

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 April 14, the undersigned caused to be filed electronically with the clerk of the Illinois Pollution Control Board **RESPONDENT ROUND LAKE PARK VILLAGE BOARD'S REPLY TO PETITIONER'S CONSOLIDATED RESPONSE TO RESPONDENTS' MOTIONS TO QUASH SUBPOENA FOR DEPOSITION OF DERKE J. PRICE**, a copy of which is attached hereto.

Respectfully Submitted,

On behalf of Round Lake Park Village Board

*Peter S. Karlovics*

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**AFFIDAVIT OF SERVICE**

The undersigned certifies that on April 14, 2014 a copy of the foregoing **RESPONDENT ROUND LAKE PARK VILLAGE BOARD'S REPLY TO PETITIONER'S CONSOLIDATED RESPONSE TO RESPONDENTS' MOTIONS TO QUASH SUBPOENA FOR DEPOSITION OF DERKE J. PRICE** was served upon the following:

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**By e-mailing a copy thereof as addressed above.**

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**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  
REPLY TO PETITIONER'S CONSOLIDATED RESPONSE TO RESPONDENTS'  
MOTIONS TO QUASH SUBPOENA FOR DEPOSITION OF DERKE J. PRICE**

Now comes the Respondent, Round Lake Park Village Board ("RLPVB"), by its attorneys, the Law Offices of Rudolph F. Magna, and hereby submits its Reply to Petitioner's Consolidated Response to Respondents' Motions to Quash Subpeona for Deposition of Derke J. Price ("Mr. Price").

RLPVB did cite a specific and concise reason for its Motion to Quash, namely, that Mr. Price was never appointed hearing officer, and that he played no role in the local siting hearing other than to be considered for the position of hearing officer. This lack of connection of Mr. Price to this case, as asserted by RLPVB, makes a deposition of Mr. Price about as relevant as TCH deposing any random person off the street.

The law is clear that "The hearing officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance, may quash or modify the subpoena if it is *unreasonable or irrelevant...*" (see 35 Ill. Adm. Code 101.622 (d)) and that

“The hearing officer *will* deny, limit or condition the production of information when necessary to prevent *undue delay, undue expense, or harassment...*” (see 35 Ill. Adm. Code 101.614).

Petitioner Timber Creek Homes, Inc. (“TCH”) had an opportunity in its Response to RLPVB’s Motion to Quash to explain the relevancy of a proposed deposition of Mr. Price, but chose not to do so. Instead, TCH invites speculation as to Mr. Price’s possible relevancy to this case. TCH does not even provide a hint as to what information Mr. Price might have that would make him a relevant witness in this case.

Mr. Price’s firm represented the Village of Hainesville at the time he interviewed for the position of hearing officer. TCH attempts to twist the June 27 email from Mr. Price into some type of admission that he has some type of relevant confidential information to this case. Nothing in Mr. Price’s email points to the possession of confidential information. Instead, Mr. Price was screening himself to comply with the provisions of Rule 1.12 of the Illinois Rules of Professional Conduct entitled “Former Judge, Arbitrator, Mediator or Other Third-Party Neutral.”

Rule 1.12 of the Illinois Rules of Professional Conduct (“RPC”) provides in pertinent part:

“(a) Except as stated in paragraph (d), a *lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral*, unless all parties to the proceeding give informed consent.

\* \* \*

(c) *If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:*

- (1) *the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and*
- (2) *written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule.*

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.” (*emphasis* supplied)

In his June 27<sup>th</sup> email, Mr. Price was making it clear to all parties involved that, even though he was not formally retained by the Village of Round Lake Park (“VRLP”) as a hearing officer (third party neutral), he was refraining from any contact with the attorneys of his firm who represent the Village of Hainesville as required by Rule 1.12 of the RPC, based upon the fact that he was in discussions to be appointed hearing officer.

If Mr. Price’s actions in recusing himself was based upon Rule 1.7 of the RPC, as TCH suggests, he would be possessing confidential information that he could not disclose to the PCB. Rule 1.6(a) of the RPC entitled “Confidentiality of Information” provides in pertinent part that:

“(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent...”

Therefore, even if Mr. Price possessed confidential information from the Village Round Lake Park, Mr. Price remains irrelevant to this case because he could not ethically disclose any such information.

It is clear that Mr. Price was *not* basing his recusal from the position of hearing officer and screening from the other attorneys in his firm based on the supposed possession of confidential information. Mr. Price was following the provisions of Rule 1.12 in his action to screen himself from any participation in this case, which is the only way the attorneys in his firm could continue to represent the Village of Hainesville should it have chosen to object (Hainesville eventually chose not to object).

After having an extensive opportunity to show the relevancy of a person who has no connection to this case, other than that he was NOT appointed hearing officer, TCH has failed to provide any connection of Mr. Price to this case that would warrant his deposition.

WHEREFORE, Respondent, Round Lake Park Village Board, respectfully requests Petitioner Timber Creek Homes, Inc.'s SUBPOENA FOR DEPOSITION be quashed, and grant Respondent, Round Lake Park Village Board such further and other relief as deemed just and proper.

Respectfully Submitted,  
Village Board of Round Lake Park,  
Respondent

By:           *Peter S. Karlovics*            
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