

CHRISTIAN COUNTY ZONING BOARD OF APPEALS

MEMORANDUM OF LAW REGARDING NOISE EMISSIONS

The actual use of the property determines the classification of the land, not the zoning classification applied to the land or its ownership. 35 Ill. Admin. Code § 901.102; *Hoffman v. City of Columbia*, 1996 WL 633343, *13 (PCB 94-146, October 17, 1996) (“the actual use of the property dictates the classification, rather than the zoning or who or what entity is conducting the activity”); *Knox v. Turris Coal Co.*, 2003 WL 137447 (PCB 00-140, January 9, 2003) (classifying property based upon its use, not its zoning).

Moreover, a single property may have different areas with different classifications based on different uses. In such cases, the Illinois Pollution Control Board (“IPCB”) has held the use of each area dictates the classification applicable to each area. *In the Matter of Noise Pollution Control Regulations*, 1973 WL 7313 (PCB No. R72-2, July 31, 1973) (“The portion of land used as farmland would be classified as a “C” use while the farmstead itself would be classified as an “A” use.”) In fact, the IPCB applied different classifications to different areas of the property in *Knox* based on different uses in each area. *Knox*, 2003 WL 137447 (PCB 00-140, January 9, 2003). Because different classifications may apply to the same property, the sound level restrictions of *each* applicable classification must be met in the entire area of the portion of the property subject to that particular classification. Thus, a measurement taken in a Class C portion of a parcel cannot suffice to establish compliance with the Class A thresholds in the Class A area of the property.

The IPCB regulations protect the *entirety* of the Class A receiving land from excessive noise. Section 901.102 of the PCB regulations governing sound emission standards state, in relevant part:

No person shall cause or allow the emission of sound during daytime hours from any property-line-noise-source located on any Class A, B or C land to any receiving Class A land which exceeds any allowable octave band sound pressure level specified in the following table, when measured at any point within such receiving Class A land, provided, however, that no measurement of sound pressure shall be made less than 25 feet from such property-line-noise-source. (emphasis added)

35 Ill. Admin. Code 901.102.

The regulations also promulgate required measuring techniques in determining whether sound emitted to Class A land violates Section 901.102. In particular, Section 910.105 provides:

Sound pressure level measurements must be obtained in accordance with the following measurement techniques to determine whether a noise source is in compliance with 35 Ill. Admin. Code 901:

a. Site Selection.

- (1) Measurements may be taken at one or more microphone positions within the appropriate receiving land. Measurement instruments must be set up outdoors within the boundaries of the receiving land for the purposes of determining whether a noise source is in compliance with 35 Ill. Admin. Code 901. (emphasis added)

35 Ill. Admin. Code 910.105.

This regulatory scheme makes clear that measurements of sound emitted to Class A land should be taken at or near the property line on the receiving Class A land. *See, e.g., Roti, et al. v. LTD Commodities*, 2001 WL 179840 (PCB 99-19, February 15, 2001) (measurement location was proper where sound was measured on the receiving property 10 feet from the property line); *Charter Hall Homeowner's Assoc. v. Overland Trans. Sys., Inc.*, 1998 WL 714214 (PCB 98-81 – October 1, 1998) (measurements taken 15 feet from a property line between the receiving land

and the property-line-noise-source complied with the location requirements of Section 901.102(d)). Section 910.105(b) removes all doubt: only if the noise source is contiguous to the property line itself should the measurements be taken at least twenty-five feet (25') from the property line. Thus, measurements taken at the property line are proper unless the noise source is contiguous to the property line.

Section 901.102 explicitly prohibits emitting excessive sound to any and all parts of the Class A receiving land. In particular, Section 901.102 prohibits sound which exceeds the limits “when measured at any point within such receiving Class A land.” (emphasis added). This language prohibits the emission of excessive sound to any point on the Class A land—if the sound exceeds the permitted limits anywhere on the Class A land, it violates Section 901.102; stated otherwise, the entirety of Class A land is protected from sound which exceeds the limits in Section 901.102, not just the residence. Nowhere do the regulations and opinions mention the word “structure” or “building” when discussing the proper locations to measure noise emission. Accordingly, measurement at or near the property line on the receiving land’s property is not only proper under the IPCB regulations and opinions, it is the best way to get an accurate measurement of the sound received on the land.

Furthermore, as to property with multiple uses subject to different classifications, the noise levels must not exceed the applicable limits in the entirety of each of these differently classified areas. *In the Matter of Noise Pollution Control Regulations*, 1973 WL 7313 (PCB No. R72-2, July 31, 1973). Thus, for parcels with multiple classifications, an applicant must establish that the Class A area(s) of the receiving land does not receive noise which exceeds the Class A limits and must establish that the Class C area(s) of the land do not receive noise which exceeds the Class C limits.

Even if the noise emitted to Class A receiving land complies with the numeric limits contained in the IPCB regulations, the noise may still violate IPCB standards. Section 24 of the Illinois Environmental Protection Act (415 ILCS 5/24) (the “Act”) provides:

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.

Additionally, Section 900.102 of the PCB regulations provides:

No person shall cause or allow the emission of sound beyond the boundaries of his property, as property is defined in Section 25 of the Illinois Environmental Protection Act, so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter.

Together these provisions constitute a prohibition against nuisance noise pollution. *Knox*, 2003 WL 137447 at *12; *Charter Hall*, 1998 WL 714214 at *17. In determining whether noise emissions rise to the level of a nuisance noise pollution violation, a two-step inquiry applies. First, it must be determined whether or not the noise constitutes an interference in the enjoyment of complainants' lives and second, considering the factors enunciated in Section 33(c) of the Act, it must be determined whether or not the interference is unreasonable. *Knox*, 2003 WL 137447 at *12.

Noise interfering with sleep constitutes interference in the enjoyment of one's life. The IPCB has repeatedly held that noise which causes sleeplessness, or even merely interferes with one's ability to get a good night's sleep, constitutes interference in the enjoyment of one's life. *Manarchy v. JJJ Associates, Inc.*, 1996 WL 419475 at *9 (PCB 95-73, July 18, 1996); *Hoffman v. City of Columbia*, 1996 WL 633343 at *14 (PCB 94-146, October 17, 1996); *Thomas v. Carry Companies of Illinois*, 1993 WL 316429 *12 (PCB 91-195, August 5, 1993). Measurements that do not strictly comply with the procedures to establish a numeric violation may establish a

nuisance violation. *Id.* The IPCB limits are equivalent to 51 dBA. The evidence supports only one conclusion: 51 dBA is too high and unreasonably interferes with the enjoyment of life.



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