



#### ISSUES PRESENTED FOR REVIEW:

1. Whether the complained of activity (i.e., the basketball games occurring at Southeast Odium Park) are organized amateur (or professional) sporting activities?
2. Whether the complainant's complaint alleges violations of the Act which fall within the Pollution Control Board's purview?

#### STATEMENT OF THE CASE:

Schaumburg Park District owns the basketball facility at Southeast Odium Park.<sup>1</sup> Schaumburg Park District restricts hours of play in which games can occur from 7:00 a.m. until sunset. (AFFIDAVIT OF DAN SCHOUREK). Schaumburg Park District also restricts the behavior permitted during basketball games. For example, abusive or obscene language is forbidden. (Exhibit 2, paragraph 22). Also forbidden is violent/overly aggressive behavior on the basketball court. Id. These rules and regulations governing hours of play and the behavior permitted by players during basketball games have been and are currently enforced by park rangers employed by Schaumburg Park District. (Exhibit 1A and AFFIDAVIT OF DAN SCHOUREK). Players

---

<sup>1</sup> Complainants, in their complaint, referred to the park in which is located the basketball court which is the subject of this PCB matter as "Odium Park." In complainants' Brief, they refer to said park as "Northeast Odium Park." Said basketball court is actually located in Southeast Odium Park and said park is referred to herein as Southeast Odium Park.

who violate these rules are subject to fines of up to \$1000 per offense. (Exhibit 2, paragraph 25).

The basketball games played at Southeast Odium Park are open to the public. (AFFIDAVIT OF DAN SCHOUREK). Mr. Dan Schourek, Assistant Director of Parks and Recreation for Schaumburg Park District, observed that members of the public do in fact watch the basketball games played at Southeast Odium Park. Id.

Complainants filed with the Illinois Pollution Control Board ("the Board") a complaint against Schaumburg Park District dated February 28, 1996. Said complaint alleges that the basketball games played at (Southeast) Odium Park generate noise in violation of Sections 415 ILCS 5/23 and 415 ILCS 5/25 of the Environmental Protection Act, and in violation of Sections 900.102 and 901.104 of Title 35, Chapter I of the Illinois Administrative Code.

On March 21, 1996, the Board ordered complainants and Schaumburg Park District to file briefs with the Board addressing the issues of i) whether the complained of activities (i.e., the basketball games played at Southeast Odium Park) are "organized amateur (or professional) sporting activities?"; and ii) whether the complainant's claim alleges violations of the Act which fall within the Board's purview?

### SUMMARY OF THE ARGUMENT:

The basketball games which take place at Southeast Odium Park are "organized amateur (or professional) sporting activities" as defined by Section 415 ILCS 5/3.25 (hereinafter "Section 3.25"); hence, said basketball games are exempt from the Board's noise regulations under Section 415 ILCS 5/25 (hereinafter "Section 25") of the Environmental Protection Act (hereinafter "the Act"). Accordingly, the basketball games are excluded from the regulatory purview of the Board and, hence, the Board lacks authority to hear the matter. Moreover, in cases such as this (PCB 96-186), where complainants have alleged violations of Sections 415 ILCS 5/23 and 415 ILCS 5/24 of the Act, and Sections 900.102 and 901.104 of Title 35, Chapter I of the Illinois Administrative Code, the Board may not hear such matters where the complained of activities are exempt under Section 25. (cites provided below)

Among the specific examples of an "organized amateur (or professional) sporting activity" provided under Section 3.25 is the following: i) sporting events ii) organized or controlled iii) by units of local government.

The basketball games at Southeast Odium Park certainly fall under the plain and ordinary meaning of the unambiguous term "sporting event." In short, said basketball games constitute athletic contests involving physical exertion and skill; hence, meeting THE NEW WEBSTER'S DICTIONARY definitions of "sporting/sport" and "event."

Schaumburg Park District is a unit of local government. The Illinois Constitution defines units of local government to include special districts (IL CONST Art. 7, Sec. 1), and the Illinois Compiled Statutes recognize park districts as special districts (see Ch. 70 ILCS generally and 70 ILCS 1205 *et seq.*). Moreover, the Illinois Supreme Court has also held that park districts are units of local government. Wilmette Park District v. Village of Wilmette, 490 N.E.2d 1282, 1290 (Ill. 1986). Thus, because Schaumburg Park District is a park district, it is recognized under Illinois law as a unit of local government.

Schaumburg Park district controls the basketball games played at Southeast Odium Park. The plain and ordinary meaning of the unambiguous term "control" is "to govern, exercise control over, to restrain, to regulate." NEW WEBSTER'S DICTIONARY at 87. By i) restricting when games can and cannot be played, ii) regulating the behavior that is permitted during basketball games, iii) using park rangers to enforce these restrictions and regulations, and iv) subjecting basketball players who fail to comply with these restrictions and regulations to substantial penalties, Schaumburg Park District clearly governs, exercises control over, restrains, and regulates (and hence controls) said basketball games.

Thus, because Schaumburg Park District is a unit of local government which controls the basketball games (sporting events) at Southeast Odium Park, said basketball games constitute "organized amateur (or professional) sporting activity" as defined under Section 3.25 of the Act, and hence, under Section 25 of the Act are exempt from the Board's regulations and jurisdiction.

While an activity that meets one of Section 3.25's examples of "organized amateur (or professional) sporting activities" is exempt under Section 25 from Board jurisdiction (Hinsdale Golf Club v. Kochanski, 197 Ill.App.3d 634, 555 N.E.2d 31, 34 (Ill.App. 2 Dist. 1990), a Board's finding that an activity does not fall under one of the specific examples provided under Section 3.25 does not preclude the activity from being an "organized amateur (or professional) sporting activity." Section 3.25 clearly states that organized amateur (or professional) sports activities include, but are not limited to, the examples provided in Section 3.25. Section 3.25 generally defines "organized amateur (or professional) sporting activities" 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." Thus, assuming arguendo that the Board were to conclude that the basketball games played at Southeast Odium Park are not encompassed by one of Section 3.25's specific examples of "organized amateur (or professional) sporting activities" (such as "sporting events controlled by a unit of local government"), said basketball games are nevertheless exempt because (as explained below) they meet Section 3.25's general definition of "organized amateur (or professional) sporting activity."

As argued above, the basketball games are clearly sporting events. These games are also carried out at the facility of Southeast Odium Park basketball court. Because the games are available for public viewing, and members of the public, in fact, do watch the basketball games played at Southeast Odium Park, the games should be considered "for education, charity, or entertainment for the general public." Such a determination would be consistent with both the Board's recent decision in Pecka v. Skylarka Remote

Control Airplane Club, PCB 92-27 (1992 WL 111969) and the legislative intent of expanding the exemptions granted under Section 25.

Thus, because the basketball games played at Southeast Odum Park are activities or events carried out at a facility by persons engaged in that activity for education, charity, or entertainment for the general public, said basketball games also meet Section 3.25's general definition of "organized amateur (or professional) sporting activities."

Because the games are "organized amateur (or professional) sporting activities," they are exempt from the Board's regulations and standards under Section 25. In cases, such as this (PCB 96-186), where complainants have alleged violations of Sections 415 ILCS 5/23 and 415 ILCS 5/24 of the Act, and Sections 900.102 and 901.104 of Title 35, Chapter I of the Illinois Administrative Code, both the Board and the Appellate Court have concluded that the Board lacks authority to hear such matters where the complained of activities are exempt under Section 25. Shepard, 651 N.E.2d at 557 and 559; Hinsdale Golf Club, 555 N.E.2d at 32 and 34; Rodney B. Nelson v. Kane County Forest Preserve, PCB 94-247 (1995 WL 78116); Pecka v. Skylarks Remote Control Airplane Club, PCB 92-27 (1992 WL 111969); and Leo Fore v. Midstate Kart Club, PCB 93-171 (1993 West 539261).

Thus, because the complained of basketball games are exempt from the Board's jurisdiction under Section 25, the Board may not hear complainant's alleged violations

of Sections 415 ILCS 5/23 and 415 ILCS 5/24 of the Act, and Sections 900.102 and 901.104 of Title 35, Chapter I of the Illinois Administrative Code.

#### ARGUMENT:

I. THE BASKETBALL GAMES TAKING PLACE AT SOUTHEAST ODLUM PARK ARE "ORGANIZED AMATEUR (OR PROFESSIONAL) SPORTING ACTIVITIES."

Section 5/3.25 of the Environmental Protection Act (the "Act") 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, including all necessary actions and activities associated with such an activity. This definition includes, but is not limited to, (i) rifle and pistol ranges, licensed shooting preserves, and skeet, trap or shooting sports clubs in existence prior to January 1, 1994, (ii) public hunting areas operated by a governmental entity, (iii) organized motor sports, and (iv) sporting events organized or controlled by school districts, units of local government, state agencies, colleges, universities, or professional sports clubs offering exhibitions to the public." 415 ILCS 5/3.25 (hereinafter "Section 3.25")(emphasis added)

It is well established that in construing a statute, the more specific terms prevail over the more general. Hinsdale Golf Club v. Kochanski, 197 Ill.App.3d 634, 555 N.E.2d 31, 34 (Ill.App. 2 Dist. 1990)(citing City of Lake Forest v. Pollution Control Board, 146 Ill.App.3d 848, 855, 100 Ill.Dec. 301, 497 N.E.2d 181)). The specific examples of the excluded activities provided in the second sentence of Section 3.25 prevail over the more general definition provided in the first sentence. Id. Thus, if an activity falls into one of the examples provided in Section 3.25, it is an "organized amateur (or professional) sporting activity" and, hence, is excluded from the regulatory purview of the Board. Id.

Section 3.25 includes the following example of "organized amateur (or professional) sporting activity": sporting events organized or controlled by units of local government. Thus, if the Board finds that the basketball games at Southeast Odum Park are i) sporting events ii) organized or controlled iii) by a unit of local government, than said basketball games must be considered "organized amateur (or professional) sporting activities" and such games must be excluded from the Board's regulatory purview. Id.

As set forth below, the basketball games played at Southeast Odum Park are sporting events, and the games are controlled by Schaumburg Park District (a unit of local government).

A. The Basketball Games Played at Southeast Odum Park are Sporting Events

Statutory terms which are unambiguous, when not specifically defined, must be given their plain and ordinary meaning. (Waste Management of Illinois, Inc., 145 Ill.2d at 348, 165 Ill.Dec. 875, 585 N.E.2d 606.). Because the Act does not specifically define "sporting event", the Board must interpret the term using its plain and ordinary meaning.

Webster's defines "sporting" as "pertaining to sport." THE NEW WEBSTER'S DICTIONARY, at p. 427. "Sport", in turn is defined as "the playing of a game or participation in competitive pastimes involving physical exertion and skill; any such game or pastime; athletics. Id. Webster's defines "event" as "a separate item in a program

of games, athletic contests, racing etc." Id. at 136. Hence, in combining these definitions, the plain and ordinary meaning of "sporting event" would be an "athletic contest" or a "contest involving physical exertion and skill." Given the competitiveness, physical exertion, skill, and athleticism required to compete in basketball contests that occur at Southeast Odium Park, these games certainly meet the plain and ordinary meaning of "sporting event."

B. Schaumburg Park District is a Unit of Local Government

Under the Illinois Constitution, the term "units of local government" is defined as "counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts. IL CONST Art. 7, Sec. 1. Special districts, in turn, have been created and set forth in Chapter 70 of the Illinois Compiled Statutes, and said Chapter 70 includes park districts among Chapter 70's list of special districts. (see Ch. 70 ILCS generally). Act 1205 of Chapter 70 specifically includes park districts as special districts. 70 ILCS 1205 *et seq.*

Also, the Illinois Supreme Court has recognized that park districts are units of local government. Wilmette Park District v. Village of Wilmette, 112 Ill.2d. 6, 490 N.E.2d 1282, 1290 (Ill. 1986). Thus, because Schaumburg Park District is a park district, it is also a unit of local government under Illinois law.

C. A Unit of Local Government (Schaumburg Park District) Controls the Basketball Games at Southeast Odium Park

When a court or agency is interpreting a disputed statutory provision, the court or agency must ascertain and give effect to the true intent and meaning of the legislature, considering first the statutory language. (Waste Management of Illinois, Inc. v. Illinois Pollution Control Board (1991), 145 Ill.2d 345, 348, 165 Ill.Dec. 875, 585 N.E.2d 606.)

Those terms which are unambiguous, when not specifically defined, must be given their plain and ordinary meaning. (Waste Management of Illinois, Inc., 145 Ill.2d at 348, 165 Ill.Dec. 875, 585 N.E.2d 606.)

The term "control" is not defined in the Act, nor is it defined in the case law interpreting Section 3.25. Black's Law Dictionary defines "control" as "to exercise restraining or directing influence over. To regulate; restrain; dominate; curb to hold from action; overpower; counteract; govern." BLACK'S LAW DICTIONARY, at p. 229. Similarly, Webster's defines "control" as "to govern, exercise control over, to restrain, to regulate." THE NEW WEBSTER'S DICTIONARY, at p. 87.

Schaumburg Park district does in fact control the basketball games played at Southeast Odium Park. Schaumburg Park District sets and enforces hours in which basketball games at Southeast Odium Park are permitted. As attested to by Mr. Dan Schourek, Assistant Director of Parks and Recreation for Schaumburg Park District and former Supervisor of Construction/Security for Schaumburg Park District, Southeast Odium Park does not open until 7:00 a.m., and the basketball court in question closes

C. A Unit of Local Government (Schaumburg Park District) Controls the Basketball Games at Southeast Odium Park

When a court or agency is interpreting a disputed statutory provision, the court or agency must ascertain and give effect to the true intent and meaning of the legislature, considering first the statutory language. (Waste Management of Illinois, Inc. v. Illinois Pollution Control Board (1991), 145 Ill.2d 345, 348, 165 Ill.Dec. 875, 585 N.E.2d 606.)

Those terms which are unambiguous, when not specifically defined, must be given their plain and ordinary meaning. (Waste Management of Illinois, Inc., 145 Ill.2d at 348, 165 Ill.Dec. 875, 585 N.E.2d 606.)

The term "control" is not defined in the Act, nor is it defined in the case law interpreting Section 3.25. Black's Law Dictionary defines "control" as "to exercise restraining or directing influence over. To regulate; restrain; dominate; curb to hold from action; overpower; counteract; govern." BLACK'S LAW DICTIONARY, at p. 229. Similarly, Webster's defines "control" as "to govern, exercise control over, to restrain, to regulate." THE NEW WEBSTER'S DICTIONARY, at p. 87.

Schaumburg Park district does in fact control the basketball games played at Southeast Odium Park. Schaumburg Park District sets and enforces hours in which basketball games at Southeast Odium Park are permitted. As attested to by Mr. Dan Schourek, Assistant Director of Parks and Recreation for Schaumburg Park District and former Supervisor of Construction/Security for Schaumburg Park District, Southeast Odium Park does not open until 7:00 a.m., and the basketball court in question closes

at dusk. (AFFIDAVIT OF DAN SCHOUREK and Exhibit 1B). Also, Schaumburg Park District Rangers have enforced and continue to enforce these hours at Southeast Odium Park. (AFFIDAVIT OF DAN SCHOUREK). Park Rangers have been to Southeast Odium Park over 50 times during a 21 week period in 1995 in order to enforce said restrictions on basketball court's hours. (Id. and Exhibit 1A). The Park Rangers enforcement of said basketball court hours has been successful. Only twice have basketball players returned to said basketball court after being removed from said court by Park Rangers earlier in the evening. Id. Said AFFIDAVIT OF DAN SCHOUREK, Exhibit 1A, and Exhibit 1B are attached hereto and are incorporated herein by this reference.

Moreover, Schaumburg Park District regulates the behavior permitted during basketball games at Southeast Odium Park. For example, any basketball player using abusive or profane language on the basketball court is subject to substantial penalties of up to \$1,000 for each offense. (CERTIFICATION and Exhibit 2, paragraphs 22, 23, and 25). Similarly, violent and overly aggressive behavior during basketball games could result in fines of up to \$1000 per offense. Id. Also, all basketball players are required to cooperate with Park Rangers in enforcing these restrictions, or else such players are subject to fines of up to \$1000. (CERTIFICATION, Exhibit 2, paragraphs 24 and 25). Said CERTIFICATION and Exhibit 2 are attached hereto and incorporated herein by this reference.

In addition to enforcing hours at said basketball court, Park Rangers have also been to said basketball court in order to enforce Schaumburg Park District's regulations

of behavior permitted during said basketball games. (AFFIDAVIT OF DAN SCHOUREK and Exhibit 1A). For example, when basketball players used profane language during a basketball game at Southeast Odium Park, Park Rangers went to said basketball court in order to enforce Schaumburg Park District's rules forbidding the use of such language. Id.

By i) restricting when games can and cannot be played, ii) regulating the behavior that is permitted during basketball games, iii) using Park Police to enforce these restrictions and regulations, and iv) subjecting basketball players who fail to comply with these restrictions and regulations to substantial penalties, Schaumburg Park District clearly governs, exercises control over, restrains, and regulates the basketball games at Southeast Odium Park. Hence, given the common and ordinary meaning of the unambiguous term "control," clearly Schaumburg Park District controls the basketball games played at Southeast Odium Park. Not surprisingly, complainant's did not bother to refute the fact that Schaumburg Park District controls said basketball games.<sup>2</sup>

Thus, because Schaumburg Park District is a unit of local government which controls the basketball games (sporting events) at Southeast Odium Park, said basketball games constitute "organized amateur (or professional) sporting activities" as

---

<sup>2</sup> Complainant's arguments were limited solely to the issue of whether or not Schaumburg Park District "organizes" the basketball games (see Complainant's Brief generally). No where in Complainant's Brief do they refute the fact that Schaumburg Park District controls said basketball games. Id.

defined under Section 3.25 of the Act, and hence, under Section 25 of the Act are exempt from the Board's regulations and purview.

D. Offering Exhibitions to the Public

In Section 3.25, the phrase "offering exhibitions to the public" appears at the end of the definition. Because this phrase appears immediately after "professional sports club," it would be logical to construe this phrase ("offering exhibitions to the public") as modifying "professional sports club," and not modifying "sporting events organized by units of local government." The Appellate Court interpreted Section 3.25 in this logical manner concluding that the phrase "offering exhibitions to the public" applies only to "professional sports clubs." Hinsdale Golf Club, 555 N.E.2d at 34.

However, even if one were to construe Section 3.25 in such an illogical manner as to conclude that "offering exhibitions to the public" modifies "sporting events organized by units of local government," the basketball games at Southeast Odium Park would meet this additional requirement. As explained in Section II of this Brief, the basketball games played at Southeast Odium Park are offered for public viewing, and the games are, in fact, viewed by members of the public. Hence, even though the basketball games are not required to be "offered as exhibitions to the public," under the examples of "organized amateur (or professional) sports activity" listed in Section 3.25, the basketball games played at Southeast Odium Park nevertheless meet this terminology.

II. THE BASKETBALL GAMES ARE ACTIVITIES OR EVENTS CARRIED OUT AT A FACILITY BY PERSONS ENGAGED IN THAT ACTIVITY FOR EDUCATION, CHARITY, OR ENTERTAINMENT OF THE GENERAL PUBLIC.

Section 3.25 clearly states that organized amateur (or professional) sporting activities include, but are not limited to, the examples provided in Section 3.25. Hence, assuming arguendo that the Board were to conclude that the basketball games played at Southeast Odum Park are not encompassed by Section 3.25's "sporting events controlled by a unit of local government" example, the Board nevertheless lacks jurisdiction if it finds that said basketball games meet Section 3.25's general definition of "organized amateur (or professional) sporting activities" (i.e. activities or events carried out at a facility by persons engaged in that activity as a business or for education, charity or entertainment for the general public).

As argued in Section IA of this Brief, the basketball games are clearly sporting events. These games are also carried out at the facility of the Southeast Odum Park basketball court. Moreover, as explained below, the games are "for education, charity, or entertainment for the general public."

In Pecka v. Skylarks Remote Control Airplane Club, the Board recently addressed the issue of whether or not a complained of activity was carried out at a facility by persons engaged in that activity for education, charity, or entertainment for the general public. PCB 92-27 (1992 WL 111969) ("Pecka"). The respondents in Pecka did have designated hours in which the activities were permitted. Id. at 2. However, said

respondents (in Pecka) flew model airplanes on private farm land and belonged to a private club that was not open to the general public. Id. Furthermore, the activities in Pecka were limited to members of the club who had to apply for membership and pay an initiation fee after attending a meeting. Id. Despite the limited public accessibility to the respondent's activities in Pecka, the Board nevertheless concluded that the activity of flying model airplanes was carried out at a facility by persons engaged in that activity for the education, charity, or entertainment for the general public. Id.

Schaumburg Park District, like the respondents in Pecka, restrict the hours in which the activities are permitted on its facilities (see Section IC of this Brief). Moreover, the basketball games played at Southeast Odium Park are far more accessible to public viewing than the activities occurring at the private club in Pecka. All members of the public are welcome to watch basketball games at Southeast Odium Park. (AFFIDAVIT OF DAN SCHOUREK). No membership nor initiation fee is required. Id. Members of the public do in fact watch the basketball games at Southeast Odium Park. Id. Mr. Dan Schourek, Assistant Director of Parks and Recreation for Schaumburg Park District, has witnessed several basketball games played at Southeast Odium Park. Id. At each of said games observed by Mr. Schourek, Mr. Schourek has witnessed members of the public watch the games being played on said court. Id.

Given the Board's determination in Pecka, and the fact that the games at Southeast Odium Park are far more accessible to the public, and the fact that the games are watched by the public, the Board should conclude that said basketball games are activities or events carried out at a facility by persons who engaged in that activity for

education, charity or entertainment for the general public. Thus, said basketball games meet Section 3.25's general definition of "organized amateur (or professional) sporting activity" and, hence, said basketball games are exempt from the Board's regulations and purview.

III. THE ALLEGED VIOLATIONS AND COMPLAINED OF ACTIVITY CLAIMED BY COMPLAINANTS DO NOT FALL WITHIN THE BOARD'S PURVIEW.

Section 25 excludes from the Board's purview the alleged violations and complained of activity claimed by complainants (i.e., the noise occurring during basketball games at (Southeast) Odlum Park allegedly violates Sections 415 ILCS 5/23 and 415 ILCS 5/25 of the Environmental Protection Act, and Sections 900.102 and 901.104 of Title 35, Subtitle H, Chapter I of the Illinois Administrative Code).

Since an administrative agency is a creature of statute, any power or authority claimed by it must find its source within the provisions of the statute by which it is created. Shepard v. Pollution Control Board, 272 Ill.App.3d 764, 651 N.E.2d 555, 558 (Ill.App. 2 Dist. 1995)(citing Granite City Division of National Steel Co. v. Illinois Pollution Control Board (1993), 155 Ill.2d 149, 171, 184 Ill.Dec. 402, 613 N.E.2d 719 (1993)). Moreover, as the Board concluded in Rodney Nelson v. Kane County Forest Preserve ("Nelson"), the Board can give itself no authority that a statute would deny it. (PCB 94-247) (1995 WL 78116, at p. 3).

A. The Basketball Games Played at Southeast Odium Park are Exempt from Board Regulations and Purview under Section 415 ILCS 5/25 of the Act.

The relevant portion of Section 415 ILCS 5/25 provides that:

No Board standards for monitoring noise or regulations prescribing limitations on noise emissions shall apply to any organized amateur or professional sporting activity except as otherwise provided in this Section. Baseball, football or soccer sporting events played during nighttime hours, by professional athletes, in a city with more than 1,000,000 inhabitants, in a stadium at which such nighttime events were not played prior to July 1, 1982, shall be subject to nighttime noise emission regulations promulgated by the Illinois Pollution Control Board; (hereinafter "Section 25") (emphasis added)

As stated above, when a court or agency is interpreting a disputed statutory provision, the court or agency must ascertain and give effect to the true intent and meaning of the legislature, considering first the statutory language. (Waste Management of Illinois, Inc. v. Illinois Pollution Control Board (1991), 145 Ill.2d 345, 348, 165 Ill.Dec. 875, 585 N.E.2d 606.) Those terms which are unambiguous, when not specifically defined, must be given their plain and ordinary meaning. (Waste Management of Illinois, Inc., 145 Ill.2d at 348, 165 Ill.Dec. 875, 585 N.E.2d 606.)

According to the unambiguous language of Section 25, the Board's regulations do not apply to organized amateur (or professional) sporting activity other than certain nighttime sporting events played by professional athletes in a city with more than 1,000,000 inhabitants. As argued in Sections I and II of this Brief, the basketball games at Southeast Odium Park are "organized amateur (or professional) sporting activities" as defined in Section 3.25. Because these basketball games are neither played by

professional athletes, nor occur at nighttime within a city with more than 1,000,000 inhabitants, the basketball games clearly do not fall within Section 25's exemption exception. Therefore, the basketball games at Southeast Odum Park (the complained of activity) are exempt from the Board's regulations and purview under Sections 25 and 3.25 of the Act. Hinsdale Golf Club, 555 N.E.2d at 34. Therefore, the Board lacks authority to hear the matter. Id.

A determination that the basketball games at Southeast Odum Park are exempt from the Board's regulations and purview would be consistent with the Legislature's intent regarding Section 25. The Appellate Court, in Hinsdale Golf Club v. Kochanski, concluded that the purpose of the Legislature's recent amendment to Section 25 was to exclude the types of activities exempt from the Board's jurisdiction -- not to restrict these exemptions. Id.

The Board reached a similar interpretation of the Legislature's intent (regarding Section 25) in Rodney Nelson v. Kane County Forest Preserve (PCB 94-247) (1995 WL 78116) ("Nelson"). In determining that fireworks are exempt from the Board's jurisdiction under Section 25, the Board reasoned that:

The legislature has twice enlarged the type of activities excluded from the Board's jurisdiction relating to Section 25, specifically Public Act 82-654 and Public Act 88-598. Prior to the current usage of "organized amateur or professional sporting activity", Section 25 exempted only sanctioned sporting events. The Legislature amended Section 25 in Public Act 82-654 to enlarge the exemption to cover "any organized amateur or professional sporting activity". (House of Representatives Transcription Debate, 82nd General Assembly, 47th Legislative Day, May 20, 1981). Reading the history of Section 25 and its present language, the legislative intent appears to be to further limit this type of noise-related case which could be brought before the Board's jurisdiction. Neither the appellate court nor the

legislature has attempted to narrow the organized amateur or professional sporting activity exemption in Section 25 and the Board will not begin this process. Rodney Nelson v. Kane County Forest Preserve, PCB 94-247 (1995 WL 78116). (emphasis added)

In following the Appellate Court's conclusion in Hinsdale Golf Club and the Board's reasoning in Nelson, the Board should give effect to the intent of the Legislature by construing Section 25 in a manner that limits the Board's purview over organized amateur (or professional) sporting events. In short, a determination that the basketball games played at Southeast Odium Park are exempt from the Board's regulations and purview would be consistent with both the unambiguous language of Section 25 and the legislative intent regarding Section 25.

B. The Board may not hear Complainant's Allegations of Violations of Sections 900.102 and 901.104 of the Illinois Administrative Code and Sections 415 ILCS 5/23 and 5/24 of the Act.

Complainant's allege that the basketball games violate Sections 900.102 and 901.104 of Title 35, Subtitle H, Chapter I of the Illinois Administrative Code (hereinafter Rule 102 and Rule 104) as well as sections 415 ILCS 5/23 and 415 ILCS 5/24 of the Act (hereinafter Section 23 and Section 24). These alleged violations are based solely on the noise allegedly occurring during basketball games played at Southeast Odium Park. As explained above, because the complained of activities fall under the Section 3.25 definition of "organized amateur (or professional) sporting activity," the Board does not have jurisdiction over the basketball games played at Southeast Odium Park.

In cases in which petitioners have alleged violations of Rule 102, Rule 104, Section 23 and Section 24, both the Shepard and Hinsdale Golf Course Courts have held that the Board lacks authority to hear such matters where the complained of activities are exempt under Section 25. Shepard, 651 N.E.2d at 557 and 559; Hinsdale Golf Club, 555 N.E.2d at 32 and 34. Similarly, the Board has determined that it does not have jurisdiction over alleged violations of Rules 102 and 104 and Sections 23 and 24, where the complained of activity is exempt under Section 25. Rodney B. Nelson v. Kane County Forest Preserve, PCB 94-247 (1995 WL 78116); Pecka v. Skylarks Remote Control Airplane Club, PCB 92-27 (1992 WL 111969); and Leo Fore v. Midstate Kart Club, PCB 93-171 (1993 West 538261).

Thus, because the complained of basketball games are exempt from the Board's jurisdiction under Section 25 (as argued in Section III A of this Brief), the Board may not hear complainant's alleged violations of Rules 102 and 104 and Sections 23 and 24.

Although the Board did not ask Respondent to brief the issue of whether a particular complained of violation is deficient, Respondent does note that complainant's allegation of a Section 24 violation is deficient on its face. The Appellate Court held in Shepard that: "the plain language of Section 24 provides no general cause of action under the Act. Therefore, [the Board correctly concluded that] petitioners had no cause of action under section 24 of the Act." Shepard v. Pollution Control Board, 272 Ill.App.3d 764, 651 N.E.2d 555, 558 (Ill.App. 2 Dist. 1995). Given the Court's holding in Shepard, complainant's have no cause of action under Section 24 of the Act.

**CONCLUSION:**

Wherefore, Respondent respectfully requests that the Board rule that: i) the basketball games played at Southeast Odium Park are "organized amateur (or professional) sporting activities" as defined under Section 3.25 of the Act; ii) said basketball games are exempt from the Board's noise regulations under Section 25 of the Act; iii) Section 25 of the Act exempts said basketball games from the Board's purview; and iv) under Section 25 of the Act, the Board may not hear complainant's alleged violations of Sections 900.102 and 901.104 of Title 35, Subtitle H, Chapter I of the Illinois Administrative Code and Sections 415 ILCS 5/23 and 415 ILCS 5/24 of the Act; and that the Board accordingly dismiss complainant's complaint.

Respectfully submitted,

SCHAUMBURG PARK DISTRICT

By: 

Bryan E. Mraz, its attorney  
Bryan E. Mraz & Associates  
111 East Irving Park Road  
Roselle, Illinois, 60172  
(708) - 529-2541 (phone)  
(708) - 529-2019 (fax)

AFFIDAVIT OF DAN SCHOUREK

Dan Schourek, being first duly sworn, on his oath says and deposes:

That this Affidavit is made on his personal knowledge, and that if affiant were sworn as a witness at the trial of the above entitled cause he would competently testify to the following facts:

1. That he is and has been Assistant Director of Parks and Recreation for Schaumburg Park District since August of 1995. That prior to becoming the Assistant Director, he was employed by Schaumburg Park District as the Superintendent of Construction/Security.
2. That since 1990 through the present, he is and has been in charge of and supervises the park rangers employed by Schaumburg Park District to patrol its parks.
3. That during this period he has received and continues to receive reports from park rangers regarding said park rangers' enforcement of park rules and policing of park property including Southeast Odlum Park, the park which is the subject matter of this PCB matter.
4. That he has reviewed and is familiar with the park rangers reports and that he has summarized the reports regarding the park rangers patrol and enforcement of park rules at Southeast Odlum Park. That said summary is attached hereto as Exhibit 1A.
5. That based on his review of the original park rangers reports and preparation of said summary of said reports, that said summary is a fair and accurate representation of said reports.
6. That as Assistant Director of Parks and Recreation, he knows the hours in which park property is open to the public, including the hours in which Southeast Odlum Park and the basketball court thereon are open to the public.
7. That based on said knowledge he would attest that the basketball court at Southeast Odlum Park is open to the public from 7:00 a.m. until sunset.
8. That he is familiar with the sign posted at Southeast Odlum Park which informs the public that said basketball court in question closes at sunset.

9. That he has seen the photograph attached to Respondent's Brief as Exhibit 1B and that he took said photograph while standing upon the basketball court in question and recognizes said photograph as the sign posted at Southeast Odlum Park on the tennis court fence immediately east of the basketball court that is the subject of this PCB proceeding.

10. That based on his familiarity with the sign at Southeast Odlum Park and said photo, that said photo is a fair, accurate, and true representation of said sign at Southeast Odlum Park.

11. That as Assistant Director of Parks and Recreation for Schaumburg Park District and former Superintendent of Construction/Security for Schaumburg Park District, he is familiar with Schaumburg Park District's ordinances and policies.

12. That based on his knowledge of Schaumburg Park District ordinances and policies, that said ordinances and policies permit members of the public to watch basketball games at Southeast Odlum Park during the hours in which the basketball court at said park may be used (between the period of 7:00 a.m. and sunset).

13. That as part of his duties as Assistant Director of Parks and Recreation and former Superintendent of Construction/Security for Schaumburg Park District, he has periodically spent time at Southeast Odlum Park and that during this time at Southeast Odlum Park he has witnessed several basketball games played there.

14. That during all of these basketball games he has witnessed members of the public watching said basketball games.

Affiant further sayeth naught.

Dan E. Schourek  
Dan Schourek

Subscribed and sworn before me  
this 30th day of April, 1996.

Laurence J. Mraz  
Notary Public



PCB 96-186

EXHIBIT 1A DS

From: Dan E. Schourek

Date: April 26, 1996

Re: SCHAUMBURG COLLEGE BASKETBALL

The following is a tabulation of the dates and times, May 1 through October 31, 1995, that the Park Rangers have found people playing basketball after 11:00 pm from May 1 - 24 and after "sunset" from May 25 - October 31. Only twice did basketball players return after being removed by Rangers earlier in the night. Incidents, other than basketball, during the same time period are also highlighted in this tabulation:

<u>DATE</u>	<u>TIME</u>	<u>PROBLEM</u>
Thursday, May 25, 1995	9:03 pm	After sunset basketball (3 people)
Friday, May 26, 1995	9:05 pm	After sunset basketball (3 people)
Monday, May 29, 1995	8:40 pm	After sunset basketball (6 people)
	9:00 pm	Report of b-ball players from MD (GDA)
Tuesday, May 30, 1995	9:43 pm	After sunset basketball (2 people)
Wednesday, May 31, 1995	8:53 pm	After sunset basketball (3 people)
Thursday, June 1, 1995	8:30 pm	After sunset basketball (2 people)
Sunday, June 4, 1995	8:15 pm	After sunset basketball (6 people)
Monday, June 5, 1995	8:50 pm	After sunset basketball (3 people)
Tuesday, June 6, 1995	11:04 pm	In park after closing (2 people)
Saturday, June 10, 1995	8:59 pm	Schaumburg police called/basketball (GDA)
Sunday, June 11, 1995	8:35 pm	After sunset basketball (2 people)
Monday, June 12, 1995	8:40 pm	After sunset basketball (10 people)
Tuesday, June 13, 1995	8:26 pm	After sunset basketball (12 people)
	9:00 pm	Report of b-ball players from CRC (4 people)
Wednesday, June 14, 1995	8:30 pm	After sunset basketball (16 people)
Thursday, June 15, 1995	8:30 pm	After sunset basketball (2 people)
Friday, June 16, 1995	8:26 pm	After sunset basketball (9 people)
Saturday, June 17, 1995	8:50 pm	After sunset basketball (4 people)
Monday, June 19, 1995	8:30 pm	After sunset basketball (8 people)
Tuesday, June 20, 1995	8:30 pm	After sunset basketball (7 people)
Friday, June 23, 1995	8:30 pm	After sunset basketball (10 people)
Saturday, June 24, 1995	8:30 pm	After sunset basketball (2 people)
Sunday, June 25, 1995	8:28 pm	After sunset basketball (6 people)
Tuesday, June 27, 1995	8:30 pm	After sunset basketball (7 people)
Wednesday, June 28, 1995	8:30 pm	After sunset basketball (3 people)

Southeast Odus - Page 2

Sunday, July 2, 1995	8:30 pm	After sunset basketball (7 people)
Wednesday, July 5, 1995	8:30 pm	After sunset basketball (3 people)
Thursday, July 6, 1995	8:45 pm	After sunset basketball (2 people)
Friday, July 7, 1995	11:33 pm	In park after closing (1 person)
Saturday, July 8, 1995	8:30 pm	After sunset basketball
Sunday, July 9, 1995	8:30 pm	After sunset basketball
Monday, July 10, 1995	8:30 pm	After sunset basketball (8 people)
Tuesday, July 11, 1995	8:28 pm	After sunset basketball (4 people)
Wednesday, July 12, 1995	8:30 pm	After sunset basketball
Monday, July 17, 1995	8:30 pm	After sunset basketball
Tuesday, July 18, 1995	8:30 pm	After sunset basketball (8 people)
Tuesday, July 25, 1995	8:28 pm	After sunset basketball (2 people)
Wednesday, July 26, 1995	8:30 pm	After sunset basketball (6 people)
Thursday, July 28, 1995	8:30 pm	After sunset basketball (8 people)
Friday, July 29, 1995	8:30 pm	After sunset basketball (6 people)
Saturday, July 30, 1995	8:30 pm	After sunset basketball (5 people)
Thursday, August 3, 1995	8:30 pm	After sunset basketball (8 people)
Saturday, August 5, 1995	8:30 pm	After sunset basketball (10 people)
Tuesday, August 8, 1995	8:30 pm	After sunset basketball (2 people)
	10:06 pm	Report of b-ball players from CRC (4 people)
Friday, August 11, 1995	8:30 pm	After sunset basketball (2 people)
Tuesday, August 15, 1995	8:02 pm	After sunset basketball (4 people)
Wednesday, August 16, 1995	8:00 pm	Skateboards on tennis (2 people)
Friday, August 18, 1995	11:30 pm	In park after closing (4 people)
Monday, August 21, 1995	8:50 pm	Urinating in playground/told to leave (2 people)
	11:00 pm	In park after closing (2 people)
Tuesday, August 22, 1995	8:00 pm	After sunset basketball (5 people)
		Father/son told no b-ball @ 8:10 pm
Saturday, August 26, 1995	8:12 pm	Report of b-ball players (00A)
Tuesday, August 29, 1995	8:01 pm	After sunset basketball (8 people)
Wednesday, August 30, 1995	7:59 pm	After sunset basketball (6 people)
Friday, September 1, 1995	8:00 pm	After sunset basketball (1 person)
Monday, September 4, 1995	7:45 pm	After sunset basketball (5 people)
Tuesday, September 5, 1995	7:28 pm	After sunset basketball (2 people)
Wednesday, September 6, 1995	7:25 pm	After sunset basketball (10 people)
Friday, September 8, 1995	7:34 pm	B-ball players left when Ranger seen
Wednesday, September 13, 1995	9:16 pm	Report b-ball players from CRC and police (00A)
Tuesday, September 26, 1995	7:24 pm	After sunset basketball (3 people)
Monday, October 9, 1995	9:53 pm	Report b-ball players from CRC (00A)

Southwest Odian - Page 3

The police department reports that the following calls and action taken have occurred at the park since April 1, 1995:

<u>DATE</u>	<u>TIME</u>	<u>REPORTED PROBLEM</u>	<u>POLICE ACTION</u>
Saturday, April 15, 1995	8:15 pm	Basketball/ swearing	GDA
Monday, April 17, 1995	8:12 pm	Basketball playing	Officer advised to leave
Tuesday, May 2, 1995	12:40 am	Hooligans playing	GDA
Tuesday, May 23, 1995	12:40 am	Noise	Officer kicked out of park
Saturday, June 10, 1995	8:59 pm	Basketball	GDA
Wednesday, August 9, 1995		(nothing to do with basketball problems)	
Wednesday, September 13, 1995	9:16 pm	Basketball	GDA

\*\*\* Starting June 13, 1995 the Park Ranger was instructed to arrive at the park around sunset, advise any basketball players that court closes at sunset, remain in park for approximately 30 minutes to see if basketball players return.

(GDA) - Gone on arrival

EXHIBIT



**EXHIBIT**  
13  
PGO 4c - 19c

Exhibit 2  
Extract of Park Use Ordinances of Schaumburg Park District

22. Disorderly Conduct. No person shall use any abusive, threatening, insulting, indecent, profane or obscene language, or make countenance or assist in making any improper noise, riot, disturbance, breach of the peace, or diversion tending to a breach of the peace on District property, or be guilty of any disorderly conduct thereon, or gather with other persons in bodies or crowds for unlawful purposes, or for any purpose to the annoyance, obstruction or disturbance of other persons.
23. Policing of Parks. The Schaumburg Park District authorizes those law enforcement agencies within the District's limits to enter all parks of this District and enforce all sections of this Ordinance. The District's Park Rangers and authorized officers shall also possess the authority to enforce all sections of this Ordinance.
24. Resisting or Interfering with Officers. No person shall resist any patrol, officer, staff or Commissioner of the District in the discharge of his/her duty, or fail or refuse to obey or in any way interfere with or hinder or prevent any such authorized person from discharging his/her duty, or in any manner assist or give aid to any person in custody to escape or to attempt to escape from custody, or rescue or attempt to rescue any person when in such custody.
25. Penalty. Any person violating any clause or provision of any section of this Ordinance shall be fined not less than ten dollars (\$10) nor more than one thousand dollars (\$1,000) for each offense upon conviction thereof in addition to restitution for any necessary repairs.

PCB 96-186

STATE OF ILLINOIS    )  
                          ) SS:  
COUNTY OF COOK        )

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly qualified and acting Secretary of Schaumburg Park District, Cook County, Illinois ("the District"), and that as such official I am the keeper of records and files of the Board of Park Commissioners of the District.

I do further certify that attached hereto as Exhibit 2 is a true and accurate copy of paragraphs 22 through 25 of Chapter III of the District's Park Use Ordinances, heretofore approved by the Board of Park Commissioners of the District on August 12, 1993, and which ordinances were in effect throughout 1995 and are currently in effect.

I hereunto affix my official signature and the seal of the District this 30th day of April, 1996.

  
Jerry Handlon, Secretary

(SEAL)