

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VITAUTAS MATULYAUSKAS,)
Complainant,)
v.)
PCB No. 2026-044)
LISLE PARK DISTRICT,)
Respondent.)

COMPLAINANT’S RESPONSE TO RESPONDENT’S MOTION TO DISMISS

I. INTRODUCTION

Respondent’s Motion to Dismiss rests entirely on the assertion that all pickleball activity at Abbeywood Park constitutes an “organized amateur sporting activity” exempt from the Board’s jurisdiction under Sections 25 and 3.310 of the Environmental Protection Act. That assertion reads the statutory exemption more broadly than the text supports, relies on distinguishable precedent, and does not account for well-pleaded facts that must be taken as true at this stage.

The Complaint does not challenge pickleball as a sport, nor does it seek application of numeric noise standards or monitoring requirements. Instead, it alleges that Respondent knowingly allowed unstructured, unsupervised, and unenforced open public recreational activity to generate ongoing, localized noise that unreasonably interferes with the enjoyment of life, and that Respondent failed to implement reasonable, available abatement measures after years of notice.

Illinois law recognizes two independent pathways for establishing a noise pollution violation. As the Second District Appellate Court held in *Roti v. LTD Commodities*, 355 Ill. App. 3d 1039, 1050 (2d Dist. 2005), “[a] complainant can establish a noise pollution violation in one

of two ways. One, the complainant may present noise emission measurements that prove the alleged polluter has exceeded the specific numeric noise limits as prescribed in the Regulations. Two, the complainant may prove that the noise emissions from the alleged polluter are a nuisance in that they unreasonably interfere with the enjoyment of life.” The Complaint proceeds under the second, qualitative pathway.

Section 25 expressly limits the Board’s authority to adopt “standards for monitoring noise or regulations prescribing limitations on noise emissions” for organized sporting activities. 415 ILCS 5/25. By its plain language, the exemption addresses numeric standards and monitoring—not the Board’s authority to hear claims of unreasonable interference or failure to abate under the qualitative prohibition in 35 Ill. Adm. Code 900.102. Because the Complaint pleads facts that, if proven, could support a violation of Section 24 and 35 Ill. Adm. Code 900.102 without reliance on numeric standards, dismissal as frivolous is improper.

II. STANDARD OF REVIEW

A complaint may be dismissed as frivolous only where it fails to state any set of facts upon which the Board could grant relief. 35 Ill. Adm. Code 101.202. At this stage, all well-pleaded factual allegations must be accepted as true, and all reasonable inferences must be drawn in favor of the complainant.

Dismissal is not appropriate where jurisdiction turns on fact-dependent questions, including the nature of the activity at issue, the degree of control exercised by the respondent, and whether reasonable abatement measures were available and ignored. To the extent Respondent’s Motion relies on factual assertions not alleged in the Complaint, such assertions must be disregarded at the pleading stage.

III. ARGUMENT

A. Illinois Law Recognizes Two Independent Pathways for Noise Violations, and the Complaint Proceeds Under the Qualitative Nuisance Pathway

Respondent's Motion assumes that if the sporting-activity exemption applies, the Board lacks all jurisdiction. That assumption is incorrect as a matter of law.

In *Roti v. LTD Commodities*, the Second District Appellate Court confirmed that Section 24 of the Act and Section 900.102 of the Board's regulations support an independent qualitative cause of action. 355 Ill. App. 3d at 1050. Critically, the *Roti* court also addressed and distinguished *Shepard v. Pollution Control Board*, 272 Ill. App. 3d 764 (2d Dist. 1995), upon which Respondent relies. The court explained that *Shepard's* statement that "section 24 provides no general cause of action" was taken out of context: in *Shepard*, the complainant lacked a cause of action specifically because the noise source was a skeet and trap range—a use expressly enumerated in Section 3.310's definition—and the complainant had failed to proceed under any applicable regulation. *Roti*, 355 Ill. App. 3d at 1050.

Respondent's Motion cites *Roti* at the Board level (PCB 99-19 (Nov. 5, 1998)) and *Shepard* for the proposition that Section 24 requires proof of a violation of a specific Board regulation or standard. But on appeal in the same case, the Second District Appellate Court held otherwise, confirming that a complainant may independently establish a noise pollution violation by proving that noise emissions constitute a nuisance that unreasonably interferes with the enjoyment of life—without reference to numeric standards. *Roti*, 355 Ill. App. 3d at 1050. The appellate decision controls over the Board-level ruling. Respondent's reliance on the PCB-level *Roti* decision, without acknowledging that the appellate court reached a different conclusion in the same case, does not accurately represent the current state of the law.

The Board's own understanding is consistent. In its September 19, 2024, Brown Bag Lunch presentation entitled "Noise, Noise, Noise! The Legal Racket Behind Noise Violations Before the Board," the Board's staff identified two types of noise complaints: (1) violation of the Board's numeric noise regulations, and (2) nuisance noise violations. The Board has thus contemporaneously recognized that qualitative noise nuisance claims exist as an independent pathway, separate from numeric standards. Complainant's claims fall squarely within the second category.

B. The Section 25 Exemption Addresses Numeric Standards and Monitoring, Not the Qualitative Prohibition in 900.102

The text of Section 25 states that “[n]o Board standards for monitoring noise or regulations prescribing limitations on noise emissions shall apply to any organized amateur or professional sporting activity.” 415 ILCS 5/25 (emphasis added). The operative terms—“standards for monitoring” and “regulations prescribing limitations”—refer to quantitative, numeric standards. The word “limitations” implies thresholds and maximum permissible levels, not general prohibitions against unreasonable interference.

Section 900.102 is not a regulation “prescribing limitations on noise emissions.” It is a general prohibition against causing or allowing noise pollution—defined as the emission of sound that unreasonably interferes with the enjoyment of life or lawful activity. It sets no quantitative threshold or maximum permissible level. It does not prescribe “limitations” in any meaningful sense of the word.

The Board’s own regulatory framework is consistent with this reading. In 2006—ten years after *Williams v. Schaumburg Park District*—the Board adopted 35 Ill. Adm. Code 901.107(a), which exempts recreational park lands classified under LBCS Code 5500 from the numeric sound level limits in Sections 901.102 through 901.106, but does *not* exempt those lands from the general qualitative noise prohibition in 35 Ill. Adm. Code 900.102. In related proceedings, the Board also repealed Part 903 (motor racing facility noise rules) on the ground that Section 25 had removed the Board’s authority to impose numeric standards on organized sporting activities, yet left 900.102 intact.

If the Section 25 exemption provided blanket immunity from *all* noise provisions—including 900.102—the Board’s decision to create a targeted numeric-only exemption for recreational parks in 901.107(a) while preserving 900.102 would have been entirely unnecessary. The Board’s regulatory choices confirm that qualitative noise claims survive the sporting-activity exemption.

Moreover, reading “regulations prescribing limitations” to encompass the qualitative prohibition in 900.102 would effectively repeal Section 24 for all organized sporting activity by implication—a result disfavored under Illinois rules of statutory construction. *Lily Lake Road Defenders v. County of McHenry*, 156 Ill. 2d 1, 9 (1993) (“[A] repeal by implication is not favored.”).

Respondent’s interpretation would convert Section 25 into a blanket immunity provision for any noise of any magnitude emanating from any activity on public park land—an outcome the statute does not support and the Board’s own regulations do not reflect.

C. The Complaint Properly Alleges Facts Distinguishing This Activity from “Organized Amateur Sporting Activity”

Even if the Board were to consider the Section 25 exemption at this stage, the Complaint alleges facts that, taken as true, establish that the pickleball activity at Abbeywood Park does not constitute an “organized amateur or professional sporting activity” within the meaning of Section 3.310.

Section 3.310 defines “organized amateur or professional sporting activity” as “an activity or event carried out at a facility by persons who engaged in that activity as a business or for education, charity or entertainment for the general public.” 415 ILCS 5/3.310 (emphasis added). The definition focuses on the persons carrying out the activity, not the entity that owns the facility. Individual members of the public engaging in unstructured, drop-in recreational pickleball are not “persons who engaged in that activity as a business or for education, charity or entertainment for the general public.” They are engaged in personal recreation.

Subsection (iv) of the definition includes “sporting events organized or controlled by ... units of local government.” But this requires that the specific events be organized or controlled, not merely that the facility is owned by a governmental unit. The Complaint alleges:

- no leagues, tournaments, events, or programming;
- no supervision, officials, or on-site staff managing the activity;

- no scheduling, permitting, or participant control;
- reliance on voluntary, unenforceable rules acknowledged as ineffective; and
- acknowledged failure of mitigation measures.

At the pleading stage, whether nominal rules constitute meaningful “control” under Section 3.310 is a factual question that cannot be resolved on a motion to dismiss where the Complaint alleges those rules were knowingly unenforced and ineffective.

D. The Complaint Is Distinguishable from *Williams v. Schaumburg Park District*

Respondent relies heavily on *Williams v. Schaumburg Park District*, PCB 96-186. That reliance is misplaced for several reasons.

First, in *Williams*, the Board emphasized facts demonstrating active control and management, including ranger enforcement, structured restrictions, and the Park District’s active oversight of the basketball court. *Williams*, PCB 96-186, at 3. The Board specifically found that “[t]he Park District has established rules for play and controls the use of the facility.” *Id.* Here, by contrast, the Complaint alleges that Respondent’s rules are voluntary, unenforced, and acknowledged by Respondent’s own staff to be ineffective. The Complaint alleges an absence of meaningful control, not the presence of it.

Second, *Williams* was decided in 1996, before the Board adopted 35 Ill. Adm. Code 901.107(a) in 2006. The Board’s subsequent creation of a targeted numeric-only exemption for recreational parks—while preserving the qualitative prohibition in 900.102—reflects an evolved regulatory framework that *Williams* could not have considered.

Third, *Williams* involved basketball—an activity whose acoustic characteristics are materially different from those alleged here. Pickleball generates short-duration, high-frequency, impulsive noise with a rapid onset of approximately 1–2 milliseconds, followed by high-density repetition, often hundreds to thousands of times per day, in close proximity to residences (approximately 45–55 feet). Whether such activity is reasonably comparable to the episodic

noise associated with the basketball play at issue in *Williams* is a fact-dependent inquiry that cannot be resolved at the pleading stage.

Fourth, the Complaint alleges facts not present in *Williams* that go directly to reasonableness and failure to abate: that Respondent acknowledged the noise impacts, identified feasible mitigation, chose voluntary recommendations rather than enforceable controls, knew those measures were ineffective, and failed to escalate or abate. These allegations, taken as true, present a materially different factual posture that precludes dismissal.

Notably, Abbeywood Park includes other active recreational uses in comparable proximity to residences, including a basketball court immediately adjacent to the pickleball courts. Those uses have not generated comparable complaints or impacts. The absence of complaints regarding basketball activity underscores that the interference alleged here reflects the distinct acoustic characteristics and operational intensity of pickleball, not a generalized objection to park noise.

E. The Complaint Pleads a Failure-to-Abate Theory Within the Board's Jurisdiction

The Complaint alleges that Respondent:

- recognized pickleball noise as problematic;
- publicly recommended quieter equipment;
- did not enforce or require it;
- observed that voluntary compliance failed; and
- took no further abatement action.

Respondent's own staff reported to the Board of Park Commissioners for the Lisle Park District that the use of the pickleball courts at Abbeywood Park exceeded what staff had anticipated, that the resulting impact on the park's neighbors was unreasonable, and that staff recommended pursuing new dedicated pickleball courts at a more suitable location, yet the activity continued without enforceable abatement. Public meeting records further reflect that Respondent repeatedly acknowledged ongoing pickleball noise complaints, discussed voluntary

“quiet” measures, and recognized that such measures were not enforceable or fully effective, while allowing open, unsupervised public play to continue.

In addition, Respondent’s Director of Parks and Recreation reported to the Board of Park Commissioners that the level of use at the Abbeywood Park courts was far greater than anyone had anticipated—including the park district’s own local USA Pickleball ambassador and park district staff—and recommended that the park district take action to address the neighbors’ concerns. Staff further acknowledged that enforcement of any restrictions would depend on voluntary self-policing by players, as the Park District lacked dedicated enforcement capacity. Indeed, Respondent’s Director characterized signage encouraging quiet equipment as “an exercise in futility as we have no way to really enforce that,” and a Park Board Commissioner publicly stated that the Board “cannot make a rule that we do not intend to enforce.” Despite these admissions, Respondent continued to permit open public play without mandatory abatement. The national governing body for pickleball has publicly acknowledged that placement of courts within close proximity to residential areas may result in noise complaints and has recommended that courts placed within 250 feet of residential areas require consistently enforceable noise mitigation policies and quiet-category equipment. The pickleball courts at Abbeywood Park are located approximately 45 feet from the nearest property line and 75 to 80 feet from the nearest bedroom windows—well within the distance at which USA Pickleball itself considers enforceable mitigation to be critical.

To the extent Respondent may contend that the opening of six additional pickleball courts at Tate Woods Park has reduced usage at Abbeywood Park and thereby diminished the noise impact, such an argument would not warrant dismissal for multiple reasons. First, the Abbeywood Park courts remain open and operational, and the Complaint challenges ongoing noise emissions at that location. Any temporary reduction in usage does not remediate a facility that Respondent’s own staff identified as unsuitably close to residences. Second, any reduction in demand at Abbeywood Park is likely to be temporary in light of the well-documented, sustained growth of pickleball participation. According to the Sports & Fitness Industry Association, U.S. pickleball participation grew 311% over the three years ending in 2024, reaching 19.8 million players, and continued to increase to an estimated 22.7 million players by mid-2025—a further 14.7% year-over-year increase. The sport has been designated the fastest-growing sport in the

United States for four consecutive years. Illinois-specific data indicates that the state will need to build over 900 additional courts at an estimated cost of \$31.8 million over the next five to seven years to keep pace with demand, and Illinois currently ranks 38th in the nation in dedicated pickleball court coverage per capita, at 34% below the national average. Even Respondent's own 2023 Strategic Master Plan process reflected community demand for additional indoor pickleball facilities, further confirming that local demand continues to outstrip supply. Under these circumstances, six additional courts at an alternate location do not abate the noise at Abbeywood Park; they temporarily absorb a fraction of growing regional demand. Whether any reduction in usage is meaningful or durable is a fact-dependent merits question that cannot be resolved at the pleading stage.

These allegations go directly to reasonableness, control, and failure to abate after notice—all proper considerations under Section 24 and 35 Ill. Adm. Code 900.102. Whether Respondent's conduct was reasonable under the circumstances is a merits question, not a basis for dismissal as frivolous.

IV. CONCLUSION

Respondent's Motion to Dismiss asks the Board to resolve disputed factual questions and to adopt an overbroad interpretation of statutory exemptions at the pleading stage. Granting dismissal would prematurely resolve facts central to jurisdiction, contrary to the standard set forth in 35 Ill. Adm. Code 101.202.

The Complaint alleges facts that, if proven, could support a finding of unreasonable noise pollution within the Board's authority through the qualitative nuisance pathway recognized in *Roti v. LTD Commodities*, 355 Ill. App. 3d 1039 (2d Dist. 2005), and reflected in the Board's own regulatory framework. The Section 25 exemption, by its plain language and as confirmed by the Board's adoption of 901.107(a), addresses numeric standards and monitoring—not the general qualitative prohibition in 900.102. Even the question of whether the activity constitutes an “organized amateur sporting activity” depends on fact-specific determinations that cannot be resolved at the pleading stage.

Where application of a statutory exemption depends on fact-specific determinations, ambiguity weighs against dismissal.

For these reasons, Complainant respectfully requests that the Board deny Respondent's Motion to Dismiss. In the alternative, should the Board identify any deficiency in the Complaint, Complainant respectfully requests leave to amend pursuant to the Board's rules.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2026, I served a copy of the foregoing Complainant's Response to Respondent's Motion to Dismiss upon counsel for Respondent by electronic mail at the following address:

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