

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

TIMBER CREEK HOMES, INC.,)	
)	
Petitioner)	
)	
v.)	No. PCB 2014-099
)	
VILLAGE OF ROUND LAKE PARK,)	(Pollution Control Facility Siting Appeal)
ROUND LAKE PARK VILLAGE BOARD)	
and GROOT INDUSTRIES, INC.,)	
)	
Respondents)	

PETITIONER'S MOTION FOR SANCTIONS

Now comes Petitioner, Timber Creek Homes, Inc. ("TCH"), by its attorneys, Jeep & Blazer, LLC, and for its Motion pursuant to 35 Ill.Adm.Code 101.616(g) and 101.800 for the imposition of sanctions against Respondents Village of Round Lake Park ("VRLP") and Round Lake Park Village Board (the "Village Board"), states:

1. TCH served Respondents with interrogatories and requests for production of documents on January 31, 2014. On February 4, 2014, the Hearing Officer entered an agreed scheduling Order that set March 15 as the deadline for responses to written discovery, and May 9 as the deadline for the completion of all discovery. In his March 25 Order, the Hearing Officer granted Respondents' request to extend the deadline for responses to written discovery to March 31.

2. Per the latter Order, Respondents tendered their initial discovery responses on March 31. Because of the limitation imposed by the Hearing Officer's March 20 Order, Respondents provided virtually no information that predated June 20, 2013 – the date on which Respondents claimed VRLP's witness, Dale Kleszynski ("Kleszynski") had been retained.

3. Respondents have throughout persisted in their effort to withhold any evidence that predates Kleszynski's retention. That was the discovery limitation in the Hearing Officer's March 20 Order, but that Order was expanded by the April 7 Order. As noted in the April 7

Order, the meeting minutes attached to TCH's Request to Admit date back to early 2008. (April 7 Order at 1) Indeed, the vast majority of the evidence relating to Respondents' collusion substantially predates June 20, 2013 (when Respondents claim Kleszynski was retained).

4. The IPCB affirmed the April 7 Order on April 17. The Hearing Officer's April 18 Order directed Respondents to comply with the new scope of discovery by April 25, and Respondents provided supplemental responses on that date. Again, however, the information provided was limited.

5. As set forth in the Hearing Officer's subsequent April 28 Order:

Discussions centered on the recent supplemental discovery provided and the respondents' privilege logs. The respondents stated that they will make the contents available to me for a ruling regarding attorney-client privilege on or before May 5, 2014.

6. Despite the open discovery issue, given the impending May 9 discovery cutoff date and June 2 hearing date, and Groot's refusal to waive the decision deadline in this matter, TCH was forced to proceed with certain depositions, including four Village Board members and the corporate representative for Groot Industries, Inc. ("Groot").

7. The commitment noted in the April 28 Order was also not met. As noted in the Hearing Officer's May 12 Order, in which the Respondents' claims of privilege were rejected, the documents identified in the privilege logs were not provided to the Hearing Officer until May 7. That production led to the May 12 Order,

8. The Village Board and VRLP thereafter filed a joint Motion for Reconsideration of the May 12 Order, which the Hearing Officer denied on May 20. The following day, May 21 (less than two weeks before the scheduled hearing in this matter, and almost two months after responses were originally due), VRLP and the Village Board finally produced the documents that they had claimed were subject to some privilege. It is that production, coupled with Respondents' conduct leading up to it and following it, which leads to this Motion.

9. First, VRLP withheld at least one document under a claim of “privilege” which could not possibly have been subject to any known privilege. TCH’s proposed Hearing Exhibit 53, one of the documents produced by VRLP after the Hearing Officer’s May 20 Order, is attached hereto as Exhibit A. This document is an email “string”, the latest portion of which is an exchange between Glenn Sechen (“Sechen”), counsel for VRLP, and Peter Karlovics (“Karlovics”), counsel for the Village Board. However, the emails begin with a communication between Sechen and Charles Helsten (“Helsten”), counsel for Groot.

10. The latter communication reflects two things. First, as noted, it is not subject to any recognized privilege, and should have been produced no later than April 25, along with the other supplemental discovery responses. This would have given TCH the opportunity to inquire about the substance of the communication during the depositions that were taken. VRLP’s baseless claim of a privilege prevented that from occurring.

11. Second, the discussion in the subject email reflects a direct link between the transfer station host agreement that was negotiated between VRLP and Groot, and VRLP’s award of its municipal waste hauling contract to Groot. This is consistent with TCH’s position throughout this case – that there is a direct relationship between the subject transfer station and the other businesses for which Groot received approval from the Village Board. Again, however, VRLP’s baseless withholding of the subject communication prevented any inquiry on the subject.

12. Beyond the foregoing, as noted above, Respondents have persisted in adhering to the limit on the scope of discovery in the Hearing Officer’s March 20 Order, even though that scope was expanded in the April 7 Order. See email attached hereto as Exhibit B.

13. None of the “privileged” documents produced by VRLP and the Village Board on May 21 predate September 28, 2013. When counsel for TCH inquired about the balance of the communications before that date, Karlovics provided an equivocal answer that he had “produced all communications consistent with the hearing officer's orders regarding scope of discovery”, and Sechen followed with a “Me too”. See email string attached hereto as Exhibit C.

14. As noted above, the transfer station discussions reflected in the meeting minutes that are the subject of the Hearing Officer's April 7 Order date back to 2008. Further, in VRLP's supplemental responses to discovery, Sechen confirmed that he "was retained on or about April 20, 2010. RLP is unable to respond regarding dates prior to retention." See VRLP's Supplemental Response to TCH's Request for Production, attached hereto as Exhibit D. No explanation has been provided for the failure to produce any communications between the date of Sechen's retention and September 28, 2013.

15. Neither TCH nor the Hearing Officer have had any opportunity to review the information that has clearly been withheld in order to assess the validity of the "scope of discovery" assertions. At a minimum, the proper course would have been to provide copies of any such communications for an *in camera* review, as was done with the limited number of communications that were produced. But VRLP and the Village Board chose a different course – they failed to provide anyone with the opportunity to independently determine the veracity of any claimed "relevance" or "scope" objection.

16. 35 Ill.Adm.Code 101.616(g) provides that, "If any person...knowingly gives a false answer to discovery questions, the Board, on its own motion or the motion of a party, may impose sanctions pursuant to Subpart H of this Part." 35 Ill.Adm.Code 101.800(b) in turn provides a list of the sanctions that may be imposed, "If any person unreasonably fails to comply with any provision of 35 Ill. Adm. Code 101 through 130 or any order entered by the Board or the hearing officer...." One of those available sanctions is that, "Any portion of the offending person's pleadings or other documents relating to that issue may be stricken and, if appropriate, judgment may be entered as to that issue...." 35 Ill.Adm.Code 101.800(b)(5)

17. 35 Ill.Adm.Code 101.800(c) further provides that:

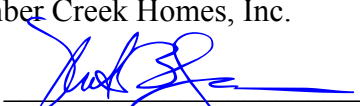
In deciding what sanction to impose the Board will consider factors including: the relative severity of the refusal or failure to comply; the past history of the proceeding; the degree to which the proceeding has been delayed or prejudiced; and the existence or absence of bad faith on the part of the offending party or person.

18. One of the principal “issues” underlying all of the discovery in this case, and Respondents’ continuous efforts to forestall, limit and evade that discovery, is the violation of principles of fundamental fairness resulting from the collusion between VRLP and Groot. That collusion in turn resulted in the predetermination of the subject siting application by three members of the Village Board and VRLP’s Mayor.

19. Given Respondents’ conduct throughout the history of this case, punctuated by their latest refusal to comply with the rules of discovery and the Hearing Officer’s Orders, only two conclusions are possible. First, Respondents clearly have something to hide on the issue of fundamental fairness, and persist in withholding information that would doubtless confirm TCH’s claims. That leads to the second conclusion – the severest sanction is clearly warranted.

20. TCH therefore requests that any defenses asserted by the Village Board and VRLP on the issues of their collusion with Groot, and the predetermination of Groot’s siting application, be stricken, and that judgment on those issues be entered in favor of TCH.

Respectfully submitted,
Timber Creek Homes, Inc.

By: 
One of its attorneys

Michael S. Blazer (ARDC No. 6183002)
Jeffery D. Jeep (ARDC No. 6182830)
Jeep & Blazer, LLC
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Fax: (708) 236-0828
mblazer@enviroatty.com
jdjeep@enviroatty.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of PETITIONER'S MOTION FOR SANCTIONS to be served on the following, via electronic mail transmission, on this 29th day of May, 2014:

Hearing Officer

Bradley P. Halloran
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
Brad.Halloran@illinois.gov

For Groot Industries, Inc.

Charles F. Helsten
Richard S. Porter
Hinshaw and Culbertson
100 Park Avenue
Rockford, IL 61101-1099
chelsten@hinshawlaw.com
rporter@hinshawlaw.com

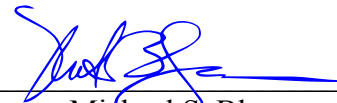
Peggy L. Crane
Hinshaw and Culbertson
416 Main Street, 6th Floor
Peoria, IL 61602
pcrane@hinshawlaw.com

For the Village of Round Lake Park Village Board

Peter S. Karlovics
Law Offices of Rudolph F. Magna
495 N Riverside Drive, Suite 201
Gurnee, IL 60031-5920
PKarlovics@aol.com

For the Village of Round Lake Park

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



Michael S. Blazer
One of the attorneys for
Petitioner

EXHIBIT A

[Print](#) | [Close Window](#)

Subject: RE: Further Discussion of Host Agreement Terms] MAYOR PHONE CONFERENCE
From: glenn@sechenlawgroup.com
Date: Fri, Sep 28, 2012 10:39 pm
To: "Peter Karlovics" <pkarlovics@aol.com>

ok Great. Are you calling me?

Have a great weekend,

Glenn

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----- Original Message -----

Subject: Re: Further Discussion of Host Agreement Terms] MAYOR PHONE CONFERENCE
From: Peter Karlovics <pkarlovics@aol.com>
Date: Fri, September 28, 2012 6:02 pm
To: glenn@sechenlawgroup.com
Cc: jean4994@sbcglobal.net

Dear Glenn:

How about Tuesday, October 2, 2012 at 10am? Please let me know.

The Law Offices of

Rudolph F. Magna

Peter S. Karlovics

495 N. Riverside, Suite 201

Gurnee, Illinois 60031

Office: (847) 623-5277 Facsimile: (847) 623-5336

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-----Original Message-----

From: glenn <glenn@sechenlawgroup.com>

To: Peter Karlovics <pkarlovics@aol.com>

Sent: Fri, Sep 28, 2012 11:06 am

Subject: [FWD: Fw: Further Discussion of Host Agreement Terms] MAYOR PHONE CONFERENCE

Pete,

We need that phone conference with the Mayor. I can do it Monday, Tuesday or Wednesday before Noon. Let me know if you need afternoon time. That is more scarce.

Thanks,

Glenn

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----- Original Message -----

Subject: Fw: Further Discussion of Host Agreement Terms

From: chelsten@hinshawlaw.com

Date: Thu, September 27, 2012 2:12 pm

To: sechlaw@yahoo.com

CONFIDENTIAL AND PRIVILEGED

Wasn't sure if you received this e-mail so I am resending it.

Charles F. Helsten
HINSHAW & CULBERTSON LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389

Phone: 815-490-4906
Fax: 815-490-4901
chelsten@hinshawlaw.com

----- Forwarded by Joan Lane/HC07 on 09/27/2012 02:11 PM -----

CONFIDENTIAL AND PRIVILEGED

Glenn: This time with the correct email address.

Charles F. Helsten
HINSHAW & CULBERTSON LLP
100 Park Avenue
P.O. Box 1389

Rockford, IL 61105-1389

Phone: 815-490-4906

Fax: 815-490-4901

chelsten@hinshawlaw.com

----- Forwarded by Charles F. Helsten/HC07 on 09/17/2012 06:13 PM -----

Charles F. Helsten/HC07

09/17/2012 06:14 PM

To glenn@sechenlawgroup.com

cc

Subject Fw: Further Discussion of Host Agreement Terms

CONFIDENTIAL AND PRIVILEGED

Glenn: This follows our most recent conversation of earlier today concerning HA terms. As I indicated earlier this afternoon, Groot will pay \$.10/ton as an additional Host fee for tonnage that comes from the Village to the Transfer Station where the Village is under direct contract with Groot. Groot will not offer any additional/supplemental Host Fee for the Village simply directing its waste to this Transfer Station where Groot does not have the hauling contract with the Village.

In addition, Groot needs a 3 (three) year hiatus before the first Annual Host Fee Adjustment takes place (not the 1 (one) year hiatus currently proposed by the Village. Moreover, the Annual Adjustment cannot exceed 3% (three per cent), with no recapture/"claw back" provision.

As previously indicated, Groot is in agreement with all other terms of the Village's proposed Host Agreement, but those discussed above are of critical importance to Groot.

Charles F. Helsten
HINSHAW & CULBERTSON LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389

Phone: 815-490-4906

Fax: 815-490-4901

chelsten@hinshawlaw.com

Charles F. Helsten/HC07

09/17/2012 05:00 PM

To glenn@sechenlawgoup.com

cc

Subject Further Discussion of Host Agreement Terms

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EXHIBIT B

Wednesday, May 14, 2014 at 4:13:58 AM Central Daylight Time

Subject: Re: Supplemental response

Date: Wednesday, April 30, 2014 at 4:38:49 PM Central Daylight Time

From: Mike Blazer

To: glenn@sechenlawgroup.com

CC: Peter Karlovics, Rick Porter

Just so we're clear, it's your position that your production is still limited to June 20, and not before then. Is that correct?

Please consider the environment before printing this email.

Sent from my iPad
mblazer@enviroatty.com

On Apr 30, 2014, at 4:29 PM, "glenn@sechenlawgroup.com" <glenn@sechenlawgroup.com> wrote:

Michael,

There is no obligation to produce anything further.

Glenn

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| ----- Original Message -----

Subject: Re: Supplemental response
From: Mike Blazer <mblazer@enviroatty.com>
Date: Wed, April 30, 2014 12:52 am
To: Glenn Sechen <glenn@sechenlawgroup.com>

Glenn?

Michael S. Blazer

Jeep & Blazer, L.L.C.

24 N. Hillside Avenue, Suite A

Hillside, IL 60162

(708) 236-0830

Direct: (708) 401-5021

Fax: (708) 236-0828

Cell: (708) 404-9091

Email: mblazer@enviroatty.com

Web Site: www.jeepandblazer.com

From: "Michael S. Blazer" <mblazer@enviroatty.com>

Date: Monday, April 28, 2014 at 4:08 PM

To: Glenn Sechen <glenn@sechenlawgroup.com>

Subject: Supplemental response

Glenn:

The invoices in your original production started with June 20. Please produce the earlier ones in accordance with the Hearing Officer's order.

Mike

Michael S. Blazer

Jeep & Blazer, L.L.C.

24 N. Hillside Avenue, Suite A

Hillside, IL 60162

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Email: mblazer@enviroatty.com

Web Site: www.jeepandblazer.com

EXHIBIT C

Thursday, May 29, 2014 at 3:07:29 PM Central Daylight Time

Subject: RE: Disclosure
Date: Wednesday, May 21, 2014 at 8:28:34 PM Central Daylight Time
From: glenn@sechenlawgroup.com
To: Mike Blazer
Category: 00614.1

Me too!

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----- Original Message -----

Subject: Re: Disclosure
From: Mike Blazer <mblazer@enviroatty.com>
Date: Wed, May 21, 2014 6:49 pm
To: Peter Karlovics <pkarlovics@aol.com>
Cc: "glenn@sechenlawgroup.com" <glenn@sechenlawgroup.com>

...and Glenn?

Michael S. Blazer

Jeep & Blazer, L.L.C.

24 N. Hillside Avenue, Suite A

Hillside, IL 60162

(708) 236-0830

Direct: (708) 401-5021

Fax: (708) 236-0828

Cell: (708) 404-9091

Email: mblazer@enviroatty.com

Web Site: www.jeepandblazer.com

From: Peter Karlovics <PKarlovics@aol.com>
Date: Wednesday, May 21, 2014 at 6:45 PM
To: Michael Blazer <mblazer@enviroatty.com>
Cc: Glenn Sechen <glenn@sechenlawgroup.com>
Subject: Re: Disclosure

Dear Mike:

I have produced all communications consistent with the hearing officer's orders regarding scope of discovery.

The Law Offices of

Rudolph F. Magna

Peter S. Karlovics

495 N. Riverside, Suite 201

Gurnee, Illinois 60031

Office: (847) 623-5277 Facsimile: (847) 623-5336

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-----Original Message-----

From: Mike Blazer <mblazer@enviroatty.com>
To: Peter Karlovics <pkarlovics@aol.com>
Cc: glenn <glenn@sechenlawgroup.com>
Sent: Wed, May 21, 2014 6:42 pm
Subject: Re: Disclosure

The limiting language in your email is a cause for concern. It appears that you do have communications that fall outside of one or both of those parameters. Is that correct?

Michael S. Blazer

Jeep & Blazer, L.L.C.

24 N. Hillside Avenue, Suite A

Hillside, IL 60162

(708) 236-0830

Direct: (708) 401-5021

Fax: (708) 236-0828

Cell: (708) 404-9091

Email: mblazer@enviroatty.com

Web Site: www.jeepandblazer.com

From: Peter Karlovics <PKarlovics@aol.com>
Date: Wednesday, May 21, 2014 at 5:49 PM
To: Michael Blazer <mblazer@enviroatty.com>
Cc: Glenn Sechen <glenn@sechenlawgroup.com>
Subject: Re: Disclosure

Dear Mike:

There are no other communications to tender to you, outside what I have already tendered. I have no attorney-client communications that pertain to any Village Board meeting that pertained to the Transfer Station and the Request to Admit. You have everything that I have.

The Law Offices of

Rudolph F. Magna

Peter S. Karlovics

495 N. Riverside, Suite 201

Gurnee, Illinois 60031

Office: (847) 623-5277 Facsimile: (847) 623-5336

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-----Original Message-----

From: Mike Blazer <mblazer@enviroatty.com>
To: Peter Karlovics <pkarlovics@aol.com>
Cc: glenn <glenn@sechenlawgroup.com>
Sent: Wed, May 21, 2014 5:44 pm
Subject: Re: Disclosure

I unfortunately have to follow up on this. Is it all you have because there never was anything else? Or is it all you have because communications that did exist no longer do? I am also still waiting for a response from Glenn.

Michael S. Blazer

Jeep & Blazer, L.L.C.

24 N. Hillside Avenue, Suite A

Hillside, IL 60162

(708) 236-0830

Direct: (708) 401-5021

Fax: (708) 236-0828

Cell: (708) 404-9091

Email: mblazer@enviroatty.com

Web Site: www.jeepandblazer.com

From: Peter Karlovics <PKarlovics@aol.com>
Date: Wednesday, May 21, 2014 at 5:42 PM
To: Michael Blazer <mblazer@enviroatty.com>
Cc: Glenn Sechen <glenn@sechenlawgroup.com>
Subject: Re: Disclosure

Dear Mike:

This is all I have.

The Law Offices of

Rudolph F. Magna

Peter S. Karlovics

495 N. Riverside, Suite 201

Gurnee, Illinois 60031

Office: (847) 623-5277 Facsimile: (847) 623-5336

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-----Original Message-----

From: Mike Blazer <mblazer@enviroatty.com>
To: Peter Karlovics <PKarlovics@aol.com>
Sent: Wed, May 21, 2014 5:40 pm
Subject: Disclosure

Peter:

I've sent Glenn a couple of emails on this same issue. The earliest email in the batch you sent me is dated September 28, 2013 – coincidentally the same date as Glenn's earliest. Transfer station discussions date back to 2008. Please provide all communications.

Mike

Michael S. Blazer

Jeep & Blazer, L.L.C.

24 N. Hillside Avenue, Suite A

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Email: mblazer@enviroatty.com

Web Site: www.jeepandblazer.com

EXHIBIT D

essentially updates, information up to 14 days prior to the subject Village Board meeting is being provided. Only a portion of the relevant requests to admit pertain. The ability of RLP to respond is limited as RLP's Counsel was retained on or about April 20, 2010. RLP is unable to respond regarding dates prior to retention.

Subsequent to the retention of RLP Counsel and prior to the filing of the Application as well as subsequent to the grant of siting, RLP and the Village Board functioned together as a unit of government. While prior to the filing of the Application RLP Counsel had little contact with the Village Board, subsequent to the filing of the Application and until the grant of siting, RLP Counsel functioned independently and isolated himself from and had no contact with the Village Board outside of the public hearing. Accordingly, RLP adopts the responses to discovery filed by the Village Board, including but not limited to its objections and claims of privilege. Any privileged material produced is accidentally produced without waiver. Further, there is an agreement with TCH precluding the application of any claim of waiver. RLP does not, by its responses waive its objection to discovery outside the limits set by the hearing officer. Any information provided herewith that is outside the scope of the Hearing Officer orders is inadvertent and should not be construed as a waiver of the limitations set by the hearing officer. Any privileged material produced is accidentally produced without waiver. RLP incorporates as part of its response to these interrogatories, the response of RLPVB as well as the documents produced by all of the Respondents up to and including those produced pursuant to the most current order. Any documents withheld under a claim of privilege will appear in a privilege log and/or be provided to the Hearing Officer for his review in the nature of an in camera inspection.

RLP Counsel has no independent recollection related to any single request or the time frame related thereto, other than that specifically noted in an individual response. A number of documents may be produced by RLP. Some of those documents may refer to communications and provide a guide as to when other communications may have occurred and various details related to each. A response to a one request may well include things that are relevant to other requests but may not be included in more than one response. Pursuant to 101 IL Admin Code 616 (h) RLP's responses will be amended as required by RLP, the Village Board or both. Accordingly, as to each request, investigation continues.

DOCUMENTS REQUESTED

1. All documents regarding the proposed transfer station and as reflected in Exhibit 24 of the TCH Request to Admit Facts and Genuineness of Documents served on the Village Board and Village of Round Lake Park.

RESPONSE: Known documents will be produced. See General Response. See *also*, the response of the Village Board. Note that production of one or more documents was withheld under a claim of privilege. See the General Response regarding that as well.

2. All documents regarding the proposed transfer station and as reflected in Exhibit 25 of the TCH Request to Admit Facts and Genuineness of Documents served on the Village Board and Village of Round Lake Park.

RESPONSE: Known documents will be produced. See General Response. See *also*, the response of the Village Board. Note that production of one or more documents was withheld under a claim of privilege. See the General Response regarding that as well.

3. All documents regarding the proposed transfer station and as reflected in Exhibit 26 of the TCH Request to Admit Facts and Genuineness of Documents served on the Village Board and Village of Round Lake Park.

RESPONSE: Known documents will be produced. See General Response. See *also*, the response of the Village Board.

4. All documents regarding the proposed transfer station and as reflected in Exhibit 27 of the TCH Request to Admit Facts and Genuineness of Documents served on the Village Board and Village of Round Lake Park.

RESPONSE: Known documents will be produced. See General Response. See *also*, the response of the Village Board.

5. All documents regarding the proposed transfer station and as reflected in Exhibit 28 of the TCH Request to Admit Facts and Genuineness of Documents served on the Village Board and Village of Round Lake Park.

RESPONSE: No responsive documents can be located. See General Response. See *also*, the response of the Village Board.

CERTIFICATON

The Village of Round Lake Park advises that its investigation is continuing and that it reserves the right to supplement its responses hereto. However, the undersigned certifies that he verily believes the forgoing response is, at this time, true, complete and accurate to the best of his knowledge. Dated April 25, 2014.

Respectfully submitted,
Village of Round Lake Park

By *Glenn C. Sechen*
One of Its Attorneys

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