinance was not being truthful,
9 right?

10 **A That's correct. The one -- 110.31 passed**
11 **10/18 of 2021. That has been the ordinance since**
12 **that date.**

13 Q Okay. In order to enforce that ordinance,
14 have you and your department set up a procedure for
15 your officers to determine noise?

16 **A I did.**

17 Q Okay. What's the procedure?

18 **A I put a memo out back, I believe, it was**
19 **March 18, 2021, and I directed my officers -- in the**
20 **memo, I stated they have numerous noise complaints**
21 **generated towards Copper Fire, and I instructed my**
22 **officers that if they get a notice complaint out**
23 **there, review the ordinance. If someone's in**
24 **violation, issue citations on that. Another way**
25 **that we did this was, I bought decibel readers for**

1 them to go out there and take, you know, tests of
2 how loud the noise was. So, when an officer would
3 go out there, they're armed with two things.
4 They're armed with a decibel reader and they're
5 armed with the ordinance. If they feel that noise
6 is unreasonably loud, then they can issue a
7 citation.

8 Q Okay. Have they issued a citation to
9 Copper Fire?

10 A They have not.

11 Q Okay. And you're aware -- you brought
12 some reports with you here today?

13 A I did.

14 Q So, they have investigated this?

15 A Yeah, we got numerous calls. The officers
16 investigated it, and they had determined
17 that probable cause didn't exist for an arrest, so
18 no arrests have been made.

19 Q Just for the record, if you don't mind,
20 can you read that ordinance word for word and just
21 for the record?

22 A Sure. It's an ordinance 10-31 labeled
23 Prohibition Against Nuisances. "A, no business,
24 trade or occupation shall be carried on in any
25 manner which will create a public or private

1 nuisance, nor shall such operation be carried on in
2 a manner which will produce unreasonably offensive
3 noise, odor or other physical disturbances at or
4 beyond the property line of the premises at which
5 such operations take place, or otherwise threaten
6 the public health, safety, morale or welfare or
7 quality of life. Unreasonably offensive noise may
8 include noises due to intermittence, beat frequency,
9 volume or shrillness so it does not become a
10 nuisance to adjacent users.

11 B, the prohibition contained herein
12 shall be an additional regulation besides those
13 otherwise provided by this subchapter and shall not
14 be deemed to be a limitation on any other ordinance.

15 Then it has some dates on when
16 different ordinances were passed, but this one was
17 passed on 10/18 of 2021.

18 Q And just on your copy, I'm going to mark
19 this down here, Exhibit R-38. I'm just going to and
20 if -- can I move to admit Exhibit R-38?

21 MR. JACOBBER: No objection.

22 HEARING OFFICER WEBB: Exhibit R-38 is
23 admitted.

24 (Respondents' Exhibit R-38 admitted onto the hearing
25 record.)

1 **THE WITNESS: Who does this go to?**

2 HEARING OFFICER WEBB: Do I get a copy or
3 just --

4 MR. PETRUSKA: Yes, yes, you'll get a
5 copy, right there. Thank you, Chief. That's
6 really all the questions I have for you.

7 **THE WITNESS: Sure.**

8 CROSS-EXAMINATION BY MR. JACOBBER:

9 Q (By Mr. Jacobber) Good afternoon, Chief.

10 **A Good afternoon.**

11 Q We met out in the hallway. My name is
12 Matthew Jacobber, and I represent Doug and Geri
13 Boyer.

14 **A Okay.**

15 Q Are you familiar with the Boyers?

16 **A I am very familiar, yes.**

17 Q Okay. Have you worked with Geri on other
18 issues regarding Belleville?

19 **A Yeah, many things through my career, yep.**

20 Q Okay. I want to start by asking you about
21 you, you listed three, and you say there might be
22 another three locations that are, I think your
23 testimony, was identical to Copper Fire; and that
24 was Big Daddy's, Benny's and Mariachis. Are there
25 any others --

1 **A Yeah.**

2 **Q -- on Main Street?**

3 **A Tavern on Main, they have live music**
4 **there. I think that that business is pretty**
5 **similar. I believe most of their live music,**
6 **though, is outside, not inside. And you know**
7 **there's a little bit of difference between each one,**
8 **right, but they're all similar. They're bars.**
9 **They're nice restaurants. And they have music.**

10 **Q Live music?**

11 **A Sure.**

12 **Q That's amplified?**

13 **A Yes.**

14 **Q Do you know if any of those locations have**
15 **buildings that are attached to them where people**
16 **make their primary residence? Or residence at all?**

17 **A I know some of them have upstairs. I**
18 **don't know if those are residences. I don't know if**
19 **anyone lives above them or not. Many of the**
20 **buildings downtown have apartments that are attached**
21 **to them that are condos. But I don't know who lives**
22 **above them or not.**

23 **Q So, but you don't know for sure, as you**
24 **sit here today, whether any of those other**
25 **restaurants have buildings attached to them with**

1 people living in the buildings?

2 **A That's correct.**

3 Q Okay. So that's -- that's a difference
4 between Copper Fire, Big Daddy's, Mariachis and
5 Tavern on Main?

6 **A It could be. Yeah, like I said, I don't**
7 **know if there is people up there; there could be.**
8 **But, yeah, it just depends if there are or aren't.**

9 Q And that analysis would be different,
10 wouldn't it?

11 **A Potentially, yeah.**

12 Q Okay. Now, the noise ordinance, when I
13 look at it, the only difference is the new ordinance
14 includes unreasonably offensive noise; is that
15 correct?

16 **A That's correct.**

17 Q And that's based on the officer's
18 discretion when he goes -- he or she goes there,
19 correct?

20 **A Correct.**

21 Q So, what could be offensive to one person
22 might not be offensive to another?

23 **A That's correct.**

24 Q And the situation could make something
25 offensive that might not be offensive to another

1 person?

2 **A Yeah, there's many variables that go into**
3 **it.**

4 Q In other words, an officer might be a
5 couple hours into a shift and be wide awake,
6 hopefully; and noise coming through a wall in a
7 residence might not be offensive because he or she
8 is not trying to go to bed?

9 **A Time -- time has a factor in it, yeah. If**
10 **it's -- if somebody is playing loud music at 6:00 in**
11 **the afternoon or they're playing it at 11:00 o'clock**
12 **at night, that is something that we would take into**
13 **consideration to see if it's unreasonable or not.**

14 Q What about the length of time that
15 something is playing?

16 **A It could be. It could be a factor.**

17 Q How about the frequency? If it's five
18 days a week?

19 **A Those are all things that could be**
20 **factors, yes.**

21 Q I'm going to play two audio clips that I
22 would like you to listen to.

23 **A Okay.**

24 Q And for purpose of the records, we have
25 not touched the volume when Ms. Boyer testified

1 earlier today about these two video clips when they
2 were admitted into evidence.

3 (Excerpt of C-12 was played.)

4 MR. JACOBBER: For purposes of the record,
5 that was Exhibit C-12.

6 Q (By Mr. Jacobber) Okay. Did you hear both
7 of those?

8 **A I did.**

9 Q Okay, for purposes of the record, the
10 second one was C-14, and the first one you listened
11 to, Chief, the C-12 was recorded on April the 2nd of
12 2021. The second one, C-14 was recorded on May 8th
13 of 2021. In the testimony that's been put into the
14 record today, is, and I'll walk you through this
15 real quick, right there where I'm pointing in the
16 upper right hand, that's Copper Fire.

17 **A Okay.**

18 Q And where the band sets up in Copper Fire.
19 And the first one, C-12, recorded in April of 2021,
20 Ms. Boyer testified that she was either in her
21 bedroom right here or in her living room right
22 there.

23 **A Okay.**

24 Q She recorded that sound late in the
25 evening at bed for her around 10:00 or 11:00 o'clock

1 at night. The second one, Ms. Boyer testified that
2 she was sitting on the bed in her bedroom right
3 here. Do you believe hearing that, at that time,
4 would be unreasonably offensive noise?

5 **A I don't, or I should say, it could be.**
6 **What I would do is I would take a decibel reader,**
7 **and I would get a reading; and then I would apply it**
8 **to the law.**

9 Q But how is decibel -- how is a decibel
10 reading -- a decibel reading is not a subjective
11 issue, correct?

12 **A Correct.**

13 Q And you testified earlier that this
14 unreasonably offensive noise is a subjective issue,
15 isn't it?

16 **A It is, yeah.**

17 Q So, if it's below a certain decibel but
18 you can still hear it and it prevents you from going
19 to sleep, isn't that unreasonably offensive?

20 **A I don't think so. You know, we use a**
21 **decibel reader and we apply it to the law that's**
22 **given to us. If we didn't have a decibel reading,**
23 **we would have to make that decision out there. And**
24 **you know a lot of things -- we took a lot of things**
25 **into consideration, and one is time. Whether**

1 **Ms. Boyer was going to bed at 9:00 o'clock or 11:00**
2 **o'clock. 9:00 o'clock, it'd be more reasonable to**
3 **have music up a little louder than it would be at**
4 **11:00 o'clock. But I just can't make a decision**
5 **being in here listening -- I would have to be out on**
6 **the scene where this is occurring at, if that makes**
7 **sense.**

8 Q I understand. It's an imperfect --

9 **A Right.**

10 Q -- process that we have right now. But to
11 go with your example of going to bed at 9:00
12 o'clock, this is Ms. Boyer's home, correct?

13 **A It's correct.**

14 Q You have the right to go bed whenever you
15 desire, don't you?

16 **A You do.**

17 Q Sometimes you have earlier mornings, you
18 might go to bed a little bit earlier than normal,
19 correct?

20 **A Correct, yes.**

21 Q Or you have a long day, and you want just
22 to crawl into bed and go to sleep, correct?

23 **A That's correct.**

24 Q And if that music was playing and it
25 prevents you from going to sleep, isn't that

1 unreasonable?

2 A I don't think so. And the reason I say
3 that is, I give my brother for example, he works
4 midnights on railroad; and he comes home early in
5 the morning and on a Friday night and a Saturday
6 morning; and everybody is cutting their grass; and
7 it's probably lower than that. And if people cut
8 their grass and produce that amount of noise where
9 it takes a while for my brother to go sleep, I don't
10 think that's unreasonable.

11 I think there's a lot of factors that
12 go into place, and, believe me, I understand both
13 sides of this. I think they're both great people,
14 and we're stuck to figure it out, and that's okay.
15 I have a tough job, and I understand that. But
16 there are so many factors that we have take into
17 consideration as police officers. One, is an
18 unreasonably loud noise. Two, is there a decibel
19 reading. Three, just, I guess, the esthetics of
20 downtown. It's a downtown, vibrant area, and we
21 have to take that into context, also.

22 Q Does it matter to you at all about who was
23 there first?

24 A It doesn't. Yeah, I mean, and I don't
25 know who was -- I can't recall who was there first.

1 I know Geri has ran a great business down there for
2 many years. I don't know when she moved in there.
3 I know Renae runs a great business down there, and I
4 met with both of them at length to try to come up
5 with a solution with sound walls and boards and
6 different things, which, obviously, didn't come to
7 fruition, but as a police department, we would love
8 to be able to fix this issue. But, as what I said,
9 there's many variables that come into this. I arm
10 my police officers with the law and a decibel
11 reader. Whatever decision they make, I will stand
12 behind them.

13 If they would have wrote Renae
14 citations, I would have stood behind those
15 citations. If they didn't write Renae citations,
16 and that would upset Ms. Boyer, I would stand behind
17 that decision, too. I give them the discretion that
18 they need and the laws to apply equally when they're
19 handling those situations.

20 Q What is your instructions on the decibel
21 readings?

22 A So, I gave my memo. You can have this, if
23 you'd like.

24 Q Sure.

25 A This is a memo that I put out to the

1 troops when I was assistant chief on March 18th,
2 2021. I highlighted some of the areas for the time
3 and the decibel readings. That's what we
4 interpreted from the EPA guidelines. I also called
5 EPA to see if the EPA would come out and assist us
6 on that. They informed me it's a municipal issue,
7 and we would have to deal with it, because I was
8 trying to go to anybody I could go to to get
9 assistance on this.

10 Q And you called --

11 A The Illinois EPA.

12 Q The Illinois EPA, I want to make the
13 record clear on that.

14 A Yeah.

15 Q When you called the EPA or -- strike that.
16 Where did you get these decibel levels from?

17 A From -- from the state law, and I have
18 that.

19 Q Are those -- do you recall, are those
20 outdoor regulations or indoor regulations?

21 A I don't know. I can't remember. It was a
22 long time ago when I reviewed that.

23 Q I understand.

24 A Let me see if I have the -- I got it from
25 the Title 35 Environment Protection, Subtitle H:

1 **Noise -- for Noise Pollution. And this is the law**
2 **that I -- that I referred to.**

3 Q Give me one second to look at this.

4 A **Sure.**

5 Q Are you aware, as we sit here today, how
6 the Writers' Loft's offices are zoned?

7 A **How what?**

8 Q They're zoned.

9 A **I'm not.**

10 Q Do you know Copper Fire is zoned?

11 A **No.**

12 Q How about Kaskaskia Engineering Group?

13 A **I don't know. I can tell you what I put**
14 **out was, going from a Class B property emitting**
15 **noise to a Class A. So, I classified it, Geri**
16 **Boyer's, as residential and Copper Fire as a**
17 **business. So, that was the numbers that I got.**

18 Q If I told you that Subtitle H is for
19 outdoor noise not indoor noise --

20 A **Okay.**

21 Q Do you think you need to take a second
22 look at your memo to your officers and look at
23 indoor noise instead of outdoor noise?

24 A **Absolutely.**

25 Q And that possible emitting noise inside of

1 someone's home should be at a different level than
2 what the noise is when it's emitting over a property
3 line?

4 MR. PETRUSKA: Now, I'm going to object to
5 this, because we're front of the Illinois
6 Pollution Control Board. You guys set the
7 regulations. This is not the time to start
8 setting new regulations or for him to suggest a
9 standard that we have to be living under
10 because the Illinois EPA hasn't set it yet.
11 Are you -- is there indoor noise regulation
12 that you're going to submit him?

13 MR. JACOBBER: No.

14 MR. PETRUSKA: Has it been set by the
15 Illinois EPA?

16 MR. JACOBBER: No.

17 MR. PETRUSKA: I object.

18 HEARING OFFICER WEBB: Well, I'm hoping
19 this is going to go back to nuisance -- I mean,
20 as you know, we're not talking about decibel
21 levels. This is a nuisance complaint, so I
22 assume you're heading back in that direction.

23 MR. JACOBBER: I am.

24 HEARING OFFICER WEBB: Then go ahead.
25

1 Q (By Mr. Jacober) Would you agree with me,
2 Chief, that if the nuisance of noise coming into
3 your property is at different levels on different
4 times of the day?

5 A Yes.

6 Q And you've already agreed with me that the
7 nuisance happens five days a week, it would be a
8 different analysis than if it was on occasion?

9 A Potentially, yes.

10 Q Okay. And you've already agreed that if
11 the noise goes late into the evening, than it's a
12 different analysis than if it is in the middle of
13 the day?

14 A Correct.

15 Q That noise that you heard, would you be
16 able to go sleep with noise playing?

17 A I personally would, because I listen to a
18 radio when I go to sleep.

19 Q You like noise when you're -- you don't
20 like noise -- don't like quiet when you're sleeping?

21 A No. A fan or my radio, so, yeah, I would
22 like that; and I get it. Some people wouldn't. But
23 as a police officer, I have to determine if that's a
24 nuisance or not, and as I sit here today listening
25 to that, I don't believe it is. Now, it might be a

1 **different scenario if I was out at Geri Boyer's**
2 **property listening to it, but I couldn't really make**
3 **a clear decision just from hearing it in the City**
4 **Council Chambers.**

5 Q Understood. Have you been in the Boyer's
6 loft?

7 A I've been inside the engineering part, but
8 not in the lofts.

9 Q Do you agree that people have the right to
10 have quiet in their homes?

11 A Sure.

12 Q And you also agree that neighbors don't
13 have the right to omit noise into someone's home?

14 A If it's an unreasonable amount.

15 MR. JACOBBER: No further questions.

16 **THE WITNESS: Thank you.**

17 REDIRECT EXAMINATION

18 BY MR. PETRUSKA:

19 Q Chief, just real quick now, and I just
20 want to make sure as a police officer, you have a
21 chance to talk about this. Why do we have speed
22 limits?

23 A To reduce injury, to reduce traffic
24 crashes.

25 Q And there's different levels of speeds in

1 different locations, correct?

2 **A Correct.**

3 Q But you still set an objective number,
4 right?

5 **A Correct.**

6 Q Could you, as a police officer, possibly
7 enforce the law, which just said unreasonably fast
8 driving speed?

9 **A Sure.**

10 Q Okay, but that -- what standard would you
11 use to enforce that?

12 **A It would -- would be -- it would be**
13 **difficult. It would kind of be like reckless**
14 **driving statute where just a reasonable person would**
15 **see that that's reckless driving. You know, it's --**
16 **it would be hard to prove, too. So, we need these**
17 **standards on -- talk about speed limits, we need**
18 **these just to set a standard so we know if it's**
19 **right or wrong. If you didn't have speed limits, it**
20 **would be difficult to arrest somebody or give**
21 **somebody a ticket for speeding, because it would**
22 **have to meet a high threshold.**

23 Q And, also, for people who want to follow
24 the law, isn't having an objective number a good
25 thing for them?

1 **A Sure, yes.**

2 Q Okay. So, a subjective standard is also
3 difficult to comply with, would you agree with that?

4 **A Yes.**

5 MR. PETRUSKA: Okay, thank you.

6 REXCROSS-EXAMINATION

7 BY MR. JACOBBER:

8 Q Just very briefly. A subjective standard
9 is you have in this instance, isn't it?

10 **A I mean, we have a number of what you can**
11 **and cannot be over on the threshold of decibels and**
12 **we go by that. But with the nuisance, I mean, that**
13 **would be the objective. Every officer handles cases**
14 **a different way. It's up to them; it's up to their**
15 **discretion on how would they handle it.**

16 Q And the ordinance is the law, not your
17 memo.

18 **A Yes, correct. Yeah, the ordinance is the**
19 **law.**

20 Q And the ordinance doesn't say anything
21 about decibel levels?

22 **A That's correct.**

23 MR. JACOBBER: No further questions.

24 HEARING OFFICER WEBB: Anything else?

25 MR. PETRUSKA: Thank you very much.

1 You're done.

2 HEARING OFFICER WEBB: Thank you, Chief.

3 MR. PETRUSKA: Thank you for coming today.

4 **THE WITNESS: Hey, any time.**

5 HEARING OFFICER WEBB: Shall we pick up
6 with Ms. Boyer's cross-examination?

7 MR. JACOBBER: Yes, ma'am.

8 MR. PETRUSKA: Yes.

9 HEARING OFFICER WEBB: Ms. Geri Boyer.
10 And I'll remind you, you're still under oath.

11 CROSS-EXAMINATION

12 BY MR. PETRUSKA:

13 Q Mrs. Boyer, when you took the oath earlier
14 today, you swore to tell the truth, the whole truth
15 and nothing but the truth, correct?

16 A **Correct.**

17 Q Did you misrepresent anything that you
18 said during your hour and a half testimony?

19 A **Well, when I say the ordinance thing,
20 yeah, I didn't realize the ordinance that I was
21 looking at, because it's really closely written to
22 the one that we did, I didn't realize that wasn't
23 the one we had worked on.**

24 Q Okay. So, you got it wrong?

25 A **Yeah, I got that wrong.**

1 Q Okay, let's talk about what else you got
2 wrong. You admit and you said under oath numerous
3 times today, you can't hear the jukebox music,
4 right?

5 A **Correct.**

6 Q Okay. And we're going to call that the
7 touchtone machine, because that's what's on the
8 machine, okay? The touchtone machine.

9 A **Okay, I mean --**

10 Q You can't -- You can't hear that in your
11 residence, correct?

12 A **We think we can't hear it.**

13 Q No, no, no. You've testified today,
14 ma'am. You've testified; it's all on the record
15 already, and you said it clearly several times.
16 Let's get this right: you can't hear that in your
17 residence, correct?

18 A **That is based on when you were over**
19 **turning it up, and we were in our residence hearing**
20 **it and testing it. I was that -- my opinion, or my**
21 **answer to that is based on when we tested it.**

22 Q Okay.

23 A **And we were together when we tested it.**

24 Q Okay. So, when we tested it, objectively,
25 there was -- they turned the machine up to a certain

1 level, do you remember that?

2 **A Yes, I do.**

3 Q And that was 75 percent, at first, of the
4 total volume?

5 **A I don't remember what it was.**

6 Q Renae will testify about this, but it was
7 tested at that and we went over to your business
8 first, correct?

9 **A Correct.**

10 Q And we couldn't hear a thing, is that
11 right?

12 **A Correct.**

13 Q And then we went up to your residence,
14 correct?

15 **A Correct.**

16 Q And no one could hear anything, right?

17 **A Correct.**

18 Q Then Renae went back to Copper Fire and
19 turned the touchtone machine up to 100 percent, at
20 least that's what she said she did, correct?

21 **A I don't know.**

22 Q Do you recall your husband calling you and
23 saying I can hear it; I can hear it. Do you
24 remember that?

25 **A That -- not how my husband talks, but, no,**

1 **I don't remember exactly; but he was upstairs to let**
2 **us know if he could hear it.**

3 Q Did he said he could hear it?

4 **A I don't really remember, but if you say he**
5 **did.**

6 Q And then we went upstairs and no one could
7 hear it, correct? At 100 percent volume, no one
8 heard the sound?

9 **A After he said he could hear it?**

10 Q Yeah.

11 **A I don't remember that.**

12 Q The record will reflect what your
13 testimony was earlier today, and I'll just leave it
14 at that about hearing the machine. But do you
15 remember talking about November 7th, 2020, and the
16 dispute at Copper Fire?

17 **A That was during Covid?**

18 Q Yes.

19 **A Yeah.**

20 Q Do you remember it?

21 **A Yes, I remember it vividly.**

22 Q Do you remember telling the police twice
23 that you could hear the music?

24 **A Yes.**

25 Q And it was too loud, right?

1 **A Yes.**

2 Q Do you know what was playing that night?

3 **A I don't know what was playing that night,**
4 **but I know when I went inside yelling behind Renae,**
5 **she couldn't hear me.**

6 Q But let's just make sure. There was no
7 band in there. It's Covid. There was no band in
8 there, right?

9 **A Yeah, I don't know, because it was Covid,**
10 **so there was gathering of people either.**

11 Q And Exhibit R-13, I'm handing this to you;
12 can you take a look at that for me, please?

13 (Respondents' Exhibit R-13 marked.)

14 **A Oh, shoot, Doug, would you hand me my**
15 **glasses, sorry.**

16 Q (By Mr. Petruska) I'll represent to you
17 that R-13 is the incident we're talking about --
18 that's the police report relating to the incident
19 we're talking about, okay?

20 **A Okay.**

21 Q Take a look through. Is there any
22 indication in there that there was a band playing
23 inside?

24 **A I don't see any indication of what was**
25 **playing the music at all.**

1 Q And certainly during Covid, if there's a
2 band playing that would be a violation of the law,
3 correct?

4 A This whole thing was a violation of the
5 law, right? Because there was no gatherings were
6 allowed during Covid.

7 Q The --

8 A Which I think -- which I think why this
9 was so shocking.

10 Q The police officers came, correct?

11 A Correct.

12 Q And filled out that report, right?

13 A Uh-huh.

14 Q On two occasions, you told them you could
15 hear the music, it was really loud in your
16 apartment, right?

17 A Yes.

18 Q Okay. Why did you lie to them?

19 A Why I did what?

20 Q Why did you lie to them?

21 A It was loud in our building. Julie called
22 and was, like, hey, can you hear that? And I'm
23 like, yes. I don't know what's going on. Copper
24 Fire is closed. My husband's, like, just call --
25 call them. I tried to call a couple times but you

1 wouldn't be to able hear the phone ring either. No
2 one is lying. We could hear that music very loudly.
3 Now, the other thing is is that the noise level
4 overall downtown was so -- was so low during Covid,
5 that maybe that made the difference, that the
6 ambient noise when we tested -- when we tested up
7 the sound, the ambient noise outside was louder, so
8 I don't know. I don't know. But no one lied that
9 they could hear music. How would I even know you
10 had music over there if I couldn't hear it?

11 Q Have you ever walked by? Have you ever
12 walked by Copper Fire and found it to be loud?

13 A I have, but I was in my loft. No one
14 walked by Copper Fire. Everything was closed
15 downtown.

16 Q And, ma'am, you have already testified
17 that you can't hear the touchtone machine. When
18 Renae testifies it was the touchtone machine that
19 was on that night, what would be your testimony now?

20 A God, I don't know how they could have had
21 that thing so loud. That's what my testimony would
22 be. Like --

23 Q So, that -- do you believe they found a
24 way to soup it up that night because --

25 A I have no idea. And I don't know what

1 **levels you were actually playing when you were**
2 **testing it either.**

3 Q Okay. When you played the music here in
4 court for us about the level it was, it's your
5 testimony that's what you hear inside your apartment
6 when music is playing at Copper Fire, correct?

7 A **It's close. I mean, I don't -- this room**
8 **is so much different. But, yeah --**

9 Q A lot of things are changing here when you
10 get asked questions. Let's see what --

11 A **No, no, they're not.**

12 MR. JACOBBER: Your Honor, I'm going to
13 object.

14 **THE WITNESS: That's close to --**

15 MR. JACOBBER: Nothing has changed. She's
16 providing her answers.

17 HEARING OFFICER WEBB: Yeah, sustained.

18 MR. JACOBBER: Argumentative and
19 unnecessary.

20 Q (By Mr. Petruska) On the record, are you
21 telling this court that what you heard out of this
22 machine, while you were sitting up there, is the
23 same sound you hear sitting in your apartment?

24 A **On some nights, yes. I don't know. Some**
25 **nights it's louder. Some nights, it's a little bit.**

1 I asked my husband, what do you think, does that
2 sound like that? He goes, I think it sounds a
3 little low. It's all -- it's what we think.

4 Q Right. This is all about what you think.

5 A Yeah.

6 Q Have you heard about anybody else
7 complaining to the police about Copper Fire other
8 than you and your husband? Anyone else?

9 A I have no idea.

10 Q Have you stopped to think this is all
11 about you trying to get what you want, which is no
12 noise?

13 A This is what I want: I don't want to
14 hear -- I don't care about noise. I don't want to
15 hear all the time in my loft. I want to have quiet.
16 I want to be able to enjoy my life. It's
17 unreasonable for anyone to have music from an
18 outside source that many hours during the week in
19 their home.

20 Q Who is Mike Biffignani?

21 A He's a sound expert that I hired.

22 Q Okay. And just to make sure, you hired
23 him because you thought he knew what he was doing,
24 right?

25 A Yes.

1 Q You wouldn't have hired someone you think
2 can't measure sound, would you?

3 A No, I -- he's a professional engineer. I
4 looked at his website. I talked to him about if he
5 ever had done a similar case, yeah.

6 Q And with respect to Mike, he has produced
7 reports for you, correct?

8 A Correct.

9 Q And in those reports, he has told you what
10 the ambient level of sound by decibels without any
11 music, correct?

12 A Correct.

13 Q He also told you what the ambient levels
14 of sound was with music in your apartment, correct?

15 A In my loft, yes.

16 Q Okay. In your loft on page five --

17 A Is it in here?

18 Q Yes, it's C-22.

19 (Complaints' Exhibit C-22 marked.)

20 A C-22.

21 Q (By Mr. Petruska) Can you find page 5?

22 A Yes.

23 Q And do you see what he put down for the
24 ambient level of loft Friday night?

25 A Yeah.

1 Q You do? 38 decibels, right?

2 A **Uh-huh.**

3 Q Correct?

4 A **That's what it says, yes.**

5 Q Then loft, Saturday, from 11:25, he put
6 39 decibels, correct?

7 A **Correct.**

8 Q Now, you realized you filed this with the
9 Illinois Pollution Control Board, which
10 has engineers on the Board, right?

11 A **Yes.**

12 Q They know what 38 and 39-decibels are.
13 You know that, right?

14 A **I would assume they do, yes.**

15 Q Do you have any idea what the level of
16 decibels are in here while we're talking?

17 A **No, I don't.**

18 Q It's way over 39. Way over 39. Are you
19 telling me at 39 decibels you can't carry on a
20 conversation? That's your testimony? Is that what
21 you're saying?

22 A **I'm just telling you that when noise is on
23 in Copper Fire, yes, we have trouble carrying on a
24 conversation and watching television, yes.**

25 Q You hired an expert to determine the sound

1 level in your apartment. He says it's 38 to 39.

2 Are you saying you can't carry on a conversation at
3 38 to 39; is that your testimony?

4 **A I'm saying that, in our loft, when he was**
5 **measuring it, it would be difficult to carry on a**
6 **conversation, yes.**

7 Q When at 38 to 39 decibels, you can't watch
8 TV?

9 **A We can watch television if we turn the**
10 **sound up enough.**

11 Q So, for this case, Geri Boyer and her
12 husband cannot handle 38 to 39 decibels in their
13 apartment?

14 **A I'm just -- all I can tell you is, when**
15 **music is playing in our loft, and we're watching**
16 **television, it's difficult because you're listening**
17 **to music -- you got all this music and you're trying**
18 **to listen to television.**

19 Q How many times have you had Mike do a
20 sound study for you?

21 **A I think he came twice.**

22 Q Okay. If I told you I had three reports,
23 would that mean anything to?

24 **A I don't remember Mike coming three times.**

25 Q Okay. When he did the testing, the first

1 test, the C-22, which has to do with the bands; and
2 he mentioned what nights -- take a look at the first
3 page: what nights he was there doing the testing.

4 Do you remember that?

5 **A Okay, April 23rd.**

6 Q What night in the first band, was what?

7 **A Steel Creek.**

8 Q Okay. Now, you also testified that you
9 want her to have the bands outside because you can't
10 hear the bands outside, right?

11 **A I said we don't mind bands outside because**
12 **we can't hear them.**

13 Q Can't hear them. Okay. So, Steel Creek
14 was playing outside, what say you now?

15 **A What's that?**

16 Q Steel Creek was playing outside that
17 night.

18 **A On April 23rd?**

19 Q What say you now?

20 **A The night that Mike was -- the days that**
21 **Mike measured all the bands were inside.**

22 Q Well, did he note that on there? This is
23 your expert.

24 **A I mean, no -- I mean, I don't see that he**
25 **notes the location of the band was inside or**

1 **outside.**

2 Q So, Renae is going to testify that they
3 were outside that night. So, now -- now, you got a
4 band outside and you're hearing the noise. Are you
5 going to change your testimony again and say that's
6 a problem also?

7 **A No, because I don't know if that's true or**
8 **not.**

9 Q Okay. If Renae says the band was outside
10 that night, do you have anything to say differently?

11 **A No, I do not.**

12 Q You understand that you're asking the
13 court, you're asking the Board, to take your
14 complaints at face value, to say that you can't
15 sleep, talk or watch TV; you understand that, right?

16 **A I understand that.**

17 Q Don't you think it would have been
18 important to make sure you had all your facts right
19 before you came up and here testified?

20 MR. JACOB: Your Honor, I'm going to
21 object --

22 HEARING OFFICER WEBB: I'm going to
23 sustain that.

24 Q (By Mr. Petruska) Did you have any other
25 errors in your testimony?

1 MR. JACOB: Your Honor, objection.

2 She's testified repeatedly there are no errors
3 other the ordinance issue.

4 HEARING OFFICER WEBB: Yeah, Mr. Petruska,
5 this is a nuisance provision, you know, a lot
6 of it is very subjective.

7 Q (By Mr. Petruska) Do you remember
8 testifying that you did not do any investigation to
9 determine if there was any air between the
10 buildings?

11 A Yeah, I didn't do any investigation to see
12 there was -- in between Copper Fire's building and
13 our building, no. I'm just -- we were just assuming
14 from construction methods at the time.

15 Q Have you reviewed your deposition before
16 coming here today?

17 A Yes, I did look it over last night.

18 Q I'm going to be showing her page 13 of her
19 deposition. Can you read out loud lines 1 through 7
20 for me, please?

21 A On what page?

22 Q Page 13.

23 A Right, and so -- what line were they --
24 I'm sorry, say that again.

25 Q On page 13, lines 1 through 7?

1 A 1 through 7, okay. "Right, and so you
2 have looked at at some point in time, the walls
3 between the two buildings and your one building and
4 saw that there was a space?"

5 "We cut a hole in them."

6 "How -- so how much space was there?
7 Do you know?"

8 "Maybe two or four inches."

9 "Okay."

10 Q Do you want to take your testimony that
11 you did nothing to investigate that?

12 A You know, what -- what I was talking about
13 was the walls between our buildings. Because we cut
14 a hole in our buildings between the two. So, I
15 guess, I misunderstood that question.

16 Q Okay.

17 A Because obviously no one cut a hole
18 through your walls.

19 Q I'm not asking about our walls. I'm
20 saying in the wall between the two buildings, you
21 said there's space between you looked up the
22 building practices --

23 A No.

24 Q -- back then?

25 A There's -- when we built the Writers' Loft

1 building, when we renovated the Writers' Loft
2 building, one of the things that I asked of the
3 builder is to change the location of where the door
4 was going to come in. So, they cut a hole because
5 our two buildings, and you could see brick wall, air
6 space, brick wall. That's how we -- and it was the
7 same thing for the third floor, because we -- there
8 was a hole in that wall that -- so we could see
9 exactly what we had.

10 Q Okay. I'm showing you what's been marked
11 as R-31, R-32, R-33, R-34, R-35, R-36.

12 A Okay.

13 Q Are those pictures of your wall and your
14 --

15 A Yes, this is the brick wall in our living
16 room.

17 Q Do you see spaces in the mortar?

18 A There are some spaces in the mortar, but
19 they're -- I mean, did you measure how deep they'
20 are because they're not very deep.

21 Q Have you ever tried to fill those mortars
22 holes?

23 A No, because they're not very deep.

24 Q Do you know how -- do you know how deep
25 any of them. Have you measured any of them?

1 A I mean, when we first bought the
2 building -- when we first were going to buy our
3 loft, we checked to make sure that they weren't too
4 deep, because the builders were like, do you want us
5 to fill this all in or keep it the way it is? It
6 looks great the way it is, so we said, no, keep it.
7 So, they penetrate -- try to penetrate them, and
8 they're not very deep. But I don't have the
9 measurements. Do you? Did you guys measure them?

10 Q Also, with respect to your apartment --

11 A The loft.

12 Q The loft. Do you also have an Airbnb?

13 A We had an Airbnb across the hall.

14 Q And did you have that in 2022?

15 A I think we -- I'm not sure. I think -- I
16 don't remember. Probably, maybe, maybe not. I
17 don't remember.

18 Q And you've testified already that the
19 people in that Airbnb can't hear Copper Fire's
20 music?

21 A No, there -- that Airbnb was actually
22 right next to Rebecca's loft, so it's across the
23 hall. So, the sound would have had to go 20 feet
24 across our loft through then a brick wall and air
25 space, a brick wall and through a hallway. And then

1 another, you know, wall, so, no.

2 Q When you brought your dying aunt into your
3 apartment, you had the Airbnb also at that time?

4 A Yes, did we -- I don't remember -- I don't
5 remember if we had the Airbnb. Oh, I think we did
6 at that time. It was rented.

7 Q Yeah. You made the decision to put her in
8 your apartment rather than the Airbnb?

9 A We talked about putting her, like, asking
10 the person to leave in the Airbnb, and we talked to
11 her about it. She was, like, what if I yell for
12 you? Like, what if I need help? And we're, like,
13 you're right; we won't be able to hear you across
14 the hall. So, again, the best situation that we
15 could up is to put her in our loft with us, so that
16 we could care her and hear her and in that way -- I
17 mean, if I could hear her moving, you know, I could
18 get up and check on her.

19 Q And then --

20 A I mean, we didn't know how long she was
21 going to live, and, so, we had, like, guests already
22 booked up, like, solid in the Airbnb. I mean,
23 there's not a lot we could do.

24 Q Well, I mean, it's a woman that's dying,
25 right? She's a little bit more important than a few

1 dollars from the renter?

2 A Had nothing to do with dollars. It's,
3 like, how long is she's going to live? Like, how --
4 there was no way to do. Like, how long do we get --
5 tell these people that cancel every one when -- I
6 mean, besides the fact that she was scared about
7 that, because if then she called for us, I couldn't
8 hear her, and she was right.

9 Q And then you knew at that point in time
10 what the sound levels were, and you put her in that
11 apartment?

12 A You know, quite frankly, I didn't think
13 about the sound at all. When we got the call that
14 she was in the hospital, that it was severe cancer,
15 bone cancer, and she was in all this pain and that
16 she was going to be put into a hospice after she got
17 finished with the radiation that they needed to do
18 to relieve some of her pain and she had to go
19 somewhere, I wasn't even thinking about that noise.
20 I was thinking about what we do to help her? How we
21 get our loft ready to take care of her? What we can
22 do? That noise was the last thing on my mind. The
23 thing that was on my mind was we just found out that
24 Aunt Gina is going to die, and she has no place to
25 go, and that we're going to care for her.

1 Q And do you do anything during that time to
2 help mitigate the sound on your side?

3 A What would I do? No, I didn't. What
4 would I do?

5 Q There's nothing -- there's nothing that
6 could be done is what your testimony is?

7 A I don't know what I could do.

8 Q Okay. Your office, you claim that you can
9 hear the music so loud that it bothers your workers,
10 right?

11 A Yes.

12 Q But you have an office on the first floor,
13 correct?

14 A Right.

15 Q And in your office, you can't hear a
16 thing?

17 A No, because I put my office all the way on
18 the other side below Rebecca's loft.

19 Q Okay. You're not hearing any -- you're
20 not hearing any music while you're in there?

21 A No. My office also has a door. No, my
22 office -- the place where I moved my office is very
23 quiet.

24 Q So, the door helps?

25 A Well, there's no way you're going --

1 that's exactly where Rebecca's loft is. So, it
2 would have to go all way across, you know, the
3 entire building. So, you can't -- you can't hear
4 this noise beyond that the top room, the top whole
5 room. The old building.

6 Q And then all these desks are right up here
7 against the wall, correct?

8 A Correct.

9 Q Okay. You haven't thought about moving
10 any of those desks at all?

11 A Where would I move all those people? That
12 layout is designed for every single desk to have
13 maximum capacity out of this building. Where would
14 I move them to?

15 Q What time does the music stop on weekdays
16 from Copper Fire?

17 A I don't even know.

18 Q You said --

19 A 9:00 o'clock, maybe, I don't know.

20 Q So, you said you work in your office until
21 9:00 so you can avoid hearing sound, right?

22 A Correct.

23 Q And you said you went for a walk so you
24 didn't have to listen to any more music, right?

25 A Well, whenever I get -- whenever I come

1 **upstairs, I take the dogs out for a walk.**

2 Q Have you ever seen a band play at a bar
3 without at least mic'd up microphone singing?

4 A Yes.

5 Q You have?

6 A Yeah, I mean, people -- well, I don't
7 know. People play all the time acoustical playing
8 and singing if it's a small enough space. I mean as
9 big as Copper Fire is, they probably would need a
10 mic.

11 Q One of the things you're asking for,
12 though, is for the -- for them to play -- have music
13 playing without any amplification, correct?

14 A I didn't say that. I just said, can we
15 just not have the music so loud that we have to hear
16 it on our loft.

17 Q And you've made clear that your goal is to
18 not hear the music, correct?

19 A Correct.

20 Q On Saturday and Sundays, what time does
21 the music start?

22 A I mean, I haven't been home for a year on
23 Saturday and Sundays. So, when -- I mean, you might
24 want to ask Doug that when he is here; but it
25 usually, like, 2:00 to 4:00 or -- I don't know. It

1 just to me, I tell you what, I don't have any idea
2 what time it is ever, because it seems to me that
3 there's always music playing when I'm home.

4 Q Right. And that's what you testified to
5 several times, is that it's always going on from
6 Wednesday through Sunday?

7 A It feels like it, yeah.

8 Q It feels like it. But what's the reality?

9 A I mean, whenever Copper Fire is open and
10 has a band, we can hear that music in our loft.

11 Q But when Renae testifies about the hours
12 of music, are you going to dispute that?

13 A No. I'm not going to dispute that. She
14 knows what she's doing.

15 Q You also testified that you really didn't
16 start complaining until there -- until it had live
17 music playing, right?

18 A Well, I actually complained the day that
19 they were taking off the plaster from the walls.

20 Q Okay. And they were banging on the walls,
21 correct?

22 A Yes.

23 Q And then shortly thereafter, you were
24 complaining about noise from them in May of 2018,
25 correct?

1 **A Do I have a text on that day?**

2 Q Yes.

3 **A Is that what you're referring to?**

4 Q You have an e-mail.

5 **A If I e-mailed or texted, yeah.**

6 Q Let's take a look at C-3 and C-4, which
7 are up there, I guess.

8 **A Oh, that's C-3?**

9 Q Tab 3, tab 4.

10 **A Okay.**

11 Q On March 17th, which was St. Patrick's
12 Day, was there a live band playing?

13 **A I'm assuming there was.**

14 Q On May 3rd, was there a live band playing?
15 May 3rd, 2018?

16 **A I'm assuming there was. I don't know. I
17 mean, we could hear it, so.**

18 Q When you set up the meeting with the Mayor
19 or tried to set up the meeting, which is C-5, that
20 was 2018, correct?

21 **A Correct. That's 5.**

22 Q Do you have any idea what it would take to
23 have the sound level in Copper Fire be at a number
24 where you can't hear it?

25 **A No. I am sure Mike could tell you.**

1 Q You're familiar with the prior ruling in
2 this case that this is about a nuisance, not about
3 noise language, right?

4 A Correct.

5 Q So, if we assume that Copper Fire is in
6 compliance with the noise standards, your testimony
7 for the Board is that those noise standards aren't
8 good enough, right?

9 A Is it -- are you talking about external --

10 MR. JACOBBER: I'm going to object. That
11 calls for a legal conclusion.

12 HEARING OFFICER WEBB: Yeah, I thought --
13 that's kind of a hard question. Can you --

14 MR. PETRUSKA: Okay.

15 HEARING OFFICER WEBB: -- break that down.

16 MR. PETRUSKA: I'll rephrase it.

17 Q (By Mr. Petruska) Are you telling the
18 Board -- is it your opinion, that their noise
19 standards are not sufficient to handle your
20 complaints?

21 A I'm not telling --

22 MR. JACOBBER: I'm going to object once
23 again. Because she -- her testimony has been
24 clear --

25 HEARING OFFICER WEBB: Sustained. Yeah, I

1 don't think she's complained about the noise
2 rules.

3 Q (By Mr. Petruska) Are you aware of a noise
4 rule from the Illinois EPA that covers indoor noise?

5 A No.

6 Q When you complained to the police, they've
7 tested -- you know that they've gone out with
8 decibel readers and tested the noise?

9 A Yes.

10 Q They've done outside 25 feet away from the
11 property, right?

12 A Right.

13 Q Are you saying that's insufficient?

14 A I'm saying the -- you know, it's just
15 putting the police in such a bad situation, which is
16 why I didn't want to call the police in the first
17 place; but the police chief that was here earlier
18 was, like, you've got to call the police and make a
19 complaint if it's a problem. Because it's so
20 subjective, and so if you just walk in a loft and
21 you haven't been there all night or for the past
22 year, it doesn't sound -- it doesn't sound bad to
23 you because it's all relative to the context of the
24 person hearing the noise.

25 Q Okay. So, a reasonable person walking

1 into your apartment could find the noise to be
2 perfectly reasonable?

3 MR. JACOBBER: I'm going to object. It
4 misstates her testimony.

5 HEARING OFFICER WEBB: Sustained.

6 Q (By Mr. Petruska) You have been
7 complaining about this for six years; is that
8 correct?

9 A Yes.

10 Q Do you think you've become overly
11 sensitive about it?

12 A I think the duration of the nuisance
13 itself has made us all sensitive.

14 Q Are you aware of any expert who has tested
15 the decibel levels in your apartment who found it to
16 be above 40 decibels?

17 A I don't know.

18 Q Okay. When you hired Mike, did you ever
19 ask him if there's anything you can do on your end
20 of the apartment?

21 A I did not ask him what he thought I should
22 do, no.

23 Q Did he ever offer some suggestions on what
24 you could?

25 A I think he did offer me some suggestions.

1 I didn't -- I didn't log them or intend to do
2 anything, that's for sure.

3 Q And why did you not to intend to do
4 anything?

5 A Because I think that noise should be
6 mitigated at the source, and because, like, covering
7 our wall isn't -- wasn't -- I didn't feel like it
8 was going to help us, because it's a situation we
9 have downstairs and we can still hear the noise. I
10 just -- it's such an easy, non-expensive thing is
11 just to turn the noise down. Just turn the levels
12 down.

13 Q Do you know -- do you know how many people
14 are in Copper Fire at night?

15 A No, I don't.

16 Q Do you know whether or not if there is a
17 bunch of people in Copper Fire the music has to be
18 louder just to be heard?

19 A No, I don't know that.

20 Q Have you considered that at all as you're
21 sitting here today?

22 A No.

23 Q Your testimony is just turn it down?

24 A Right.

25 Q And that's because you're having a problem

1 with it?

2 A Well, it's because I'm having a problem
3 with it, but it's because, you know, when people in
4 Belleville talked to me, like, how it is like living
5 next to Copper Fire, any time I go in there it's so
6 loud, and if you read the reviews, it's loud. It's
7 loud inside there. So, it would help everybody just
8 to turn it down.

9 Q I noticed that you've said that a lot,
10 that you think it would actually help the business
11 if she turned down the music, right?

12 A I mean, I just -- I'm not a restaurateur,
13 but I just Googled it. Like, what does noise, loud
14 noise, in a restaurant do for the restaurant?
15 People perceive the food to be worse than, like, bad
16 if it's louder. It seems to me, it would be easy
17 just to turn it down.

18 Q Have ever talked to anyone that attended
19 Copper Fire that loves the environment inside Copper
20 Fire?

21 A I haven't talked to enough people. I
22 mean, people talk to me because they know I'm next
23 door to it.

24 Q And they know you're complaining about it?

25 A People don't know that I'm complaining

1 **about it.**

2 Q No one know that you've complained about
3 that?

4 **A I mean, I don't talk about complaining**
5 **about Copper Fire, no.**

6 Q Why did Benny come over to listen to the
7 noise in your apartment? He knew about it, right?

8 **A Yeah, because I said, hey, what are you**
9 **doing for noise? Can you give her some suggestions**
10 **of how to -- yeah.**

11 Q So, you do talk to people about Copper
12 Fire?

13 **A Maybe a few people that I think might be**
14 **able to help me.**

15 Q Have you seen the documents that Renae has
16 produced about her attempts to address the noise
17 level in her restaurant?

18 **A No.**

19 Q Do you care what she's done to attempt to
20 control the noise?

21 **A I mean, that she's cared to try. I also**
22 **care that it appears not to work.**

23 Q If she were to buy a bunch of noise
24 insulation tiles, install them on the ceiling and
25 on the wall, and you could still hear the music,

1 would you demand she do more?

2 **A I would say, like, let's turn it down a**
3 **little bit to see if that helps.**

4 Q So, really no matter what she does, as
5 long as you can hear it, you're going to complain?

6 **A Well, I --**

7 MR. JACOBBER: Objection, that misstates
8 the witness's testimony.

9 HEARING OFFICER WEBB: I'm not sure it
10 does.

11 **THE WITNESS: I would not want to hear the**
12 **music in my loft all the time.**

13 Q (By Mr. Petruska) I'm going to show what
14 I've marked Exhibits 27 and 28.

15 (Respondents' Exhibits R-27 and R-28 marked.)

16 **A Is it part of here? Is in here?**

17 Q (By Mr. Petruska) No, this is from me.
18 Exhibits R-27 and R-28. We talked earlier about
19 Mike possibly making some recommendations to you of
20 things you could do?

21 **A Yeah.**

22 Q Are those those e-mails?

23 **A Yes.**

24 Q Are those true and accurate copies that
25 you exchanged with Michael?

1 A Yes. I didn't -- there wasn't any way I
2 was going to do any of this.

3 Q Right. And I just want to make sure the
4 Board understands --

5 A I mean --

6 Q Is the noise not loud enough for you to
7 take those steps?

8 A Well, adding dry wall he says, okay,
9 there's -- the downstairs' walls are covered, and
10 that didn't help. So, I'm going to I'm -- I'm an
11 engineer; I'm going to be, like, well, it doesn't
12 help below, it's not going to help above. Then I
13 got Julie's lot, too, to worry about. So, that's
14 two lofts. We're not going to put drywall all over
15 these brick walls when we're -- we know that it
16 won't work, because it doesn't help downstairs,
17 okay?

18 And, then, or mass loaded vinyl into
19 the inside of your wall would be a good sound
20 blocker. We're not going to put -- we're not going
21 to put vinyl over our brick walls, because,
22 logically, to me, this noise is too great to put
23 vinyl over a wall think it's going to help. Sorry,
24 Mike. I don't mean to be -- those two solutions did
25 not seem reasonable to me.

1 Q And --

2 A And I don't want to alter the brick walls
3 in our loft.

4 Q Okay.

5 A That's part of its value.

6 Q Anything else inside your apartment that
7 you might have done to help you?

8 A We added rugs. We did -- because we have
9 wood floors, so we did add big area rugs. It
10 doesn't help.

11 Q Final area of discussion: in 2018, did you
12 serve on the Downtown Development-Redevelopment
13 Commission?

14 A I served on the Downtown
15 Development-Redevelopment Commission, yes.

16 Q And was the idea of Copper Fire going into
17 the building next door to you on the agenda?

18 A That is not a regulatory board in any way.
19 That would be -- that would be the Zoning Board that
20 heard that. That's not that.

21 Q I'm just asking was it on the agenda?

22 A It might have been. I don't know. We
23 talk about all kinds of things going in downtown.
24 But it's not a regulatory board.

25 Q The Downtown Development-Redevelopment

1 Commission, was it involved in redeveloping Main
2 Street?

3 A It was -- what that commission does, is it
4 regulates the money, so all the buildings downtown
5 are -- have an extra tax added on them. That tax
6 goes into a fund, and then that group regulates how
7 that money is spent.

8 Q But you certainly can't say that in 2018
9 you weren't aware that Copper Fire was trying to
10 put --

11 A Yeah, we were excited there was a
12 restaurant going in next door to us. We were sad
13 that Junction Coffee went away.

14 Q And Quiznos went away, right?

15 A Well, of course.

16 Q Do you know why Quiznos went away?

17 A No, I have no idea.

18 Q You said during your direct testimony you
19 sent -- your lawyer sent a letter to the City?

20 A Otto Faulbaum (sic).

21 Q Do you have a copy of that letter?

22 A I don't.

23 Q I have not seen that letter in this case
24 at all.

25 A I couldn't -- I couldn't find it in my

1 **files, and Otto is retired. The City -- well, the**
2 **city probably can't find it either.**

3 Q So, there's a letter from you?

4 **A There's a letter -- there's a letter from**
5 **Otto.**

6 Q Otto, prior to Copper Fire being
7 completed?

8 **A Yes.**

9 Q Asking the City to insure that there's
10 some sort of noise mitigation --

11 **A At least they discussed it. It was from**
12 **Otto Faulbaum to Garrett Hoerner, the city attorney.**

13 Q Okay. And do you have any reason to
14 believe that Copper Fire built their building
15 without cooperation from the City?

16 **A I would think that they had cooperation**
17 **from the City. The City really wanted to see that**
18 **business go in.**

19 Q So, the City approved what was finally put
20 in, and it gave them an occupancy permit and a
21 building permit, correct?

22 **A Well, they couldn't have opened if they**
23 **didn't.**

24 Q So, you heard the chief of police testify
25 earlier today, correct?

1 **A Yes.**

2 Q And we know the City approved Copper Fire
3 going in, correct?

4 **A Correct.**

5 Q And we have no evidence of anyone else
6 complaining to the police about Copper Fire, right?

7 **A I don't know that.**

8 Q So, this comes down to you against Copper
9 Fire? You and your husband against Copper Fire?

10 **A Well, Julie Orlet has a problem, too. She**
11 **lives upstairs. But, yes, it's we own this loft**
12 **building next door. It's a huge property. Yes,**
13 **which just turn the music down.**

14 Q Let me get a few things admitted, and then
15 I'll stop asking questions. I would like to move to
16 admit the photos marked as R-31 through R-36?

17 MR. JACOBBER: No objection.

18 HEARING OFFICER WEBB: I will admit those
19 too. I -- do you have a copy for me?

20 (Respondents' Exhibits R-31, R-32, R-33, R-34, R-35
21 and R-36 admitted onto the hearing record.)

22 MR. PETRUSKA: Yes, yes. I'm going to --

23 **THE WITNESS: Is this -- do you want this**
24 **back?**

25 HEARING OFFICER WEBB: I don't know. It's

1 not been offered yet, so.

2 MR. PETRUSKA: This is 31, 32, 33, 34, 35.

3 **THE WITNESS: We didn't give anybody**
4 **permission to take those pictures either. Hey,**
5 **do you want this back?**

6 MR. PETRUSKA: I'm going to also move to
7 admit --

8 HEARING OFFICER WEBB: Okay, these are
9 admitted. Okay, so R-31 through 36 is
10 admitted. You did not move R-13, correct?

11 MR. PETRUSKA: I did not move R-13, but I
12 will move now to have R-13 admitted.

13 MR. JACOBBER: What is R-13?

14 HEARING OFFICER WEBB: I don't know.

15 **THE WITNESS: It's a police officer report**
16 **from the incident.**

17 MR. PETRUSKA: R-13 is a police report
18 from November 7th, 2020.

19 MR. JACOBBER: No objections.

20 HEARING OFFICER WEBB: Okay. R-13 is
21 admitted.

22 (Respondent's Exhibit R-13 is admitted onto the
23 hearing record.)

24 MR. PETRUSKA: And I'll move during our
25 case-in-chief to admit the ordinance, but --

1 that was R-38. I can move now just to get it
2 over with.

3 HEARING OFFICER WEBB: I think that one
4 has already been admitted, R-38. I have
5 written down that that one was admitted. R-27
6 to R-28, you did not move.

7 MR. PETRUSKA: Right.

8 HEARING OFFICER WEBB: Okay.

9 MR. PETRUSKA: I also used theirs. Did I
10 use theirs for that? Okay. So, R-27, I'll
11 move to admit R-27 and R-28.

12 MR. JACOBBER: No objection.

13 HEARING OFFICER WEBB: All right. R-27
14 and R-28 are admitted.

15 (Respondents' Exhibits R-27 and R-28 are admitted
16 onto the hearing record.)

17 HEARING OFFICER WEBB: I don't have a
18 copy, though.

19 MR. PETRUSKA: I will bring you a copy.

20 HEARING OFFICER WEBB: Okay.

21 MR. PETRUSKA: For the record, these are
22 the e-mail exchanges between Geri and her
23 expert.

24 HEARING OFFICER WEBB: Okay. Is that all
25 for now?

1 MR. PETRUSKA: That's all for now, thank
2 you.

3 MR. JACOBBER: Thank you. I do have some
4 Redirect.

5 HEARING OFFICER WEBB: Not you. That's
6 not all for you, I'm sorry.

7 REDIRECT EXAMINATION BY MR. JACOBBER:

8 MR. JACOBBER: Let's start off with the
9 housekeeping, and I should have done this
10 earlier, so I apologize. I'm putting up on the
11 board again --

12 **THE WITNESS: It looks upside down. In**
13 **case you care.**

14 Q (By Mr. Jacobber) You've referenced these
15 throughout today correct, Geri?

16 **A Yes.**

17 Q We referenced this at Demonstrative
18 Exhibit 1. We're just going to mark that now; and
19 we've referenced this as Demonstrative Exhibit 2;
20 and we have referenced this as Demonstrative
21 Exhibit 3; is that correct?

22 (Complainants' Demonstrative Exhibits 1, 2 and 3
23 marked.)

24 Q (By Mr. Jacobber) Is that correct?

25 **A Yes.**

1 Q And I would move admission for 1 --
2 Demonstrative 1, 2 and 3 into the record?

3 MR. PETRUSKA: No objection.

4 HEARING OFFICER WEBB: They are admitted,
5 and just to clarify, you will file the 8 and a
6 half by 11 with the clerk's office?

7 (Complainants' Demonstrative Exhibits 1, 2 and 3
8 admitted onto the hearing record.)

9 MR. JACOBBER: Yeah, I think what we do is
10 we'll take the Exhibit binder back from you --

11 HEARING OFFICER WEBB: Okay.

12 MR. JACOBBER: And we'll update the Exhibit
13 binder before we reconvene. Or we can bring --
14 if you want to take it with you, we can bring
15 the insertions --

16 HEARING OFFICER WEBB: As long as I keep
17 the exhibit list.

18 MR. JACOBBER: You can keep all of it.
19 We'll just bring a new one.

20 HEARING OFFICER WEBB: I mean, I don't
21 need all the exhibits, but the list I'll just
22 take. Okay, so Demonstrative Exhibits 1
23 through 3 are admitted.

24 MR. JACOBBER: Thank you.

25

1 BY MR. JACOBER:

2 Q Geri, if you could look at Exhibit R-27.
3 (Respondents' Exhibit R-27 marked.)

4 Q (By Mr. Jacober) That's the e-mail
5 exchange between yourself and Mike Biffignani in
6 December of 2021?

7 A R-27?

8 Q Oh, it's not in there?

9 A Oh.

10 HEARING OFFICER WEBB: Oh, oh, okay.

11 MR. PETRUSKA: I can you give you another
12 copy. Hold on.

13 THE WITNESS: Okay, I have it. I think
14 this is part of it.

15 HEARING OFFICER WEBB: That's 28, yeah.

16 THE WITNESS: Yes.

17 Q (By Mr. Jacober) And these are back and
18 forth e-mails between yourself and Mike?

19 A Right.

20 Q Where he poses or presents an idea to
21 you --

22 A Right.

23 Q -- to either install clear MLV, which is I
24 guess an acrylic or a vinyl partition --

25 A Yeah.

1 Q -- covering to keep the sound down or some
2 kind of drywall that is designed for sound
3 mitigation, correct?

4 A Correct.

5 Q In the e-mail from Mike to you on
6 December 7th, 2021, at 10:18 p.m., could you read
7 the second to the last sentence that Michael has in
8 his e-mail? It starts with "I know".

9 A "I know Copper Fire should be taking some
10 action, but this might be a way for you to reduce
11 the annoyance. Let me know if you want to discuss."

12 Q It is your view that since you were there
13 first, that's it's not your responsibility to get
14 rid of this nuisance?

15 A I mean, that's part of it. It's also that
16 if you mitigate the sound at the source, then that's
17 a more effective way to mitigate sound.

18 Q That's based on your training as an
19 engineer, right?

20 A Yes.

21 Q That's not speculation. You didn't turn
22 to Google for that?

23 A Right.

24 Q That's based on your --

25 A I do turn to Google for a lot of things,

1 **but not that.**

2 Q Right. That's based on your college
3 education as an engineer and you're certified --

4 **A And noise classes.**

5 Q Your professional --

6 **A Yeah, noise wall analysis classes.**

7 Q Okay. Thank you. I wanted to make sure
8 the record is clear, Geri. Your issue today that
9 you're asking the Pollution Control Board to address
10 isn't necessarily the fact that Copper Fire produced
11 a sound, it's the sound that you hear in your loft
12 as a result of live music being played at Copper
13 Fire, correct?

14 **A Correct.**

15 Q And if that is addressed, you would be
16 okay?

17 **A True.**

18 Q And the address is that you don't want to
19 hear it in your loft?

20 **A Yes.**

21 Q Now, there's some discussion in your
22 cross-examination about the ambient noise being
23 38 decibels and the music being 39 decibels. First
24 of all, is it your understanding that the decibel
25 scale is a linear scale?

1 A Correct.

2 Q So, is 39 decibels just a little bit
3 louder than 38 decibels?

4 A No.

5 Q So, it's not linear?

6 A It's not -- oh, sorry, yes, no, it's
7 not -- is.

8 Q I think I misspoke.

9 A And I'm not -- I am not a sound accident
10 expert by any means. I'm really good at stopping
11 sound, mitigating sound, but I'm not a sound expert.
12 I just want to make sure you know that.

13 Q Okay. So, is there also a difference
14 between -- in between ambient noise, the noise
15 that's just present in a room, versus intrusive
16 noise?

17 A Yes. That's why it's so hard -- like, I
18 couldn't comprehend when he was saying this is --
19 this the is ambient noise here, and that is the
20 noise level there. I'm just, like, it's -- that is
21 so hard to comprehend because if noise -- if sound
22 is just steady and then there's an intrusive noise,
23 it seemed like it's a lot, yes. And I will say that
24 during Covid, the ambient noise was a lot lower
25 everywhere.

1 Q We all experienced, I think, and enjoyed
2 that a little bit with Covid, that the world grew
3 quiet for a little bit.

4 A Which is maybe why we could hear that
5 sound machine.

6 Q Perhaps. And it is also another way to
7 kind of express is if we're having this back and
8 forth and our conversation is at a certain decibel
9 level, but in the back of the room, there's two
10 other people who are talking at a normal level, then
11 it becomes hard for your ears to hear all of that
12 conversation?

13 A Right, and to process it, of course.

14 Q And that's what your -- that's the issue
15 here, right?

16 A That is the issue.

17 Q Is watching TV difficult because when you
18 sit there, your brain is having to process or tune
19 out this music that's coming in and listen to the TV
20 and try to understand what's going on on TV?

21 A I will say, yes, that's true. I don't
22 even like television that much, but you can't read,
23 okay? So, that is the only option, and it's --
24 yeah, it's way too much for the mind to separate. I
25 mean, whether people think it or not, your mind can

1 not do more than one thing at a time. I mean, I
2 feel like I've gotten dumber since this whole thing
3 has started, I want to tell you. Because it is hard
4 for me to process anything because of all this
5 constant noise.

6 Q Well, we've known each other a long time.
7 I can tell you that's not true, but I appreciate the
8 comments; and, yeah, it is kind of like what our
9 moms told us when were growing up: if you're
10 talking, you're not listening, right? Can you
11 answer that?

12 A Yes.

13 Q Just for the record.

14 A That is what my mom used to say.

15 Q Now, when Mike did his sound study, were
16 you there for either of them?

17 A We wouldn't -- couldn't be -- no, we
18 couldn't be there because we would make noise, you
19 know.

20 Q You can't comment on what he heard --

21 A Yeah.

22 Q -- or what was observed during that sound
23 study? I want to very touch briefly on the Airbnb.
24 I believe your testimony earlier was part of the
25 reason why you stopped renting out that unit as an

1 Airbnb and eventually sold it to Becca, was you were
2 leaving town and you couldn't turn -- basically,
3 couldn't turn the room?

4 **A Correct. I mean, at first we tried to**
5 **just, like, block all the weekends off. But, you**
6 **know, then people were, like, is there a way I can**
7 **stay through, you know -- it's just -- it was hard.**

8 Q Have the police ever been to your loft to
9 listen to music in your loft?

10 **A Yes.**

11 Q But the chief has not?

12 **A No.**

13 MR. JACOBBER: I have no further questions.

14 RE-CROSS-EXAMINATION

15 BY MR. PETRUSKA:

16 Q I just want to clarify. So, on C-22, do
17 you have it up there in your binder?

18 **A Yes.**

19 Q Okay.

20 **A It's Mike's report.**

21 Q Yeah, in case I misspoke, I just want to
22 make sure this is clear. On page 4, in the middle
23 of the page, Mike noted the ambient level of sound
24 with no music going. Do you see that? Daytime and
25 nighttime ambient level?

1 **A Yes.**

2 Q Okay. One of those daytime measured at 30
3 dBA; the next one was nighttime, Friday and Saturday
4 at 1:00 a.m. was 29 dBA, do you see that?

5 **A Okay. So, you had asked me -- you thought**
6 **it was 38 and 39, is that what you're saying?**

7 Q No, no, I'm saying that's the ambient
8 level, correct?

9 **A Okay, yeah, but you had me looking at page**
10 **5.**

11 Q Then on page 5, he was giving you the
12 decibel levels with music playing in your apartment?

13 **A Right.**

14 Q You see that?

15 **A That's when you said the ambient level, I**
16 **was, like, I couldn't comprehend it all. Okay, now**
17 **I understand, okay.**

18 Q So, the -- in the loft on Friday, it was
19 38 decibels --

20 **A The sound was recorded as that, right?**

21 Q Right, yes.

22 **A Okay.**

23 Q Then on the loft on Saturday, the sound
24 recording of the music from 10:00 to 11:25 was 39 --

25 **A Okay.**

1 Q Correct?

2 A Yes.

3 MR. PETRUSKA: Thank you.

4 MR. JACOBBER: No further questions.

5 HEARING OFFICER WEBB: You are done,
6 Ms. Boyer.

7 THE WITNESS: Thank you.

8 HEARING OFFICER WEBB: Let's go off the
9 record.

10 (Wherein, a short recess was taken.)

11 HEARING OFFICER WEBB: Okay. We are back
12 on the record. The Complainants may call their
13 next witness.

14 MR. JACOBBER: Thank you. Complainants
15 would call Doug Boyer.

16 (Doug Boyer sworn.)

17 DIRECT EXAMINATION

18 BY MR. JACOBBER:

19 Q Could you please state your name for the
20 record?

21 A Douglas Boyer.

22 Q And it is okay if I call you Doug?

23 A Yes, please.

24 Q Doug, just so the hearing officer knows a
25 little bit about your background, what's your

1 highest level of education?

2 **A I have two Master's degrees.**

3 Q What are those Master's degrees in?

4 **A I have a Master's degree in pastoral**
5 **studies from Loyola in New Orleans and an MS in**
6 **Church Administration from Villanova.**

7 Q Are you currently employed?

8 **A I am. I teach theology at Althoff**
9 **Catholic High School here in Belleville.**

10 Q Okay. Do you do anything else, whether
11 it's paid or unpaid, that is a job or like a job?

12 **A I just retired a couple weeks ago as**
13 **Chancellor of the Dioceses and I'm officially**
14 **assigned to work in two parishes here in Belleville.**

15 Q What parishes are those?

16 **A St. Teresa of the Child Jesus and St.**
17 **Luke.**

18 Q And what do you do for St. Teresa and St.
19 Luke?

20 **A I'm an ordained deacon, so whatever I**
21 **need, I preach every week and various other --**
22 **celebrate other sacraments and teach and whatever**
23 **else I need to do.**

24 Q How many masses a weekend do you do?

25 **A Four.**

1 Q So, you work every weekend?

2 A **Yes, I'm sorry. Yes.**

3 Q Every Saturday and Sunday, at least?

4 A **Yes.**

5 Q And then work throughout the week to get
6 ready for your weekend sermons?

7 A **Right.**

8 Q What time do you need to be up to get to
9 your first mass on Sunday morning?

10 A **Ideally, 5:45. That way I can sneak in a
11 cup of coffer before my hour fast.**

12 Q So, you get up at 5:45 or --

13 A **Have mass at 7:00.**

14 Q At mass at 7:00, okay. Where do you
15 currently reside?

16 A **208 East Main, the Writers' Loft, suite
17 230.**

18 Q I'm going to show you a couple of
19 demonstrative exhibits just to have you identify
20 them?

21 A **Okay.**

22 Q Is in the building where you live?

23 A **It is.**

24 Q Is this the Writers' Loft right there?

25 A **The whole thing is the Writers' Loft.**

1 Q The whole thing, this whole --

2 A Yeah.

3 Q And the first floor is --

4 A Kaskaskia Engineering.

5 Q And that's your wife's company, correct?

6 A Correct.

7 Q You don't have anything to do with

8 Kaskaskia?

9 A No.

10 Q That was a vehement no. Now,
11 Demonstrative 2, and there's a laser pointer right
12 there in front of you?

13 A Okay.

14 Q If you want to point. Show us where --
15 I'm sorry. Demonstrative 3 is the second floor of
16 that building.

17 A Yes.

18 Q If you would, point to us where suite is
19 in the Writers' Loft? Hold that button down.

20 A Okay. Oh, there it is.

21 Q There it is.

22 A I was pointing everywhere but. So, this
23 is our loft right here. (Indicating)

24 Q Okay. And that's your bedroom?

25 A Yes.

1 Q It's a study, and that's your living room,
2 correct?

3 A **Correct.**

4 Q And you live there with Geri?

5 A **I do.**

6 Q How long have you guys been married?

7 A **Forty-two years.**

8 Q Congratulations. Do you recall when you
9 all first moved into the Writers' Loft?

10 A **I believe 2008, close.**

11 Q Somewhere in that range?

12 A **I feel pretty confident.**

13 Q At first, you just owned your suite,
14 correct?

15 A **Yes, that was always the plan. Simplify
16 life.**

17 Q But eventually life got a little more
18 complicated?

19 A **Yes, indeed.**

20 Q And what happened?

21 A **The person who sold us the loft went
22 bankrupt, and we eventually had to find a way to buy
23 the whole building.**

24 Q And you bought the entire building and
25 then sold some suites off?

1 **A Yes, not much but a little.**

2 Q And you still own some of the suites?

3 **A Most of them.**

4 Q And then rent them?

5 **A Uh-huh.**

6 Q Do you know how many units in the building
7 you and Geri own?

8 **A Five.**

9 Q How many units are in the building?

10 **A Seven.**

11 Q There were eight, right?

12 **A There were eight and --**

13 Q Becca brought one and joined it with her
14 loft?

15 **A Correct.**

16 Q Is -- so Becca's the only other one who
17 owns a unit or there's one other family member who
18 owns a unit, correct?

19 **A One of Geri's brothers still owns one
20 that --**

21 Q Is that on the second floor or is that on
22 the third floor?

23 **A Second.**

24 Q Can you point to which unit that is?

25 **A That would be 210.**

1 Q Okay. Why did you and Geri want to move
2 to downtown Belleville?

3 A When we did, Geri's office was two blocks
4 down right on the square in Belleville. We lived on
5 the West End, and the parish I was assigned to at
6 the time was in Waterloo. So, in order to ever have
7 a meal together, we had to do something, because she
8 couldn't do her work, get home before I had to --
9 and have dinner before I had to leave for the
10 parish.

11 Q Okay.

12 A So, this made -- again, life simpler.

13 Q And you had Suite 230 constructed for you
14 guys, correct?

15 A Yes.

16 Q To your specifications?

17 A Yes. To Geri's specifications. I was
18 just along for the ride.

19 Q Smart man, smart man. What was in the
20 building next door where Copper Fire is presently
21 located when you guys moved into Suite 230?

22 A In the first floor, Quiznos was next door.
23 I think it was the whole first floor at that point.

24 Q Was there a coffee shop over there as
25 well?

1 **A That one came later.**

2 Q Okay. Any issues with noise from Quiznos
3 or the coffee shop?

4 **A No.**

5 Q Did either one of those businesses ever
6 play live music?

7 **A No.**

8 Q Do you recall, as you sit here today,
9 about when Copper Fire opened next door?

10 **A It was before Covid. 2018, 2019,**
11 **somewhere in there.**

12 Q And at the time you already lived in your
13 loft, correct?

14 **A For a long time, yeah.**

15 Q For about eight years, give or take?

16 **A Yeah.**

17 Q And Kaskaskia Engineering Group already
18 occupied the first floor of that building as well?

19 **A They did.**

20 Q Do you recall how long it took for Copper
21 Fire to do their construction?

22 **A I don't.**

23 Q Do you recall having noise issues while
24 Copper Fire was doing the construction?

25 **A There were some, but, normally, they were**

1 at a level, just like, all right, they're under
2 construction. It's a construction zone.

3 Q Are you aware of whether Copper Fire knew
4 that you and Geri lived in Suite 230 before they
5 started construction?

6 A I am not aware.

7 Q Okay.

8 A What they knew.

9 Q Do you know if they became aware that
10 people were living in Suite 230 and other places in
11 the building at any point? Did you do that? Make
12 them aware of that?

13 A I did not.

14 Q Okay. Have you any --

15 A Well, I take that back. That was a
16 misspeak on my part. I did have one conversation
17 when we were having issues, so they knew from me
18 that we lived there.

19 Q Okay. Do you recall when that happened
20 about?

21 A No, I really don't.

22 Q Was it while they were under
23 construction --

24 A No.

25 Q -- or after they opened?

1 **A After they opened.**

2 Q About how long after they opened did you
3 start to have issues with the noise coming from
4 Copper Fire?

5 A So, it was a fairly good while, because
6 originally either they didn't have bands or were
7 they were quiet. So, there was a time when it was
8 not too bad or not noticeable even, is a better way
9 to put that.

10 Q I'd like you to look in that book in front
11 of you at Tab 3, and ask you to read that e-mail.
12 Maybe you haven't seen it until today.

13 A Which --

14 Q Just read from the bottom up.

15 A March 17th at 3:47, Geri wrote, "Looks
16 like Copper Fire is a hit today. We're so glad you
17 got partially opened, but the sound is very loud in
18 our second floor loft. Please talk to the architect
19 about acoustical remediation immediately."

20 Q Does that refresh your recollection that
21 you had noise issues with Copper Fire from day one
22 when they opened?

23 A Certainly not on a regular basis. Again,
24 this is March 17th. I specifically remember that
25 because there were also, you know, issues downstairs

1 **because it was a workday. But I don't remember it**
2 **being a daily, you know, a five-day-a-week issue by**
3 **any stretch.**

4 Q When did it become a five-day-a-week
5 issue? And, actually, let me withdraw that
6 question?

7 **A Thank you.**

8 Q Let me ask, I think, a better question.
9 Was there an event or a change in how Copper Fire
10 conducted its business that caused the sound to
11 become a five-day-a-week issue?

12 **A Yeah, the music venue was not anybody's**
13 **understanding going in.**

14 Q So --

15 **A It was a restaurant that may have music**
16 **from time to time.**

17 Q Okay. When they first opened, it wasn't a
18 plan to have music, at least not your
19 understanding --

20 **A Correct.**

21 Q -- that they have music five days a week?

22 **A Correct.**

23 Q And the noise became an issue for you all
24 when they shifted their strategy and started to have
25 music five days a week?

1 **A Correct.**

2 Q Do you know when they have music?

3 **A Normally, it's Wednesday, Thursday, Friday**
4 **evening and typically in the afternoon -- I'm sorry.**
5 **That was a mistake. Friday evening, Saturday**
6 **afternoon, Saturday evening, Sunday from 2:00 to**
7 **5:00.**

8 Q So, Wednesday, Thursday, Friday nights,
9 Saturday and Sunday during the day and then Saturday
10 night?

11 **A Right.**

12 Q What -- what impact does that have on your
13 life?

14 **A Especially when we get to the weekend, the**
15 **volume goes up. And, so, again, we've made it a**
16 **point, when humanly possible, just not to be in our**
17 **home Friday night and Saturday. We take our**
18 **grandsons in, now that we have a lake house and go**
19 **to the lake. But, of course, I have to come back**
20 **for my four services over the weekend.**

21 Q Are you able to sleep on Saturday nights
22 okay?

23 **A A little around 11:00.**

24 Q After 11:00, you're able to go asleep?
25 That's a short night, though, isn't it?

1 **A Getting shorter as I get older.**

2 Q Probably would like to go bed before 11:00
3 so you could be up on Sunday morning?

4 **A It would be ideal.**

5 Q But you can't go to bed earlier than that?

6 **A Not and sleep.**

7 Q Are you able to have a normal conversation
8 in your home at any of the times when bands are
9 playing.

10 **A Again, during the week, it's there, but**
11 **it's not to the point where it's distracting from a**
12 **regular conversation. But certainly on the**
13 **weekends.**

14 Q How about watch TV?

15 **A Again, if you turn it up, and, normally,**
16 **if I'm there on Saturday, I take my hearing aids**
17 **out. Sometimes, I can get it to tune to where I**
18 **could -- it will focus a little more on the TV and**
19 **drown out the ambient, but I'm not a master of these**
20 **things.**

21 Q And you heard Geri testify earlier that
22 the issue is the sound coming in and the fact that
23 you have this competing sound --

24 **A Sure.**

25 Q -- correct? It's hard for your brain to

1 kind of decipher all that noise at the same time?

2 **A Absolutely.**

3 Q Does that prevent you from listening to
4 your own music in your loft?

5 **A Yeah. I would never attempt it, to listen
6 to music at home.**

7 Q How about reading a book?

8 **A It's a challenge.**

9 Q Now, you reference you have hearing aids.
10 How long have you had those?

11 **A Three years.**

12 Q Any specific reason why you had to get
13 hearing aids?

14 **A I couldn't hear my wife, as she pointed
15 out, regularly.**

16 Q You're scoring points today, bud. So, if
17 you take your hearing aids out, is the sound from
18 Copper Fire pretty much gone?

19 **A Oh, no, no.**

20 Q You can still hear it without --

21 **A Yeah, there's a just a particular range
22 that I specifically need them for. And that's part
23 of the problem, the top and bottom are fine, and so
24 even when they're out, things like base or the high
25 part of drums, those come through loud and clear no**

1 **matter whether I have them in or not.**

2 Q Okay, so --

3 **A The middle part that's not --**

4 Q You've got your hearing right in the
5 middle is what's been impacted?

6 **A Yeah.**

7 Q Now, you say you go to your lake house
8 every Friday?

9 **A Try to.**

10 Q Take the grandkids?

11 **A Uh-huh.**

12 Q Was the construction of the lake house
13 prompted by anything in particular?

14 **A Covid.**

15 Q I'm sorry?

16 **A Covid.**

17 Q Covid?

18 **A Yeah, that was the main thing. Well,**
19 **there was no place that we could take them, the boys**
20 **in particular and, so, we went back home to where we**
21 **used to go because they could be outside and not**
22 **around people. And it's, like, oh, if we're going**
23 **to come here ever week, we're not camping. That's**
24 **for darn sure.**

25 Q Sure. When you decided to construct it,

1 was it in part because your grandkids weren't able
2 to sleep in your loft when you had them?

3 MR. PETRUSKA: Objection, asked and
4 answered.

5 HEARING OFFICER WEBB: You can go ahead
6 and answer it.

7 THE WITNESS: That came into play. It
8 did.

9 Q (By Mr. Jacober) Okay.

10 A It wasn't the initial reason, but it
11 become obvious that it was a brilliant solution.

12 Q We talked about hearing the noise from
13 Copper Fire. Could you also feel the noise?

14 A I often wondered which really is it
15 sometimes. The -- especially, again, when that base
16 starts, a base player starts rolling, it's hard to
17 tell whether it's vibration -- well, sound is
18 vibration.

19 Q So, you feel like you can feel it as well
20 as hear it?

21 A Yeah, sometimes.

22 Q Have you ever talked to anyone at Copper
23 Fire about the noise issues in your loft?

24 A For the most part, I normally let my wife
25 do all of those things. That's not one of those

1 things I'm particularly comfortable with. As I
2 said, I did have one conversation relatively early
3 on with Mark.

4 Q Okay. So, any efforts that have been done
5 to try to address the sound issues have all been
6 done by Geri not by you?

7 A Pretty much, yes.

8 Q Okay. Are you and Geri together less on
9 the weekends since she's staying -- strike that.
10 You testified that you come home on Saturday
11 afternoon on the lake --

12 A Right.

13 Q -- so you can take care of your mass on
14 Saturday evenings and then Sunday morning?

15 A Uh-huh.

16 Q Does Geri come home from the lake with you
17 on Saturday?

18 A No. Almost -- I can't think of a time. I
19 am sure she has, but I can't think of -- it's been a
20 long time.

21 Q Okay. And as a result, you spend less
22 time with your wife, right?

23 A Absolutely.

24 Q Does Geri stay in the office later during
25 the week so she cannot deal with the noise?

1 A Her time staying at the office is later in
2 the week. I don't want to say definitively that
3 that's her reasoning, but it's definitely the last
4 part of the week when she stays late.

5 Q And, so, that means you and Geri spend
6 less time during the week as well?

7 A Yes.

8 Q Has that had an impact on your marriage?

9 A It hasn't been positive, you know, because
10 an important part is often is just catching up,
11 spending time together, sometimes doing nothing
12 together. So, not being able to do that, yes, it's
13 a challenge.

14 Q And what it is that you and Geri are
15 asking the Pollution Control Board to do for you all
16 in this matter?

17 A We would just like -- I think Geri spoke
18 for herself, but my answer would be pretty similar:
19 just want to be able to enjoy my space without
20 constant intrusive noise in the evenings and on the
21 weekends.

22 Q You don't care if they have bands?

23 A No.

24 Q You don't care if they have a loud
25 environment?

1 **A No, if they keep it to themselves.**

2 Q As long as that loud environment doesn't
3 intrude into your space?

4 **A Right.**

5 Q Have you ever been in Copper Fire?

6 **A It seems like we went once before any of**
7 **the band things started, it seems like we did go --**
8 **have a lunch there.**

9 Q Have you been in Copper Fire since the
10 bands started?

11 **A No.**

12 Q No. Have you personally done any
13 investigation or research into something that you
14 could do in your suite, in your loft, to address the
15 sound?

16 **A Actually, I've talked to my**
17 **brother-in-laws, who are construction people, about**
18 **is there anything that physically we could do, and**
19 **their only answer was, you know, probably build a**
20 **wall and completely cover up the exposed brick for**
21 **200 feet along wall or 100 feet along the wall, I'm**
22 **sorry.**

23 Q And let's talk about the exposed brick.
24 Is that kind of an esthetic element of your loft
25 that you think adds value to it?

1 **A Absolutely. Yeah, it's striking. It's**
2 **the first thing that people see when they come in.**

3 Q You don't to want cover that up?

4 **A No.**

5 Q You think it would affect your property
6 value if you covered up that brick wall?

7 **A Absolutely.**

8 Q Were they able, your brothers-in-law or
9 anyone you've talked to, were they able to tell you
10 if you did install a wall and cover the brick up,
11 that would guarantee the noise from Copper Fire
12 would not come in to your loft area?

13 **A No, I don't -- my impression from them was**
14 **that they don't have the expertise to be able to say**
15 **something like that.**

16 MR. JACOBBER: I have no further questions
17 at this time.

18 CROSS-EXAMINATION

19 BY MR. PETRUSKA:

20 Q Good afternoon, sir. One of the
21 complaints in this case is an inability to sleep,
22 correct?

23 **A Uh-huh.**

24 Q Okay. Your bedroom is back here?

25 **A Uh-huh.**

1 Q 16 by 9 by 16; is that correct?

2 A Yeah.

3 Q Okay. Have you considered doing anything
4 with this wall to -- just this wall, not the front,
5 just that wall to make it better?

6 A Again, it's a striking feature of the
7 room. It's one of the things that really gives it
8 character. It's going to decrease the value and
9 decrease the esthetic.

10 Q So, I understand, but we're here today
11 because your wife is saying she can't have a
12 conversation; she can't watch TV; she can't even
13 stay there. And if that's true, I'm just wondering
14 why not do something to try to make it better?

15 A Because as Geri said, and I totally agree,
16 we didn't do anything. We didn't create the
17 problem, and why should we decrease our value,
18 make -- risk our resell when the time comes, in
19 order to fix a problem that we didn't create.

20 Q Understood. Are you aware of all of the
21 steps that Copper Fire has taken to help mitigate
22 the sound?

23 A No.

24 Q Okay. Would you be surprised to find out
25 they installed rules and regulations for bands

1 playing there as to what sound level they can reach?

2 **A I would be surprised.**

3 Q Would you be surprised if they consulted
4 with sound experts to talk about what they can do?

5 **A Yeah, I would.**

6 Q Would you be surprised if they installed
7 sound monitoring devices?

8 **A I had heard that.**

9 Q Would you be surprised if they recently
10 installed a sound clock, pretty much, right in front
11 of the band to let them know how loud they are?

12 **A I would be surprised.**

13 Q So, Copper Fire -- if the evidence is that
14 Copper Fire is doing all kinds of things to help
15 mitigate the sound, are you still unwilling to do
16 nothing?

17 **A Again, I didn't create the problem.**

18 Q Right.

19 **A Wouldn't it just be simpler, if we were
20 going to do all of these things and bring experts in
21 and post all of these things, wouldn't it be easier
22 to turn just the freaking sound down so we didn't
23 have to listen it?**

24 Q Well, it sounds wonderful but have you
25 talked to anyone in the music industry who's figured

1 out that's actually a solution?

2 **A** It doesn't take a sound expert to say if
3 you turn the sound down, you're not going to hear as
4 much of it. There's not going to be as much
5 transmitted because there's not as much coming out.
6 It is just a simple -- that's physics 101. And I
7 was an engineering student before I did all my --

8 **Q** Actually it's not. You have a hearing
9 issue, correct?

10 **A** **Absolutely.**

11 **Q** Okay, so frequencies matter?

12 **A** **Absolutely.**

13 **Q** Correct? Decibel levels and certain
14 frequencies matter?

15 **A** **Sure.**

16 **Q** So, it's not just turning down sound,
17 right?

18 **A** Well, if you turn down the overall sound,
19 then you're turning down all of those frequencies.
20 So, the ones that are the problem would also go
21 down.

22 **Q** What about all the people inside the
23 restaurant, do they create noise?

24 **A** You know, I have never -- that's not true.
25 I have almost never heard any sound from the people

1 even when they're cheering. You never -- almost
2 never hear the people.

3 Q See that's amazing, because your wife says
4 she hears Sweet Caroline and them all singing it all
5 time.

6 A Well --

7 Q She says that's constant?

8 A The damn Sweet Caroline, that's -- but
9 conversation, people hanging out, talking, drinking,
10 you don't hear that. Singing's a whole different
11 ballgame.

12 Q So, you do hear people?

13 A When they sing.

14 Q Okay. So, when there's sound in the bar,
15 doesn't the music need to be louder so people can
16 hear it?

17 A I do not know. I can't imagine that it
18 needs to be loud.

19 Q I'm just asking the question --

20 A Yeah.

21 Q -- because it's -- you know, you and your
22 wife are suggesting it's an easy solution. I'm
23 trying to tell you it may not be that easy. Have
24 you thought that?

25 A I have that I hear -- I see through

1 various ways, all of the people who complain about
2 how loud it is in there to start with, so.

3 Q Have you paid attention to any of the
4 people that love the environment inside Copper Fire?

5 A Normally, they will mention the food. You
6 don't hear much about, gosh, that I love it that
7 it's so loud that I can't talk to my friends. I've
8 never seen that.

9 Q You never seen people that say like to go
10 there because it's a fun and exciting venue?

11 A I see Renae say that, but I -- I am sure
12 there are people who do. I am sure.

13 Q Okay.

14 A I don't -- God knows that I have better
15 things to do than read all of the Copper Fire
16 reviews. I just glance from time to time.

17 Q And there are hundreds of reviews,
18 correct?

19 A Huh?

20 Q There are hundreds of reviews of Copper
21 Fire?

22 A If you say so.

23 Q Okay. Have you been to Big Daddy's?

24 A Not for a long time.

25 Q Okay. When you -- how long ago did you

1 go?

2 **A Probably pre-Covid.**

3 Q Okay.

4 **A Back when it was -- had a different**
5 **feeling that it does now.**

6 Q Was it a loud venue?

7 **A Yeah.**

8 Q Okay. Are there other places on Main
9 Street that have live music?

10 **A Sure.**

11 Q And they have microphones and amplifiers
12 and things like that?

13 **A Uh-huh.**

14 Q So, is it really fair to Copper Fire to
15 say you can't do it just because the Boyers live
16 next to you?

17 **A I say it's not fair if you impinge on my**
18 **privacy, my lifestyle, my home. Again, I know,**
19 **because I've seen Benny do it, he doesn't even have**
20 **anybody who lives next to him, but he asks if he has**
21 **somebody who thinks he is a little loud, he'll go**
22 **and ask, is this a problem and he'll turn it down.**
23 **Big Daddy doesn't have anybody next to him other**
24 **than a blind shop that's closed in the evening.**

25 Q You ever heard about anyone complaining

1 about the music at Big Daddy's?

2 **A No. I can see that it could happen but I**
3 **haven't.**

4 Q You're not aware of any noise complaints
5 that have been filed against Big Daddy's?

6 **A Not something I ever checked or**
7 **particularly cared about, because he doesn't bother**
8 **me.**

9 Q Are you aware of anybody else other than
10 you, your daughter and your wife that have
11 complained about the noise from Copper Fire to the
12 police?

13 **A There's no one else whose walls impinge on**
14 **Copper Fire, so why would anybody complain?**

15 Q Are you aware that there are people above
16 Copper Fire?

17 **A I have no idea.**

18 Q No. So, you don't really know if there
19 are other people that live next to Copper Fire?

20 **A If they do, they know who their landlord**
21 **is and they should expect it.**

22 Q You are not sitting here saying that
23 Copper Fire is not suitable for the area, right?
24 It's just like other bars and restaurants in the
25 area?

1 **A Say that one more time.**

2 Q Is Copper Fire suitable for the area? Are
3 there other bars and restaurants in the area?

4 **A Of course there are.**

5 Q Okay.

6 MR. PETRUSKA: That's all the questions I
7 have, thank you.

8 MR. JACOBBER: Briefly, your Honor.

9 REDIRECT EXAMINATION

10 BY MR. JACOBBER:

11 Q Kaskaskia Engineering is on the first
12 floor of that building, correct?

13 **A Correct.**

14 Q It also shares a wall with Copper Fire,
15 correct?

16 **A It does.**

17 Q On the ground floor?

18 **A Uh-huh.**

19 Q Does Kaskaskia Engineering have drywall on
20 its walls?

21 **A On that wall, yes.**

22 Q Can you still hear the sound through the
23 drywall?

24 **A You know with the -- I don't know that I
25 can answer that, because the bands are there in the**

1 evening, and if I'm downstairs, it would be during
2 business hours.

3 Q Okay. Counsel went through the steps that
4 Copper Fire has instituted to mitigate the sound.
5 I'll go through those again with you. They have
6 rules for the bands, consultation with sound
7 experts, sound monitor and the sound clock or a
8 sound reading in front of the band to let them now
9 how loud they are. You heard those?

10 A Uh-huh.

11 Q I think you were surprised at all of them,
12 correct?

13 A Yeah, there was one that I was aware of,
14 but the rest of them were all surprises.

15 Q Have those mitigation efforts by Copper
16 Fire done anything to reduce the sound coming into
17 your loft?

18 A I don't have quantitative data, but I don't
19 sense that it has.

20 Q At least you haven't observed it?

21 A I can't say, oh my God, there was a step
22 change last week. Copper Fire must have done
23 something. No, there's been no --

24 Q And did you hear counsel say that Copper
25 Fire has installed any kind of sound deadening in

1 its space to absorb the sound before it comes into
2 your space?

3 **A I don't believe I did.**

4 Q The loft above you, that's owned by you
5 and Geri, correct?

6 **A Yes.**

7 Q Do you have a renter in there?

8 **A We do.**

9 Q Who is that?

10 **A Julie Orlet.**

11 Q Do you talk to Julie?

12 **A Several times a week.**

13 Q Has she ever commented about the sound
14 from Copper Fire?

15 **A Numerous times.**

16 Q To you?

17 **A Uh-huh.**

18 Q What does she say?

19 **A What she has said makes me think it's**
20 **maybe actually almost worse in her place than ours.**
21 **That it seems like it's much more distracting to**
22 **her, even than it is to us.**

23 Q So, besides you and Geri and Becca, Julie
24 also has made a comment about the sound?

25 **A Absolutely. And, again, the fact that she**

1 has specifically told me that, you know, she no
2 longer can rent her place out when she's out of town
3 because of the volume of the sound.

4 Q Now, there was a little bit of discussion
5 about Big Daddy's and then you referenced the pizza
6 place, what's the name of it?

7 A Huh? Oh, Benny's.

8 Q Benny's. And drawing comparisons between
9 those two --

10 A Uh-huh.

11 Q -- you don't live next to Big Daddy's, do
12 you?

13 A I don't.

14 Q You don't live --

15 A And I'm grateful for that. At least, I
16 would have been back in the day, yeah. But, yeah,
17 he's down the street.

18 Q So --

19 A I may hear it when I walk the dogs, but
20 I'm fair game out on the street.

21 Q And so what happens in Big Daddy's,
22 doesn't impact you whatsoever?

23 A Not in the least.

24 Q It's not really a comparison that is
25 appropriate or applicable to what's happening in

1 your place?

2 **A Right.**

3 Q Correct?

4 **A Correct.**

5 Q Same thing, for Benny's. You don't live
6 next to Benny's?

7 **A No.**

8 Q You don't share a wall with Benny's?

9 **A No.**

10 Q You don't share a wall with Big Daddy's?

11 **A No.**

12 Q So, anything that happens in Benny's is
13 not applicable to what's happening in your home?

14 **A Correct.**

15 Q In your home, Copper Fire shares a wall
16 with you, and you are hearing the bands in Copper
17 Fire in your loft?

18 **A Right.**

19 Q Is that correct?

20 **A That's correct.**

21 MR. JACOBBER: No further questions.

22 RECROSS-EXAMINATION

23 BY MR. PETRUSKA:

24 Q Sir, what is Spaces?

25 **A It's -- I guess you would call it an event**

1 **space across the street.**

2 Q And do they have outdoor events?

3 **A Occasionally.**

4 Q Do they have music playing?

5 **A Yes.**

6 Q It's right across the street from you?

7 **A Uh-huh.**

8 Q Can you hear it when you're walking on the
9 street?

10 **A On the street, absolutely.**

11 MR. PETRUSKA: That's all I have.

12 HEARING OFFICER WEBB: Nothing further?

13 MR. JACOBBER: Just one follow-up.

14 FURTHER REDIRECT EXAMINATION

15 BY MR. JACOBBER:

16 Q Can you hear the music that is outdoors in
17 Spaces in your loft?

18 **A If I do, I close windows.**

19 Q So, it's --

20 **A I literally cannot hear them at all if the
21 windows are closed.**

22 Q You can only hear them if your windows are
23 open?

24 **A Which is rare.**

25 Q No further questions.

1 MR. PETRUSKA: No questions.

2 HEARING OFFICER WEBB: Okay. Great, thank
3 you, sir.

4 **THE WITNESS: Thank you.**

5 HEARING OFFICER WEBB: Okay. We have this
6 room for another hour. We had previously
7 discussed that Complainants would allow
8 Respondent to put one more witness on the
9 stand.

10 MR. JACOBBER: Yeah, my next witness, Your
11 Honor, would be Mike Biffignani, and I think --

12 HEARING OFFICER WEBB: He may take while?

13 MR. JACOBBER: He's going to take more than
14 an hour?

15 HEARING OFFICER WEBB: Okay. All right,
16 let's do that. Let's call Respondent's next
17 witness.

18 MR. PETRUSKA: I'd like to call Tim
19 Albert, please.

20 (Tim Albert sworn.)

21 DIRECT EXAMINATION

22 BY MR. PETRUSKA:

23 Q Can you state your name for the record?

24 **A Yes, Timothy Albert. You can call me Tim.**

25 Q What do you do for a living?

1 A I'm the technical director at the Sheldon
2 Concert Hall in St. Louis. So, I've been in the
3 audio business since 1977.

4 Q Are you also a music guy?

5 A Yes, I've been a musician for 60 years.

6 Q Okay. Have you played at Copper Fire?

7 A Yes, I have.

8 Q What are the names of your bands?

9 A Uncle Albert.

10 Q Have you consulted with Renae on sound
11 inside of Copper Fire?

12 A Yes, I have. And that was before the band
13 ever played there or even considered -- she had
14 spoken to somebody else about installing a house
15 sound system. That person asked me to go in and
16 just do a site survey and talk to them and come up
17 with ideas of what to work.

18 So, Renae and I discussed what she
19 had thought about installing a house sound system to
20 give the house complete control over the sound.
21 That doesn't necessarily always work the way you
22 would think. And then we discussed some sound
23 mitigation, how do we, you know, if she's going to
24 have bands, how would we make them quieter; where we
25 place the bands, so we discussed, do you put them in

1 the window; do you put them up against this wall?

2 Do we do any kind of sound deadening. So, after the
3 initial discussion, I also dug up references to the
4 Illinois statute of, you know, standard sound
5 levels --

6 Q I want to avoid that --

7 A Correct. So, what we did discuss was, you
8 know, putting different fabrics and things on the
9 wall to deaden -- to stop reverberant sounds,
10 basically. To break up the frequencies so they
11 don't scatter, so if you break up the frequencies,
12 it basically helps drop the perception of what we
13 call volume.

14 Q Okay.

15 A Because it's a very subjective thing.

16 Q Let's talk about -- just so we can talk
17 about your -- the basics of giving some
18 consultation --

19 A Correct.

20 Q -- I want to talk about your experience in
21 sound. What do you do at the Sheldon Home?

22 A I'm the technical director and the concert
23 sound engineer, so I operate all of the concerts.
24 We do between 3 and 400 shows a year. Everything
25 from non-reinforced acoustical classical shows,

1 everything up to screaming loud rock bands, you
2 know, BB King, Willie Nelson and on and on. Robert
3 Cray is going to be there Friday. So, with that
4 experience in that venue, just to give you a little
5 thumbnail on it, the venue is built specifically for
6 acoustical music, so that means string quartets, et
7 cetera.

8 You know, with the times and the
9 popularity of different kinds of music, I've got to
10 deal with a band that's not appropriate for the
11 room, but we sold tickets; it's a great band; it's
12 going to be a little too loud for the room; so most
13 of my daily conversations are on how do we make that
14 fit for both sides. How does the performer get the
15 performance that they want to get across to the
16 audience? How do I make that accessible to our
17 audience members so they don't come up and say it's
18 too loud; give my money back.

19 The whole idea is to make a quality
20 experience for the audience and the performers, all
21 in the same thing. So, that's mostly just
22 discussing the acoustics of the room, how sound
23 moves, how things change, what instrument might be
24 louder, perceived louder than another instrument in
25 that space. Usually, it's a conversation of

1 compliance for, for lack of a better word, to just
2 kind of piece together and, you know, we've
3 typically had no complaints, so.

4 Q Does the number of --

5 MS. ROBBINS: Your Honor, we want to place
6 an objection on the record to Mr. Albert to the
7 extent he's testifying as an expert witness.
8 He was not disclosed as an expert by the
9 Respondents in this case, and it appears that
10 he's trying offer some sort of expert
11 testimony.

12 MR. PETRUSKA: I'm just trying to give his
13 background as why -- why he was able to consult
14 with Renae, and the fact that she consulted
15 with him is relevant to the Section 33 factors
16 in this case.

17 HEARING OFFICER WEBB: He's not -- are you
18 considering him an expert?

19 MR. PETRUSKA: I'm not going to ask him a
20 single opinion about Copper Fire's noise there
21 or anything else, just things that he
22 recommended.

23 HEARING OFFICER WEBB: Okay, go ahead.

24 THE WITNESS: I can offer more about my
25 background if that's --

1 MS. ROBBINS: But recommendations are
2 opinions by an expert, and he's trying to lie
3 foundation as to why he's able to give these
4 recommendations in this consultation. I mean,
5 that's an expert opinion.

6 MR. PETRUSKA: If I can ask my questions
7 and if I ask an opinion question, she can
8 object but I don't expect to ask an opinion
9 questions.

10 HEARING OFFICER WEBB: Okay.

11 Q (By Mr. Petruska) Just to continue with
12 your background, can you explain if a -- how a band,
13 a two-to-five-person band? How do they perform?
14 How does that actually occur?

15 MS. ROBBINS: I'm going to object. He's
16 asking for an expert opinion.

17 MR. PETRUSKA: That's a factual question.

18 HEARING OFFICER WEBB: I'll allow it.

19 **THE WITNESS: Do you want more information**
20 **on my background?**

21 Q (By Mr. Petruska) No, no, please, if you
22 just say how would a five-person band, they're going
23 to go out and play, what stuff do they need?

24 **A If you're going -- a typical five-person**
25 **band would be a drummer, base player, guitar player,**

1 keyboard player and a vocalist, possibly, that would
2 involve amplifiers typically for each base, guitar,
3 keyboard amplifiers for the vocal microphones. That
4 typically would go into a mixer; then you adjust the
5 sound mixer to be appropriate for the space.

6 Q And the mixer, when someone just talks
7 just about a master sound, the mixer actually
8 controls the sound more than the amplifier --

9 A Correct, it's --

10 MS. ROBBINS: I'm going to object. Again,
11 same thing.

12 HEARING OFFICER WEBB: How about I'll
13 allow you to make a standing objection to his
14 testimony?

15 MS. ROBBINS: Okay, a standing objection
16 to Mr. Albert's testimony to the extent he is
17 an undisclosed expert witness.

18 HEARING OFFICER WEBB: Okay, go ahead.

19 Q (By Mr. Petruska) So, the mixer controls
20 the sound as much as the master?

21 A Correct.

22 Q Okay. And just so people understand, do
23 take you take a cord and plug it into something?

24 A Correct. All the microphones and
25 everything that's associated with hooking up the

1 equipment would go into the mixer. You have the
2 individual control over each instrument. There's a
3 master volume, you know, basically, you know,
4 it's -- it's close to a home stereo system. You
5 just have more control over it all.

6 Q Kind of like an equalizer to some extent?

7 A Yes.

8 Q Okay.

9 A To a certain degree.

10 Q If a person wants the vocals to be louder,
11 they can change the mixer?

12 A Correct.

13 Q Okay. Have you ever seen a band, I'm
14 talking factually now, have you ever seen a band go
15 into a place like Copper Fire and play without
16 amplification?

17 A No.

18 Q Do singers typically like to have a
19 microphone that's amped?

20 A Yes.

21 Q Okay. Why is that?

22 A Just to be heard, and there's also the
23 physical aspect of if they're to sing, say, to fill
24 a space, it's, you know, physically stressing.

25 Q You mentioned that you ended up meeting

1 Renae because someone recommended a house system to
2 her?

3 **A Correct.**

4 Q Can you explain to me what your
5 conversation was after that with Renae?

6 **A Well, my conversation after that was so**
7 **she called a music store and asked for advice on**
8 **installing a sound system. They explained to me --**
9 **the store explained to me what the situation was and**
10 **asked me to go in based on my experience teaching,**
11 **et cetera, et cetera. So, I always start with what**
12 **is your motivation and why do you want to make this**
13 **extra investment? Her motivation was, if we have a**
14 **sound --**

15 MS. ROBBINS: Objection, calls for
16 hearsay.

17 MR. PETRUSKA: The entire purpose of this,
18 Your Honor, is to show Renae has consulted with
19 an expert to address her sound and it's a
20 mitigating factor and relevance to the Section
21 33 factors in this case.

22 MS. ROBBINS: Right, and he just admitted
23 it's an expert. He just said, she proved that
24 she's consulted with an expert. And, once
25 again, Mr. Albert has not been disclosed.

1 MR. PETRUSKA: Mr. Albert was disclosed as
2 a fact witness, and that's all we're talking
3 about, his factual involvement in this case.

4 MS. ROBBINS: And you just said on the
5 record that Mr. Albert -- that Renae consulted
6 with Mr. Albert as an expert to show that she
7 consult with an expert to talk about certain
8 mitigation inside the bar, so.

9 HEARING OFFICER WEBB: I mean, if we're
10 talking expert recommendations -- I mean, I'll
11 just allow the testimony --

12 MR. PETRUSKA: Sure.

13 HEARING OFFICER WEBB: -- as an offer of
14 proof, but I don't -- I mean, just factual -- I
15 mean, he's a musician and a sound mixer, I
16 mean, I'm not really sure --

17 **THE WITNESS: Well, I think it's also**
18 **relevant, excuse me, I taught audio at**
19 **Washington University; I taught audio --**

20 MS. ROBBINS: Right, so he's --

21 MR. JACOBBER: Your Honor, he's an expert
22 witness.

23 HEARING OFFICER WEBB: You are sounding
24 more like an expert --

25 MR. JACOBBER: And he wasn't disclosed as

1 an expert witness. We are being sandbagged in
2 this hearing with an expert witness that we had
3 no clue was going to come here and testify
4 about today.

5 HEARING OFFICER WEBB: I understand. I
6 will allow you to make an offer of proof.

7 MR. PETRUSKA: Sure.

8 HEARING OFFICER WEBB: Is that okay?

9 MR. JACOBBER: An offer of proof would be
10 made by Mr. Petruska, not by the witness on the
11 record.

12 MR. PETRUSKA: No, you ask questions of
13 the witness to show --

14 MR. DAVIS: Right.

15 MR. PETRUSKA: -- the testimony he would
16 give.

17 HEARING OFFICER WEBB: Then you can
18 argue -- well, no, it's not admitted. It's not
19 admitted.

20 MR. JACOBBER: It's not admitted.

21 HEARING OFFICER WEBB: You would have to
22 argue to the Board --

23 MR. PETRUSKA: Yeah.

24 HEARING OFFICER WEBB: -- that it's
25 admissible.

1 MR. PETRUSKA: That's fine.

2 HEARING OFFICER WEBB: Is that okay?

3 MR. JACOBBER: I -- we will maintain our
4 objection because it's a sandbag, and it's due
5 process is not here.

6 HEARING OFFICER WEBB: I understand.

7 MR. JACOBBER: The rules require disclosure
8 of experts and an opportunity to examine the
9 expert outside of this. We have no idea what
10 he's about to say, and counsel has admitted
11 that the purpose is to provide what the expert
12 that Ms. Eichholz's consulted with told her
13 what to do. That's the foundation of this
14 hearing, and we're being sandbagged with this
15 information today, so I would object to it
16 being put on the record at all.

17 MR. PETRUSKA: If I can't get it on the
18 record then we can't have submitted it to the
19 board.

20 MR. JACOBBER: You can get it on the record
21 if you had disclosed the expert prior to the
22 hearing and afforded us an opportunity to
23 examine the witness and review his report and
24 his data and his analysis and everything that
25 you're entitled to do with an expert witnesses

1 before. That's what the protection is in the
2 rules to ensure.

3 MR. PETRUSKA: He didn't prepare a report.
4 He didn't do an analysis. He simply talked to
5 Renae and worked with Renae on establishing
6 some of the policies that we've established in
7 this case.

8 MR. JACOBBER: Yes, he provided his
9 opinions to her. We're being sandbagged. We
10 didn't have an opportunity to examine him
11 before the hearing today.

12 HEARING OFFICER WEBB: I understand. That
13 is not fair. But, also, this is an
14 administrative hearing, so we do have -- you
15 know, I will allow him to -- I don't know what
16 he's going to use this to argue, so I am going
17 to allow him to put the evidence -- put the
18 testimony forward as an offer of proof. It's
19 not admissible. He can later argue why it
20 should be admitted, and we can argue about this
21 later.

22 MR. JACOBBER: Okay.

23 Q (By Mr. Petruska) So, with respect to the
24 sound mixer, the idea of a house system, what
25 conversations did you have with Renae about that?

1 MS. ROBBINS: Objection, hearsay. It's --

2 HEARING OFFICER WEBB: What was the
3 question?

4 MR. PETRUSKA: The question becomes is it
5 being offered for the truth of matter or being
6 offered to show that Renae had some input; so
7 it's being offered on the effect on Renae of
8 hearing this information. That's how these --
9 all the policies we put together, they've all
10 been created by consultations with people
11 like --

12 HEARING OFFICER WEBB: I mean, is there --
13 I suppose there would be a way to phrase the
14 question that does not call -- I mean, she will
15 be available to testify --

16 MR. PETRUSKA: Yes.

17 HEARING OFFICER WEBB: -- so then I
18 suppose you can get clarification then. I
19 don't know -- I mean, sometimes we just have to
20 do things efficiently.

21 MR. JACOBBER: No pun intended, Your Honor,
22 but I'm going to sound like a broken record
23 here: that's why, with expert witnesses,
24 there's a disclosure requirement so you can
25 explore these issues and experts are given more

1 leeway to talk about conversations they had,
2 because you have an opportunity to learn what
3 they're going to say before a hearing and you
4 don't get sandbagged with their testimony at
5 the hearing. That's the fundamental fairness
6 issue that applies, all due respect, applies in
7 administrative hearings. And they's why it's
8 problematic to have this testimony at all.

9 MR. PETRUSKA: I still, Your Honor, I've
10 not asked a single opinion question of this
11 man. I've not asked him to evaluate Copper
12 Fire, the sound, anything else.

13 MS. ROBBINS: That's exactly what he's
14 testifying as what to he was asked to do --

15 HEARING OFFICER WEBB: Well, all I can say
16 is, in the past when witnesses have not been
17 disclosed, the Board has allowed the party to
18 make an offer of proof then argue it later.

19 MR. PETRUSKA: And in my response, just
20 for the record, in response to interrogatory 2,
21 known to you to have information or knowledge
22 with respect to any factual matter alleged
23 related to any allegation in the complaint or
24 the defenses set forth in your answer, include
25 the address, blah, blah, blah.

1 So, the answer was "Respondent will
2 disclose all fact witnesses as required to
3 answer this interrogatory directly. The only
4 persons with knowledge of the allegations in
5 the Complaint in Respondent's Answer are Renae
6 and Mark. With respect to the facts raised in
7 the Complaint and the Respondent's Answer,
8 Respondent identified the following: General
9 Manager Mary; Kitchen Manager Jeremy Francis;
10 Assistant Manager Sarah Joiner; Lieutenant
11 Colonel Mike Eiskant; Mark Bartle (sic),
12 downtown resident; Tim Albert, musician and
13 sound man." We disclosed who he is, and we
14 disclosed he's going to be talking about his
15 facts in this case, so I'm just going to leave
16 it there --

17 MS. ROBBINS: But that doesn't mean he can
18 testify to hearsay or an expert witness.

19 HEARING OFFICER WEBB: Okay, I've lost
20 track of what the question was.

21 MR. PETRUSKA: Yes. When Renae came to
22 you or -- sorry, when Renae wanted to talk
23 about a sound system, did you have an
24 opportunity to talk to her?

25 **A Yes.**

1 Q (By Mr. Petruska) Okay. Can you tell me
2 what -- what advice you gave her regarding a sound
3 system, a master sound system?

4 A The advice I gave her was, you can install
5 a house sound system; that doesn't necessarily mean
6 it gives you control of each individual band. What
7 I suggested was finding bands that are willing to be
8 compliant within the needs of the venue.

9 Q What do mean by bands that are willing to
10 be to compliant?

11 A Meaning bands that understand the
12 environment and are willing to play at a level that
13 fits the constraints of each individual venue.

14 Q Okay. So what would that involve to have
15 some of sort of control over the bands?

16 A Just being aware of the space and being
17 aware of how sound travels through a space and do
18 your best not to, quote, unquote, be too loud.

19 Q Okay. And did Renae follow some of that
20 advice?

21 A Yes.

22 Q What did she put in place?

23 MS. ROBBINS: Objection, he's asking --

24 HEARING OFFICER WEBB: Pardon me?

25 MS. ROBBINS: He's asking for -- he's

1 calling for speculation based off of what Renae
2 did. He hasn't established foundation that
3 this witness knows everything that was
4 implemented.

5 HEARING OFFICER WEBB: Well, I guess if he
6 was disclosed as a sound man, what did that --
7 how do you interpret that?

8 MS. ROBBINS: He was disclosed as a fact
9 witness and musician and sound man listed on
10 the list of -- he was not listed as an expert
11 witness. Whether, I mean, that he's a
12 musician, okay, we assumed he was a musician.
13 What else are we supposed to assume from that?
14 We're not -- we're not --

15 HEARING OFFICER WEBB: Well, I'm asking
16 you --

17 MS. ROBBINS: He's an expert.

18 HEARING OFFICER WEBB: -- if a sound man,
19 I'm not sure that he's -- he's, you know, I
20 guess, you know, I'm not sure what that meant
21 to you.

22 MS. ROBBINS: Well, it meant that he was a
23 fact witness, not an expert witness, and today
24 Mr. Petruska is putting him on as an expert
25 witness.

1 MR. PETRUSKA: I think we've covered this
2 and it's been ruled on. Just putting the offer
3 of proof, I think that's all we're dealing with
4 here, and I'll have to file a motion to have
5 whatever he says admitted.

6 HEARING OFFICER WEBB: Yeah.

7 MR. PETRUSKA: I think that's where we
8 are.

9 HEARING OFFICER WEBB: Okay.

10 MR. PETRUSKA: So, going back to the
11 question, can you read back the question?
12 (Requested portion of the record read back.)

13 **THE WITNESS: She experimented with where**
14 **the bands set up physically in the room.**
15 **Changed that to be a little more compliant with**
16 **the space. Put up a sound decibel meter that**
17 **the bands can read while on stage. Also, put**
18 **up a complete list of what the decibel levels**
19 **have -- your operating levels -- your limits**
20 **are, otherwise, you know, you're not welcome in**
21 **the space. The meter is in a position where**
22 **everybody can clearly see it and choose to**
23 **follow it or not, I guess.**

24 Q (By Mr. Petruska) Have you -- have you
25 seen -- I'm handing you what's been marked as

1 Exhibits R-21 and R-22.

2 (Respondents' Exhibits R-21 and R-22 marked.)

3 Q (By Mr. Petruska) Have you seen these
4 documents before?

5 A Yes.

6 Q Did you have some consultation with Renae
7 which lead to creating these?

8 A Yes.

9 Q And you have played in a band at Copper
10 Fire?

11 A Yes.

12 Q Okay. And have you been asked to abide by
13 these standards?

14 A Yes, we have been asked to abide by those
15 standards.

16 We also pay attention to the meter,
17 and it appears we're getting anywhere close to the
18 range, we bring it down.

19 Q And it is -- is that what you try to do
20 when you're at the Sheldon with bands?

21 A Yes.

22 Q Try to have them control their sound?

23 A Yes.

24 MR. PETRUSKA: Thank you. That's all
25 questions I have.

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CROSS-EXAMINATION

BY MS. ROBBINS:

Q Mr. Albert, I have a few questions. You mentioned a discussion regarding fabric and things on the wall.

A Correct.

Q Did that happen?

A To my knowledge, they did put some kind of padding on the back wall, yes, to break up the sound.

Q Was anything put on the side wall that was shared with the lofts?

A No padding that I'm aware of. Just paintings and things.

Q So, you're saying that something was placed on the far back wall --

A Correct.

Q -- on the opposite side from where the bands play?

A Correct.

Q So, looking at Demonstrative 3, which I realize is maybe not the best view; but this is the Writers' Loft, and this is the wall with Copper Fire here.

A Correct.

1 Q So, the bands are up here in the front?

2 A Correct.

3 Q So, you're saying they only set up fabric
4 on this back wall?

5 A Not on the far back wall, where the --
6 close to probably where the bedroom is.

7 Q Here?

8 A Correct.

9 Q Okay. Did you recommend that they put up
10 any fabric or any sound deadening or any other
11 devices in any other locations inside the bar?

12 A Not specifically. We discussed putting up
13 sound barriers just to break up the sound, you know,
14 the direct sound that was hitting it, yes.

15 Q And it was only placed near the back of
16 the bar?

17 A Correct.

18 Q Would it be possible, you've seen the bar,
19 would it be possible to place up additional devices
20 in other places to mitigate the sound?

21 A Speculative, but yes.

22 Q And at Sheldon, are there any residential
23 neighbors?

24 A No.

25 Q And when were your discussions with Renae?

1 **A I don't remember specifically. I think**
2 **2019. It was before Covid.**

3 Q And you said that when your band is
4 playing, you -- you can see the monitor and you can
5 turn the sound down --

6 **A Correct.**

7 Q -- if it gets -- so, if the band does get
8 too loud, you have the ability to turn the sound
9 down?

10 **A The band has the ability to turn it down.**

11 Q And looking at Exhibit R-22, which was the
12 noise and the tabs, you still have a copy of that?
13 Thank you.

14 **A Thank you.**

15 Q And it talks about certain sound limits
16 and that if a band isn't abiding by the sound
17 limits, you know, they may be shut down. To your
18 knowledge, has any band ever been shut down from
19 playing at Copper Fire?

20 **A Not to my knowledge, because I don't see**
21 **other bands there.**

22 Q And then also you said that, you know, the
23 bands have the ability to change their sound, but
24 doesn't this policy say, "Set your sound. When it's
25 perfect, do not change it."

1 **A Yes.**

2 MS. ROBBINS: I have no further questions.

3 MR. PETRUSKA: That's all I have.

4 HEARING OFFICER WEBB: Thank you, sir.

5 Were you going to offer these --

6 MR. PETRUSKA: No, I'm going to introduce
7 them through Renae.

8 HEARING OFFICER WEBB: Okay. Well, it's
9 quarter to 4:00. We've got 45 minutes. Do you
10 want to do something or do you want to hold off
11 until our --

12 MR. JACOBBER: I'd rather hold off, because
13 I know we're not going to get through my next
14 witness --

15 HEARING OFFICER WEBB: You have how many
16 more? You have three more?

17 MR. JACOBBER: Just one more.

18 HEARING OFFICER WEBB: Oh, you have one
19 more and you have --

20 MR. PETRUSKA: I have Renae --

21 MR. JACOBBER: I'm sorry, Your Honor. We
22 have two. We'll call two more witnesses.

23 HEARING OFFICER WEBB: Okay, you have two
24 more. You have your main witness, so okay. I
25 think we'll be able to get this done next time.

1 MR. JACOBBER: Yeah, we'll be able to get
2 it done in one day.

3 HEARING OFFICER WEBB: Is there
4 anything -- I'm going to make some comments at
5 the end, but is there anything else you want to
6 discuss while we're here today on the record?

7 MR. JACOBBER: On behalf of the
8 Complainant, no.

9 MR. PETRUSKA: No, Your Honor. And just
10 for the record, I just want to state that I
11 don't believe I asked a single expert opinion
12 of the witness, and I also will make on the
13 filling motion to have his factual testimony be
14 admitted.

15 HEARING OFFICER WEBB: Sounds good.

16 MR. JACOBBER: For purposes of the record,
17 we would disagree that there was very much
18 expert --

19 HEARING OFFICER WEBB: I'm sure there will
20 be an exchange --

21 MR. JACOBBER: -- testimony.

22 HEARING OFFICER WEBB: -- of motions --

23 MR. JACOBBER: Yes.

24 HEARING OFFICER WEBB: -- and responses
25 and replies, okay. I would like to note for

1 the record that there are no members of the
2 public present here today to make any public
3 comment. We've decided to continue this
4 hearing on the record. The hearing will be
5 continued on November 6th at 10:00 o'clock a.m.
6 at the Pollution Control Board Hearing Room in
7 Springfield. The address -- you don't have to
8 write down this down; I will also send out
9 something in writing, but the address is 1021
10 North Grand Avenue East in Springfield.

11 Again, I will send all this out in a
12 hearing officer order November 6th at 10:00
13 o'clock. And I think that is all we have right
14 now. We are -- we will continue November 6th.
15 Thank you all.

16 (Ending time of the hearing: 03:47 p.m.)

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1 I, Colin Wallis, in and for the State of
 2 Missouri do hereby certify that the witness
 3 whose testimony appears in the foregoing
 4 Examination Under Oath was duly sworn by me;
 5 that the testimony of the said witness was
 6 taken by me to the best of my ability and
 7 thereafter reduced to typewriting under my
 8 direction; that I am neither counsel for,
 9 related to, nor employed by any of the parties
 10 to the action in which this examination was
 11 taken, and further that I am not relative or
 12 employee of any attorney or counsel employed by
 13 the parties thereto, nor financially or
 14 otherwise interested in the outcome of the
 15 action.

Colin Wallis

17 within and for the State of Missouri

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