

ORIGINAL

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MAY 10 1996  
STATE OF ILLINOIS  
POLLUTION CONTROL BOARD

BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD

Mrs. & Mrs. Don Williams,	)	
Mrs. & Mrs. Tom Morris, and	)	
Mr. & Mrs. Peter Bizios,	)	
	)	
Complainants,	)	PCB No. 96-186
v.	)	
Schaumburg Park District,	)	(Enforcement-Noise)
	)	
Respondent.	)	

Notice of Filing

TO: Bryan E. Mraz	Mr. & Mrs. Tom Morris	Mr. & Mrs. Bizios
Bryan E. Mraz & Associates	225 S. Pembroke	c/o Don Williams
Attorneys for Respondent	Schaumburg, Illinois	2417 Fabish Court
111 East Irving Park Road	60193	Schaumburg, Illinois
Roselle, Illinois 60172		60193

PLEASE TAKE NOTICE that on May 10, 1996, we filed Complainants' Motion for Leave to File Response to the Brief of the Schaumburg Park District on PCB Jurisdiction Over Noise Complaint and Complainants' Response to Brief of the Schaumburg Park District on PCB Jurisdiction Over Noise Complaint in the above matter with the Clerk of the Illinois Pollution Control Board, 100 West Randolph Street, Suite 11-500, Chicago, Illinois 60602. Copies of said Motion and Brief are attached hereto and served upon you.

Dated this 10th day of May, 1996:

Don Williams  
On Behalf of All Complainants  
2417 Fabish Court  
Schaumburg, Illinois 60193  
(847) 524-2421

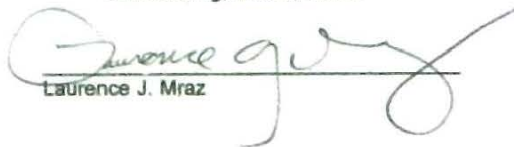
BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD

Mr. & Mrs. Don Williams )  
Mr. & Mrs. Thomas Morris )  
Mr. & Mrs. Peter Bizios )  
Complainants, ) PCB No. 96-186  
vs. ) (Enforcement - Noise)  
Schaumburg Park District, )  
Respondent. )

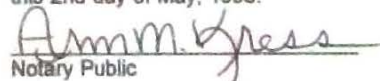
CERTIFICATE OF MAILING

On May 2, 1996, I mailed a copy of the attached Notice of Filing to the persons addressed as follows, by depositing the same in the U.S. Mail, certified mail, return receipt requested, postage pre-paid, at Chicago, Illinois:

<u>Name</u>	<u>Address</u>
Mr. and Mrs. Don Williams	2417 Fabish Court Schaumburg, Illinois, 60193
Mr. and Mrs. Thomas Morris	225 South Pembroke Schaumburg, Illinois, 60193
Mr. and Mrs. Peter Bizios	c/o Mr. Don Williams 2417 Fabish Court Schaumburg, Illinois, 60193

  
Laurence J. Mraz

Subscribed & Sworn to before me  
this 2nd day of May, 1996.

  
Notary Public



Bryan E. Mraz  
Bryan E. Mraz & Associates  
Attorneys for the Schaumburg Park District  
111 East Irving Park Road  
Roselle, Illinois 60172  
(708) - 529-2541

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD

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Schaumburg Park District, ) (Enforcement-Noise)  
 )  
Respondent. )

**Complainants' Motion for Leave to File Response to Brief of the  
Schaumburg Park District on PCB Jurisdiction Over Noise Complaint**

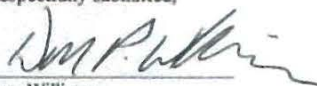
NOW COME the Complainants, by and through Don Williams, and in support of Complainants' Motion for Leave to File Response to Brief of the Schaumburg Park District on PCB Jurisdiction Over Noise Complaint, state as follows:

1. That on March 5, 1996, the above-named Complainants filed a Formal Complaint with the Pollution Control Board against the Schaumburg Park District alleging violations of the Environmental Protection Act and the Illinois Administrative Code arising from the unlawful levels of noise pollution generated by the use of a basketball court situated in close proximity to the Complainants' properties.
2. That the Respondent, Schaumburg Park District, did not file an answer to the Complaint, but instead filed a "Motion to Extend Time to Answer and to Delay the Setting of Hearing". The Respondent's also challenged the Board's jurisdiction to hear the Complaint and on March 21, 1996, the Board order that Complainants and Respondents to file briefs with the PCB addressing the aforesaid issues.
3. That Respondents filed a 20 page brief, excluding exhibits, in violation of Section 101 104(a).
4. That Complainants wish to respond to the alleged statements of fact made by Dan Schourek's in his Affidavit regarding the alleged spectators that Mr. Schourek has purportedly witnessed watching the basketball games.
5. That Complainants respectfully request leave to file their response to Respondent's brief so that the Board is apprised of all the relevant facts and circumstances pertaining to this matter prior to any decision on Respondent's motion regarding PCB jurisdiction.

6. That Respondent would not be prejudiced or harmed were the Board to grant Complainants' motion.

WHEREFORE, Complainants respectfully request that the Board grant their Motion for Leave to File Complainants' Response to the Brief of the Schaumburg Park District on PCB Jurisdiction Over Noise Complaint, instanter.

Respectfully submitted,



Don Williams  
2417 Fabish Court  
Schaumburg, Illinois 60193  
(847) 524-2421

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Complainants' Response to Brief of the Schaumburg Park District  
on PCB Jurisdiction Over Noise Complaint

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#### **BACKGROUND OF THE CASE:**

The above-captioned Formal Complaint against the Schaumburg Park District was filed with the Pollution Control Board in February of 1996 after nearly two years of attempts by residents whose properties adjoin Southeast Odium Park to remove the basketball court that was erected by the Schaumburg Park District over the strenuous objections of the area residents.

One of the objections to the basketball court was and is the level of noise pollution that is generated by the dribbling of basketballs on the court and the yelling of the individuals using the court. The court is in very close proximity to residential properties (approximately 35 to 50 feet) and has been an all too frequent source of noise pollution ever since its erection in June of 1994.

In the two years since its installation, the basketball court has been frequented by many individuals who have used the court both during regular park hours when the park is open to public use and as early as 5:30 a.m. and as late as 1:30 a.m., when the park is officially closed. At no time during this two year period has the basketball court been used for organized amateur or professional sporting activities. (See Exhibit "A" Affidavit of Don Williams). The players that frequent the park are not part of an organized amateur or professional group engaging in sporting activities. At no time has the court been host to any organized sporting activity. There has never been any organized team play or organized team practices. There have never been any uniformed team players on the court. There are no coaches on the court to supervise or instruct the players and there has never been any coaching, supervision or sponsorship of activities by the Schaumburg Park District.

Activities on the court have never been conducted for the entertainment of the general public. At no time during this two year period have the complaining residents who live near the basketball court observed any members of the public watching the basketball games played at the park. Basketball play at the court is conducted simply and solely for the enjoyment of the individual players and not for the education, charity or entertainment of the general public. (See Exhibit "A").

**ARGUMENT:**

In support of its argument that PCB lacks the jurisdiction to hear this Complaint pursuant to Section 25 of the Environmental Protection Act, Respondent relies on Section 5/3.25 of the Environmental Protection Act (the "Act") which 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")

Respondent argues that this Board should consider the basketball play at the court at Southeast Odium Park an, a) organized sporting activity, b) that the Schaumburg Park District supposedly "controls" the activities taking place on the basketball court and that c) the basketball play is conducted to entertain the general public. The Respondent's arguments are erroneous in several respects.

First, the various individuals who come to the basketball court at all hours of the day and night to dribble the ball and shoot baskets are not engaged in an organized amateur ( or professional) sporting activity. These individuals are not members of an organized amateur or professional group engaging in sporting activities. There has never been any organized team play, organized team practices, or a set time or day when the players come to the court.

Second, Respondent would like the Board to accept its erroneous interpretation of the Act so that it ignores the basic definition of "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 of the general public." Because Respondent is aware that it cannot prove that the basketball play on the court is carried out for business, charity or for the entertainment of the general public, it misconstrues the definition and the legislative intent encompassed in that definition by arguing that any organized amateur (or professional) sporting activity that is organized or purportedly controlled by a unit of local government is exempt from PCB jurisdiction, regardless of whether or not the organized sporting activity is conducted for business, charity or entertainment of the general public. Such an interpretation of Section 3.25 of the Act is erroneous and misleading. Furthermore, even if the Board were to accept this interpretation of Section 3.25, Respondent cannot prove that the individuals playing basketball at the court are engaged in an organized amateur sporting activity, nor can Respondent prove that it organizes or "controls" the players on the court.

Third, the basketball play at the court is not for business, educational or

charitable purposes, nor is the play for the entertainment of the general public. There is no factual basis for the Park District's assertion that the basketball play is watched by spectators. Dan Schourek's Affidavit is insufficient to support Respondent's argument in that the Affiant does not state when he witnessed the spectators watching the game, the number of spectators present, the duration of their stay, or who was playing basketball at the time. Those residents whose homes face the court, such as Complainant Don Williams, are in a better position to know whether or not the court attracts spectators to watch the games and would testify that they have never witnessed spectators at the court. (See Exhibit "A", Affidavit of Don Williams)

Moreover, there are no stands, designated areas or seating provided for spectators to watch individuals or groups play basketball. There is nothing in the area surrounding the basketball court to suggest that the Schaumburg Park District ever intended that the court be a staging ground for sporting events to entertain the general public.

Finally, Respondent would have this Board believe that it "controls" the so-called organized amateur sporting activities taking place on the court by virtue of the park rangers it employs to patrol all Park District facilities. Respondent's argument is, once again, misguided and erroneous. The fact that the Park District employs two(2) park rangers only six(6) months of the year, from May 1 to October 31, who patrol fifty-seven(57) Park District facilities from 6:00 p.m. to 1:00 a.m. does not mean that it organizes or controls the activities on the basketball court. (See Park District Map attached hereto as Exhibit "B"). The word "control" cannot be taken out of context from the Act and given its generic dictionary meaning to support Respondent's argument.

Section 3.25 seeks to exclude from the PCB's purview organized amateur or professional sporting activities that are either engaged in for profit, charity or for the public's entertainment. Such organized sporting activities include, pistol ranges, licensed shooting preserves, hunting areas, motor sports, and those organized sporting events that are organized or controlled by school districts, units of local government, colleges and professional sports clubs. Clearly, individual members of the public who play basketball are not engaged in an organized sporting event. The basketball players do not engage in their activities for the public's entertainment or benefit. The Park District does not organize or sponsor any basketball games at the court, nor does it control when any individual or group can use the court when it is officially open to the public. The Park District does not control when certain groups of individuals, such as pre-teens, teenagers, or adults may use the court or the duration of their play.

Moreover, the park rangers are only on duty six(6) months out of the year and then for only seven(7) hours per day, even though individuals use the basketball court throughout the winter and spring months, weather permitting, and are oftentimes on the court well outside the posted hours.

In addition, the Park Use Ordinances cited in Respondent's brief in support of its argument that it "controls" the use of the basketball court is misleading. The ordinances cited are general rules regarding prohibited behavior on all Park District property, and do not specifically refer to the Park District's "control" of actual organized sporting events taking place on its property.

**CONCLUSION:**

Wherefore, Complainants respectfully request that the Board rule that: 1) the basketball games played at Southeast Odium Park are not "organized amateur (or Professional) sporting activities" as defined under Section 3.25 of the Act; 2) said basketball games are not exempt from the Board's noise regulations under Section 25 of the Act; 3) Section 25 of the Act does not exempt said basketball games from the Board's purview; and 4) under Section 25 of the Act, the Board may hear the Complaint arising from the alleged violations of Sections 900.102 and 901.104 of Title 35, Subtitle H, Chapter 1 of the Illinois Administrative Code and Sections 415 ILCS 5/23 and 415 ILCS 5/24 of the Act, and that the Board accordingly deny Respondent's request for the dismissal of the Complaint and order Respondent to file its answer to said Complaint.

Respectfully submitted,



Don Williams  
2417 Fabish Court  
Schaumburg, Illinois 60193  
(847) 524-2421

AFFIDAVIT OF DON WILLIAMS

Don Williams, 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.

1. That he resides at 2417 Fabish Court in Schaumburg Illinois.
2. That the rear of his home abuts Southeast Odlum Park and the basketball court contained thereon.
3. That he has monitored the activities occurring on said court since its completion in June of 1994, and has never witnessed the court being used for any organized amateur or professional sporting activities.
4. That he has never witnessed any organized team play or team practices on said court.
5. That the basketball court is sometimes used by players as early as 5:30 a.m. and as late as 1:30 a.m.
6. That the basketball court is used by players all year round, not just from May to October.
7. That affiant spoke with Dan Schourek, the Assistant Director of Parks and Recreation for Schaumburg Park District, via telephone on May 8, 1996 at approximately 11:45 a.m. and was advised by Mr. Schourek that the Park District employs two(2) park rangers from May 1 through October 31, from 6:00 p.m. to 1:00 a.m. to patrol all of its facilities.
8. That he has monitored the activities occurring on said court since its completion in June of 1994 and has not witnessed members of the public watching players on the basketball court.

Affiant Further Sayeth Naught.

  
Don Williams

Subscribed and Sworn to before me  
this 10 day of May, 1996.

  
Notary Public

"OFFICIAL SEAL"  
Jeanine L. Stevens  
Notary Public, State of Illinois  
My Commission Expires Nov. 15, 1996



CERTIFICATE OF MAILING

I, Don Williams, on oath state I served this notice, along with all attachments, by mailing a copy to the persons addressed as follows and depositing same in the U.S. Mail, certified mail, return receipt requested, postage pre-paid, at Chicago, Illinois, before 5:00 p.m. on May 10, 1996.

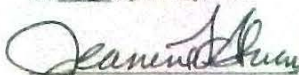
Bryan E. Mraz  
Bryan E. Mraz & Associates  
111 East Irving Park Road  
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225 South Pembroke  
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