

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

TIMBER CREEK HOMES, INC.	)	
	)	
Petitioner,	)	
	)	PCB No. 14-99
v.	)	(Pollution Control Facility
	)	Siting Appeal)
VILLAGE OF ROUND LAKE PARK,	)	
ROUND LAKE PARK VILLAGE BOARD	)	
And GROOT INDUSTRIES, INC.	)	
	)	
Respondents.	)	

NOTICE OF FILING

**TO: SEE ATTACHED SERVICE LIST**

Please take notice that on February 18, 2014 the undersigned caused to be filed with the clerk of the Illinois Pollution Control Board **RESPONDENT ROUND LAKE PARK VILLAGE BOARD'S REPLY TO PETITIONER'S CONSOLIDATED RESPONSE TO RESPONDENTS' MOTIONS TO DISMISS**, a copy of which is attached hereto.

Respectfully Submitted,

On behalf of Round Lake Park Village Board



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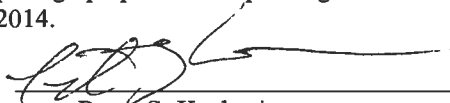
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The undersigned, an attorney, certifies that he served true and correct copies of the attached **RESPONDENT ROUND LAKE PARK VILLAGE BOARD'S REPLY TO PETITIONER'S CONSOLIDATED RESPONSE TO RESPONDENTS' MOTIONS TO DISMISS**, on the parties as above addressed by mailing a copy to each person to whom it is directed in a properly addressed envelope, postage prepaid and depositing it in the U.S. Mail in Gurnee, Illinois, 60031, on the 18<sup>th</sup> day of February, 2014.



Peter S. Karlovics



**II. PETITIONER'S RESPONSE IS AN ATTEMPT TO JUSTIFY PLEADING CONCLUSIONS IN PLACE OF FACTS**

In its response, Petitioner argued against the relevancy of the cases cited by Respondents establishing the requirement of fact pleading in Illinois, and thereafter, cited the case of *American Disposal Services of Illinois v. County Board of McLean County*, et al., 2012 WL 586817, PCB 11-60 (February 16, 2012)...which also recognizes the requirement of fact pleading in Illinois. Nothing in *American Disposal* conflicts with the cases cited by Respondents, nor does *American Disposal* allow for pleading of conclusions. In fact, *American Disposal* restates the requirement of fact pleading in similar language to the cases cited by Respondents.

Respondent Round Lake Park Village Board ("RLPVB"), in its Motion to Strike and Dismiss, cited caselaw which held that "Illinois is a fact-pleading State, and accordingly, Plaintiff is required to set out the ultimate facts which support his or her cause of action and legal conclusions unsupported by allegations of specific facts are insufficient." *La Salle Nat. Trust, N.A. v. Village of Mettawa*, 249 Ill.App.3d 550, 557, 186 Ill.Dec. 665, 671, 616 N.E.2d 1297, 1303 (2<sup>nd</sup> Dist. 1993); *Estate of Johnson v. Condell Memorial Hospital*, 119 Ill.2d 496, 509-10, 117 Ill.Dec. 47, 52, 520 N.E.2d 37, 52 (1988); *People of the State of Illinois v. Michel Grain Company Inc. et al.*, 1996 WL 742730 (Ill.Pol.Control.Bd). Further, RLPVB cited caselaw which held that "Notice pleading is not sufficient in Illinois, and allegations that are too conclusory to meet the fact pleading requirements of Illinois practice must be dismissed." *Mueller v. Board of Fire and Police Commissioners of the Village of Lake Zurich*, 267 Ill.App3d 726, 729, 205 Ill.Dec. 304, 308, 643 N.E.2<sup>nd</sup> 255, 259 (2<sup>nd</sup> Dist. 1994).

From the motions and responses, the parties appear to agree that the law in Illinois requires pleading of facts, and Petitioner has failed to cite any authority that authorizes pleading conclusions.

**III. IN MAKING ITS DECISION ON THE MOTIONS TO DISMISS, THE BOARD SHOULD CONSIDER WHETHER THE ALLEGATIONS IN TCH'S PETITION CONSTITUTE PLEADINGS OF FACTS, OR PLEADINGS OF CONCLUSIONS.**

One of the definitions provided in Black's Law Dictionary for the term "fact" is as follows:

**"Fact.** (15c) .... 2. An actual or alleged event or circumstance, as distinguished from its legal effect, consequence, or interpretation <the jury made a finding of fact>..." *Black's Law Dictionary* 669 (9th ed. 2009)

In Paragraph 7 of the PETITION FOR REVIEW, Petitioner alleged:

"7. The local siting review procedures, hearings, decision, and process, individually and collectively, were fundamentally unfair in at least two respects. First, members of the Village Board prejudged the Application and were biased in favor of Groot. Second, the hearing officer, appointed to oversee the hearing process and render proposed findings and conclusions, usurped the authority of the Village Board by making determinations that were beyond the scope of his authority and that were solely the province of the Village Board. The Village Board in turn failed in its statutory duty to make those determinations."

No part of the allegations in Paragraph 7 of the PETITION constitute an "an actual or alleged event or circumstance." The allegation that "members of the Village Board prejudged the Application and were biased in favor of Groot" is an "effect, consequence or interpretation" of what actually occurred at the "hearings, decision and process," and not the occurrence itself. Another "effect, consequence or interpretation" of what actually occurred at the "hearings, decision and process" is the allegation that "the hearing officer ... usurped the authority of the Village Board by making determinations that were beyond the scope of his authority and that

were solely the province of the Village Board” and that the “Village Board in turn failed in its statutory duty to make those determinations.”

Nothing in Paragraph 7 alleges an actual event. The PETITION does not allege what actually occurred at the hearing, and instead, alleges the “effects, consequences or circumstances” resulting from the occurrences at the siting hearing. The petition is silent as to what actions or inactions occurred on the part of members of the Village Board that would allow Petitioner to conclude that there was prejudgment of the Application or bias in favor of Groot. The pleading does not even allege which members of the Village Board committed the supposed acts of bias or prejudgment. Finally, the PETITION does not allege what determinations the hearing officer made, resting on the conclusion that the determination was beyond the scope of his authority, and that it should have been made by the Village Board.

In its Response, TCH compares its Paragraph 7 to the fundamental fairness pleading in *American Disposal*, which alleged in pertinent part:

“Finally, the local siting review procedures, hearings decision and process, individually and collectively, were fundamentally unfair due to, at a minimum, the unavailability of the public record...” (Underline supplied)

TCH’s allegation of conclusion in Paragraph 7 is easily distinguishable from the allegation of fact in *American Disposal*. The above fundamental fairness allegation in *American Disposal* did allege a specific occurrence, which was that the public record was not available. The unavailability of the record is an allegation of a fact, while TCH’s allegation of bias and prejudgment of members of the Village Board and wrongful determinations by the Hearing Officer is a conclusion, which has no basis in any factual allegation of any occurrence at the “hearings, decision and process.”

In Paragraph 8 of the PETITION FOR REVIEW, Petitioner alleged:

“8. In addition, the Village Board majority's finding that Groot met its burden of proving the nine statutory siting criteria, subject to certain conditions, was against the manifest weight of the evidence, and contrary to existing law, with respect to criteria I (need), ii (public health, safety and welfare), iii (character of the surrounding area and property values), vi (traffic) and viii (consistency with county solid waste plan).”

As with Paragraph 7 of the PETITION, no part of the pleading in Paragraph 8 constitutes an “an actual or alleged event or circumstance.” TCH did not allege any fact in Paragraph 8 as to what occurred at the hearing that would serve as the basis for the conclusion that the findings were against the weight of the evidence.

To allow Paragraph 7 and Paragraph 8 to stand as acceptable allegations in this case is to allow conclusion pleading in the review process of local siting hearings.

#### **IV. ALLOWING VAGUE CONCLUSION PLEADINGS DOES AN INJUSTICE TO ALL RESPONDENTS**

Courts are to construe pleadings liberally, with the view to do substantial justice between the parties. Accordingly, no pleading is defective in substance if it contains facts which reasonably inform the opposite party of the nature of the charge to be answered. *Keller v. State Farm Insurance Company*, 180 Ill.App.3d 539, 546, 129 Ill.Dec. 510, 514, 536 N.E.2d 194, 198 (5<sup>th</sup> Dist. 1989); *Disc Jockey Referral Network, Ltd. v. Ameritech Pub. of Illinois*, 230 Ill.App.3d 908, 912, 172 Ill.Dec. 725, 728, 596 N.E.2d 4, 7 (1<sup>st</sup> Dist. 1992)

In this case, TCH's broad and vague conclusory pleadings leave Respondents guessing as to the nature of its claim. It puts Respondents at a disadvantage to require them to guess as to which Village Board members were biased, what those Village Board members did that was biased or prejudicial toward Groot, what in the evidence failed to support or contradicted the

local siting decision, or what determinations of the Hearing Officer were improper. TCH's PETITION provides no facts to reasonably inform the Respondents of the basis of its case.

**V. TCH FAILED TO ALLEGE BIAS AND PREJUDICE IN ITS PETITION FOR REVIEW AND THEREFORE FORFEITED ITS CLAIM.**

"...(T)he law is clear that a disqualifying claim of bias against a specific board member must be raised at the original siting hearing, and that any such claim of bias not promptly raised at the original siting hearing is forfeited." *Fox Morraine, LLC, v United City of Yorkville*, 960 N.E.2d 1144, 1168, 356 Ill.Dec. 21, 45 (2<sup>nd</sup> Dist. 2011). Nowhere in *Fox Morraine* does the court use the term "waiver." The court used the term "forfeit."

In order to avoid that forfeit of the claim of bias and prejudice, it is a prerequisite for TCH to raise that claim at the original hearing. See *Fox Morraine, LLC, v United City of Yorkville*, 960 N.E.2d at 1168, 356 Ill.Dec. at 45.

One of the definitions provided in Black's Law Dictionary for the term "forfeiture" is as follows:

"Forfeiture...(14c) .... 2. The loss of a right, privilege, or property because of a crime, breach of obligation, or neglect of duty..." *Black's Law Dictionary* 722 (9th ed. 2009)

Neglecting to raise the claim of bias and prejudice at the original siting hearing does not result in TCH consciously waiving its right to raise the claim; that neglect of duty to raise the claim at the original siting hearing causes a loss of right to make the claim.

Raising the claim of bias and prejudice at the original siting hearing is a prerequisite to raising the claim during appeal. Since TCH failed to allege in its PETITION FOR REVIEW that any specific Village Board member was biased in favor of Groot Industries, Inc., and further,



that it raised the disqualifying claim of bias or prejudice against a specific Village Board member at the original siting hearing, TCH forfeited its right to raise the claim.

WHEREFORE, Respondent, Round Lake Park Village Board, respectfully requests that the Pollution Control Board enter an order striking and dismissing the PETITION FOR REVIEW OF DECISION CONCERNING SITING OF A NEW POLLUTION CONTROL FACILITY and grant Respondent, Round Lake Park Village Board, such further and other relief as this Board deems just and proper.

Respectfully Submitted,  
Village Board of Round Lake Park,  
Respondent

By: 

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