

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 April 19, 2014 the undersigned caused to be filed electronically with the clerk of the Illinois Pollution Control Board **RESPONDENT ROUND LAKE PARK VILLAGE BOARD'S RESPONSE TO PETITIONER'S MOTION FOR EXPEDITED REVIEW OF HEARING OFFICER ORDER**, a copy of which is attached hereto.

Respectfully Submitted,

On behalf of Round Lake Park Village Board

Peter S. Karlovics

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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
RESPONSE TO PETITIONER'S MOTION FOR EXPEDITED REVIEW
OF HEARING OFFICER ORDER**

Now comes the Respondent, Round Lake Park Village Board ("RLPVB"), by its attorneys, the Law Offices of Rudolph F. Magna, and hereby submits its Response to Petitioner's Motion for Expedited Review of Hearing Officer Order.

On April 8, 2014, Petitioner Timber Creek Homes, Inc. ("TCH") issued a subpoena to Derke J. Price ("Mr. Price") to appear on April 8, 2014 for a deposition. On April 9, 2014, RLPVB filed a motion to quash subpoena of Mr. Price. After reviewing arguments of the parties, Hearing Officer Brad Halloran granted RLPVB's motion on April 17, 2014.

The law is clear that "The hearing officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance, may quash or modify the subpoena if it is *unreasonable or irrelevant...*" (see 35 Ill. Adm. Code 101.622 (d)) and that "The hearing officer *will* deny, limit or condition the production of information when necessary to prevent *undue delay, undue expense, or harassment...*" (see 35 Ill. Adm. Code 101.614).

TCH has been given three (3) opportunities (PETITIONER'S CONSOLIDATED RESPONSE TO RESPONDENTS' MOTION TO QUASH SUBPEONA, PETITIONER'S CONSOLIDATED RESPONSE TO RESPONDENTS' MOTIONS FOR LEAVE TO FILE REPLIES, and PETITIONER'S MOTION FOR EXPEDITED REVIEW OF HEARING OFFICER ORDER) to show the possible relevancy of a deposition of Mr. Price, and has failed to make an adequate offer of proof as to what relevant information TCH would obtain by such a deposition.

In Paragraph 6 of its motion, TCH makes the incredible claim that it "...is clear that Karlovics, as attorney for the Village Board, conveyed confidential information to Price – information so sensitive and of such a nature, that Price not only had to withdraw from consideration as the hearing officer, but had to insulated himself from any contact with attorneys representing an opponent to the proposed transfer station..." Although TCH attempts to draw speculative connections between Mr. Price and this case through desperate suggestions that he might have received some type of unspecified confidential information, the record is empty as to any specific fact that would back such speculation. As Hearing Officer Halloran noted in his order granting RLPVB Motion to Quash: "...Mr. Price was not the hearing officer and there (is) no evidence, as opposed to supposition, that his testimony would provide any relevant information or lead to and relevant information. TCH offers only speculation in support of its claim that Mr. Price must necessarily possess such information because he withdrew from consideration for appointment as hearing officer and was "walled off" from other attorneys at his firm representing the Village of Hainesville. That is not a reasonable inference from the relevant facts concerning Mr. Price's prospective role as hearing officer – a role that he never assumed ..."

TCH admits in Paragraph 3 of its Motion for Expedited Review (“Motion”) that Mr. Price’s only connection to this case is that he was “selected to serve as the hearing officer for the underlying siting proceeding, although he had not yet been formally retained.” TCH did not allege that Mr. Price was actually an advocate for any party in this case. After admitting that Mr. Price’s only connection to this case is that he was considered for appointment to the position of hearing officer, TCH makes the incredible argument that the only possible reason that Mr. Price could withdraw from the case is because he “screened himself” to comply with Rule 1.7(a) of the Illinois Rules of Professional Conduct (“RPC”) (pertaining to a conflict of interest as an advocate for another party other than the Village of Hainesville). TCH argues that Mr. Price absolutely could not have resigned and screened himself from the attorneys in his firm in compliance with Rule 1.12 of the RPC (as a third party neutral as a candidate for hearing officer).

Rule 1.12 of the RPC provides in pertinent part:

“(a) Except as stated in paragraph (d), a *lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral*, unless all parties to the proceeding give informed consent.

* * *

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

- (1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and*
- (2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule.*

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.” (emphasis supplied)

In the June 27 email from Mr. Price, attached as Exhibit “A” to its motion, Mr. Price was making it clear to all parties involved that, even though he was not formally retained by the

Village of Round Lake Park (“VRLP”) as a hearing officer (third party neutral), he was refraining from any contact with the attorneys of his firm who represent the Village of Hainesville, based upon the fact that he was in discussions with the RLPVB attorney to be appointed hearing officer for the local siting hearing in this case. Nothing in the subject June 27th email points to Mr. Price possessing confidential information, or to Mr. Price representing any party in the case as an advocate.

If Mr. Price’s actions in recusing himself was based upon Rule 1.7 of the RPC, as TCH suggests, he would be possessing confidential information that he could not disclose to the PCB. Rule 1.6(a) of the RPC entitled “Confidentiality of Information” provides in pertinent part that:

“(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent...”

Therefore, even if Mr. Price possessed confidential information from the Village Round Lake Park, Mr. Price remains irrelevant to this case because he could not ethically disclose any such information.

It is clear that Mr. Price was *not* basing his recusal from the position of hearing officer and screening from the other attorneys in his firm based on the supposed possession of confidential information as an advocate for one of the parties to this case. Mr. Price was following the provisions of Rule 1.12 in his action to screen himself from any participation in this case based on his role as a third party neutral being considered for hearing officer during discussions with the RLPVB attorney, which is the only way the attorneys in his firm could continue to represent the Village of Hainesville, should it have chosen to object (Hainesville eventually chose not to object).

Further, it is interesting to note that in his June 27th email, Mr. Price stated that “the July 9 meeting (between the parties) is probably unlikely but I leave that to Peter (Karlovics).”

Attached to this response as Exhibit "A" is an email from Mr. Price dated June 24, 2013, which TCH neglected to attach to its Motion, which shows part of Mr. Price's involvement in this case as a third party neutral, contacting the parties to set up a pre-hearing conference. As demonstrated by Exhibit "A", Mr. Price personally and substantially participated as a third party neutral.

After having an extensive opportunity to show the relevancy of a person who has no connection to this case, other than that he was NOT appointed hearing officer, TCH has failed to provide any connection of Mr. Price to this case that would warrant his deposition.

WHEREFORE, Respondent, Round Lake Park Village Board, respectfully requests that **PETITIONER'S MOTION FOR EXPEDITED REVIEW OF HEARING OFFICER ORDER** be denied, and Respondent, Round Lake Park Village Board be granted such further and other relief as deemed 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

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July 9th

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From: Price, Derke <DPrice@ancelglink.com>
To: glenn <glenn@sechenlawgroup.com>; chelsten <chelsten@hinshawlaw.com>; 'Larry Clark'
<larymclark55@sboglobal.net>; 'Peter Karlovics' <pkarlovics@aol.com>
Subject: July 9th
Date: Mon, Jun 24, 2013 5:02 pm

Gentlemen,

I would like us to convene the first of what is sure to be several pre-hearing conferences concerning logistics (after more appearances roll in, we will need to have another prehearing conference at least). I have reserved the Council Chambers at Round Lake Park Village Hall for 9 am on 7/9. I would like to confirm that there are no objections to the location and proposed dates for the hearing. By my count, day 90 is Thursday September 19 and I am happy to have the initial housekeeping hearing that night and start testimony the next day and then go into the next week as necessary. I will arrange a conference call-in if you cannot attend in person.

Your thoughts will be welcome on the following matters:

Opening statements?

The proposed location (Round Lake Beach Civic Center)?

Anticipated length of testimony and number of experts?

Hearings during the day (the siting ordinance is silent; my preference is to work during the day just like they do at the courthouse)?

Attendance by the Village Board (again silent as to any attendance requirement)?

Public comment sessions following the testimony portion of the hearing -- to be conducted at night?

Please confirm your attendance and let me know if you need the conference call. Thank you sirs.

Derke J. Price, Partner

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AFFIDAVIT OF SERVICE

The undersigned certifies that on April 19, 2014 a copy of the foregoing **Notice of Filing** and **RESPONDENT ROUND LAKE PARK VILLAGE BOARD'S RESPONSE TO PETITIONER'S MOTION FOR EXPEDITED REVIEW OF HEARING OFFICER ORDER** were served upon the following:

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