

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PAUL CHRISTIAN PRATAPAS,)	
)	
Complainant,)	
)	
v.)	PCB No. 2023-060
)	(Enforcement)
LEXINGTON TRACE BY)	
LEXINGTON HOMES,)	
)	
Respondent.)	

NOTICE OF FILING

To: *SEE ATTACHED SERVICE LIST*

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the **Appearance of Respondent, LEXINGTON TRACE LLC and Respondent’s Motion for Rule to File Out of Time and Extension of Time In Which to File Motion to Dismiss**, copies of which are herewith served upon you.

Date: January 11, 2023

By: /s/ Jason M. Metnick
One of the attorneys for the Respondent,
LEXINGTON TRACE LLC

Jason M. Metnick
MELTZER, PURTILL & STELLE LLC
125 S. Wacker Drive, Suite 2900
Chicago, IL 60606
Phone: 312-987-9900
Email: jmetnick@mpslaw.com
Firm ID: 33682

AFFIDAVIT OF SERVICE by Non-Attorney
(BY EMAIL & US MAIL)

I, the undersigned, on affirmation state that I have served on the date of January 11, 2023, the attached **Appearance of Lexington Trace LLC and Respondent's Motion for Rule to File Out of Time and Extension of Time In Which to File Motion to Dismiss**, upon the following persons **[X] by email**, to the address listed below, from my email address (pdunne@mpslaw.com) and computer located at 125 S. Wacker Drive, Suite 2900, Chicago, IL 60606; and/or **[X] by US Mail** by depositing the document(s) in a U.S. Postal Service mailbox located at 125 S. Wacker Drive, Chicago, IL 60606, by or before 5:00 p.m., with proper postage or delivery charges prepaid.

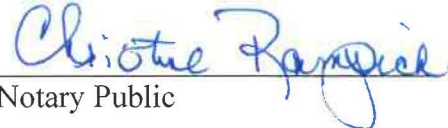
Paul Christian Pratapas
1330 E. Chicago, #110
Naperville, IL 60540
paulpratapas@gmail.com



Patrick Dunne

SUBSCRIBED AND SWORN TO BEFORE ME

this 11th day of January, 2023.



Notary Public



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PAUL CHRISTIAN PRATAPAS,)	
)	
Complainant,)	
)	
v.)	PCB No. 2023-060
)	(Enforcement)
LEXINGTON TRACE BY)	
LEXINGTON HOMES,)	
)	
Respondent.)	

APPEARANCE

The undersigned, as an attorney, enters the appearance of the Respondent, LEXINGTON TRACE LLC, misnamed as “LEXINGTON TRACE BY LEXINGTON HOMES.”

Date: January 11, 2023

By: /s/ Jason M. Metnick
One of the attorneys for the Respondent,
LEXINGTON TRACE LLC

Jason M. Metnick
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Paul Christian Pratapas,)
)
 Complainant,)
)
 v.) PCB 2023-060
)
 Lexington Trace by Lexington Homes,)
)
 Respondent,)

**RESPONDENT’S MOTION FOR RULE TO FILE OUT OF TIME AND
EXTENSION OF TIME IN WHICH TO FILE MOTION TO DISMISS**

Lexington Trace LLC, misnamed as “Lexington Trace by Lexington Homes” (“Respondent”), by and through its attorneys, Meltzer, Purtill & Stelle LLC, hereby moves this Board pursuant to 35 Ill. Admin. Code § 101.522 to allow Respondent to file a motion pursuant to 35 Ill. Admin. Code § 103.212(b) out of time, and for an extension of time in which to file said motion. In support hereof, Respondent states as follows:

1. On November 18, 2022, Paul Christian Pratapas (“Complainant”) filed a Formal Complaint (the “Complaint”) to initiate a citizen’s enforcement proceeding against Respondent.
2. On November 28, 2022, Complainant filed a Proof of Service purporting to serve the Complaint upon Respondent via email. A copy of the Proof of Service is attached hereto as **Exhibit 1**.
3. On January 5, 2023, Respondent received a copy of the Complaint via U.S. mail.
4. Respondent recently retained the undersigned law firm to represent it in this proceeding. The undersigned law firm is filing with this Motion its Appearance on behalf of Respondent.
5. Respondent has grounds to challenge service of the Complaint in this proceeding, and to move for dismissal of the Complaint in its entirety pursuant to 35 Ill. Admin. Code

§101.506.

6. First, service of the Complaint was improper because Complainant served the Complaint via electronic mail, which is expressly not permitted.

7. Pursuant to 35 Ill. Admin. Code 101.1000(e), “[a]ll documents filed with the Board may be served by e-mail except for enforcement complaints...” Further, “[s]ervice of enforcement complaints...must be made personally, by U.S. Mail with a recipient’s signature recorded, or by a third-party commercial carrier with a recipient’s signature recorded.” 35 Ill. Admin. Code § 101.1060. Additionally, “a proceeding is subject to dismissal, and the filing party is subject to sanctions, if service is not timely initiated or completed.” 35 Ill. Admin. Code § 101.304(b)(4).

8. The Proof of Service filed by Complainant admits that the Complaint was served via “Electronic Service” to “Jack Murphy” at jmurphy@lexingtonchicago.com. See **Exhibit 1**. Email service does not constitute personal service of a Formal Complaint.

9. Complainant’s service via email is not permitted by 35 Ill. Admin. Code § 101.1060; therefore, service of the Complaint was improper.

10. Even if service were somehow permitted by email, Mr. Murphy is not the registered agent of Respondent and he is not otherwise authorized to accept service of the Complaint. A copy of the Illinois Secretary of State record for Lexington Trace LLC is attached as **Exhibit 2**. Mr. Murphy is not the registered agent of Lexington Trace LLC and not authorized to accept service on its behalf.

11. By all accounts, Complainant failed to serve the Complaint as required by law, and as a result, Complainant has failed to properly initiate a citizen’s enforcement proceeding against Respondent.

12. Respondent, having not been served as required by law, would be materially

prejudiced by improper service if it not granted its requested extension of time. Respondent only received the Complaint by US mail on January 5, 2023 and immediately filed this Motion.

13. Moreover, the Complaint is frivolous because, among other reasons: (1) it fails to state sufficient fact for a claim; (2) it seeks relief the Board does not have authority to grant, namely civil penalties for wholly past violations; and (3) it seeks improper relief.

14. Pursuant to 35 Ill. Admin. Code § 103.212(b), a respondent may move to dismiss a citizen's enforcement proceeding alleging the complaint is frivolous or duplicative. "Frivolous" means a "request for relief that the Board does not have authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief." *See* 35 Ill. Admin. Code § 101.202. Respondent has numerous meritorious reasons why the Formal Complaint fails as a matter of law.

15. Here, Respondent's request for to file a motion out of time and for extension of time is supported by good cause under 35 Ill. Admin. Code § 101.522 and is not being brought for the purpose of delay or for any other improper purpose. Respondent has good faith bases to challenge service of the Complaint and the sufficiency of same. Further, no party will suffer any prejudice as a result of Respondent's requested extension of time.

16. Accordingly, Respondent respectfully requests the Broad this motion pursuant to 35 Ill. Admin. Code § 103.212(b) out of time, and for an extension of time through and including January 30, 2023 to file its motion to dismiss.

WHEREFORE, Lexington Trace LLC respectfully requests that the Board enter an order as follows:

- A. Granting Respondent leave to file a Motion to Dismiss pursuant to 35 Ill. Admin. Code § 103.212(b); and

B. Granting Respondent an extension of time through and including February 6, 2023
to file a Motion to Dismiss; and

C. Such further and additional relief that the Board deems equitable and just.

Date: January 11, 2023

LEXINGTON TRACE LLC

By: /s/ Jason M Metnick

One of Its Attorneys

Jason M. Metnick
Michael K. Jameson
MELTZER, PURTILL & STELLE LLC
125 South Wacker Drive, Suite 2900
Chicago, Illinois 60606
(312) 987-9900
jmetnick@mpslaw.com
mjameson@mpslaw.com

COMPLAINANT:

PAUL CHRISTIAN PRATAPAS

RESPONDANT:

LEXINGTON TRACE BY LEXINGTON HOMES

PROOF OF SERVICE

Concerning: PAUL CHRISTIAN PRATAPAS FORMAL COMPLAINT

Case Name: ABOVE Case # IPCB 2023 060

Name of Paper(s) Served: FORMAL COMPLAINT, IPCB

Method of Service:

- First-Class Mail
- Registered Mail (Copy of Receipt Attached)
- Certified Mail (Copy of Receipt Attached)
- Electronic Service
- Personal Service
- After all due diligence, I was unable to locate and serve the targeted person(s).

Person Served: JACK MURPHY

Email Served: jmurphy@lexingtonchicago.com

City: _____ State: ILLINOIS Zip: _____

Phone No. : _____ Time of Service: 2:48PM

I, the messenger, swear and affirm, under the penalty of perjury, that I was 18 years of age or older at the time of delivery and I served the papers on the date of 11/18/2022

Name of Server: Paul Christian Pratapas Miles Traveled: _____

Fee: _____ Service Fee: _____

Incorrect Address Fee: _____ Total Fee: _____

Paul Christian Pratapas
Signature

11/18/2022
Date





Office of the Secretary of State Jesse White
ilsos.gov

Corporation/LLC Search/Certificate of Good Standing

LLC File Detail Report

File Number	07493754
Entity Name	LEXINGTON TRACE LLC
Status	ACTIVE

Entity Information

Principal Office
1731 N MARCEY ST SUITE 200
CHICAGO IL 606140000

Entity Type
LLC

Type of LLC
Domestic

Organization/Admission Date
Friday, 18 January 2019

Jurisdiction
IL

Duration
PERPETUAL

EXHIBIT

2

Agent Information**Name**

THOMAS P DUFFY

Address1515 E WOODFIELD RD STE 250
SCHAUMBURG , IL 60173**Change Date**

Thursday, 17 June 2021

Annual Report**For Year**

2023

Filing Date

00/00/0000

Managers**Name****Address**LEXINGTON HOMES L.L.C.
1731 N. MARCEY STREET, STE 200
CHICAGO, IL 60614**Series Name**

NOT AUTHORIZED TO ESTABLISH SERIES

[Return to Search](#)[File Annual Report](#)[Adopting Assumed Name](#)[Articles of Amendment Effecting A Name Change](#)[Change of Registered Agent and/or Registered Office](#)

(One Certificate per Transaction)

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Fri Dec 30 2022