

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

TIMBER CREEK HOMES, INC., )  
 )  
 ) Petitioner )  
 ) V. )  
 ) No. PCB 2014-099 )  
 )  
 ) VILLAGE OF ROUND LAKE PARK, )  
 ) ROUND LAKE PARK VILLAGE BOARD ) (Pollution Control Facility Siting Appeal)  
 ) and GROOT INDUSTRIES, INC. )  
 )  
 ) Respondents )

**RESPONDENT ROUND LAKE PARK VILLAGE BOARD'S  
REPLY TO PETITIONER'S RESPONSE TO RESPONDENT'S  
DISCOVERY OBJECTIONS**

Now comes the Respondent, Round Lake Park Village Board, by its attorneys, the Law Offices of Rudolph F. Magna, and hereby submits its RESPONDENT ROUND LAKE PARK VILLAGE BOARD'S REPLY TO PETITIONER'S RESPONSE TO RESPONDENT'S DISCOVERY OBJECTIONS.

Petitioner Timber Creek Homes, Inc.'s ("TCH") broad discovery request shows the danger of allowing broad conclusion pleading. Such vague pleading leads to the potential of abuse in the process, and makes a mockery of the purpose of Pollution Control Board review, which should be a review of the record to ensure that the local siting process was proper, a determination as to whether the conclusions of the Village Board were supported by the evidence, and a determination whether the proceedings were fundamentally fair.

In its response, TCH continues to use the *American Disposal Services v. Illinois* case to support its view that vague conclusionary pleading is proper. See *American Disposal Services of Illinois, Inc. v. County Board of McLean County, et al.*, 2012 WL 586817, PCB 11-60

(February 16, 2012) (hereinafter "*ADS v. Illinois*"). While such broad pleading may be appropriate for that portion of this case in which the process involves a simple review of the record, it is fundamentally unfair to allow such pleading in that portion of the case where the parties will be litigating and introducing evidence. If the PCB does not require some level of specificity in that portion of the case in which new evidence will be introduced, all of the Respondents will be at a disadvantage in attempting to chase down and answer TCH's novel conspiracy theories.

The distinction between *ADS v. Illinois* and the present case is clear. The Petitioner in the *ADS v. Illinois* clearly articulated the basis of its claim of unfairness by stating a specific fact: The record was not available. The Respondents in that case were well informed of the nature of the claim, and could prepare a defense to that allegation.

In this case, TCH only provides the broad conclusion that there was some type of bias on the part of the some part or all of the Village Board, and that the hearing officer made findings that were the responsibility of the Village Board. Respondents have no idea what decision the board members failed to make, how many or which of the board members were biased, who those Village Board members might be, what the nature of the bias was, or what specific circumstance or occurrence in the course of the hearing that caused TCH to come to this conclusion.

Members of the Village Board demonstrated their intent to base their decision on the evidence provided at the siting hearing by their continuous attendance at the hearings. (See *9/20/2013 Hearing Transcript 3:3-8, Record of Proceedings C02533*; *9/23/2013 Hearing Transcript 4:21-24, Record of Proceedings C02575*; *9/23/2013 Hearing Transcript 28:14-15, Record of Proceedings C02599*; *9/24/2013 Hearing Transcript 6:6-7, Record of Proceedings*

*C02882; 9/24/2013 Hearing Transcript 2:2-6, Record of Proceedings C03508; 9/25/2013 Hearing Transcript 2:22-24, Record of Proceedings C03118; 9/25/2013 Hearing Transcript 3:9-11, Record of Proceedings C03258; 9/26/2013 Hearing Transcript 2:20-14, Record of Proceedings C03263; 9/26/2013 Hearing Transcript 3:8-11, Record of Proceedings C03354; 10/1/2013 Hearing Transcript 2:20-24, Record of Proceedings C03359; 10/1/2013 Hearing Transcript 3:15-19, Record of Proceedings C03742.003; 10/2/2013 Hearing Transcript 58:5-7, Record of Proceedings C03800.*

As the Hearing Officer Luetkehans noted at the end of the hearing:

“...And finally, I do wish to really thank the Village Board. We have had a large number of the Village Board members here on a daily basis. I don't think we have ever had less than two or three at some very - - not the easiest times for everyone to show up. You have been very attentive and I think all parties I think mentioned it in their closings and they are all very true, the attentiveness of this Village Board has been exemplary and you should be proud of yourselves and the people who you represent should be proud of yourselves as well...” (*See Statement of Hearing Officer Philip Luetkehans, 10/3/2013 Hearing Transcript 115:21-24 and 116:1-8, Record of Proceedings C03857-C03858*)

Even with the good attendance by the members of the Village Board and their attentiveness to the evidence presented, TCH directly transmitted its intent to abuse the PCB appeal process in its final comments to the Village Board at the local siting hearing. In a public statement at the close of the hearing, Larry Cohn, owner of TCH, made the following threat and revealed the true intent of TCH in an appeal to the PCB:

“...if the Village Board votes yes and approves the petition, that decision will be appealed and it will be appropriate and necessary as part of the appeal process for every member of the present

board of trustees to be required to appear and testify in a deposition to ascertain the facts of what has been taking place in your village with regard to this matter..."

*(See Statement of Larry Cohn, 10/3/2013 Hearing Transcript 107:22-24 and 108:1-5, Record of Proceedings C03849-C03850)*

While it is clear that the fundamental fairness issue raised by TCH will require some additional evidence to be introduced, if the PCB allows broad overreaching discovery, based on fuzzy conclusionary pleading, this review process has the potential to devolve to a Spanish Inquisition of sorts, punishing underpaid part time Village Board members for their good attendance at the hearings with baseless accusations of bias, and requiring their attorney to chase a shotgun attack of allegations without the ability to prepare for their defense.

The extensive discovery request of TCH is the fulfillment of the threat made by Mr. Cohn at the hearing. If the PCB allows the pleading of fundamental fairness to remain vague and hazy, and the discovery requests to remain unrestricted and extensive, the process will deteriorate from a search for the truth to a punitive retaliatory exercise by TCH against Village Board members who, by their actions, demonstrated a desire to hear evidence and to base their decision upon that evidence.

WHEREFORE, Respondent, Round Lake Park Village Board, respectfully requests that the Pollution Control Board enter an order striking the above Requests to Produce and Interrogatories, or in the alternative, limit such requests and interrogatories so as not to include privileged information pertaining to attorney client privilege and limit the requests so as not to include any information outside of the Village Board's consideration of Groot's Application for Local Siting Approval for the Lake Transfer Station, 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: *Peter S. Karlovics*  
Peter S. Karlovics,  
Attorney for the  
Village Board of Round Lake Park

The Law Offices of Rudolph F. Magna 110560  
Peter S. Karlovics # 6204536  
P.O. Box 705  
Gurnee, Illinois 60031  
(847) 623-5277