

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**NOTICE OF FILING**

PLEASE TAKE NOTICE that on March 3, 2014, there was filed electronically Respondent, GROOT INDUSTRIES, INC.'S RESPONSE TO PETITIONER'S OBJECTIONS TO DISCOVERY REQUESTS, a copy of which is hereby attached and served upon you.

Dated: March 3, 2014 Respectfully submitted,

On behalf of GROOT INDUSTRIES, INC.

/s/ Richard S. Porter

Richard S. Porter  
One of Its Attorneys

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**GROOT INDUSTRIES, INC.'S RESPONSE**  
**TO PETITIONER'S OBJECTIONS TO DISCOVERY REQUESTS**

NOW COMES the Respondent, Groot Industries, Inc. ("Groot"), in response to the objections of Petitioner Timber Creek Homes, Inc. ("TCH") to Groot's discovery requests, and states as follows:

TCH's objection to Request to Admit number 11 and Interrogatory number 20 is based almost entirely on the incorrect premise that it was not "required" to make a motion regarding fundamental fairness in the underlying proceeding, that it was impossible for TCH to do so, and therefore TCH should not be required to respond to Groot's requests regarding any such motion. TCH's objection implicitly answers Groot's Requests to Admit and Interrogatories regarding whether TCH made such a motion; it is obvious based on the tenor of TCH's objection that it did not so move. However, TCH should be required to answer the Interrogatories and Requests to Admit and affirmatively admit such fact.

TCH first argues that the Round Lake Park ordinance governed the procedure of the siting hearing and made no provision for such a motion. Therefore, according to TCH's flawed logic, it could not have so moved. However, the Round Lake Park ordinance was not the sole authority governing the procedure of the hearing. The Illinois Environmental Protection Act,

Section 39.2, sets forth minimum procedural requirements for a pollution control facility siting hearing, including a requirement that the hearing comport with requirements of fundamental fairness.

Further, even if the Ordinance did not explicitly provide a procedure for a motion regarding fundamental fairness, the hearing officer did, in fact, present such an opportunity to TCH. It was therefore clearly not impossible for Petitioner to make a motion; it simply chose not to. The PCB has upheld cases in which divergence from the proceedings set forth in a local siting hearing actually afforded petitioners *more* process than they were entitled to, as was the case here. *See Stop the Mega-Dump v. County Board*, PCB No. 10-103, 2011 WL 986687 (Mar. 17, 2011). Indeed, in *Stop the Mega-Dump*, the petitioners did preserve their claim of fundamental fairness by making a specific motion during the siting proceeding. Here, the hearing officer specifically asked during the siting hearing whether TCH was making a motion, and TCH's counsel responded that it was not making such a motion. TR 9/25/13B at 120. Groot should be allowed to seek the discovery necessary to establish a record for responding to TCH's claims of lack of fundamental fairness. Clearly the failure to make any motion regarding the fundamental fairness of the proceedings is, at a minimum, a factor to be considered by the IPCB.

The legal significance of TCH's failure to make a motion is something to be debated in dispositive motions, or at the ultimate hearings in this case, but TCH should be required to respond to discovery regarding the facts underlying its allegations of fundamental fairness, including whether and how it allegedly raised the issue in the proceeding below.

TCH next argues that it need not respond to Groot's requests regarding its failure to make a motion regarding the fundamental fairness of the underlying proceeding because the Requests do not seek facts as authorized by Section 101.618 of the Illinois Administrative Code. Despite

Petitioner's rather disingenuous protests, Groot is not inquiring as to "the availability and necessity of such a motion," but is merely inquiring into the *fact* of whether such a motion was made. Groot has set forth its position regarding the significance of Petitioner's failure to preserve its fundamental fairness claim in its Motion to Dismiss. If the Motion is granted, then Petitioner need not respond to Groot's discovery requests because they would be irrelevant. In the interim, however, Groot is entitled to responses to the requests objected to by Petitioner.

As to Groot's Interrogatory numbers 24 and 25 and Production Request number 13, the Respondent is entitled to discover the witnesses and exhibits to be relied upon by Groot at the upcoming hearing. By statute there is a very limited time-frame to disclose witnesses and testimony as a decision generally must be made by the IPCB within 120 days. If TCH had any basis for bringing this action it must disclose that basis now by identifying the witnesses, testimony and exhibits upon which it intends to rely. If there is any privilege asserted for specific information the date and nature of the information must still be identified. There is no work-product privilege for disclosing one's intended exhibits and testimony. It is likely that TCH simply has no evidence to support the siting appeal and rather than admit this fact it has instead raised this specious objection. The work-product privilege only protects notes and memoranda which disclose an attorneys' opinions, theories and conclusions, but it does not protect material and relevant evidentiary facts from the truth-seeking discovery process. *Monier v. Chamberlain*, 221 N.E.2d 410, 35 111.2d 351 (Ill.S.Ct. 1966).

WHEREFORE, Respondent Groot Industries Inc. respectfully requests an order requiring Petitioner to respond to each of its discovery requests.

Dated: March 3, 2014

Respectfully submitted,

On behalf of GROOT INDUSTRIES, INC.

/s/ Richard S. Porter

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One of Its Attorneys

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**AFFIDAVIT OF SERVICE**

STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF WINNEBAGO    )

The undersigned certifies that on **March 3, 2014**, a copy of the foregoing **Notice of Filing and Groot Industries, Inc.'s Response to Petitioner's Objections to Discovery Requests** was served upon the following:

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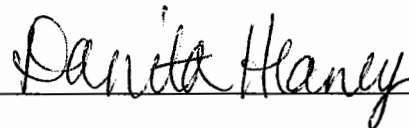
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