

**Electronic Filing - Received, Clerk's Office, August 14, 2009**

**O'REILLY LAW OFFICES, LLC**

1751 SOUTH NAPERVILLE ROAD

SUITE 101

**WHEATON, ILLINOIS 60189**

TELEPHONE (630) 665-4444

FACSIMILE (630) 665-4442

MOLLY M. O'REILLY  
JOHN F. O'REILLY

ROGER KEVIN O'REILLY  
(1934-2000)

August 11, 2009

SENT VIA EMAIL

Paul J. Oleksak  
100 N. Atkinson Road, Suite 110F,  
Grayslake, IL 60030

Bruce A. Slivnick  
707 Lake Cook Road, Suite 316,  
Deerfield, IL 60015

Re: MORRISSEY v. ALPINE AUTOMOTIVE, PCB 2009-010

Dear Gentleman:

Please find attached a copy of the expert report by Greg Zak from Noise Solutions by Greg Zak, Inc. who has been retained to offer expert opinions in this case. I have spoken to Mr. Zak regarding his availability for deposition. His current schedule would permit a deposition to proceed in Springfield, Illinois at the office of a court reporter of your choice on August 31<sup>st</sup>, September 9<sup>th</sup>, 10<sup>th</sup>, 14<sup>th</sup>, or 15<sup>th</sup>, 2009. If you intend to take the deposition of Mr. Zak prior to his testimony at hearing in this case, please contact my office to schedule the same at your earliest convenience so that we can confirm a date with Mr. Zak.

At this point in time, it appears that Mr. Morrissey does not wish to proceed with taking the deposition of Mr. Thunder prior to hearing. Consistent with the recent order in this matter, we anticipate that this will complete discovery in this case so that the matter can be scheduled for hearing at the next telephonic court status hearing on September 17, 2009. Also, please allow this correspondence to confirm that I am sending digital photographs to your attention via email under separate email so as to allow electronic transfer. If you do not receive them by the end of the day, please contact me to resend the same.

Very truly yours,

John F. O'Reilly

JFO/am w/ attachment

# NOISE SOLUTIONS BY GREG ZAK, INC.

1800 PROVIDENCE LANE  
SPRINGFIELD, ILLINOIS 62711  
(217) 698-3507  
(217) 698-5666-FAX  
E-mail: [gregzak@gregzak.com](mailto:gregzak@gregzak.com)

March 6, 2009

Mr. & Mrs. Joseph Morrissey  
32 S. Chestnut Ct.,  
Hawthorn Woods, Illinois 60047  
Home phone: 847-726-1377  
Cell phone: 847-809-4560  
[josephrngr@yahoo.com](mailto:josephrngr@yahoo.com)

RE: Alpine Automotive Noise Impact

Dear Mr. & Mrs. Morrissey:

Noise Solutions by Greg Zak, Inc. was retained by you to advise you how to proceed with a course of action to be taken to obtain relief from the noise emanating from the premises of Alpine Automotive. The facility is located at 1320 Ensell Road, Lake Zurich, Illinois. Their primary functions are auto/truck repair, 24 hour towing service and as police impound facility. In 2007, the owner, Geoff Pahios, moved his business from the heart of an industrial park to a new location adjacent to residential homes with the expressed understanding that it would not have an adverse affect on the residential community. Since the new property is not zoned for outdoor storage or 24 hour towing, a special use permit had to be approved by the village. Alpine Automotive is operating as usual, but they are now adjacent to residential homes. The Morrissey backyard is approximately 200 feet away from the property line of this auto/truck repair facility.

Your particular concern was the noise being emitted to the Morrissey family residence, which has unreasonably interfered with the use of property and enjoyment of life. You and your family lose nightly sleep, as well as awakening in the early hours. In addition, it has damaged your family's emotional and physical health and well being.

You originally contacted us by phone on June 18, 2008 to inform us of the type of noise problem that you and your family were experiencing and what you had used to record the decibel levels. You used a sound level meter which is the IntelliSafe Model: JTS-1357, Serial No. 5970, digital sound level meter that you later sent to us for calibration. Your meter was calibrated with a Larson Davis Model CAL250, Serial No. 0761 precision calibrator traceable to the National Institute of Standards and Technology (NIST) to establish its accuracy. The IntelliSafe Model: JTS-1357 meter meets the international IEC 651 Type II standards. The expected sound pressure level indication on the meter was 109 dB(A) and it read 109 dB(A). Upon testing, the meter was neither reading high nor low, therefore, no correction was needed in any of your measurements. We checked the meter on Slow and Fast meter response and C-weighting and these were also

error free. While following our instructions and those of the sound level meter manufacturer, you recorded measurements as high as decibel levels in the mid-70s. The allowable limits are 61 dB(A) daytime, 51 dB(A) nighttime and 43 dB(A) nighttime for impulsive noise (i.e. air hammers and impact wrenches).

You have provided the following information on the types and frequency of the plant's daytime and at times, nighttime operations that result in the disruption of your activities. Some of the main sources of noise being emitted from this facility, include those from 24-hour towing, truck and auto repair, a ventilation system exhaust fan and truck idling engine noise.

Towing occurs on a daily/weekly basis during normal business hours. However, the worst towing operations are the police impounds that take place mostly from midnight to 3 AM and often on weekends. These are year round and several times a month. Heavy diesel trucks arrive, unhook the vehicle (very loud rattling of heavy chains across a furrowed aluminum bed) and rev the engines to lift then lower the bed. This engine noise is constant throughout the process. The types of noise during the day that are the most annoying involve the repairs portion of the business. These are impact wrenches, ratchets, air hammers, grinders, drills and cutting tools. These operations are loud inside their building, but much worse during the warmer weather, when work is often performed outside, since the building owner has not installed air-conditioning in his building. The ventilation fan exhaust is directed at the residences. An attempt at shielding has been installed, but the fan noise is still very audible year round, with no predictability as to when it starts. The sound is like a small jet engine pointing at the residences. The idling engine noise from trucks may last up to an hour at a time, which occurs each day.

The measurements that were taken by you, and recorded on your sound level meter, began in July of 2007 and continued through February 23, 2009. You have produced these hundreds of recordings by the use of video clips, in which you illustrate the sound levels obtained over that time period. You then sent us this data for us to review and evaluate.

In our opinion, the measurements you have taken and provided to us for review and evaluation indicate both a numerical exceedence of the Illinois Pollution Control Board's regulations, as well as a strong case for the existence of nuisance noise. Specifically, the Illinois Administrative Code, Title 35: Environmental Protection, Subtitle H: Noise, Chapter I: Pollution Control Board, Section 900.102, Sections 901.102 a), 901.102 b), and Section 901.104 address the noise provisions regulated by the State of Illinois. These regulations limit the noise levels allowable from an industrial facility to a residential area for both nighttime and daytime. Additionally, it restricts the levels for highly-impulsive sound. Compliance must be met with these regulations.

Alpine Automotive engaged a noise consultant to measure the noise emissions from their facility. The firm hired was Acoustic Associates, Ltd., owned and operated by Mr. Tom Thunder. Acoustic Associates conducted their noise testing on the afternoon of 5-6-08. You forwarded their report to us for our comments and analysis. The following are the results of our evaluation.

Figure 1 entitled: "Sound Level History at Property Line" graphs the time period tested from 2:29 to 3:22 PM. Although the narrative on page 1 of the report states that "recording began at 2:13 PM and continued it for over one hour," the graph does not support that timeframe. Therefore, a one hour Leq was not obtained, as required by the regulations. In addition, Sections 901.102 a) and b) of the regulations also require that measurements be taken in each of

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the nine octave bands from 31.5 Hz to 8000 Hz. The graph depicts sound levels recorded in dBA, not in each of the nine octave bands. Consequently, there is no way to determine whether Alpine Automotive is in compliance with the octave band levels. In analyzing Figure 1 further, we noted that the testing performed by Acoustic Associates, in all probability, did not include any of the noise emitting sources that you have indicated are all part of your complaint. The references include “shop impacts, an air wrench and loud talking”. There is NO reference to the noise from heavy diesel trucks revving their engines, the rattling of heavy chains across the aluminum beds, usually occurring within a few hundred feet, between Alpine and the residences. In addition, no identification of each of the equipment items and their specific sound levels were recorded so no valid conclusion can be made. There is no specific sound level measurement that separately provides a reading for the ventilation fan. This further emphasizes that the noise emissions that you and your family are subjected to cannot be determined by the sound testing performed by Acoustic Associates.

The Acoustic Associates report states that “the greatest noise, however, came from the jets that passed overhead”. Since jet flyovers are not common to your neighborhood, their sound emissions are not part of the normal ambient. The jets are not a regular occurrence, so their sounds do not become a contribution to the background (or ambient) levels.

The conclusion cited in the report is that the noise from the shop, in their opinion, does not “appear” to exceed the State noise limits. However, it does point out the “high audibility and abrupt and distinct character” of the impact wrench. It further suggests that this noise could be decreased by hanging clear vinyl strips over the overhead doors, as sometimes seen in car washes. While we disagree that this insufficient attempt at mitigation will reduce the impact from the highly impulsive noise emitted from the daily operations of the facility, we note that even this minimal effort has not been made by the building owner to date.

With the information that you have provided and the data analysis performed, in our opinion, you have a solid case of a noise nuisance violation. Furthermore, we have concluded that the noise emissions emanating from Alpine Automotive are not in compliance with the State of Illinois Noise Regulations.

In our opinion, the noise impact on your residence is unacceptable. As a result of Alpine Automotives’ violations, you and your family have been, and will continue to be, prevented from the normal enjoyment of your property and uninterrupted daily activities.

Sincerely,

Greg Zak, INCE