

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.)	

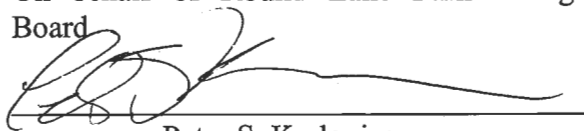
NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

Please take notice that on February 6, 2014 the undersigned caused to be filed with the clerk of the Illinois Pollution Control Board RESPONDENT ROUND LAKE PARK VILLAGE BOARD'S MOTION TO STRIKE AND DISMISS PETITION FOR REVIEW OF DECISION CONCERNING SITING OF A NEW POLLUTION CONTROL FACILITY, a copy of which is attached hereto.

Respectfully Submitted,

On behalf of Round Lake Park Village Board



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The undersigned, an attorney, certifies that he served true and correct copies of the attached RESPONDENT ROUND LAKE PARK VILLAGE BOARD'S MOTION TO STRIKE AND DISMISS PETITION FOR REVIEW OF DECISION CONCERNING SITING OF A NEW POLLUTION CONTROL FACILITY, on the parties as above addressed by mailing a copy to each person to whom it is directed in a properly addressed envelope, postage prepaid and depositing it in the U.S. Mail in Gurnee, Illinois, 60031, on the 6th day of February, 2014.



Peter S. Karlovics

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

TIMBER CREEK HOMES, INC.,)	
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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 MOTION TO STRIKE AND DISMISS PETITION FOR REVIEW OF DECISION CONCERNING SITING OF A NEW POLLUTION CONTROL FACILITY

Respondent, Round Lake Park Village Board, moves to strike and dismiss the PETITION FOR REVIEW OF DECISION CONCERNING SITING OF A NEW POLLUTION CONTROL FACILITY filed by Petitioner Timber Creek Homes, Inc., and in support thereof, states as follows:

I. Petitioner has failed to allege sufficient facts to state a cause of action.

1. Petitioner, Timber Creek Homes Inc., filed PETITION FOR REVIEW OF DECISION CONCERNING SITING OF A NEW POLLUTION CONTROL FACILITY on January 10, 2014 (hereinafter “PETITION FOR REVIEW”).

2. In Paragraph 7 of the PETITION FOR REVIEW, Petitioner alleged:

“7. The local siting review procedures, hearings, decision, and process, individually and collectively, were fundamentally unfair in at least two respects. First, members of the Village Board prejudged the Application and were biased in favor of Groot. Second, the hearing officer, appointed to oversee the hearing process and render proposed findings and conclusions, usurped the authority of the Village Board by making determinations that were beyond the scope of his authority and that were solely the province of the Village Board. The Village Board in turn failed in its statutory duty to make those determinations.”

3. In Paragraph 8 of the PETITION FOR REVIEW, Petitioner alleged:

“8. In addition, the Village Board majority’s finding that Groot met its burden of proving the nine statutory siting criteria, subject to certain conditions, was against the manifest weight of the evidence, and contrary to existing law, with respect to criteria i (need), ii (public health), iii (character of surrounding area and property values, vi (traffic) and viii (consistency with county solid waste plan).”

4. Petitioner’s above allegations are the basis for its PETITION FOR REVIEW.

5. For Paragraph 7 of its PETITION FOR REVIEW, Petitioner fails to allege a specific incident or fact showing bias on the part of any Village Board member, Petitioner fails to allege the identity of any specific Village Board member who was supposedly biased, and Petitioner fails to allege what determinations made by the Hearing Officer were beyond his scope of authority and were not made by the Village Board.

6. For Paragraph 8 of its PETITION FOR REVIEW, Petitioner fails to allege a specific fact that shows that the decision that the majority of the Village Board made was against the manifest weight of the evidence.

7. Petitioner’s above allegations are so conclusory and devoid of fact, that they fail to state a cause of action and are a small step above alleging a simple conclusion that the “Village Board did it wrong.”

8. Illinois is a fact-pleading State, and accordingly, Plaintiff is required to set out the ultimate facts which support his or her cause of action and legal conclusions unsupported by allegations of specific facts are insufficient. *La Salle Nat. Trust, N.A. v. Village of Mettawa*, 249 Ill.App.3d 550, 557, 186 Ill.Dec. 665, 671, 616 N.E.2d 1297, 1303 (2nd Dist. 1993); *Estate of Johnson v. Condell Memorial Hospital*, 119 Ill.2d 496, 509-10, 117 Ill.Dec. 47, 52, 520 N.E.2d 37, 52 (1988); *People of the State of Illinois v. Michel Grain Company Inc.et al.*, 1996 WL 742730 (Ill.Pol.Control.Bd).

9. Notice pleading is not sufficient in Illinois, and allegations that are too conclusory to meet the fact pleading requirements of Illinois practice must be dismissed. *Mueller v. Board of Fire and Police Commissioners of the Village of Lake Zurich*, 267 Ill.App3d 726, 729, 205 Ill.Dec. 304, 308, 643 N.E.2nd 255, 259 (2nd Dist. 1994).

10. Even liberally construed, the Petition for Review does not contain sufficiently detailed facts regarding an actual or legal controversy for which the Respondent Round Lake Park Village Board can provide a defense, or for which the Pollution Control Board may grant the relief requested by Petitioner.

II. Petitioner has forfeited its claim of bias by failing to raise the issue during the original siting hearing.

1. The law is clear that a disqualifying claim of bias against a specific board member must be raised at the original siting hearing, and that any such claim of bias not promptly raised at the original siting hearing is forfeited. *Fox Moraine, LLC, v United City of Yorkville*, 960 N.E.2d 1144, 1168, 356 Ill.Dec. 21, 45 (2nd Dist. 2011)

2. Petitioner failed to allege in its PETITION FOR REVIEW that any specific Village Board member was biased in favor of Groot Industries, Inc.

3. Petitioner failed to allege that it raised the disqualifying claim of bias against a specific Village Board member at the original siting hearing.


4. Petitioner, in fact, failed to make the disqualifying claim of bias against any Village Board member at the original siting hearing.

5. Petitioner has forfeited his claim of bias by failing to raise it at the original siting hearing.

WHEREFORE, Respondent, Round Lake Park Village Board, respectfully requests that the Pollution Control Board enter an order striking and dismissing the PETITION FOR

REVIEW OF DECISION CONCERNING SITING OF A NEW POLLUTION CONTROL FACILITY and grant Respondent, Round Lake Park Village Board, such further and other relief as this Board deems just and proper.

Respectfully Submitted,
Village Board of Round Lake Park,
Respondent

By: 
Peter S. Karlovics,
Attorney for the
Village Board of Round Lake Park

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