

ILLINOIS POLLUTION CONTROL BOARD

May 2, 2002

DAVID L. WEBER and RACHEL B. )  
WEBER, )  
 )  
Complainants, )  
 )  
v. ) PCB 02-157  
 ) (Citizens Enforcement – Noise)  
CISCO UNITED METHODIST CHURCH, )  
 )  
Respondent. )

ORDER OF THE BOARD (by M.E. Tristano):

On March 18, 2002, David L. Weber and Rachel B. Weber (complainants) filed a noise pollution complaint against Cisco United Methodist Church (respondent). See 415 ILCS 5/31(d) (2000); 35 Ill. Adm. Code 103.204. Complainants allege that respondent violated sections 900.102 and 901.104 of the Board’s noise regulations (35 Ill. Adm. Code 900.102 and 901.104). Complainants allege that respondent violated these provisions by (1) broadcasting recorded church bells or chimes through loudspeakers located on the top of the Church bell tower; and (2) ringing of actual bells at various times and days of the week.

Section 103.212(a) of the Board’s procedural rules directs the Board to determine whether a citizen’s complaint is duplicitous or frivolous. 35 Ill. Adm. Code 103.212(a). On April 8, 2002, the respondent filed a motion to strike and dismiss the complaint.

**BACKGROUND**

Complainants state that they live at 245 West North Street in Cisco, Piatt County, which is in close proximity to Cisco United Methodist Church. Comp. at 1-2.<sup>1</sup> Complainants allege that the broadcasting of church bells or chimes through loudspeakers and the ringing of other bells from the bell tower of the Church cause noise pollution. The complaint states noise was noticed by Mr. Weber when he took occupancy of the property in 1996 and was noticed by Mrs. Weber approximately one year prior to her marriage to Mr. Weber in 1998. Comp. at 2.

The Webers report that the loudspeakers play everyday of the week at noon and 6 p.m. On Tuesdays, the loudspeakers play at 9 a.m. On Sundays, the loudspeakers play at approximately 9 a.m., 10 a.m., and 11 a.m. in addition to the regular noon and 6 p.m. The

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<sup>1</sup> The complaint filed by David L. Weber and Rachel B. Weber will be referred to as “Comp. at \_\_\_.”

actual bell rings at 9 a.m. and at the end of church service on Sunday. All loudspeaker broadcasts last approximately five minutes and the ringing of bells has a duration of less than one minute. Comp. at 3.

The complainants allege that the noise from the broadcasting of church bells/chimes through loudspeakers and the ringing of the bells from the bell tower of the Church have resulted in an unreasonable interference with the use and enjoyment of their property. Complainants state that the noise disturbs and prevents sleep during the day, interrupts family conversations, interferes with Mrs. Weber's ability to conduct her home business, and risks depressing the value and resale potential of the property. Comp. at 4.

Complainants request that the Board enter an order directing the respondent to cease and desist from further violations of applicable statutes and regulations and, more specifically, to permanently discontinue the use of the loudspeakers and bells. Comp. at 4.

In its April 8, 2002 motion to strike and dismiss the complaint, the respondent argues that 35 Ill. Adm. Code 901.107 exempts it from 35 Ill. Adm. Code 901.104 because the alleged violations do not apply to sound emitted by land used for religious activities as specified by the Standard Land Use Coding System Code 691. Mot. at 2.<sup>2</sup>

### **DUPLICITOUS/FRIVOLOUS DETERMINATION**

Section 103.212.(a) of the Board's procedural rules implements Section 31(d) of the Act, providing that the Board shall schedule a hearing upon receipt of a citizen's complaint, unless it determines that the complaint is duplicitous or frivolous. 35 Ill. Adm. Code 103.212(a).

#### **Duplicitous**

A matter is duplicitous if it is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code 101.202. The Board has not identified any other cases, identical or substantively similar to this, pending in this or any other forum.

#### **Frivolous**

An action before the Board is frivolous if it requests relief that the Board does not have the authority to grant or if the complaint fails to state a cause of action upon which the Board can grant relief. 35 Ill. Adm. Code 101.202.

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<sup>2</sup> Respondent's motion to dismiss will be referred to "Mot. at \_\_\_."

**Section 901.104 Allegation Stricken as Frivolous**

The Board finds the alleged violation of Section 901.104 is frivolous. Complainants allege that respondent is violating Section 901.104 of the Board's regulations, which restricts impulsive sound emissions. Respondent argues that Section 901.107 of the Board's regulations does not apply to sound emitted by land specifically used as specified by the Standard Land Use Control System Code 691. Code 691 is defined as "religious activities" with sub-code 6911 further defines the category as churches, synagogues, and temples. The motion asserts that the respondent is a religious corporation, which was incorporated pursuant to the Religious Corporation Act. As a result, the respondent argues it is exempt from the Section 901.104.

The Board finds that it cannot grant the relief requested here. By the terms of Section 901.107 respondent is exempt from the numerical noise provisions of Section 901.104. The alleged violation of Section 901.104 is frivolous, and the Board strikes and dismisses it.

**Section 900.102 Allegation is Not Frivolous**

Section 900.102 of the Board's regulations prohibits any person from causing or allowing noise pollution, such as noise that unreasonably interferes with the enjoyment of another's life or property. 35 Ill. Adm. Code 900.102. The complaint alleges that the noise generated by the loudspeakers and bells has resulted in an unreasonable interference with the use of the complainants' well-being and property.

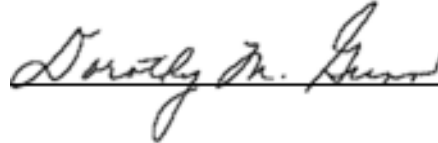
The Board has consistently found that the exemption under Section 901.107 from the numerical noise limitations does not extend to the noise nuisance action under Section 900.102. See Kvatsak v. St. Michael's Lutheran Church PCB 89-182 (Aug 30, 1990). Since this allegation states a cause of action upon which the Board can grant the relief that complainants have requested, the Board finds that the alleged violation of Section 900.102 of the Board regulations are not frivolous.

**Conclusion**

The Board finds that, pursuant to Section 901.107 of the Board's regulations, the alleged violation of Section 901.104 of the Board's regulation is frivolous, and strikes it from the complaint. The Board finds that the remaining alleged violation of the Board's regulations is neither duplicitous nor frivolous, and accepts it for hearing. The Board directs that this matter proceed to hearing as expeditiously as practicable.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 2, 2002, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board