

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

WILLIAM F. HASSAY, JR.,

*Plaintiff,*

v.

MAYOR AND CITY COUNCIL OF  
OCEAN CITY, MARYLAND, *et al.*,

*Defendants.*

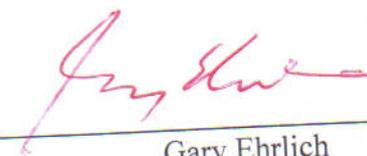
Civil Action No. 13-cv-01076-ELH

\* \* \* \* \*

**SUPPLEMENTAL DECLARATION OF GARY EHRLICH**

1. My name is Gary Ehrlich and I am the principal and sole member of Hush Acoustics LLC ("Hush Acoustics").
2. Hush Acoustics has been contracted by Orrick, Herrington & Sutcliffe LLP ("Orrick") on behalf of Mr. William F. Hassay, Jr., the plaintiff in this case.
3. Attached as Exhibit A, and incorporated herein by reference, is a true and correct copy of an addendum to a report dated April 8, 2013 that Hush Acoustics LLC prepared at Orrick's request.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON JUNE 4, 2013.

  
\_\_\_\_\_  
Gary Ehrlich

**EXHIBIT A**

June 3, 2013

Orrick, Herrington & Sutcliffe LLP  
Columbia Center  
1152 15th Street, N.W.  
Washington, DC 20005-1706

Re: Town of Ocean City Noise Ordinance  
Acoustical Review

## 1. Scope

This report is an addendum to our April 8, 2013, report addressed to Orrick, Herrington & Sutcliffe LLP. The purpose of this addendum is to present additional ambient sound level information collected on May 30, 2013, in Ocean City, MD.

## 2. Analysis

### 2.1 Ambient Sound Tests and Observations

On Thursday May 30, 2013, sound levels were measured on the Ocean City boardwalk in various locations. The purposes of these tests were: (1) to collect a sampling of ambient sound level data during the summer season, and (2) to determine at what distance various sound sources were audible during the summer season. A laser range finder was used to determine approximate distances to sound sources, many of which were moving.

Sound levels were measured using a Norsonic Precision Sound Analyser Nor140 serial number 1402854 last calibrated on May 8, 2012, with a single Norsonic Type 1233 microphone serial number 08609. The meter was programmed to automatically store the sound level each second. The sound level meter was calibrated using a Quest Technologies QC-20 Calibrator serial number QOF07008 and last complete laboratory calibrated on May 8, 2012, calibrated traceable to the National Institute of Standards and Technology (NIST). Calibration of the meter was also verified after completion of the measurements to be within 0.2 dB of the initial calibration level. Sound levels were measured for one minute in each location on the boardwalk along the extensions of Dorchester Street, Talbot Street, Caroline Street, North Division Street, North 1<sup>st</sup> Street, and North 2<sup>nd</sup> Street.

The A-weighted sound level is an overall sound level metric which has sound levels in certain frequency ranges altered to make the overall sound level correlate with peoples' judgment of loudness for many types of sounds. This is the most commonly used sound level metric. Measured A-weighted ambient sound levels were as follows:

	<u>Time</u>	<u>Average</u>	<u>Maximum</u>	<u>Minimum</u>
Dorchester Street (50' to performer):	6:45 pm	62.2 dB	69.2 dB	56.3 dB
Talbot Street:	6:48 pm	58.6 dB	62.5 dB	56.5 dB
Caroline Street (no performer yet):	6:53 pm	65.5 dB	68.3 dB	61.6 dB
Caroline Street (40' to performer):	7:11 pm	73.7 dB	76.0 dB	71.1 dB

North Division Street:	6:55 pm	59.5 dB	66.2 dB	56.6 dB
North 1 <sup>st</sup> Street:	6:59 pm	63.9 dB	69.7 dB	59.5 dB
North 2 <sup>nd</sup> Street:	7:02 pm	58.2 dB	64.9 dB	55.5 dB

Typical sound sources included the following:

- Amplified music from stores and restaurants
- Other activity from stores such as the ventilation system, using an airbrush, or making food
- Seagulls
- Distant cars or motorcycles
- Heels of people walking by
- People talking to each other or talking on a telephone
- Moving bicycles, skateboards, and strollers
- Street performers at the extensions of Dorchester Street (The Magic of the Amazing Josini, a performer speaking through a small amplified loudspeaker) and Caroline Street (a musician seated playing a harmonica, guitar, bass drum, and high hat cymbals, and singing through a small amplified loudspeaker)

Following is a summary of the approximate distances at which sound sources were audible. When multiple distances are listed below, distances were measured for occurrences on multiple occasions.

Amplified sound from stores and restaurants:

- Polish Water Ice store music at 100'
- Dairy Queen store TV at 100'
- Connie's Deck Bar restaurant music at 100'
- Ripley's Believe It Or Not store music at 120'
- Guide Burrito restaurant music at 136' to façade
- Swirled World American Body Piercing store music at 141' to façade
- Fun City store game at 142'
- Jolly Roger Water Gun Game store amplified voice at 167'
- Fun City Drumscape drum-playing game at 205'
- Tre's Place store music at 267'

Amplified sound from street performers:

- The Magic of the Amazing Josini street performer amplified speech at 179'
- Performer at Caroline street seated playing harmonica, guitar, bass drum, and high hat cymbals, and singing through a small speaker at 291'

Non-amplified sounds from stores/restaurants:

- LA Piercing store conversation at 57'
- Fat Cats and one other store airbrush at 61', 63'
- The Dough Roller ventilation system at 135'

Non-amplified sounds from the outdoors:

- Flip flops at 40'
- Children's footsteps at 43'
- Two women talking to each other at 44'
- Stroller squeaky wheel at 60'
- Man talking normally at 65'
- Idling shuttle bus on boardwalk at 68'
- Bicycle at 75'
- Small painter's air compressor at 86'
- People talking on cell phones at 38', 90'
- Flags on tall poles flapping at 93'
- Toddler giggling at 100'
- Moving shuttle bus on boardwalk at 120', 120'
- Skateboard at 77', 109', 154'
- Seagulls at 320'
- Front end loader engine at 676'

## 2.2 Conclusions

The following conclusions can be reached based on the acoustical tests and observations performed by Hush Acoustics LLC on May 30, 2013:

1. 30-foot distance in ordinance. Virtually all ambient sounds are audible at distances far greater than the noise ordinance limit of 30 feet. Even flip flops and normal conversational speech were audible at this distance on May 30, 2013. Therefore, the sound of all musical instruments and sound amplification devices would be audible at 30 feet. Put another way, in order to comply with the noise ordinance requirement, a musical performer would have to be quieter than a flip flop which is infeasible.
2. Distances greater than 30 feet. Typical ambient sounds were audible at far greater distances than 30'. This includes music from stores and restaurants audible at distances up to 267', and a skateboard rolling audible at 154'. Therefore, even if the distance of the noise ordinance provision were doubled or tripled, typical ambient sounds would still be audible at those distances.
3. Audibility of street performers. During our site visit there were two street performers. Both were audible at distances far greater than 30'. This includes distances of 179' and 291'.

Sincerely,



Gary Ehrlich, P.E.  
Principal