

Dear Chairman and Members of the ALRC:

For the last two and a half years the neighbors of the 900 block of Jenifer Street have been working with the owners of Plan B nightclub to resolve the problem of music, especially amplified bass sound, escaping from their club. The noise and vibration wake us and our children or keep us from falling asleep; until 2:00 in the morning three nights of the week. We have included the latest citation from the police for a noise disturbance.

In July of 2011, Plan B hired Audio Design Specialists of Madison to come to their establishment to solve this issue. Audio Design issued a written report concluding that the sound was escaping primarily from the roof of the club. The company recommended the modest investment of installing MLV (mass loaded vinyl) to the roof of the building, which it concluded would likely reduce the bass noise to an acceptable level. Despite the recommendation having been made almost a year ago, Plan B still has not installed the soundproofing. In the meantime, the excessive noise and vibration has continued and is such a big problem that we have resorted to hiring an attorney to try to get relief.

At one point, the city conducted a decibel study following the guidelines in section 24.08, the city's noise ordinance. Unfortunately, the general measuring standards set out in the noise ordinance to address all varieties of noise do not accurately capture the noise problems created by amplified bass music. We have included a copy of a letter from our attorney addressing the city's noise measurements and explaining the particular problems, recognized by noise engineers, created by amplified bass music.

The neighbors have tried to work with Plan B, but in a recent comment on a Madison Magazine blog Rico Sabitini, one of the co-owners of Plan B wrote "Plan B has taken many steps to be a good neighbor, and address the issues that have arose from coming into a unique neighborhood. We will continue to do so, but some resident's perceptions, expectations, and demands are just unreasonable."

We do not feel that it is unreasonable to be able to sleep and have our children be able to sleep in our homes. Nor do we think it is unreasonable to expect Plan B to take the step recommended by its own consultant to fix the noise problem.

We are not trying to shut down Plan B; we just want the club to operate in a reasonable way. So far, the way Plan B has been operated has created a nuisance that has had a serious and negative impact on our families' health. We believe that it would be appropriate for the ALRC to set conditions on the renewal of Plan B's liquor license to ensure that this problem is solved soon; Therefore, we respectfully request that the ALRC schedule Plan B's application for a separate hearing so that this issue can be addressed.

Sincerely,

Judith Guyot

The neighbors of the 900 block of Jenifer,

Richard A. Guyot 936 Jenifer

Tracy R. Gallo

Steve Gallo

Lynn Lee

Steve Skaggs

JUDITH GUYOT 936 Jenifer
RICHARD GUYOT 936 Jenifer

TRACY GALLO 916 Jenifer
STEVE GALLO 916 Jenifer

LYNN LEE 922 Jenifer
STEVE SKAGGS 922 Jenifer

Mark J. Steichen, Attorney

1 SOUTH PINCKNEY STREET, FOURTH FLOOR, P.O. BOX 927, MADISON, WI 53701-0927
Telephone 608-283-1767
Facsimile 608-283-1709
msteichen@boardmanclark.com

April 17, 2012

Via e-mail (canderson@staffordlaw.com)

Constance L. Anderson
Stafford Rosenbaum LLP
222 West Washington Ave., Suite 900
P.O. Box 1784
Madison, WI 53701-1784

RE: Plan B: Bass Noise Complaints

Dear Ms. Anderson :

I represent Dick and Judy Guyot, Steve and Tracy Gallo, Lynn Lee and Steve Skaggs. I am writing in regard to the ongoing noise problem generated by Plan B. The problem has been occurring for over two years and must be resolved. While Plan B has taken some action to address noise issues, its action to date has been insufficient.

There are multiple sources of noise complaints and the various types may require different solutions. The complaint my clients have raised consistently is the level of bass sound generated by Plan B's amplified music. The noise and concomitant vibration is so disturbing that it keeps them and their families from sleeping at night. This situation is not acceptable.

Response to Plan B Memoranda and Noise Measurements

I have read your memoranda of January 12, 2012 and January 24, 2012, as well as assistant city attorney Jennifer Zilavy's memorandum of May 11, 2011, and John Westra's letter of July 19, 2011 summarizing the findings from Audio Design Specialist's site visits on July 14 and 16, 2011. I would like to address several key points.

1. Most of Plan B's actions to date have not targeted the problem with the bass noise.

Items 1-7 in your memorandum of January 12, 2012, concern problems with noise from patrons in the parking lot and outdoor areas around the club, noise escaping the club from the front and back doors, and noise from discarding bottles and other containers into dumpsters. The

actions taken in response to those complaints do not address the problem with the bass noise pollution.

2. There is no dispute that there is a problem with bass noise emanating from the roof of the club.

Your clients acknowledge and have confirmed through the sound engineering investigation that the music played in the club is escaping from the roof of the building. In his letter of July 19, 2011, Mr. Westra writes:

"The problem that you described when engaging our services was music from the sound system at 924 Williamson Street being an irritation to neighbors, with the most intense complaints coming from residences one block to the south on the north side of Jennifer Street. You further indicated your belief that the sound transmission was through the roof, as the shell of the building is mostly concrete masonry units, but the roof is wood framing with a rubber membrane.

The site visitation of 14 July 2011 confirmed that the roof is the basis of the problem." (p. 1)

3. The general noise readings taken by the city and Plan B do not accurately assess the extent of the disturbance and irritation caused by the bass noise.

Attorney Zilavi's memorandum of May 11, 2011 refers to readings by Mr. Neitzel from the city's building inspection department taken with a sound meter at various locations inside and outside the club. The readings are given in units of "db", which is the common abbreviation of decibels, but the memorandum does not specify whether those readings were made with an A-weighted, C-weighted or other weighted meter. Moreover, it does not indicate whether the measurements are of the sound pressure level (SPL) or some other factor. However, I think it is safe to assume that they were taking measurements consistent with the city's noise control ordinance. Section 24.08 of the city ordinances calls for measurement of the SPL using the A-weighted scale, normally abbreviated as "dBA." The numerical readings taken by Audio Design Specialists were made using the dBA scale.

The problem with relying on dBA readings of the SPL was identified by Audio Specialists in its July 19 memorandum.

"[T]he problem arises due to the nature of the signal with its rhythmic bass. The human ear/brain combination easily distinguishes this signal from that of sustained background noise such as produced by the nearby HVAC fan. The literature details extensive criteria for determining the irritation value of signals based upon such factors as SPL, waveform, repetition rate, time of day, etc., so it is these additional factors, not just the SPL, that result in the complaints." (p. 3)

The industry is aware of the special problems created by bass sound and the limitations of the dBA scale for dealing with bass noise from amplified music.

"Although the A-Weighted response is used for most applications, C-Weighting is also available on many sound level meters. C Weighting is usually used for Peak measurements and also in some entertainment noise measurement, where the transmission of bass noise can be a problem." (emphasis added)

Noise Meters Ltd, <http://www.noisemeters.co.uk/help/faq/frequency-weighting.asp>

"An A-weighted sound level is one to which an A-weighting filter has been applied. The A-weighting filter approximates the response of the human ear to lower and medium level pure tone sounds. It deducts significant amounts of sound energy from the low frequencies. This presents a problem with regard to equipment noise and bass musical sounds because the bass or lower frequency sounds are decreased by substantial amounts when using the A-weighting measurement process. This means, for example, that ambient noise on the street or in a residence on the A-scale may be measured as just about the same sound level with and without disturbing levels of bass music being played. The bass music is easily heard by people listening, but it is not recorded by an A-weighted sound level measurement." (emphasis added)

Siebein, Gary W. FASA, FAIA and Lilkendey, Robert M. INCE, Technical Acoustical Issues To Be Considered In Noise Regulation, <http://fl-counties.com/Docs/Legal/Accoustical%20Issues%20in%20Community%20Noise%20Regulation.pdf>, (p. 16)

Attorney Zilavi's experience with the difficulty of measuring the actual impact of the bass sound coming from the club and my clients' frustration with the failure of their repeated complaints to effect an end to the excessive sound irritation is apparently a common situation.

"Many communities enact "plainly audible" noise ordinance requirements particularly for amplified music because of the inherent difficulties in measuring short duration, bass, thumping sounds by enforcement personnel who are not trained acoustical consultants and who have sound level meters that only measure overall A-weighted and C-weighted sound levels. The experience of many enforcement personnel is that people will hear sounds that are disturbing, particularly at night, and file a complaint or call the police. When an officer arrives and measures the sounds with an overall A-weighted sound level meter, cars passing on the street, people talking and even insects may create louder levels than the sounds upon which the complaints are based, particularly if they are bass sounds. Furthermore, the overall A-weighted sound levels can be very low, yet still have enough bass sound to be very disturbing." (emphasis added)

Siebein, (p. 18).

In addition to the fundamental problem of attempting to measure the impact of amplified bass sound with A-weighted meters, the city's readings also suffer from the locations in which they were taken. As noted above, the bass sound emanates from the building's roof. My clients' houses are set up on a hill and the bedrooms are higher than the street level. The sound transmission from the club to their bedrooms is different than at the street levels at which the city's readings were taken.

4. Plan B has not installed the VML (vinyl mass loading) recommended by its sound engineer almost a year ago.

Audio Design Specials recommended two options for addressing the problem of the amplified bass noise to be used individually or in combination. The first option was the application of a 1/4" thick layer of mass loaded vinyl (MLV) to the roof of the building. "MLV is recommended because of its low cost and ease of installation." (7/19/11 letter, p. 3). Despite having been made nine months ago, the recommendation has not been implemented.

The second option is to incorporate a digital processor into the club's sound system to limit the peak bass noise. Your January 12 memorandum indicates that Plan B spent around \$1,000 to install a bass limiter, but this minimal investment has obviously not solved the problem. Moreover, your clients indicated at one of the neighborhood meetings that some DJs hired by the club bring their own sound equipment, which bypasses the club's sound system.

Action Required

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April 17, 2012

It is time for Plan B to install the MLV recommended by Audio Design Specialists. Hopefully, that will solve the problem. Requiring my clients to call Plan B to ask that the sound be turned down when they are unable to fall asleep or are awakened by the bass noise is not acceptable. Plan B intends to ask the city for approval of a second floor expansion, which is no doubt quite expensive, so the comparatively low cost of installing the MLV surely cannot be outside its budget. In the alternative and reluctantly, if the club decides not to install the MLV, my clients might request reasonable limitations on hours that music can be played as part of the renewal of the club's liquor license. Please understand that my clients are not opposed to the club and have no animosity toward Mr. Sabatini or Mr. Gresen. At the same time, your clients should understand that the bass noise from the club is significantly affecting my clients' basic living conditions--their ability to sleep at night.

Plan B's proposal set out in your letter of January 24 calls for proceeding with its application for the second floor expansion simultaneously with installation of the MLV. The application should be made after the MLV is installed. Your clients do not require any approval from mine to move ahead with installing the vinyl. As my clients said in a neighborhood meeting last October, if the sound proofing is installed and solves the problem, they will sincerely consider the proposed expansion. It is difficult for them to agree to any expansion until the noise problem is resolved.

Sincerely yours,

Boardman & Clark LLP

By

Mark J. Steichen

MJS/rh

cc: Marsha Rummel, Alder District 6
Mark Woulf, Alcohol Policy Coordinator
Jennifer Zilavi, Asst. City Attorney
Scott Thornton, Marquette Neighborhood Association

A 030852

WISCONSIN UNIFORM MUNICIPAL COURT CITATION AND COMPLAINT

* Deposit Permitted \$ 177.00 Cash Card

(For Court Use Only) 12MOR1984 MI

You Are Notified to Appear

Is this a mandatory appearance? yes no

Date 5/2/12

Time 8:30 AM PM

CITY OF MADISON MUNICIPAL COURT

RM#203, 210 MARTIN LUTHER KING JR. BLVD.

MADISON, WI 53703

Plaintiff City Village Town

OF: MADISON

Description of Violation

RADIO, PHOTOGRAPH OR OTHER SUCH DEVICE FROM BLINDING DISTURBING

Week Day Month - Day - Year Time

FRI 3/30/12 12:53

Citation Served: Personally Mailed to defendant's last known address

Left with person receiving citation at address: Name BENJAMIN SABATINI Age 29

Print Officer Name P.D.S. WEMSWESS

Department MADISON POLICE

I.D. No. 2792

Date Citation Issued 3/30/12

Telephone Number of Parent/Guardian/Legal Custodian 608-692-1900

Defendant Name - Last

SABATINI RICO J DBA PLAN B

Street Address

3923 CLARE ST

Driver License Number or Other I.D. (specify)

S135-1308-1084-05

Date of Birth

3/4/81

Sex M

Race W

Height 511

Weight 175

Hair BLK

Eyes BRN

License Plate Number

N/A

Plate Type

State

Exp. Yr. N/A

Adopting State

Statute No.

Name & Address of Parent/Guardian/Legal Custodian (if minor defendant)

Case # 12-84186

CITATION PLAN B
5/2/2012

COURT COPY

LOW

audio design specialists

ADVANCED ACOUSTICAL CONSULTATION & SYSTEM DESIGN

19 July 2011

Mr. Rico Sabatini & Mr. Cory Gresen
Plan B
924 Williamson Street
Madison, WI 53703

Subject: Noise Transmission at 924 Williamson Street

Gentlemen:

This letter is to summarize our findings from the site visitation of 14 July 2011 and a subsequent visitation to the aligned residence on Jennifer Street between the hours of 12:05 AM and 12:35 AM the morning of 16 July 2011.

The problem that you described when engaging our services was music from the sound system at 924 Williamson Street being an irritation to neighbors, with the most intense complaints coming from residences one block to the south on the north side of Jennifer Street. You further indicated your belief that the sound transmission was through the roof, as the shell of the building is mostly concrete masonry units, but the roof is wood framing with a rubber membrane.

The site visitation of 14 July 2011 confirmed that the roof is the basis of the problem. An initial test employed pink noise as the signal, making use of the facility's sound system to produce an internal level of 100 dBA in the dance floor area. The level around the perimeter of the building ranged in the low 60 dBA range, but averaged 72 dBA to 74 dBA on north half of the roof.

At this point we learned that the you were not using the sound system's subwoofers in an attempt to minimize complaints. Therefore, for the purpose of making the test process more complete, the test was run again with the subwoofers engaged, which increased the level on the north half of the roof to an average of 78 dBA to 80 dBA.

The comparison of inside to outside SPL (sound pressure level) measurements does not constitute a formal STC (sound transmission class) test, but does approximate that process, with an estimated transmission loss of approximately 20+ dB. We are only concerned with low frequency content, as it is the long wavelength energy that most readily transmits through barriers, and most closely follows the inverse square law when attenuating over distance.

Compressed to 80 dBA scale
A weighting:

Following the pink noise signal, a recording of contemporary music with a heavy bass beat was used, supplied by you as representative of the music used for your clients. The sustained level inside at the dance floor was 98 dBA with the subwoofers operating. At your suggestion, and in order to obtain a worst case measurement, the gain of the sound system then was increased to produce a sustained level of 108 dBA inside, with a resultant level of 78 dBA to 81 dBA over the north portion of the roof, and a level of 68 dBA to 71 dBA at the south extreme of the roof.

This south extreme roof reading is important as it establishes an initial distance value, separate from the source value, for use of the inverse square law. From satellite imagery we can approximate the south extreme roof distance from the mid north roof position over the dance floor, and the distance to the back yard of the Jennifer Street resident that we met when measuring SPL values on Jennifer Street. The two distances are 77 feet and 362 feet, which result in a loss of 13 dB to Jennifer Street location. Subtracting 13 dB from 68 dBA to 71 dBA results in a range at rear of the house on Jennifer Street of 55 dBA to 58 dBA.

During the afternoon of 14 July 2011 we were not able to obtain meaningful SPL measurements at the Jennifer Street address, even though the music signal was audible, as the bulk of acoustical energy present was in the form of road construction machinery noise from Williamson Street, an HVAC related fan on a building between Williamson Street and Jennifer Street, bird calls in the trees on Jennifer Street, and intermittent road traffic on Jennifer Street.

Accordingly, we returned to the Jennifer Street site between 12:05 AM and 12:35 AM the morning of 16 July 2011. At this time, the measured SPL value obtained when no traffic noise was present was 44 dBA to 45 dBA. The music signal was again audible, but the reading did not change between times when the music was present and breaks between selections, as the reading was essentially determined by the same HVAC related fan referred to above.

As per your request, you and your staff were not informed of the timing of the second visit, so the levels witnessed at that time were presumably representative of normal operation. If normal operation is represented by the 98 dBA interior value, the south roof value would be 58 dBA to 61 dBA, and the projected values at the Jennifer Street site would be 45 dBA to 48 dBA, and these values correlate relatively well with the values measured the morning of 16 July 2011.

The correlation must take into account two factors. First, since the measured values of the morning of 16 July 2011 did not change when the music started and stopped, even though the music was discernable to a human listener, the contribution of the music to the measured values was at least 6 dB below that of the HVAC fan, so if we could have turned off the fan, the likely values would have ranged from 39 dBA to 42 dBA. Second, the path from the roof of the Williamson Street site to the Jennifer Street site is not a clear one. There are obstructions in the form of other structures, foliage, and a fence. These obstructions will account for a loss of at least several dB, further supporting the 39 dBA to 42 dBA range as the most probable actual values.

was available time approx, dB measurement value reduced

dB

While these levels are quite low, the problem arises due to the nature of the signal with its rhythmic bass. The human ear/brain combination easily distinguishes this signal from that of sustained background noise such as produced by the nearby HVAC fan. The literature details extensive criteria for determining the irritation value of signals based upon such factors as SPL, waveform, repetition rate, time of day, etc., so it is these additional factors, not just the SPL, that result in the complaints.

* The good news is that, based upon the values determined, only a relatively small amount of attenuation will be needed to eliminate the problem. There are two reasonable options that could be done individually or in combination:

1. Application of a layer of 1/4" thick MLV (mass loaded vinyl) to the north 2/3 of the roof. The transmission loss specifications for mass loaded vinyl are not available for frequencies below the 125 Hz octave, but at the 125 Hz octave the transmission loss is 16 dB. The transmission loss of materials drops with decreasing frequency, so a reasonable projection for the 63 Hz octave is 8 dB. It is the 63 Hz octave that contains most of the frequencies of concern. The transmission loss values for a material like MLV are determined by a specific test process that should not imply that this loss value will be obtained when the material is placed directly against another barrier. In reality, the net increase in transmission loss is likely to be on the order of 4 to 6 dB in the 63 Hz octave.

MLV is recommended because of its low cost and ease of installation. It is also light enough that it should not present a significant structural load to the roof structure, but any loading of the roof should be confirmed as safe by a structural engineer. One drawback, however, is that it may not hold up well when exposed to ultra violet radiation from the sun. This concern may be alleviated by painting it white.

2. Any barrier, and in this case the roof, has a measurable transmission loss, but this loss is determined by exposure to broadband noise, which may not account for dimensionally determined resonant frequencies. At one to three resonant nodes the transmission loss drops dramatically. If a particular musical selection has the pitch of the bass notes align with roof resonant nodes, the transmission loss will be minimal. Therefore, it may be useful to incorporate a digital processor into the sound system that would provide the following operational features:

- 2.1. Generation of extremely narrow but deep notch filters adjusted to align with roof resonant nodes.

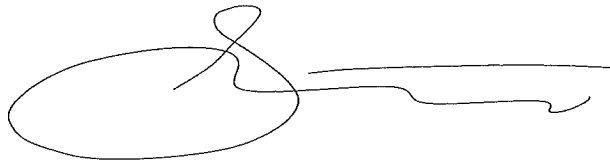
- 2.2. Selective peak limiting of the bass and sub bass bands.

If properly adjusted, this approach is likely to reduce the low bass peaks radiating through the roof by about 6 dB to 8 dB. If this 6 dB to 8 dB is added to the 4 dB to 6 dB resulting from the MLV in option 1, the total reduction will be on the order of 10 dB to 14 dB, which would be enough to lower the value at Jennifer Street to insignificance. At the same time, and also contingent upon proper adjustment, use of this device should have a minimal impact upon the musical experience of clients.

In summary, any means of providing an additional transmission loss, or effective transmission loss in the case of the digital processor, of over 10 dB should take care of the problem. The current level at Jennifer Street is already quite low compared to the levels that typically require our services. Another factor to consider is the Fletcher-Munson effect, whereby human sensitivity to low frequency material at low levels drops faster than actual levels would indicate. An actual loss of 10 dB to 14 dB relative to the currently measured levels would be perceived more as a 16 dB to 20 dB loss, and a loss of this order of magnitude would be dramatic.

Sincerely yours,

AUDIO DESIGN SPECIALISTS

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a long, horizontal, slightly wavy line extending to the right.

John Westra,
President

.IW/rf



Customer No: PLA302

Order No.: 0074213

2420 Grenoble Road Richmond, VA 23294
 Phone: (804) 346-8350 Toll: (800) 782-5742 Fax: (804) 346-8808
 www.AcousticalSolutions.com

QUOTE/ACKNOWLEDGEMENT

| | |
|-------------------------------------|----------------------------------|
| CONFIRMING TO: Rico Sabatini | DATE: 8/1/2011 |
| APPROVAL VIA: | FROM: Kevin McIver-Ext.19 |
| Phone: (608) 692-1900 | kmi@acousticalsolutions.com |
| e-mail: rico@planbmadison.com | |

BILL TO:

Plan B
 924 Williamson St
 Madison, WI 53703

US

Phone: (608) 692-1900

Fax:

SHIP TO:

Plan B
 924 Williamson St
 Madison, WI 53703

US

Market Code: 3

Customer P.O.

Ship VIA
 TRK/L

Terms

| ITEM # | DESCRIPTION | UNIT | QTY | PRICE | AMOUNT |
|-----------|---|------|-------|----------|----------|
| BARAB20NR | AudioSeal Sound Barrier 2# per SqFt Roll Size 54" x 30' Includes UV inhibitor | EACH | 27.00 | 279.00 | 7,533.00 |
| Freight | Freight | EACH | 1.00 | 1,544.00 | 1,544.00 |

Estimated Shipping Date: TBD

Custom Order Non Returnable

Net Order: 9,077.00

Order Total: 9,077.00

CUSTOMER SIGNATURE _____

SIGNATURE REQUIRED TO PROCESS ORDER

Please confirm order and accuracy of information

Quote for materials & product is good for 90 days from issuance, freight quote good for 30 days.

How did you hear about us? _____



Chuck Chvala <cjchvala@gmail.com>

Vinyl loaded material

2 messages

Dan Crow <DanC@kswconstruction.com>

Thu, Sep 8, 2011 at 8:44 AM

To: "chuck@chvalalaw.com" <chuck@chvalalaw.com>, Chuck Chvala <cjchvala@gmail.com>

My budget to install these 27 mats which are 200-300 lbs each is about \$2,500. This is based on little or not information. This is just labor. If I have to rent any equipment, that would be extra. If I have to provide any material, that would be extra. I'm assuming we can get this done in one day.

I'm assuming this will take 4 guys.

Dan Crow
Project Manager
KSW Construction Corp
5957 McKee Rd., Suite 107, Madison, WI 53719
O. 608.271.8360 | M. 608.333.1602 | F. 608.271.8370

Chuck Chvala <cjchvala@gmail.com>

Thu, Sep 8, 2011 at 10:02 AM

To: rico@planbmadison.com

FYI

[Quoted text hidden]

--
Chuck Chvala
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44 E. Mifflin Street, Suite 802
Madison, WI 53703
608-258-8222
608-204-5991 (fax)