

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 May 13, 2014 the undersigned caused to be filed electronically with the clerk of the Illinois Pollution Control Board **RESPONDENT ROUND LAKE PARK VILLAGE BOARD'S AND RESPONDENT VILLAGE OF ROUND LAKE PARK'S MOTION TO RECONSIDER HEARING OFFICER'S ORDER DATED MAY 12, 2014**, a copy of which is attached hereto.

Respectfully Submitted,

On behalf of Round Lake Park Village Board

Peter S. Karlovics
Peter S. Karlovics

Peter S. Karlovics #6204536
The Law Offices of Rudolph F. Magna #110560
495 N. Riverside Dr., Ste. 201
PO Box 705
Gurnee, IL 60031

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 AND RESPONDENT
VILLAGE OF ROUND LAKE PARK’S MOTION TO
RECONSIDER HEARING OFFICER’S ORDER DATED MAY 12, 2014**

Now come the Round Lake Park Village Board (“RLPVB”) and the Village of Round Lake Park (“VRLP”) move the Hearing Officer to reconsider his order of May 12, 2014 and support thereof states as follows:

1. In an order dated May 12, 2014, Hearing Officer Brad Halloran reviewed sixty (60) emails in a Privilege Log tendered by RLPVB, and additioand ruled that the RLPVB failed to establish an attorney-client privilege in the disclosure of emails, focusing on whether RLPVB established a “control group” under the analysis provided by *Consolidation Coal Co. v. Bucyrus-Erie*, 89 Ill.2dn 103, 117-18, 432 N.E.2d 250, 256 (1991).

2. The “control group” is defined as “top managers who have the ability to make final decisions.” *Consolidation Coal Co. v. Bucyrus-Erie*, 89 Ill.2dn 103, 117-18, 432 N.E.2d 250, 256 (1991)

3. 65 ILCS 5/3.1-45-5 provides that the powers of a Village are exercised by its Board of Trustees. Specifically, 65 ILCS 5/3.1-45-5 provides:

“65 ILCS 5/3.1-45-5. Composition; manner of acting. The *board of trustees shall consist of the president and trustees* and, except as otherwise provided in this Code, shall exercise the same powers and perform the same duties as the city council in cities. *It shall pass ordinances, resolutions, and motions* in the same manner as a city council. The president of the board of trustees may exercise the same veto power and powers in Section 3.1-40-30, and with like effect, as the mayor of a city. The trustees may pass motions, resolutions, and ordinances over the president's veto in like manner as the aldermen of a city council.” (*Emphasis supplied*)

4. 65 ILCS 5/3.1-35-90 provides that the Village Clerk is the keeper of records of the Village. Specifically, 65 ILCS 5/3.1-35-90 provides in pertinent part:

“§ 3.1-35-90. Clerk; duties.

(a) The *municipal clerk shall keep the corporate seal*, to be provided by the corporate authorities, *and all papers belonging to the municipality* the custody and control of which are not given to other officers. The clerk shall attend all meetings of the corporate authorities including executive sessions and keep a full record of their proceedings in the journal...” (*Emphasis supplied*)

5. For the RLPVB and VRLP, the control group pursuant to 65 ILCS 5/3.1-45-5 and 3.1-35-90 are the village president, village trustees, and village clerk.

6. Further, it is well settled that the attorney-client privilege applies to communications between a corporation's in-house counsel and outside counsel. *Hertzog, Calamari & Gleason v. Prudential Insurance Company of America*, 850 F. Supp. 255 (United States District Court, S.D. New York, 1994); *Garvy v. Seyfarth Shaw*, 2012 IL App(1st) 110115, 359 Ill.Dec. 202, 215, 966 N.E. 2d 523, 536 (1st Dist. 2012).

7. The RLPVB and VRLP, in presenting its Privilege Log to Hearing Officer Brad Halloran, identified the control group in its statement that the listed communications are between the “Round Lake Park Village Board and its Attorney.” (see first paragraph of LAW AND ARGUMENT in RESPONDENT ROUND LAKE PARK VILLAGE BOARD'S PRESENTATION OF ATTORNEY CLIENT PRIVILEGE LOG IN RESPONSE TO

PETITIONER TIMBER CREEK HOMES' REQUEST TO PRODUCE AND INTERROGATORIES)

8. The "Round Lake Park Village Board" consists of its Village President and Village Trustees.

9. Jean McCue has served as Village President from the period of September 28, 2012 (the date of the first email on RLPVB Privilege Log) to May 7, 2013, and thereafter, served as Village Trustee from May 7, 2013 until December 10, 2013 (the date of the last email on RLPVB Privilege Log).

10. Linda Lucassen has served as Village Trustee from the period of September 28, 2012 to May 7, 2013, and thereafter, served as Village President from May 7, 2013 until December 10, 2013.

11. Karen Eggert has served as Village Clerk from May 7, 2013 until December 10, 2013.

12. Candy Kenyon and Robert Cerretti served as Village Trustees from the period of September 28, 2012 to December 10, 2013.

13. Peter Karlovics served as in-house counsel for the RLPVB.

14. Glenn Sechen served as outside counsel for VRLP.

15. From the body of the emails produced to Hearing Officer Halloran, and the provided Attorney Client Privilege Log, communications listed in the Attorney-Client Privilege Log pertain to attorney-client privileged communications between in-house counsel Peter Karlovics and/or outside counsel Glenn Sechen, and/or between members of the above identified control group (Village President, Village Trustees, or Village Clerk).

WHEREFORE, Respondent, Round Lake Park Village Board, respectfully requests that its Motion to Reconsider Hearing Officer's Order Dated May 12, 2014 be granted, that the Attorney-Client Privilege be applied to the emails contained in the Attorney-Client Privilege Log, and that 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

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

Respectfully submitted,
Village of Round Lake Park

By *Glenn C. Sechen*
One of its Attorneys

Glenn C. Sechen
The Sechen Law Group, PC
13909 Laque Drive
Cedar Lake, IN 46303
312-550-9220

AFFIDAVIT OF SERVICE

The undersigned certifies that on May 13, 2014 a copy of the foregoing **Notice of Filing** and **RESPONDENT ROUND LAKE PARK VILLAGE BOARD'S AND RESPONDENT VILLAGE OF ROUND LAKE PARK'S MOTION TO RECONSIDER HEARING OFFICER'S ORDER DATED MAY 12, 2014** were served upon the following:

For the Village of Round Lake Park:

Attorney Glenn Sechen
The Sechen Law Group
13909 Laque Drive
Cedar Lake, IN 46303-9658
glenn@sechenlawgroup.com

Ms. Karen Eggert
Village of Round Lake Park
203 E. Lake Shore Drive
Round Lake Park, IL 60073
keggert@villageofroundlakepark.com

For Groot Industries, Inc.
Attorney Charles F. Helsten
Hinshaw & Culbertson LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105
chelsten@hinshawlaw.com

Attorney Richard S. Porter
Hinshaw & Culbertson LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105
rporter@hinshawlaw.com

Attorney George Mueller
Mueller Anderson & Associates
609 Etna Road
Ottawa, IL 61350
george@muelleranderson.com

For Timber Creek Homes, Inc.:

Attorney Jeffrey D. Jeep
Jeep & Blazer, LLC
24 North Hillside Avenue
Suite A
Hillside, IL 60162
jdjeep@enviroatty.com

Attorney Michael S. Blazer
Jeep & Blazer, LLC
24 North Hillside Avenue
Suite A
Hillside, IL 60162
mblazer@enviroatty.com

By e-mailing a copy thereof as addressed above.

The Law Offices of Rudolph F. Magna #110560
495 N. Riverside Dr., Ste. 201
PO Box 705
Gurnee, IL 60031

Peter S. Karlovics