

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 OBJECTIONS TO DISCOVERY REQUESTS

Now comes Petitioner, Timber Creek Homes, Inc. ("TCH"), by its attorneys, Jeep & Blazer, LLC, and pursuant to the Hearing Officer's February 19, 2014 Order, hereby submits its Objections to certain discovery requests propounded by Respondent Groot Industries, Inc. ("Groot").

1. Groot's Request to Admit No. 11 asks TCH to admit 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 objects to this Request in that it presupposes an impossibility. The Round Lake Park Pollution Control Facilities Siting Ordinance (the "Ordinance") (C02458-02470), 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 Park Village Board. The Hearing Officer also acknowledged during the siting hearing, when TCH raised the fundamental fairness issue, that he had no authority to take any action in connection with the issue. (C03234, C03236-03237; 09/25/13 Hearing Transcript-2 at 118, 120-121)

Further, 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. Rather, the cases confirm that the party claiming a fundamental fairness violation must have “raised” or “asserted” the issue during the siting proceeding. *E & E Hauling, Inc. v. Pollution Control Board*, 107 Ill.2d 33, 38 (1985) *Peoria Disposal Co. v. Illinois Pollution Control Board*, 385 Ill.App.3d 781, 798 (3rd Dist.), appeal denied 231 Ill.2d 654 (2008) TCH did so in this case. (C03234; 09/25/13 Hearing Transcript-2 at 118) Request to Admit No. 11 is therefore not a request for admission of fact as authorized by 35 Ill.Adm.Code 101.618(d). Rather, it seeks a legal conclusion regarding the availability and necessity of such a “motion”.

2. As a corollary to the above Request to Admit, Groot’s Interrogatory No. 20 requests that, “If 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. Please include the name of the individual making the motion, the date and time of such motion, and the specific content of such motion.” This Interrogatory is subject to the same objections set forth above.

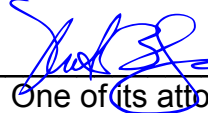
3. Groot’s Interrogatory No. 24 requests that TCH, “Please identify the name, current address, and current telephone number of all witnesses who will testify at the Hearing for Petitioner, and the subject of each individual’s testimony.” TCH objects to this Interrogatory because it is premature (no responses 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 that are covered by the attorney work-product doctrine.

4. Groot’s Interrogatory No. 25 requests that TCH, “Please identify and list any and all documents which will be introduced into evidence at the Hearing, and the purpose and content of each such document.” TCH objects to this Interrogatory because 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 that are covered by the attorney work-product doctrine.

5. Groot's Request for Production No. 13 seeks, "Any and all documents or things set forth or referred to in TCH's Answers to Interrogatories, propounded herewith." To the extent this Request encompasses the subjects of Request to Admit 11 or Interrogatories 20, 24 and 25, TCH objects to this Request on the same bases.

Respectfully submitted,
Timber Creek Homes, Inc.

By: 
One of its attorneys

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of PETITIONER'S OBJECTIONS TO DISCOVERY REQUESTS to be served on the following, via electronic mail transmission, on this 23rd day of February, 2014:

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