

State of Illinois
Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601
<http://www.ipcb.state.il.us/>

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In The Matter Of:)	
)	
Joseph & Victoria Morrissey)	
)	
Complainant(s),)	
)	
v.)	PCB 09 - 10
)	(For Board use only)
Geoff Pahios and Alpine Automotive, Inc)	
)	
Respondent(s))	

Response to Written Discovery Request

1. State the name of the Complainants answering and, if different, give the full name and address of the individual signing the answers, and the capacity in which said person is signing the answers.

ANSWER:
Joseph and Victoria Morrissey
32 S. Chestnut Ct.
Hawthorn Woods, Il 60047

2. State the full name and address of each person who witnessed or claims to have witnessed the occurrences (alleged noise pollution) alleged in the Complaint.

ANSWER:
Frank and Karen Gambino
23 S. Chestnut Ct
Hawthorn Woods, Il 60047
Lakewood meadow is a subdivision with 60 homes encircled with a common area and a bike/walking path. All residents would potentially be witnesses, but at this time the complainants are undecided on using witness testimony to prove the noise violations other than the above.

3. State the full name and address of each person not named (in Answer to Interrogatory Number 2) above who was present or claims to have knowledge of the noise pollution

complained of in the Complainants complaint.

ANSWER:

As the noise violations are an ongoing issue, there are too many people to list. As stated, the complainants are undecided on using witness testimony to prove our case. We would be happy to provide witnesses if requested by the Respondents.

4. The dates and times of any and/or all occurrences of the noise pollution complained of in the Complainants' Complaint.

ANSWER:

As the noise violations are an ongoing issue, there are too many to list. We are providing a copy of our written logs as well as pictures and video which have dates and times.

6. Were any photographs, slides or motion pictures, video and/or audio recordings taken of the scene of the occurrence or of the persons involved? If so, state the date or dates and times on which such photographs were taken, the subjects thereof, who took said photographs and who has custody of them at the present time.

ANSWER:

We are including a USB drive of photographs and video taken. Most are date and time stamped. All pictures and video were taken by the Complainants and have been in the complainant's possession at all times.

7. Do you or your attorneys have any statements from any witness or party other than yourself or, if a corporation, of anyone other than an officer, director, managing agent or foreman?

If so, state:

- (a) The name and address of each such party or witness;
- (b) The date of each of said statements;
- (c) Whether such statement is typewritten, handwritten or oral, or by court reporter, and state the name and address of the person who typewrote, hand-wrote or was the court reporter.

- (d) The name, address, employer and occupation of the person who took the statement and in whose possession the statement is as of this date.

ANSWER:

As stated, the Complainants at this time are undecided on using witness testimony and have not taken any statements from involved parties. The complainants will include copies of relevant emails, which discuss the ongoing issue, and would be happy to provide names and addresses of any or all of the people referenced in or copied on emails.

8. List the names and addresses of all other persons (other than yourself and person heretofore listed or specifically excluded) who have knowledge or information relating to facts of said occurrences of noise pollution and/or of the injuries and damages following therefrom.

ANSWER:

The complainants have been working with a noise consultant to be addressed in the "expert" discovery portion of this process. The complainants have also been working with Village officials from Hawthorn Woods and Laze Zurich, as well as Police Departments from both Villages. The complainants do not intend at this time to involve either village in this process other than to make reference to the fact that the complainants tried to resolve this issue before filing a complaint with the IPCB. The complainants will attach links or copies of archived village meeting notes. The complainants have also received advice and instruction (attached) from

Michael Kuhn

Lake County Health Dept.

Environmental Health Services

3010 Grand Ave

Waukegan, IL 60085

9. State all facts and/or which support your allegations in Paragraph 5 of the Complainants' Complaint for the violations of the above stated laws:

- (a) 415 ILCS 5/24

No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this act.

Complainants will use personal testimony, expert testimony and video recordings with and without an ANSI compliant and calibrated noise meter to show that the respondents emitted sound, which unreasonably interferes with the enjoyment of life and use of the property.

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(b) 35 Ill. Admin Code Section 900.102

Prohibition of Noise Pollution:

Complainants will use personal testimony, expert testimony and video recordings with and without an ANSI compliant and calibrated noise meter to show that the respondents cause and or allow emission of sound that will be defined as noise pollution

(c) 35 Ill. Admin Code Section 901.102a

Sound emitted to a Class A Land. (Daytime)

Complainants will use personal testimony, expert testimony and video recordings with and without an ANSI compliant and calibrated noise meter to show that the respondents emitted sound during daytime hours that exceeded allowable decibel limits from Class B Land (LBCS Function Code 2110 – Automobile Service Establishment) to Class A Land (LBCS Function Code 1100 – Private Household)

(d) 35 Ill. Admin Code Section 901.102b

Sound emitted to a Class A Land. (Nighttime)

Complainants will use personal testimony, expert testimony and video recordings with and without an ANSI compliant and calibrated noise meter to show that the respondents emitted sound during daytime hours that exceeded allowable decibel limits from Class B Land (LBCS Function Code 2110 – Automobile Service Establishment) to Class A Land (LBCS Function Code 1100 – Private Household)

(e) 35 Ill. Admin Code Section 901.104; and

Highly Impulsive Sound

Complainants will use personal testimony, expert testimony and video recordings with and without an ANSI compliant and calibrated noise meter to show that the respondents emitted Highly Impulsive Sound that exceeded allowable decibel limits from Class B Land (LBCS Function Code 2110 – Automobile Service Establishment) to Class A Land (LBCS Function Code 1100 – Private Household) during both Daytime and night time hours.

(f) Any other statute or administrative regulation you allege to have been violated.

ANSWER:

10. State all facts and/or which support your allegations in Paragraph 6 of the Complainants' Complaint for the following being a nuisance:

(a) 24 Hour Towing;

Engine noise, chains rattling, hydraulic noise of lift beds, banging and other impulsive noises violate the above stated noise laws. Complainants will use attached video to show nuisance.

(b) Truck/Auto Repair;

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Everyday/Common Noise from Truck/Auto Repair violates the above stated noise laws. Complainants will use attached video to show nuisance.

(c) Ventilation Fan;

At this time, the Respondents seem to have taken measures to reduce the noise from the fan. Complainants would request that this noise continues to be abated. Complainants will use attached video to show previous nuisance if requested.

(d) Engine Noise; and/or

Excessive engine idling violates 415 ILCS 5/24

(e) Any other allegations that Respondent's activities constitute a nuisance.

ANSWER:

10. State all facts and/or which support your allegations in Paragraph 6 of the Complainants' Complaint for the following being a violation of existing noise laws:

(a) 24 Hour Towing;

Complainants will use personal testimony, expert testimony and video recordings with and without an ANSI compliant and calibrated noise meter to show that noise from a tow truck violates existing noise laws.

(b) Truck/Auto Repair;

Complainants will use personal testimony, expert testimony and video recordings with and without an ANSI compliant and calibrated noise meter to show that noise from Truck/Auto Repair violates existing noise laws.

(c) Ventilation Fan;

At this time, the Respondents seem to have taken measures to reduce the noise from the fan. Complainants would request that this noise continues to be abated. Complainants will use attached video to show previous violation if requested.

(d) Engine Noise; and/or

Complainants will use personal testimony, expert testimony and video recordings with and without an ANSI compliant and calibrated noise meter to show that excessive Engine noise violates existing noise laws.

(e) Any other allegations that Respondent's activities constitute a violation of existing

noise laws.

ANSWER:

11. State all facts and/or which support your allegations in Paragraph 7 of the Complainants' Complaint relative to the duration and frequency of the alleged pollution.

- (a) 24 Hour Towing;
See attached video and log
- (b) Truck/Auto Repair;
See attached video and log
- (c) Ventilation Fan;
See attached video and log
- (d) Engine Noise; and/or
See attached video and log
- (e) Any other allegations that Respondent's activities constitute a violation of existing noise laws.

12. State all facts and/or which support your allegations in Paragraph 8 of the Complainants' Complaint relative to the effects that you believe that the alleged pollution has had on the following:

- (a) Loss of Sleep and/or awaken at early hours(stating dates and times)
Loud noises wake people up. See log and video,
- (b) Dates and Times for irritating and infuriating noise;
See attached video and log
- (c) Drop in Property Value;
See attached video and Log
- (d) Emotional Health and Well being (including any medical reports)
Complainants reserve the right to address this issue in a different forum.
- (e) Limitation on use of outdoor property (including specific dates and times); and/or
Complainants reserve the right to address this issue in a different forum.
- (e) Any other allegations that of bad effects believed to be caused by the alleged pollution.
Complainants reserve the right to address this issue in a different forum.

13. Have you or anyone on your behalf (including any expert) conducted any test, experiment, and/or scientific study from which, or the results of which, you will attempt to introduce into evidence in a trial of this cause? If so, state:

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Noise Solutions by Greg Zak have received sample videos of noise violations to be examined. Greg Zak has also inspected and calibrated complainant's noise meter. See attached report.

- (a) The name of the person and/or entity conducting said test(s)
- (b) The date and times of each said test(s)
- (c) The results of each of said test(s)
- (d) The name address and telephone number of all individuals and/or entities having copies of the results of said tests.

**1800 PROVIDENCE LANE
SPRINGFIELD, ILLINOIS 62711
(217) 698-3507
(217) 698-5666 FAX**

E-mail: gregzak@gregzak.com

We also had Jim Safran of McGinty Bros, a certified arborist on site several times with VOLZ officials to discuss ways to increase the barrier between the two properties.

ANSWER:

14. Please describe fully any and all investigations of the incidents (noise pollution) made the basis of this Complaint (other than those privileged by law) including who conducted the investigation, when the investigation was conducted and the results, findings or conclusions of said investigation. If you are claiming privilege as to any investigation, based on its allegedly being done in anticipation of litigation, describe specifically what you are relying on to establish that you had reason to believe the litigation would ensue, including what overt acts or statements were made by plaintiff or someone acting on behalf of plaintiff.

ANSWER:

Lake Zurich noise ordinance defaults to Ill law. Although complainants will provide relevant documentation of conversations and correspondence with village officials and police departments, it is clear that the IPCB is the governing body for noise in Ill. Complainants would be happy to provide names of all village officials.

15. With respect to any complaints, inquiries, police reports, or any other type of inquiry presented to a local (municipal or county), state and/or federal authority relative to the noise pollution complained of including but not limited to Village zoning board, and/or municipality village board; correspondence with municipal (village, county, state and/or federal authorities

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relating to the alleged noise pollution with respect to each such inquiry state as follows:

- (a) The date(s) of said complaints, inquiries, police reports or other referral to the governmental entity;
- (b) The names, addresses and telephone numbers of the specific person(s) and that you dealt with respect to said inquiry;
- (c) The dates of any meetings with any officials with respect to said inquiry and the names, addresses and telephone numbers of person(s) present during said meeting;
- (d) The names, addresses and telephone numbers of any persons that joined with the Complainants in making the inquiry;
- (e) The results of said inquiry by the governmental entity and any recommendations made by said entity to the Complainants, the Respondents, and/or other persons joining in said inquiry.

ANSWER:

Lake Zurich noise ordinance defaults to Ill law. Although complainants will provide relevant documentation of conversations and correspondence with village officials and police departments, it is clear that the IPCB is the governing body for noise in Ill. Complainants would be happy to provide names of all village officials and discuss in detail conversations.

16. With respect to any complaints, inquiries, police reports, or any other type of inquiry presented to a local (municipal or county), state and/or federal authority relative to the noise pollution complained of including but not limited to Village zoning board, and/or municipality village board; correspondence with municipal (village, county, state and/or federal authorities relating to the zoning application made to the Village of Lake Zurich for the Respondents' property with respect to each such inquiry state as follows:

- (a) The date(s) of said complaints, inquiries, police reports or other referral to the governmental entity;
- (b) The names, addresses and telephone numbers of the specific person(s) and that you dealt with respect to said inquiry;
- (c) The dates of any meetings with any officials with respect to said inquiry and the names, addresses and telephone numbers of person(s) present during said meeting;
- (d) The names, addresses and telephone numbers of any persons that joined with the Complainants in making the inquiry;
- (e) The results of said inquiry by the governmental entity and any recommendations

made by said entity to the Complainants, the Respondents, and/or other persons joining in said inquiry.

ANSWER:

Lake Zurich noise ordinance defaults to Ill law. Although complainants will provide relevant documentation of conversations and correspondence with village officials and police departments, it is clear that the IPCB is the governing body for noise in Ill. Complainants would be happy to provide names of all village officials.

17. With respect to any complaints, inquiries, police reports, or any other type of inquiry presented to a local (municipal or county), state and/or federal authority relative to the noise pollution complained of including but not limited to Village zoning board, and/or municipality village board; correspondence with municipal (village, county, state and/or federal authorities relating to alleged noise pollution emanating from property neighboring the Respondents' property and/or in the vicinity of Respondents' property with respect to each such inquiry state as follows:

- (a) The date(s) of said complaints, inquiries, police reports or other referral to the governmental entity;
- (b) The names, addresses and telephone numbers of the specific person(s) and that you dealt with respect to said inquiry;
- (c) The dates of any meetings with any officials with respect to said inquiry and the names, addresses and telephone numbers of person(s) present during said meeting;
- (d) The names, addresses and telephone numbers of any persons that joined with the Complainants in making the inquiry;
- (e) The results of said inquiry by the governmental entity and any recommendations made by said entity to the Complainants, the Respondents, and/or other persons joining in said inquiry.

Lake Zurich noise ordinance defaults to Ill law. Although complainants will provide relevant documentation of conversations and correspondence with village officials and police departments, it is clear that the IPCB is the governing body for noise in Ill. Complainants would be happy to provide names of all village officials.

18. If Complainant(s), or any agent has given a statement to anyone other than defendant's attorney with respect to either the incidents in question and/or the damages complained of by the Complainants, please state the name, address, and telephone number of the person to whom such statement was given, the date on which the statement was given, the substance of such statement and whether such statement was a written or oral statement.

ANSWER:

See attached reports.

19. Have you (or anyone acting on your behalf) had any conversations with any person at any time or overhear any statements made by any person at any time with regard to the manner in which the incidents complained of occurred? If so, please state the following:

(a) Date(s) of such conversations and/or statements;

(b) Place of such conversations and/or statements;

(c) Names, addresses and telephone numbers of all persons present for the conversations and/or statements;

(d) Matters and/or things stated and/or discussed by said persons

(e) Whether the conversation was oral and if so, was it recorded or transcribed or was the statement in writing; and/or

(f) The name, address and telephone number of each person that has possession of the statement or recording if it was written, recorded and/or transcribed.

ANSWER:

Unreasonable request. Too many to reference. This is an ongoing issue which has been reported on in the newspaper. It is the subject of constant conversation.

20. State in detail each factual observation or finding and each conclusion drawn based upon defendant's inspection of the area, measurement of noise level, and/or other observations relating to the source of any alleged noise pollution.

ANSWER:

Who is the defendant?

21. State the name, address and occupation of each individual who has inspected, measured the noise levels or tested the area in question relative to noise or who has performed any simulation studies, experiments, or other tests of any kind relevant to this Complaint and describe each such inspection, measurement, test, simulation, and/or study.

ANSWER:

Have not received report from Greg Zak at this point.

Have had several police officers and other village officials on site. All have agreed that the IPCB should be the governing body on this.

22. Pursuant to the Illinois Supreme Court's revised Rule 213, furnish the identities and addresses of witnesses who will testify at trial, and provide the following information:

- d) Lay Witnesses. Please identify the subjects on which the witness will testify;
- d) Independent Expert Witnesses. Please identify the subjects on which the witness will testify and the opinions you expect to elicit.
- e) Controlled Expert Witnesses. Please identify the following:
 - (ii) the subject matter on which the witness will testify;
 - (iii) the conclusions and opinions of the witness and bases therefor;
 - (iv) the qualifications of the witness; and
 - (v) any reports prepared by the witness about the case.

ANSWER:

At this time the Complainants are undecided on using witnesses other than Greg Zak of Noise solutions and Frank Gambino. It is our understanding that there is a separate discovery for

expert witnesses.

Potential witnesses would be village officials from both villages, both Police Chiefs, area neighbors and Lakewood Meadow Association officials.

Respectfully submitted,
Joseph & Victoria Morrissey



By: _____

Joseph Morrissey

Victoria Morrissey

CERTIFICATION

I, Joseph Morrissey, on oath or affirmation, state that I have read the foregoing and that it is accurate to the best of my knowledge.



(Complainant's signature)

Subscribed to and sworn before me

this _____ day

of _____, 20__.

Notary Public

My commission expires: _____

CERTIFICATE OF SERVICE

I, the undersigned, on oath or affirmation, state that on ____Jan 26th____, 2009__, I served the attached formal complaint and notice on the respondent by

_____ certified mail (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

_____ registered mail (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

_____ messenger service (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

X _____ personal service (attach affidavit if available, otherwise you must file affidavit later with Clerk)

at the address below:

RESPONDENT'S ADDRESS:

Name Bruce Slivnick _____

Street 707 Lake Cook Rd _____

City, state, zip code Deerfield , Il 60015 _____
(list each respondent's name and address if multiple respondents)



Complainant's signature

Street 32 s. Chestnut ct _____

City, state, zip code Hawthorn Woods, il 60047 _____

Subscribed to and sworn before me

this _____ day

of _____, 20__.

Notary Public

My commission expires: _____