ILLINOIS POLLUTION CONTROL BOARD
May 27, 2014

TIMBER CREEK HOMES, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	PCB 14-99
VILLAGE OF ROUND LAKE PARK,	)	(Pollution Control Facility
ROUND LAKE PARK VILLAGE BOARD	)	Siting Appeal)
and GROOT INDUSTRIES, INC.,	)	
	)	
Respondents.	)	
	)	

ORIGINAL

HEARING OFFICER ORDER

A Hearing Officer order issued February 4, 2014, directed that all discovery must be completed on or before May 9, 2014, and that the parties were to file all prehearing motions, including motions *in limine*, on or before May 12, 2014. All responses to prehearing motions were directed to be filed on or before May 15, 2014.[1]

On May 9, 2014, Timber Creek Homes, Inc. (TCH) filed its supplemental answers to interrogatories and its supplemental response to request for production of documents.

On May 12, 2014, the following prehearing motions were filed: Groot Industries, Inc. (Groot) filed its motion *in limine* (Groot Mot.). The Village of Round Lake Park (Village) filed a motion *in limine* and also adopting Groot's motion *in limine* (Village Mot.). The Round Lake Village Board (Village Board) filed a motion adopting the Village Board's motion (Village Board Mot.). Groot filed a motion adopting the Village's motion *in limine*, and added further argument (Groot Mot. to Adopt). Finally, the Village Board filed a motion to adopt Groot's motion *in limine* (Village Board's Mot. to Adopt).

On May 15, 2014, TCH filed a consolidated response to respondents' motions *in limine* (TCH Resp.)

[1] The parties are currently working on stipulations to alleviate the need for responses.

Groot, Village Board and the Village's Motions *in Limine*

Because all of the respondents adopt each other's respective motions *in limine*, all motions *in limine* will be treated as one, but reference to a particular motion will be included if needed. The respondents argue that in siting appeals, the petitioner is "barred from introducing any new evidence that is related to a manifest weight of the evidence review of the siting criteria", and that "the only new evidence that may be introduced is that relevant to the fundamental fairness of the procedures used by the siting authority." Groot's Mot. at 3-4. The respondents argue that the parameters of relevant discovery have been set forth by the March 20, 2014 and the April 7, 2014 Hearing Officer orders. *Id.* In particular, the respondents state that:

> The standards for relevance are broader during discovery, because parties are permitted to seek information that is relevant or is reasonably calculated to lead to relevant information. 35 Ill. Adm. Code 101.616(a). However, not all discoverable information will ultimately be relevant at hearing. It follows that if the hearing officer determined – and the PCB affirmed – that evidence outside the parameters delineated by the March 20 and April 7 Hearing Officer Orders was not even discoverable under the broader discovery standards, then information outside these parameters necessarily is not relevant in the hearing itself.
>
> Petitioner should be barred from introducing new evidence regarding fundamental fairness unless it is either 1) dated between June 20, 2013 (the date of Mr. Kleszynski's hiring) and December 12, 2013 *and* related to the transfer station, or 2) related to the meeting minutes attached to Petitioner's Request to Admit *and* related to the transfer station. Any new evidence that falls within these limitations must necessarily be evaluated for relevance, as well. (emphasis in original).
>
> Petitioner should specifically be barred from introducing evidence that pre-dates Mr. Kleszynski's hiring and is not related to the meeting minutes at all. Petitioner's counsel attempted to introduce numerous such documents during depositions in this matter and should not be permitted to waste the parties' time with such clearly irrelevant documents during the hearing.
>
> Similarly, Petitioner should be barred from introducing any evidence that pre-dates Mr. Kleszynski's hiring if it does not relate to the meeting minutes and to the transfer station. For example, most of the 30 exhibits attached to Petitioner's Requests to Admit do not relate in any way to the transfer station that is the subject of this appeal. Petitioner should be barred from introducing any of these exhibits.
>
> Finally, Petitioner should be barred from introducing witnesses it did not properly disclose during the discovery period. By waiting until the last day of discovery to identify its potential witnesses, most of whom fall outside the scope of discovery in this matter, and two of whom are counsel for the parties in this proceeding,

Petitioner is attempting to conduct trial by ambush. Such "sharp" practice should not be rewarded in this forum. Groot's Mot. at 4-5.[2]

In the Village's motion *in limine*, aside from adopting Groot's motion *in limine*, the Village argues, as it did in its motion to dismiss, that "it remains vague and unclear" what TCH finds fundamentally unfair in the proceedings at the local siting hearing. Village Mot. at 1. [3] In particular, the Village finds unclear what "TCH refers to in its Petition as being solely within the province of the Village Board and beyond the scope of the authority of that hearing officer and likewise remains vague and unclear regarding what determination, in view of TCH, the Village Board in turn failed to make." *Id.* The Village further argues that "TCH's allegations regarding RLP's Appraiser, Mr. Kleszynski, do not rise to the level of fundamental [un]fairness as Mr. Kleszynski was cross examined on those issues at hearing and those issues were considered by the Village Board in reaching its decision." *Id.* at 2

In Groot's motion to adopt, it additionally argues that TCH "has repeatedly failed to respond in any meaningful way to discovery that would assist the parties in determining the specific nature of Petitioner's claims regarding fundamental fairness, and particularly its claim that the hearing officer usurped the authority of the Village Board by making determinations outside the scope of his authority." Groot's Mot. to Adopt. at 1. Finally, Groot argues that because TCH has repeatedly failed to provide meaningful discovery responses, and based on Illinois Supreme Court Rule 219(c), petitioner should be "barred from introducing evidence regarding alleged usurpation by the hearing officer of the Village Board's authority or the Village Board's alleged failure to make determinations required by statute." *Id.* at 2.

TCH's Consolidated Response to Respondents' Motions *In Limine*

TCH states in its introduction that "Respondents still want to avoid any evidence of the collusive contacts that led three Village Board members and RLP's Mayor to vote in favor of the subject transfer station application." TCH Resp. at 1.

TCH cites to the March 20, 2014 and the April 7, 2014 Hearing Officer orders limiting discovery and states that "Respondents now seek to convert this limitation on the scope of discovery into a limitation on the scope of evidence at the upcoming hearing, even including evidence that is already in the record or that was produced by Respondents during discovery." Resp. at 2. TCH argues that "[n]either order, however, said anything about evidence already in the hearing record or about additional evidence produced by Respondents during the course of discovery." *Id.* at 3.

TCH also takes issue with the Village's argument that allegations regarding Mr. Kleszynski do not rise to the level of fundamental unfairness. Resp. at 4. TCH states that the

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[2]The supplemental answers to interrogatories filed by TCH on May 9, 2014, listed 19 potential witnesses.

[3] The Village failed to paginate its motion.

Village's argument is better raised at hearing or in a motion for summary judgment and not in a motion *in limine*. *Id.*

Next, TCH addresses Groot's argument that due to the disclosure of 19 potential witnesses on May 9, 2014, the last day of discovery, TCH should be barred from presenting those witnesses at hearing. Resp. at 5-6. As background, TCH states that depositions took place with five deponents from May 1, 2014 to and including May 8, 2014. Resp. at 6. "The names of all the potential witnesses, and the role many of them in the relationship between Groot and VRLP, were addressed during those depositions." *Id.* In short, TCH states that due to the belated compliance with discovery orders on the part of respondents, and the abbreviated discovery schedule in general due to the statutory decision deadline, "[t]he simple fact is that the basis for determining who those witnesses might be was not available, and to a great extent still not, until the evening before the Supplemental Responses were provided." Resp. at 6. Furthermore, TCH states that all of the potential witnesses, except for Charles Helsten, "are identified in the meeting minutes that are the subject of TCH's Request to Admit." *Id.* at 7. TCH argues respondents' argument that TCH's witnesses should be limited to those that it deposed is in error because "no case has ever held that a party has an obligation to depose every witness it intends to call at a hearing or trial." *Id.* TCH concludes by stating that this argument, though without merit, would be more appropriately raised in a motion for sanctions, and not in a motion *in limine*. *Id.* at 6.

Finally, TCH addresses Groot's claim that TCH's allegations of fundamental unfairness remain vague and unclear and therefore such evidence should be barred at hearing where TCH "has repeatedly failed to respond in any meaningful way to discovery that would assist the parties in determining the specific nature of Petitioner's claims regarding fundamental fairness, and particularly its claim that the hearing officer usurped the authority of the Village Board by making determinations outside the scope of his authority or the Village Board's alleged failure to make determinations required by statue." Resp. at 8. In short, TCH responds by stating that it properly responded to Groot's Interrogatories and Request to Admit. *Id.* at 9. Further, TCH argues that like respondents' "efforts regarding hearing witnesses, this aspect of the Motions *in Limine* questions the adequacy of TCH's responses to Groot's discovery requests" and would be more appropriately raised in a motion for sanctions. *Id.*

Finally, TCH argues that the respondents' arguments that TCH needs to state with more particularity its claims of fundamental unfairness has already been addressed and rejected by the Board. Resp. at 9-10.

Discussion And Ruling

The respondents are correct when they state that the Board "must generally confine its review to the record developed by the local siting authority, and may only hear new evidence outside this record if it is relevant to fundamental fairness…and that Petitioner should be barred from introducing any new evidence that is related to a manifest weight of the evidence review of the siting criteria." Groot Mot. at 3. However, the respondents take it a step further and argue that the only evidence that may arguably be relevant to fundamental fairness was delineated, and limited, by the March 20, 2014 and the April 7, 2014 Hearing Officer orders. *Id.* at 4.

Regarding the relevancy objections, my orders of March 20, 2014 and April 7, 2014, speak for themselves. The respondents ask me to rule categorically that no potential evidence that falls outside the parameters defined in those orders—even if it consists of documents produced by the respondents in discovery—may be introduced at hearing. I find, however, that at this time it is premature to rule on whether any evidence that may be introduced at hearing is relevant. The issues before me at the discovery stage, with the limited information I could rely on then, are not the same as the evidentiary questions that may be raised at hearing. The relevance of specific evidence presented at hearing depend on testimony and other evidence that will be adduced at hearing that is not currently before me and will not be until hearing. And of course the respondents will have every opportunity to make their respective objections on the record, including based on relevancy, and I will make my ruling on any objections as they arise at hearing.

For these reasons, respondents' respective motions*in limine*, to the extent based on relevancy, are denied at this time.

Respondents' motions are likewise denied to the extent they seek to bar potential witnesses because they were listed in TCH's Supplemental Answers to Interrogatories filed on the last day of discovery. As outlined by TCH, due to the belated discovery responses by the respondents, the abbreviated discovery schedule necessitated by this time-driven case, and the lack of any case law requiring exclusion of witnesses under such circumstances, , I find the motions without merit. [4]

Finally, I deny the respondents' motions to the extent they assert that TCH's claim that the hearing officer below usurped the Village Board's authority or the Village Board failed to make determinations required by statute remains vague and conclusory. The Board has previously reviewed and rejected these arguments, and I am in no position to revisit them Timber Creek Homes, Inc. v. Village of Round Lake Park, PCB 14-99 (March 20, 2014). That said, the respondents remain free to raise any objection they see fit to evidence the petitioner seeks to introduce at hearing relating to this or any other claim. As with potential evidence that falls outside the scope of my orders regarding discovery, I will address any such objections as they arise, based on the record as it develops at hearing.

In sum, for the above reasons, the respondents' motions *in limine* are denied in their entirety. However, I emphasize that this ruling does not in any way preclude objections the respondents wish to make at hearing to specific items the petitioner seeks to introduce into evidence. I simply decline at this stage to exclude any particular categories of potential evidence, before any testimony and other evidence has been adduced.

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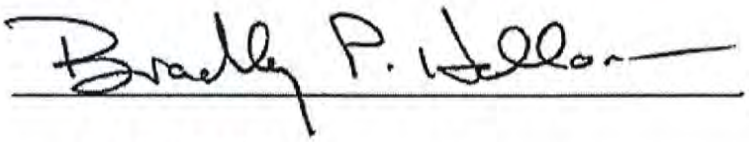
[4] The parties are presently working on stipulations that would alleviate the need for many of these potential witnesses, if not all.

Procedural rules provide that parties may seek Board review of discovery rulings pursuant to 35 Ill. Adm. Code 101.616 (e). The parties are reminded that the filing of any such appeal of a hearing officer order does not stay the proceeding. In statutory decision deadline cases, such as at bar, the hearing officer must manage the case to insure that discovery, hearing and briefing schedules allow for Board deliberation and a timely decision of the case as a whole.

IT IS SO ORDERED.



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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on May 27, 2014, to each of the persons on the service list below.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on May 27, 2014:

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