

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PAUL CHRISTIAN PRATAPAS	)	
Complainant	)	PCB No. 2023-079
v.	)	
	)	
WINDING CREEK by PULTE HOMES,	)	
and CITY OF BATAVIA,	)	
Respondents.	)	

**APPEARANCE**

The undersigned, as attorney, enters the appearance of the Respondent, PULTE HOME COMPANY, LLC, improperly sued as “WINDING CREEK BY PULTE HOMES.”

By: /s/ Gregory M. Emry  
One of the Attorneys for Respondent,  
PULTE HOME COMPANY, LLC

Michael J. Maher ([mmaher@smbtrials.com](mailto:mmaher@smbtrials.com))  
J. A. Koehler. ([jkoehler@smbtrials.com](mailto:jkoehler@smbtrials.com))  
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Swanson, Martin & Bell, LLP  
330 North Wabash Avenue, Suite 3300  
Chicago, Illinois 60611  
312-321-9100/312-321-0990 (fax)  
Firm ID No. 29558

I certify that a copy of the within instrument was served on all parties who have appeared and have not heretofore been found by the Court to be in default for failure to plead.

/s/ Gregory M. Emry  
One of the Attorneys for Defendant,  
PULTE HOME COMPANY, LLC

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PAUL CHRISTIAN PRATAPAS	)	
Complainant	)	PCB No. 2023-079
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WINDING CREEK by PULTE HOMES,	)	
and CITY OF BATAVIA,	)	
Respondents.	)	

**RESPONDENT, PULTE HOMES', MOTION REQUESTING THE POLLUTION CONTROL BOARD NOT ACCEPT COMPLAINT AND/OR DISMISS THE COMPLAINT**

Respondent, PULTE HOME COMPANY, LLC (“Pulte Home”), improperly sued as “Winding Creek by Pulte Homes”, by and through its attorneys, SWANSON, MARTIN & BELL, LLP, pursuant to 35 Ill. Adm. Code §§ 103.212(b) and 101.506, respectfully moves the Illinois Pollution Control Board to not accept the Citizen’s Formal Complaint in this matter for hearing on the basis that Complainant never properly served Respondent and because the Complaint is frivolous, alleging wholly past violations for which private citizens lack authority to pursue. In support, Respondent states as follows:

**FAILURE TO PROPERLY SERVE RESPONDENT**

1. Respondent denies any claim that its actions or activities caused or allowed pollution or constitute a violation of Illinois law or regulations.
2. Pursuant to 415 ILCS 5/31(d)(1) and 35 Ill. Adm. Code § 101.202(b), the Board will not accept a complaint for hearing if the Board finds the complaint is “frivolous”, meaning the Board lacks the authority to grant the requested relief.
3. The Board should not accept this Complaint because Complainant failed to serve Respondent as required by 35 Ill. Adm. Code § 101.304.

4. 35 Ill. Adm. Code § 101.304(d) specifically provides that a proceeding is subject to dismissal for failure to comply with service requirements.
5. Although 35 Ill. Adm. Code § 101.304(c)(1) allows for service in several ways, Complainant's chosen method of service is via personal service, which is governed by 35 Ill. Adm. Code § 101.304(d). (*See* attached hereto as Exhibit A, for Complainant's Proof of Service.)
6. Complainant's "Documentation of Service" is improper and fails to supply required information necessary to give this Honorable Board jurisdiction over this matter or Complainant's Complaint.
7. With regards to Respondent Pulte Homes, the attached "Documentation of Service", acknowledges the lack of service, and furthermore fails provide any affidavit of proof of service. *See* Exhibit A.
8. For personal service on a corporation, Illinois requires delivery of the complaint to a registered agent or other individual authorized to receive the complaint. *See* 35 Ill. Adm. Code § 101.100(b) (applying the Illinois Code of Civil Procedure and the Illinois Supreme Court Rules when the Board's procedural rules are silent).
9. Complainant's "Documentation of Service" is inadequate.
10. A simple internet search of the Illinois Secretary of State shows the registered agent for Pulte Homes (of 3350 Peachtree Rd.. NE, STE 1500, Atlanta, GA 30326) at 801 Adlai Stevenson Drive Springfield, IL 62703. (*See* Pulte Homes, Registered Agent Information, attached as Exhibit B.)
11. Complainant's lack of service violates Illinois law.
12. This Honorable Board cannot proceed in this matter until service is perfected.

13. Because there is no proper service on Respondent, the Board should not accept Complainant's Complaint.

**WHOLLY PAST VIOLATION**

14. Respondent denies any claim that its actions or activities caused or allowed pollution or constitute a violation of Illinois law or regulations.
15. Pursuant to 415 ILCS 5/31(d)(1) and 35 Ill. Adm. Code § 101.202(b), the Board will not accept a complaint for hearing if the Board finds the complaint is "frivolous", meaning the Board lacks the authority to grant the requested relief.
16. Paragraph 6 of the Formal Complaint alleges wholly past violations, limited to Complainant stating he "Observed on 12/13/2011 at 11:13 PM following rainfall".
17. Paragraph 4 of the Formal Complaint alleges violations of 415 ILCS 5.12(a), 5.12(d) and IL. Admin Code Title 35, 204.141(b).
18. 415 ILCS 5.12(a) addresses water pollution identical to provisions of the Federal Clean Water Act, 33 U.S.C. 1251, *et.seq.*
19. The U.S. Supreme Court directly and clearly holds there is no standing for citizen suits where the relief addresses wholly past violations of the Clean Water Act. *Gwaltney of Smithfield, Ltd v. Chesapeake Bay Foundation, Inc.*, 484 U.S. 49 (1987).
20. In Illinois, citizens only possess authority to enforce statutes as specifically allowed and authorized by status. See *Glisson v. City of Marion*, 188 Ill. 2d 211, 222-23 (1999).
21. Specifically, 35 Ill Adm. Code § 103.204(c)(1) requires the complainant to identify "...[T]he provisions of the Act that Respondents *are alleged to be violating.*" (*emphasis added.*)

22. The language of 35 Ill. Adm. Code § 103.204(c)(1) unambiguously addresses current violations which are alleged to be ongoing—hence “*violating*—at the time the complaint is filed.
23. The only plausible interpretation for the regulations conjugation of the verb “to violate” into “*violating*” is by application of the present tense.
24. 35 Ill Adm. Code § 103.204(c)(1) is clear that complainants must identify actions Respondent is alleged “[T]o be *violating* . . .” when the complaint is filed. (*emphasis added*.)
25. Therefore, consistent with the U.S. Supreme Court’s holding in *Gwaltney* (supra), 35 Ill. Adm. Code § 103.204(c)(1) does not authorize private citizen actions alleging wholly past violations, such as alleged here.
26. Complainant’s suit is not brought by the State of Illinois, for which suits alleging past violations are authorized. *See, e.g., Modine Mfg. Co v. Pollution Control Bd.*, 193 Ill. App. 3d 643, 648 (2d. Dist. 1990) (fines for wholly past violation allowed where action was brought by Illinois EPA or Illinois Attorney General.)
27. This Board implicitly recognized that a private citizen cannot maintain actions for wholly past violations in *Environmental Law and Policy Center v. Freeman United Coal Mining Co. and Springfield Coal Co., LLC*, PCB 2011-002 (July 15, 2010), when the Board held that a failed permit transfer left the named respondent in (then) current violation of NPDES permit requirements. Further, in *Shelton v. Crown*, PCB 96-53 (Oct. 2, 1997), the Board denied a motion to dismiss, finding continued operation of equipment giving rise to the alleged violation. Both of these cases acknowledge that citizens may pursue

complaints for current and ongoing violations, which is the opposite of what Complainant alleges here.

28. The allegations here are clear: alleged, past violations on “12/13/2022”.

29. There are no allegations of continuing violation or injury.

30. Complainant’s Complaint should be dismissed.

WHEREFORE, for the foregoing reasons, Respondent, PULTE HOME COMPANY, LLC, respectfully moves the Illinois Pollution Control Board not to accept the Citizens’ Formal Complaint for hearing on the basis the Complaint is frivolous and/or the Complaint in this matter was improperly served.

**SWANSON, MARTIN & BELL, LLP**

/s/ Michael J. Maher/Jay Koeler  
Attorneys for Respondent,  
**PULTE HOME COMPANY, INC.**

Michael J. Maher ([mmaher@smbtrials.com](mailto:mmaher@smbtrials.com))  
J. A. Koehler. ([jkoehler@smbtrials.com](mailto:jkoehler@smbtrials.com))  
Gregory Emry ([gemry@smbtrials.com](mailto:gemry@smbtrials.com))  
**SWANSON, MARTIN & BELL, LLP**  
330 N. Wabash Ave., Suite 3300  
Chicago, IL 60611  
Phone: (312) 321-9100/Fax: (312) 321-0990

**DOCUMENTATION OF SERVICE**

**Note to the Complainant:** This Documentation of Service must accompany the Formal Complaint and the Notice of Filing. Once you have completed the Documentation of Service, the Formal Complaint, and the Notice of Filing, you must file these three documents with the Board's Clerk *and* serve a copy of each document on each respondent.

This form for the Documentation of Service is designed for use by a non-attorney and must be notarized, *i.e.*, it is an "affidavit" of service. An attorney may modify the form for use as a "certificate" of service, which is not required to be notarized.

**Affidavit of Service**

I, the undersigned, on oath or affirmation, state that on the date shown below, I served copies of the attached Formal Complaint and Notice of Filing on the respondent at the address listed below by one of the following methods: [*check only one—A, B, C, D, or E*]

A. \_\_\_\_ U.S. Mail or third-party commercial carrier with the recipient's signature recorded by the U.S. Postal Service or the third-party commercial carrier upon delivery. Attached is the delivery confirmation from the U.S. Postal Service or the third-party commercial carrier containing the recipient's signature and showing the date of delivery as \_\_\_\_\_ [month/date], 20\_\_\_. [*Attach the signed delivery confirmation showing the date of delivery.*]

B. \_\_\_\_ U.S. Mail or third-party commercial carrier with a recipient's signature recorded or to be recorded by the U.S. Postal Service or the third-party commercial carrier upon delivery. However, the delivery confirmation from the U.S. Postal Service or the third-party commercial carrier containing the recipient's signature is not available to me at this time. On \_\_\_\_\_ [month/date], 20\_\_, by the time of \_\_:\_\_ AM/PM, at \_\_\_\_\_ [*address where you provided the documents to the U.S. Postal Service or the third-party commercial carrier*], copies of the attached Formal Complaint and Notice of Filing were provided to the U.S. Postal Service or the third-party commercial carrier, with the respondent's address appearing on the envelope or package containing these documents, and with proper postage or delivery charge prepaid. [*Within seven days after it becomes available to you, file with the Board's Clerk the delivery confirmation—containing the recipient's signature and showing the date of delivery—and identify the Formal Complaint to which that delivery confirmation corresponds.*]

C. \_\_\_\_ Personal service and I made the personal delivery on \_\_\_\_\_ [month/date], 20\_\_, by the time of \_\_:\_\_ AM/PM.



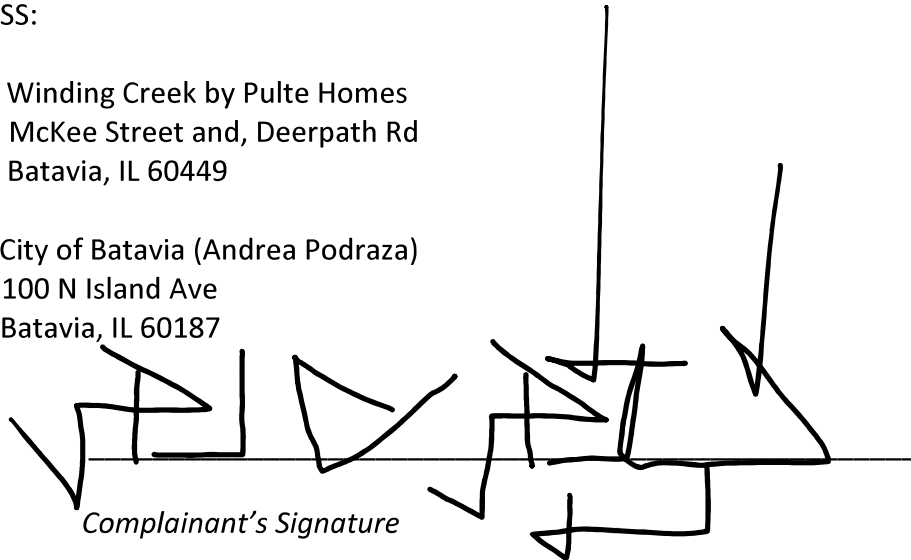
D. \_\_\_\_ Personal service and another person made the personal delivery. Attached is the affidavit of service signed by the other person (or the declaration of service signed by the process server) who made the personal delivery, showing the date of delivery as \_\_\_\_\_ [month/date], 20\_\_\_. [Attach the other person's signed affidavit or declaration showing the date of delivery.]

E. X Personal service and I will make the personal delivery. However, the affidavit of service is not available to me currently.

RESPONDENTS' ADDRESS:

**Name:** Winding Creek by Pulte Homes  
**Street:** McKee Street and, Deerpath Rd  
**City/State/Zip:** Batavia, IL 60449

**Name:** City of Batavia (Andrea Podraza)  
**Street:** 100 N Island Ave  
**City/State/Zip:** Batavia, IL 60187



Complainant's Signature

**Street:** 1330 E. Chicago Ave.

**City, State, Zip Code:** Naperville, IL 60540

**Date:** \_\_\_\_\_12/15/2022\_\_\_\_\_

Subscribed to and sworn before me

this \_\_\_\_\_ day

of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



Office of the Secretary of State Jesse White  
ilsos.gov

## Corporation/LLC Search/Certificate of Good Standing

### LLC File Detail Report

File Number	05999588
Entity Name	PULTE HOME COMPANY, LLC
Status	ACTIVE

Entity Information	
Principal Office	3350 PEACHTREE RD. NE, STE 1500 ATLANTA, GA 30326
Entity Type	LLC
Type of LLC	Foreign
Organization/Admission Date	Thursday, 5 January 2017
Jurisdiction	MI
Duration	PERPETUAL

Exhibit B

**Electronic Filing: Received, Clerk's Office 01/13/2023****Agent Information**

Name

ILLINOIS CORPORATION SERVICE COMPANY

Address

801 ADLAI STEVENSON DRIVE

SPRINGFIELD , IL 62703

Change Date

Thursday, 5 January 2017

**Annual Report**

For Year

2023

Filing Date

Monday, 5 December 2022

**Managers**

Name

Address

SHELDON, TODD N.

SUITE 1500 3350 PEACHTREE ROAD NE

ATLANTA, GA 30326

**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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Mon Dec 19 2022