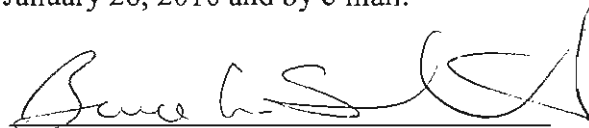


Certificate of Service

Bruce A. Slivnick, an attorney hereby certify that I served this Notice and Motion for Leave to File Reply and Proposed Reply to Complainants' Response to Motions in Limine to each person to whom it is directed by depositing the same in the Regular First Class U.S. Mail from Deerfield, Illinois 60015 prior to 5:00 p.m. on January 26, 2010 and by e-mail.

A handwritten signature in black ink, appearing to read "Bruce A. Slivnick", is written over a horizontal line. The signature is stylized and cursive.

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that the Complainants made during the October 22, 2009 teleconference as to their intentions relative to their expert witness.

3. The Complainants' Response to the Respondents Witness List requests certain relief. The failure of the Complainants to make this request in the form of a Motion in Limine denies the Respondents an opportunity to respond to this request for relief in the absence of a reply.

4. Denial of the Respondents' request will materially prejudice the Respondents for each of the above stated reasons.

WHEREFORE, the Respondents, GEOFF PAHIOS and ALPINE AUTOMOTIVE, INC. improperly noted as ALPINE AUTOMOTIVE respectfully pray that this Hearing Officer enter an Order granting the Respondents leave to file a Reply to the Complainants' Response to Motions in Limine, instanter.

GEOFF PAHIOS and ALPINE AUTOMOTIVE, INC.

By: 
One of Respondents' Attorneys

Paul J. Oleksak
Attorney At Law
100 Atkinson Road, Suite 110F
Grayslake, Illinois 60030
(847) 543-9000
Attorney Number

Bruce A. Slivnick
Attorney At Law
707 Lake Cook Road, Suite 316
Deerfield, Illinois 60015
(847) 714-0503
Attorney Number 6181410

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(Interrogatories Nos. 2 and 3) The Complainants also asked for the names of witnesses and none were named. (Interrogatories No. 22) The Complainants witness list for the hearing also does not list any specific names of neighbors other than Frank Gambino. See Excerpts from Answers to Interrogatories and Witness List attached as **Exhibit A** and incorporated herein by reference.

B.. The Complainants' Response is a clear indication that their intention has been to flood these proceedings with participation by neighbors without having to explicitly disclose their names so as to circumvent the Respondents rights to conduct full fledged discovery. There can be no question that the Complainants knew the names and addresses of neighbors in the subdivision who may be participants. However, they neither disclosed their names nor later supplemented their responses. Rule 101.616 of the Pollution Control Board explicitly refer to the Illinois Code of Civil Procedure and the Illinois Supreme Court Rules relative to discovery. 35 Ill. Admin Code 101.616 (Westlaw 2010).

In this regard, Illinois Supreme Court Rule 213 has been held to require strict compliance by the parties. This is to allow the litigants the have a full opportunity to ascertain the scope and nature of their adversaries case in order to avoid surprise.. Bill Marek's the Competitive Edge, Inc. v. Mickelson Group Inc., 346 Ill. App. 3d 996, 1007, 806 N.E.2d 280, 288 (2nd Dist. 2004). Additionally, parties are under an obligation to supplement their answers once additional information becomes known. Clayton v. County of Cook, 346 Ill. App. 3d 367, 377-378, 805 N.E.2d 222, 232 (1st Dist. 2003). Here the Complainants are engage in tactical gamesmanship by failing to disclose individuals that they know may have relevant information and then try to have that information presented as a participant statement. The discovery rules are explicitly designed to defeat such gamesmanship and eliminate surprise. Garden View, LLC v. Fletcher, 394 Ill. App. 3d 577, 588, 916 N.E.2d 554, (1st Dist. 2009). If the Honorable Hearing Officer were to

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exercise his discretion and allow any lay witnesses other than the Complainants and the Gambinos to testify, the Complainants deliberate and purposeful disregard for the discovery rules would be rewarded and the Respondents' will have been denied their opportunity to fully and properly prepare their defense. In re: Estate of Andernovics, 311 Ill. App. 3d 741, 745, 725 N.E.2d 382, 385 (3rd Dist. 2000).

2. With regard to the oral testimony of Greg Zak, the Complainants consistently made representations to the Respondents counsel that they did not intend to call Mr. Zak as a witness. While it is true that the Respondents elected not to take Mr. Zak's deposition, that decision was based on the representation by the Complainants that Mr. Zak was not going to testify orally at the hearing. In fact, during the October 22, 2009 teleconference at which the Respondent indicated that Mr. Zak's deposition would not be taken, Mr. Morrissey and/or his attorney explicitly indicated during that teleconference that Mr. Zak would not be providing oral testimony at the hearing. Had Mr. Morrissey not made that representation during the teleconference, the Respondents would have taken Mr. Zaks deposition.

3. Relative to the third Motion in Limine, the Respondents maintain that the video tapes were undated and/or inaccurately dated. Furthermore there is nothing to indicate the method of recording as such no appropriate foundation can be established as to said recording as and they should be excluded.

4. The Respondents stand on their initial Motion in Limine No. 4 and the matters stated therein.

5. The Complainants' Motion to Strike or Clarify the Respondent's Witness List should have been made as a Motion rather than merely part of the Complainants' Response. This is designed to obtain a ruling without providing the Respondents an opportunity to respond. In this

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regard, the Complainant is explicitly stating the names of those witnesses that they believe may be needed to support its defense. To some extent the need for each and every witness may depend on the evidence produced during the Complainants' case in chief. The exclusion of some of these witnesses would be dependent on the evidence adduced by the Plaintiffs. As opposed to the Complainants the Respondents are being explicit and preventing surprise by providing the names of each of its potential witnesses. Parties often make last minute decisions not to call certain named witnesses as part of their case and that is not considered subterfuge. In fact, the Respondents actions explicitly prevent any surprise as required by the discovery rules.

WHEREFORE, the Respondents, GEOFF PAHIOS and ALPINE AUTOMOTIVE, INC. improperly noted as ALPINE AUTOMOTIVE respectfully pray that this Hearing Officer enter an Order at the onset of the hearing herein in accordance with the Complainants previously filed Motions in Limine and for such further and other relief deemed just and reasonable under the circumstances.

GEOFF PAHIOS and ALPINE AUTOMOTIVE, INC.

By: 

One of Respondents' Attorneys

Paul J. Oleksak
Attorney At Law
100 Atkinson Road, Suite 110F
Grayslake, Illinois 60030
(847) 543-9000
Attorney Number

Bruce A. Slivnick
Attorney At Law
707 Lake Cook Road, Suite 316
Deerfield, Illinois 60015
(847) 714-0503
Attorney Number 6181410

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

EXHIBIT A

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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.

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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

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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* _____
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.

Joseph Morrissey Jan 26 2009
(Complainant's signature)

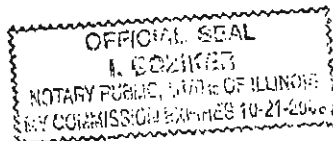
Subscribed to and sworn before me

this 26th day

of January, 2009.

[Signature]
Notary Public

My commission expires: _____



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CERTIFICATE OF SERVICE

I, the undersigned, on oath or affirmation, state that on _____, 20____, 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)

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

at the address below:

RESPONDENT'S ADDRESS:

Name _____

Street _____

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

Complainant's signature

Street _____

City, state, zip code _____

Subscribed to and sworn before me

this _____ day

of _____, 20__.

Notary Public

My commission expires: _____

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)
(Insert your name(s) in the space above))
Complainant(s),)
)
v.)
)
Geoff Pahios)
Alpine Automotive)
(Insert name(s) of alleged polluter(s)))
Respondent(s))

PCB 20 09-10 -
(For Board use only)

Witness and Exhibit List

Now come the complainants, Joseph and Victoria Morrissey, and disclose there list of witnesses and exhibits for the hearing on this matter currently set for February 23, 24, 25th, 2010:

Witnesses

Joseph and Victoria Morrissey
32 S. Chestnut Ct
Hawthorn Woods, Il 60047
847-726-1377

Frank & Karen Gambino
28 S. Chestnut Ct
Hawthorn Woods, Il 60047
847-438-8595

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Geoff Pahois
 24675 W. August Lane
 Lake Zurich, IL 60047
 847-526-0474

Tom Thunder
 Roger Harmon
 1278 W. Northwest Highway
 Palatine, IL 60067
 847-359-1068

Greg Zak
 Noise Solutions by Greg Zak, Inc
 1800 Providence Lane
 Springfield, IL 62711
 217-698-3507

Exhibits

Opinion Letter by Greg Zak	6-Mar-09	Document
Noise Log		Document
Transcript – Dec 20, 2004 VOLZ Plan Commission mtg	20-Dec-04	Document
Feb 2 2005, VOLZ Mtg minutes	2-Feb-05	Document
March 2, 2005 VOLZ Plan Commission minutes	2-Mar-05	Document
Daily Herald Article	17-Oct-07	Document
Lake County Letter	12-Oct-07	Document
VOLZ Special Use Permit Application Jan 5 2005	5-Jan-05	Document
9-28-07 Threat posted online	28-Sep-07	Document
CDC Report on Impact Wrench	Online	Document
Jan 5, 2005 VOLZ Application for Site Plan Approval	5-Jan-05	Document
March 2, 2005 VOLZ Plan Commission Minutes	2-Mar-05	Document
Oct 12, 2007 Letter from Lake County Health Dept	12-Oct-07	Document
Landscape Plan Edited 2-08-05	8-Feb-05	Document
Dixon Letter	15-Aug-07	Document
Landscape inspection, Shawn Walkington	25-Sep-09	Document
Village ordinance 4-2-1-7 Deliveries		Document
VOLZ Ordinance 4-2-1-3 Public Nuisances		Document
Greg Zak - Meter calibration	9-Jul-08	Document
Oct 2007 Mayor Hunt letter to Lake Zurich	15-Oct-07	Email
Donna Lobaito email	27-Dec-06	Email
Dave Remus Email	1-Aug-07	Email
July 1 2008 Email to residents	1-Jul-08	Email
Email to Keith Hunt Sept 25th 2008	25-Sep-08	Email
Email from Bob Vitas	18-Apr-08	Email

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Email to Pres Tolomie	15-Jan-08	Email
Email response from Pres Tolomie	9-Nov-07	Email
Email to Pres Tolomie, 2nd request for mtg	7-Nov-07	Email
Email to Pres Tolomie, request for Cooling off period	22-Oct-07	Email
Email from Margo, Tom Thunder	26-Jan-09	Email
Ariel Photograph #1	1-Oct-09	Photo
Ariel Photograph #2	1-Oct-09	Photo
Photo of tree removal May 2007	1-May-07	Photo
Photo of existing tree line	1-Feb-07	Photo
Picture of Opening South Door	4-Sep-08	Photo
Picture of Geoff Pahios Car	Oct 16, 2009	Photo
Sept 19 th 2008 Police Report Pahios threats	19-Sep-08	Police Report
Sept 26 th , 2008 Police report	26-Sep-08	Police Report
Video - Dec 1, 2008 VOLZ Trustee Mtg	1-Dec-08	Video
Video Examples of Noise		Video
Application for Amendment to Zoning Code	5-Jan-05	Document

Documents and Video sent via registered mail. .

CERTIFICATION
(optional but encouraged)

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

Joseph Merssery
(Complainant's signature)

Subscribed to and sworn before me

this _____ day

of _____, 20__.

Notary Public

My commission expires: _____