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STATE OF ILLINOIS
Pollution Control Board



ORIGINAL

ILLINOIS POLLUTION CONTROL BOARD
March 11, 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.)	
)	
)	
)	

HEARING OFFICER ORDER

On February 24, 2014, petitioner Timber Creek Homes, Inc. (TCH), filed objections to certain discovery requests (Obj.) propounded by Groot Industries, Inc. (Groot). Specifically, TCH objects to Groot's Request to Admit No. 11, Groot's Interrogatory Nos. 20, 24, and 25, and Groot's Request for Production No. 13. On March 3, 2014, Groot filed its response (Resp.).

TCH's Objections to Groot's Discovery Requests

TCH first objects to Groot's Request to Admit No. 11. Groot's Request to Admit No. 11 requests TCH to "[a]dmit that TCH did not make any motion during the hearing or prior to the Village Board's decision on December 12, 2013, regarding the fundamental fairness of the siting process or procedures." TCH argues that this request "presupposes an impossibility" because the local ordinance "which governed the procedure to be followed during the siting hearing does not provide any means for either presenting a motion based on fundamental fairness, or for the disqualification of any member of the Round Lake Village Board." Obj. at 1. TCH further argues that "the law does not require that a 'motion' be made (even if such a motion could have been made) in order to preserve the issue of fundamental fairness for appeal." *Id.* at 1-2. Rather, TCH states that case law only requires that the issue of fundamental unfairness be raised or asserted during the siting proceeding, which TCH did. *Id.* TCH wraps up its objection by stating that Groot's Request to Admit No. 11 is not a request for admission of fact as contemplated by Section 101.618 (d) of the Board's procedural rules (35 Ill. Adm. Code 101.618(d)), but rather seeks a legal conclusion.

TCH likewise objects to Groot's Interrogatory No. 20 where, in pertinent part, Groot requests that "[i]f your answer to Request to Admit No. 11 is anything other than an unequivocal admission, please identify precisely the manner in which Petitioner made a motion regarding fundamental fairness in the siting process and procedures." *Id.* at 2. TCH argues that Groot's

Interrogatory No. 20 is subject to the same objections it put forth regarding Groot's Request to Admit No. 11. *Id.*

TCH also objects to Groot's Interrogatory No. 24 that requests TCH to "[p]lease identify by name, current address, and current telephone number of all witnesses who will testify at the Hearing for Petitioner, and the subject of each individual's testimony." *Id.* TCH objects by stating that "it is premature (no responses to TCH's discovery requests have been provided yet, and no depositions have yet been taken), and seeks information regarding mental impressions and hearing strategy covered by the attorney work-product doctrine." *Id.*

TCH also objects to Groot's Interrogatory No. 25, where it requests that TCH "[p]lease identify and list any and all documents which will be introduced into evidence at the Hearing, and the purpose and content of each document." *Id.* TCH objects on the same grounds as it did for Groot's Interrogatory No. 24. *Id.*

Finally, TCH objects to Groot's Request for Production No. 13, where Groot requests "[a]ny and all documents or things set forth or referred to in TCH's Answers to Interrogatories, propounded herewith." *Id.* at 3. TCH states that "[t]o the extent this Request encompasses the subjects of the Request to Admit 11 or Interrogatories 20, 24 and 25, TCH objects to this Request on the same bases." *Id.*

Groot's Response

In summary, Groot states that TCH's argument that it was not required to make a motion regarding fundamental fairness or that the local siting procedures did not allow for such a motion, "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." Resp. at 1. Groot argues that TCH should be required to answer the Interrogatories and Request to Admit where the siting transcript demonstrates that TCH's counsel stated that it was not making a motion. *Id.* at 1-2. Finally, Groot argues that it "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." *Id.*

Groot addresses TCH's objections to its Interrogatories Nos. 24 and 25 and Production Request No. 13, by stating that "it is entitled to discover the witnesses and exhibits to be relied upon by Groot at the upcoming hearing." *Id.* at 3. Finally, Groot argues that if privilege is asserted, specificity is required. *Id.*

Discussion and Ruling

Requests to admit "legal conclusions are improper; however, requests for admissions of factual questions which might give rise to legal conclusions are not improper." PRS Int'l, Inc. v. Shred Pax Corp., 184 Ill.2d 224, 236, 703 N.E.2d 71, 77 (1998).

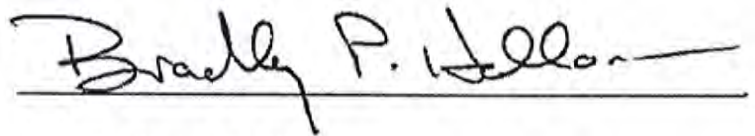
Here, Groot only requests THC to admit or deny whether THC made a motion on the issue of fundamental fairness at the local siting hearing, not whether or not it has preserved the issue on appeal. Indeed, the siting hearing transcript reflects that THC's counsel specifically stated that it was not making a motion. CO3234; 9/25/13; Hearing Transcript-2 at 118-20. THC's confusing argument that it could not make a motion because the local siting ordinance did not allow for it but THC instead raised or asserted the issue is to no avail at this time. Groot's Request to Admit No. 11 may give rise to a legal conclusion, but it is not improper. TCH's objection to Groot's Request to Admit No. 11 and Interrogatory No. 20 is denied.

TCH's objections to Groot's Interrogatories Nos. 24 and 25 are sustained to the extent that at present, the requests are premature because no responses to discovery requests have been provided. Further discussions on the discovery schedule will be entertained at the next telephonic status conference. However, THC's objections premised on certain privileges, is denied because THC wholly fails to allege any specificity regarding the same.

THC's objection to Groot's Request for Production No. 13 is denied as to documents related to Groot's Request to Admit No. 11 and Interrogatory No. 20. THC's objection to Groot's Request for Production No. 13 as it relates to Interrogatory Nos. 24 and 25 is sustained.

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.



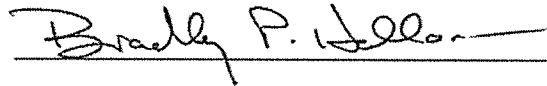
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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on March 11, 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 March 11, 2014:

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A handwritten signature in black ink, reading "Bradley P. Halloran", is written over a horizontal line.

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