

**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 CONSOLIDATED RESPONSE  
TO RESPONDENTS’ MOTIONS IN *LIMINE***

Now comes Petitioner, Timber Creek Homes, Inc. (“TCH”), by its attorneys, Jeep & Blazer, LLC, and hereby submits its Response to the Motions In *Limine* filed by Respondents Groot Industries, Inc. (“Groot”), Village of Round Lake Park (“VRLP”) and Round Lake Park Village Board (the “Village Board”).<sup>1</sup>

**I. INTRODUCTION**

The IPCB has repeatedly held, both in this case and countless others, that, “Pre-filing contacts may be probative of prejudgment of adjudicative facts, which is an element to be considered in assessing a fundamental fairness allegation.” *Timber Creek Homes, Inc. v. Village of Round Lake Park*, 2014 WL 1350986, PCB 14-99, Slip Op. Cite at 3 (April 3, 2014) Respondents nevertheless persist in their assertion that “all pre-filing contacts are irrelevant to the fundamental fairness of the siting procedures”. (Groot Motion at 2) That is the premise underlying Respondents’ latest effort to limit the scope of this proceeding – despite several contrary rulings, Respondents still want to avoid any evidence of the collusive contacts that led three Village Board members and RLP’s Mayor to vote in favor of the subject transfer station application.

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<sup>1</sup> Only Groot and VRLP have filed motions. Each has joined in the other’s, and the Village Board has joined in both.

**II. RESPONDENTS IMPROPERLY SEEK TO PRECLUDE THE CONSIDERATION OF EVIDENCE ON THE ISSUE OF FUNDAMENTAL FAIRNESS**

Respondents fail to identify a single document that is claimed to fall within the ambit of their Motions. Instead, Respondents seek a blanket preclusion – they do not want TCH to be able to introduce any evidence, and not just new evidence, that predates the retention of Dale Kleszynski (“Kleszynski”), or that is not related to the meeting minutes attached to TCH’s Request to Admit. (Groot Motion at 4-5, ¶¶18, 19) There is no basis in the law for such a blanket preclusion.

Respondents acknowledge that the IPCB “must generally confine its review to the record developed by the local siting authority, and may only hear **new** evidence outside this record if it is relevant to fundamental fairness. [Emphasis added]” (Groot Motion at 3) The scope of the new evidence about which discovery could be conducted was established, for better or worse, by the Hearing Officer’s April 7, 2014 Order. That Order, as Respondents acknowledge, provides that:

I interpret the Board's ruling that the parties may proceed with discovery that is the subject of TCH's Request to Admit. I therefore orally ruled during the telephonic status conference on April 3, 2014 that TCH may pursue discovery regarding entries reflected in the Village Board's minutes that was the Subject of TCH's Request to Admit as those documents were provided or gained during the course of discovery. The discovery, however, must only pertain to the waste transfer station that is the subject of the above-captioned appeal. Further, any discovery request is limited to relevant information and information calculated to lead to relevant information, excluding any privileged information. The parties are cautioned that objections based on an alleged privilege must each be specifically asserted and each substantiated.

(April 7 Order at 2)

Respondents now seek to convert this limitation on the scope of discovery into a limitation on the scope of evidence at the upcoming hearing, even including evidence that is already in the hearing record or that was produced by Respondents during discovery. Respondents try to support their requested blanket preclusion by asserting that, “It follows that if the hearing officer determined - and the PCB affirmed - that evidence outside the parameters

delineated by the March 20 and April 7 Hearing Officer Orders was not even discoverable under the broader discovery standards, then information outside these parameters necessarily is not relevant in the hearing itself.’ (Groot Motion at 4, ¶16) Neither Order, however, said anything about evidence already in the hearing record, or about additional evidence produced by Respondents during the course of discovery. Respondents nevertheless assert that, “The **only** evidence that may arguably be relevant to fundamental fairness has been delineated by the March 20 and April 7 hearing officer orders, as set forth above. [Emphasis added]” (Groot Motion at 4, ¶15) Respondents also assert that, “Similarly, Petitioner should be barred from introducing **any** evidence that predates Mr. Kleszynski's hiring if it does not relate to the meeting minutes and to the transfer station. [Emphasis added]” (Groot Motion at 5, ¶19)

First, as noted above, the discovery limitation in this case only relates to new evidence in discovery, and not to all evidence for purposes of the hearing. There is a substantial amount of evidence already in the record of this case that is relevant to the issue of fundamental fairness. (See TCH’s Answers to Groot’s Interrogatories, attached hereto as Exhibit A, ¶¶3, 5, 9, 11) A number of Village Board meeting minutes that are not part of TCH’s Request to Admit are also in the hearing record. The Village Board has admitted that those meeting minutes are “Relevant Open Meetings of the Village Board”. (Hearing Record, C00vii)

Further, Respondents’ position is inconsistent with their own discovery responses in this case. Following the Hearing Officer’s expansion of allowable discovery in his April 7 Order (and the IPCB’s affirmance of that Order on April 17), all of the Respondents produced documents relevant to the issue of fundamental fairness, including a number of e-mails between the parties relating specifically to the transfer station hearing process. These communications substantiate the collusive relationship among the Respondents with respect to the transfer station.

Finally, Respondents persist in their effort to preclude any evidence that predates Kleszynski’s retention. (Groot Motion at 4) That was the discovery limitation in the Hearing Officer’s March 20 Order, but that Order was superseded by the April 7 Order. As noted in the

April 7 Order, the meeting minutes attached to the 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).

VRLP additionally asserts in its Motion that:

TCH's allegations regarding RLP's Appraiser, Mr. Kleszynski, do not rise to the level of fundamental fairness as Mr. Kleszynski was cross examined on those issues at the hearing and those issues were considered by the Village Board in reaching its decision. TCH did not depose Mr. Kleszynski.

(VRLP Motion at 2) It appears that VRLP is arguing that Kleszynski's hearing testimony and report do not prove a claim of fundamental fairness. A motion in *limine*, however, is not the appropriate vehicle for assessing the weight of the evidence – that is left to the hearing or, in the appropriate case, to a motion for summary judgment. Nor is TCH's decision to not depose Kleszynski in any way relevant to that analysis. There is no principle of law that requires a party to depose every potential witness. More to the point, however, Kleszynski's testimony and report are already in the hearing record. It is frankly impossible to determine what Respondents seek to "exclude".

On a related vein, Respondents claim that, "Petitioner argued in response to a motion to quash a subpoena to Mr. Kleszynski that his hiring was the basis of Petitioner's fundamental fairness claim." (Groot Motion at 1) That assertion is patently false. TCH alleged in its Response to the subject Motion to Quash that, "VRLP's complicity with Groot reached its zenith with the report and testimony of Dale Kleszynski...." (TCH Response to Motion to Quash at 3) It is certainly true that Kleszynski's conduct is probative of VRLP's undisclosed status as Groot's co-applicant, and of the collusive scheme that led to the approval of the subject transfer station. But TCH has never alleged that Kleszynski's hiring was the basis for the fundamental fairness claim, as confirmed by TCH's Answers to Groot's Interrogatories, and the other proceedings and discovery that have taken place to date.

**II. TCH PROVIDED ITS SUPPLEMENTAL DISCOVERY RESPONSES AS SOON AS PRACTICABLE GIVEN THE DELAYS IN DISCOVERY THAT PRECEDED THOSE RESPONSES. MOREOVER, ALL OF THE WITNESSES IDENTIFIED IN TCH'S SUPPLEMENTAL DISCOVERY RESPONSES WERE PREVIOUSLY IDENTIFIED DURING DISCOVERY**

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 11, 2014 Order, the Hearing Officer sustained TCH's objections to Groot's Interrogatory Nos. 24 and 25, which sought a list of all witnesses to be called and documents to be used at the hearing of this matter, because no responses to TCH's discovery requests had yet been provided. In his March 25 Order, the Hearing Officer granted Respondents' request to extend the deadline for responses to written discovery to March 31.

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 Kleszynski had been retained. Indeed, Groot limited its responses to one day – from June 20 to June 21, 2013. The Hearing Officer then issued his April 7 Order expanding the scope of allowed discovery, and the IPCB affirmed that 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. Nor did that end the saga of Respondents' discovery responses.

As set forth in the Hearing Officer's 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.<sup>2</sup>

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<sup>2</sup> As reflected in the Hearing Officer's May 12 Order, the purportedly privileged documents were not provided until May 7.

Despite the open discovery issue, given the impending May 9 discovery cutoff date and Groot's refusal to waive the decision deadline in this matter, TCH was forced to proceed with certain depositions. Those depositions proceeded as follows:

Deponent	Date	Time
Lee Brandsma, Groot corporate representative	May 1, 2014	11:00 a.m.
Trustee Donna Wagner	May 2, 2014	10:00 a.m.
Mayor Linda Lucassen	May 5, 2014	5:00 p.m.
Trustee Candace Kenyon	May 6, 2014	4:30 p.m.
Trustee Jean McCue	May 8, 2014	4:30 p.m.

The names of all of the potential witnesses, and the role of many of them in the relationship between Groot and VRLP, were addressed during those depositions. Notably, the last deponent, Trustee McCue, was VRLP's Mayor from the inception of discussions with Groot in 2008 through May 2013, and was the principal contact between VRLP and Groot throughout that period. Her deposition was initially scheduled for May 6, but she stated that she was unavailable that day and the deposition had to be rescheduled at her counsel's request to May 8. Her deposition concluded at 7:00 p.m. that day. TCH served its Supplemental Responses shortly after 1:00 p.m. the following day, although none of the deposition transcripts were yet available at that time.

Respondents assert that, "By waiting until the last day of discovery to identify its potential witnesses, most of whom fall outside the scope of discovery in this matter, and two of whom are counsel for parties in this proceeding, Petitioner is attempting to conduct trial by ambush." (Groot Motion at 5) Respondents do not suggest, given the above circumstances, when TCH should or could have provided the supplemental responses. The simple fact is that the basis for determining who those witnesses might be was not available, and to a great extent is still not, until the evening before the Supplemental Responses were provided.

Further, this portion of Respondents' Motions is not properly the subject of a motion in *limine*. It would, in the appropriate circumstance (not present here), be the proper subject of a

motion for discovery sanctions pursuant to 35 Ill.Adm.Code 101.616(g) and 101.800. Respondents have filed no such motion.

Nor would such a motion be proper in any event. Apart from the above facts, Respondents have made no effort to comply with the consultation requirement mandated by Supreme Court Rule 201(k). Indeed, the only discussion initiated by Respondents regarding TCH's Supplemental Responses was a request on May 6 to confirm who TCH would not call as a witness, so that those witnesses would not have to be deposed. The email exchange reflecting that discussion is attached hereto as Exhibit B.

Moreover, Respondents' assertion that most of the potential witnesses "fall outside the scope of discovery" is false. Respondents claim that TCH "never actually identified any of its witnesses during the period in which such information could be of use to the other parties". (Groot Motion at 5) But the identities of the potential witnesses are certainly not a surprise to any of the Respondents. All of the individuals listed, except Charles Helsten ("Helsten")<sup>3</sup>, are identified in the meeting minutes that are the subject of TCH's Request to Admit. Notably, none of the persons are third-party witnesses. Rather, they include former VRLP Trustees, VRLP's retained experts, VRLP's Village Planner, one of Groot's consultants who had extensive communications with Trustee McCue, and the head of the Solid Waste Agency of Lake County, a former employee of Groot's chief consultant who first addressed bringing a transfer station to VRLP with the Village Board in 2008.

Respondents nevertheless assert that TCH's witnesses should be limited to those that TCH deposed. (*Id.*) As noted above, no case has ever held that a party has an obligation to depose every witness it intends to call at a hearing or trial. Nor have Respondents suggested anything that prevented them from deposing anyone identified on the meeting minutes that have been a part of this case since early February. Particularly given the circumstances of this case,

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<sup>3</sup> Helsten is listed because of e-mails he exchanged with the Village Board's counsel in the period leading up to the siting hearing. Those e-mails were produced by the Village Board and Groot, and were addressed during Trustee McCue's deposition.

and Respondents' dilatory conduct in responding (and not responding) to discovery, there is no basis for precluding the testimony of any of the witnesses identified by TCH.

**III. VRLP PREVIOUSLY RESPONDED TO THE DISCOVERY REGARDING ITS CLAIM THAT THE HEARING OFFICER USURPED THE VILLAGE BOARD'S AUTHORITY**

Respondents assert that, "It remains wholly vague and unclear, despite the approaching hearing, specifically what determinations of the hearing officer below TCH refers to in its Petition as being solely within the province of the Village Board and beyond the scope of the authority of that hearing officer and likewise it remains vague and unclear regarding what determination, in the view of TCH, the Village Board in turn failed to make." (VRLP Motion at 1)

Groot makes a similar argument in adopting VRLP's Motion, asserting that, "Petitioner has repeatedly failed to respond in any meaningful way to discovery that would assist the parties in determining the specific nature of Petitioner's claims regarding fundamental fairness, and particularly its claim that the hearing officer usurped the authority of the Village Board by making determinations outside the scope of his authority." (Groot Motion to Adopt at 1) Groot then claims that, "Based on Petitioner's repeated failure to provide meaningful discovery responses, and Illinois Supreme Court Rule 219(c), Petitioner should be barred from introducing evidence regarding the alleged usurpation by the hearing officer of the Village Board's authority or the Village Board's alleged failure to make determinations required by statute." (Groot Motion to Adopt at 2)<sup>4</sup> Respondents' assertions are simply untrue.

First, the principal proponent of this argument, VRLP, did not issue any discovery in this case – only Groot did. Nor did Groot's Interrogatories request any information regarding this

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<sup>4</sup> Groot also complains, without any citation, that TCH's corporate President was directed not to answer questions regarding the usurpation claim during his deposition, based on the attorney-client privilege. It is impossible to determine the relevance of this assertion in the context of the present Motions. It must be noted however, as set forth in TCH's Response To Notice Of Rule 206(A)(1) Deposition Of Petitioner Timber Creek Homes, Inc., that Groot failed to comply with Supreme Court Rule 206(a)(1) when it sought to depose TCH's President in his corporate capacity.



subject. Rather, Groot's Interrogatory No. 11 sought information regarding "any grounds for a claim of fundamental unfairness other than already described in Answers to the previous interrogatories". In response to the subject Interrogatory, and in accordance with Supreme Court Rule 213(e), TCH provided a detailed listing of the documents in the hearing record, with specific page references, that respond to that Interrogatory. (See Exhibit A hereto) TCH confirmed that its answer to Interrogatory No. 11 relates directly to the "usurpation" claim in its response to Request No. 4 of Groot's Request for Production of Documents. A copy of TCH's Response is attached hereto as Exhibit C.

Moreover, as with Respondents' efforts regarding hearing witnesses, this aspect of the Motions in *Limine* questions the adequacy of TCH's responses to Groot's discovery requests, and seeks a discovery sanction. Such a request would properly be the subject of a motion pursuant to 35 Ill.Adm.Code 101.616(g) and 101.800, not a motion in *limine* on the eve of the hearing and after all discovery has been closed. Nor, again, would such a motion be appropriate here in any event.

TCH's Responses were served 45 days ago – on March 31. Contrary to Respondents' assertion of "repeated failures", however, neither Groot, who issued the discovery requests, nor either of the other Respondents, ever previously questioned the adequacy of those responses. Nor did Respondents even attempt any kind of consultation in accordance with Supreme Court Rule 201(k). Rather, in the type of "trial by ambush" that Respondents falsely accuse TCH of conducting, Respondents sat silent until discovery was closed to complain that TCH's responses did not provide enough information. Apart from the fact that it is untrue, that complaint comes far too late.

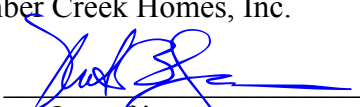
Respondents nevertheless assert that, "Fundamental fairness and due process require more particularly [*sic*] when viewed in light of the previously litigated motions including motions to strike and dismiss." (VRLP Motion at 2) The IPCB rejected any such requirement of "more particularity" when it denied Respondents' Motions to Dismiss. *Timber Creek Homes, Inc.*

v. *Village of Round Lake Park*, 2014 WL 1117954, PCB 14-99, Slip Op. Cite at 11-12 (March 20, 2014)

**IV. CONCLUSION**

For all of the foregoing reasons, TCH requests that the Motions in *Limine* be denied.

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 RESPONSE TO RESPONDENTS' MOTIONS IN *LIMINE* to be served on the following, via electronic mail transmission, on this 15<sup>th</sup> day of May, 2014:

*Hearing Officer*

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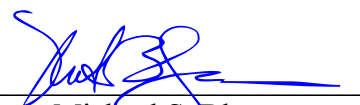
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Michael S. Blazer  
One of the attorneys for  
Petitioner

**EXHIBIT A**

**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, ) (Pollution Control Facility Siting Appeal)  
 ROUND LAKE PARK VILLAGE BOARD )  
 and GROOT INDUSTRIES, INC., )  
 )  
 Respondents )

**ANSWERS TO INTERROGATORIES**

Now comes petitioner, Timber Creek Homes, LLC (“TCH”), by its attorneys, Jeep & Blazer, LLC, and hereby submits its Answers to the Interrogatories served by respondent Groot Industries, Inc. (“Groot”).

**INTERROGATORY NO. 1.** Identity all persons answering these Interrogatories, and all persons who provided information regarding or assisted in answering these Interrogatories.

**ANSWER:** These interrogatories are being answered by TCH, to whom they are directed. Information for most of the Answers was derived from the siting hearing record and other sources identified in the following Answers. Mr. Larry Cohn and counsel for TCH provided the information for the Answer to Interrogatory 26. Mr. Larry Cohn provided the information for the Answers to Interrogatories 27 and 28.

**INTERROGATORY NO. 2.** Is it Petitioner’s contention that the siting process and procedures employed by the Village Board were fundamentally unfair?

**ANSWER:** Yes.

**INTERROGATORY NO. 3.** If the answer to your foregoing Interrogatory is “yes”, then please identify with specificity:

- a. Every fact within Petitioner's knowledge which is relied upon in making that assertion;
- b. Each statement, declaration, assertion, or conversation relating to the fundamental fairness of the siting process and procedures employed in this matter by the Village Board;
- c. Every document or other evidentiary item relating to the fundamental fairness of the siting process and procedures employed in this matter which the Petitioner relies upon in making that assertion.

**ANSWER:** In accordance with Illinois Supreme Court Rule 213(e), see the following documents:

1. Timber Creek Homes' Proposed Findings and Conclusions (C04190-C04194) and references cited therein.
2. Timber Creek Homes' Motion to Strike and For Negative Inference Instruction (C04355.002-C04355.005) and references cited therein.
3. Findings And Recommendations of the Hearing Officer (C04355.036-C04355.038, C04355.044, C04355.050-C04355.052, C04355.055, C04355.058-C04355.060, C04355.066-C04355.07, C04355.069-C04355.070) and references cited therein.
4. Village of Round Lake Park Ordinance No. 12-13 (C02472-C02490)
5. Village of Round Lake Park Ordinance No. 13-15 (C02491-C02494)
6. Village of Round Lake Park Board Meeting Minutes October 16, 2012 (C04394-C04395)
7. Village of Round Lake Park Board Meeting Minutes November 13, 2012 (C04402)
8. Village of Round Lake Park Board Meeting Minutes December 18, 2012 (C4414))

9. Village of Round Lake Park Board Meeting Minutes February 5, 2013 (C04419)
10. Village of Round Lake Park Board Meeting Minutes March 12, 2013 (C04423-C04424)
11. Village of Round Lake Park Board Meeting Minutes June 11, 2013 (C04438)
12. Village of Round Lake Park Board Meeting Minutes June 18, 2013 (C04446)
13. Village of Round Lake Park Board Meeting Minutes August 6, 2013 (C04471)
14. Village of Round Lake Park Board Meeting Minutes September 17, 2013 (C04489-C04490)
15. Village of Round Lake Park Board Meeting Minutes October 1, 2013 (C04496-C04497)
16. Village of Round Lake Park Board Meeting Minutes November 5, 2013 (C04508-C04510)
17. Village Board meeting minutes that are the subject of TCH's Request to Admit Facts and Genuineness of Documents.
18. Transcript of Village Board deliberations on December 11, 2013 (C03875-C04009)
19. Village of Round Lake Park Board Meeting Minutes December 10, 2013 (C04521-C04523)
20. Transcript of Village Board vote on December 12, 2013 (C04025-C04044)
21. Village of Round Lake Park Board Meeting Minutes December 12, 2013 (C04524)
22. Village of Round Lake Park Resolution No. 13-09 (C04579-C04623)

Investigation continues.

**INTERROGATORY NO. 4.** Is it petitioner's contention that the merits of the Siting Application were pre-adjudicated?

**ANSWER:** Yes.

**INTERROGATORY NO. 5.** If the answer to your foregoing Interrogatory is "yes", then please identify with specificity:

- a. Every fact, opinion, statement, declaration, assertion or evidentiary item of any type or kind within Petitioner's knowledge which is relied upon in making that assertion;
- b. Each statement, conversation, declaration, assertion or writing relating to the alleged pre-adjudication of the merits of the Siting Application;
- c. Every document or other evidentiary item relating to the alleged pre-adjudication of the merits of the Siting Application.

**ANSWER:** See Answer to Interrogatory No. 3.

**INTERROGATORY NO. 6.** Is it Petitioner's contention that *ex parte* or improper communications took place concerning the Siting Application?

**ANSWER:** Groot does not specify whether this Interrogatory seeks information regarding communications before or after the Siting Application was filed. The word "improper" is also not defined. Since *ex parte* communications could only take place after the Siting Application was filed, TCH therefore assumes that this Interrogatory seeks information regarding such communications. As to that subject, unknown at this time. Investigation continues. TCH will supplement this answer upon definition of the word "improper".

**INTERROGATORY NO. 7.** If the answer to your foregoing Interrogatory is "yes", then please identify with specificity:



- a. Every fact, opinion, statement, declaration, assertion or evidentiary item of any type or kind within Petitioner's knowledge which is relied upon in making that assertion;
- b. Each statement, conversation, declaration, assertion or writing relating to any *ex parte* or improper communication;
- c. Every document or other evidentiary item relating to any *ex parte* or improper communication.

**ANSWER:** See answer to Interrogatory No. 6.

**INTERROGATORY NO. 8.** Is it Petitioner's contention that the Village Board was in any way biased regarding the Siting Application?

**ANSWER:** It is TCH's contention that certain members of the Village Board were biased.

**INTERROGATORY NO. 9.** If the answer to your foregoing Interrogatory is "yes", then please identify with specificity:

- a. Every fact, opinion, statement, declaration, assertion or evidentiary item of any type or kind within Petitioner's knowledge which is relied upon in making that assertion;
- b. Each statement, conversation, declaration, assertion or writing relating to any alleged bias by the Village Board;
- c. Every document or other evidentiary item relating to any alleged bias of the Village Board.

**ANSWER:** See answer to Interrogatory No. 3.

**INTERROGATORY NO. 10.** Does the Petitioner allege any grounds for a claim of fundamental unfairness other than already described in Answers to the previous interrogatories?

**ANSWER:** Yes.

**INTERROGATORY NO. 11.** If the answer to your foregoing Interrogatory is "yes", then please identify with specificity:

- a. Every fact, opinion, statement, declaration, assertion or evidentiary item of any type or kind within Petitioner's knowledge which is relied upon in making that assertion;
- b. Each statement, conversation, declaration, assertion or writing relating to any alleged fundamental unfairness;
- c. Every document or other evidentiary item relating to any alleged fundamental unfairness.

**ANSWER:** In accordance with Illinois Supreme Court Rule 213(e), see the following documents:

1. Findings And Recommendations of the Hearing Officer (C04355.036-C04355.038, C04355.044, C04355.050-C04355.052, C04355.055, C04355.058-C04355.060, C04355.066-C04355.07, C04355.069-C04355.070) and references cited therein.
2. Village of Round Lake Park Board Meeting Minutes October 1, 2013 (C04496-C04497)
3. Transcript of Village Board deliberations on December 11, 2013 (C03904, C03905-C03907, C03918-C03920, C03976-C03977)

Investigation continues.

**INTERROGATORY NO. 12.** Is it Petitioner's contention that the decision by the Village Board was against the manifest weight of the evidence regarding statutory criterion i (need)?

**ANSWER:** Yes.

**INTERROGATORY NO. 13.** If the answer to your foregoing Interrogatory is "yes", then please identify with specificity:

- a. Every fact within Petitioner's knowledge which is relied upon in making that assertion;
- b. Each statement, declaration, assertion, or conversation relating to your contention;
- c. Every document or other evidentiary item relating to statutory criterion i (need) upon which the Petitioner relies in making that assertion.

**ANSWER:** In accordance with Illinois Supreme Court Rule 213(e), see the following documents:

1. Timber Creek Homes' Proposed Findings and Conclusions (C04135-C04151) and references cited therein.
2. Findings And Recommendations of the Hearing Officer (C04355.039-C04355.044) and references cited therein.
3. Transcript of Village Board vote on December 12, 2013 (C03894-C03917)
4. Village of Round Lake Park Board Meeting Minutes December 12, 2013 (C04524)
5. Village of Round Lake Park Resolution No. 13-09 (C04579-C04623)

**INTERROGATORY NO. 14.** Is it Petitioner's contention that the decision by the Village Board was against the manifest weight of the evidence regarding statutory criterion ii (public health, safety, and welfare)?

**ANSWER:** Yes.

**INTERROGATORY NO. 15.** If the answer to your foregoing Interrogatory is "yes", then please identify with specificity:

- a. Every fact within Petitioner's knowledge which is relied upon in making that assertion;
- b. Each statement, declaration, assertion, or conversation relating to your contention;
- c. Every document or other evidentiary item relating to statutory criterion ii (public health, safety, and welfare) upon which the Petitioner relies in making that assertion.

**ANSWER:** In accordance with Illinois Supreme Court Rule 213(e), see the following documents:

1. Timber Creek Homes' Proposed Findings and Conclusions (C04151-C04164) and references cited therein.
2. Findings And Recommendations of the Hearing Officer (C04355.045-C04355.052) and references cited therein.
3. Transcript of Village Board vote on December 12, 2013 (C03917-C03924, C03971-C03973)
4. Village of Round Lake Park Board Meeting Minutes December 12, 2013 (C04524)
5. Village of Round Lake Park Resolution No. 13-09 (C04579-C04623)

**INTERROGATORY NO. 16.** Is it Petitioner's contention that the decision by the Village Board was against the manifest weight of the evidence regarding statutory criterion iii (compatibility with the character of the surrounding area)?

**ANSWER:** Although not specified in the parenthetical, it is assumed that this Interrogatory is directed at both clauses of criterion iii – compatibility with the character of the surrounding area and minimization of impact on property values. The answer with respect to both clauses is yes.

**INTERROGATORY NO. 17.** If the answer to your foregoing Interrogatory is “yes”, then please identify with specificity:

- a. Every fact within Petitioner's knowledge which is relied upon in making that assertion;
- b. Each statement, declaration, assertion, or conversation relating to your contention;
- c. Every document or other evidentiary item relating to statutory criterion iii (compatibility with the character of the surrounding area) upon which the Petitioner relies in making that assertion.

**ANSWER:** In accordance with Illinois Supreme Court Rule 213(e), see the following documents:

1. Timber Creek Homes' Proposed Findings and Conclusions (C04164-C04177) and references cited therein.
2. Findings And Recommendations of the Hearing Officer (C04355.053-C04355.061) and references cited therein.
3. Transcript of Village Board vote on December 12, 2013 (C03974-C03980)
4. Village of Round Lake Park Board Meeting Minutes December 12, 2013 (C04524)

5. Village of Round Lake Park Resolution No. 13-09 (C04579-C04623)

**INTERROGATORY NO. 18.** Is it Petitioner's contention that the decision by the Village Board was against the manifest weight of the evidence regarding statutory criterion vi (minimization of impact on traffic)?

**ANSWER:** Yes.

**INTERROGATORY NO. 19.** If the answer to your foregoing Interrogatory is "yes", then please identify with specificity:

- a. Every fact within Petitioner's knowledge which is relied upon in making that assertion;
- b. Each statement, declaration, assertion, or conversation relating to your contention;
- c. Every document or other evidentiary item relating to statutory criterion vi (minimization of impact on traffic) upon which the Petitioner relies in making that assertion.

**ANSWER:** In accordance with Illinois Supreme Court Rule 213(e), see the following documents:

1. Timber Creek Homes' Proposed Findings and Conclusions (C04177-C04188) and references cited therein.
2. Findings And Recommendations of the Hearing Officer (C04355.062-C04355.067) and references cited therein.
3. Transcript of Village Board vote on December 12, 2013 (C03980-C03991)
4. Village of Round Lake Park Board Meeting Minutes December 12, 2013 (C04524)
5. Village of Round Lake Park Resolution No. 13-09 (C04579-C04623)

**INTERROGATORY NO. 20.** 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.

**ANSWER:** See Response to Request to Admit No. 11.

**INTERROGATORY NO. 21.** If your answer to Request to Admit No. 12 is anything other than an unequivocal admission, please identify precisely the manner in which Petitioner objected regarding bias in the siting process and procedures. Please include the name of the individual making the objection, the date and time of such objection, and the specific content of such objection.

**ANSWER:** In accordance with Illinois Supreme Court Rule 213(e), see the following documents:

1. Siting hearing transcript. (C03234, C03236-03237)
2. Timber Creek Homes' Proposed Findings and Conclusions (C04190-04194) and references cited therein.
3. Timber Creek Homes' Response to Co-Applicant's Motion to Strike. (C04355.028-C04355.030)
4. Findings And Recommendations of the Hearing Officer (C04355.037) and references cited therein.

**INTERROGATORY NO. 22.** If your answer to Request to Admit No. 13 is anything other than an unequivocal admission, please identify precisely the manner in which Petitioner objected regarding pre-adjudication in the siting process and procedures. Please include the

name of the individual making the objection, the date and time of such objection, and the specific content of such objection.

**ANSWER:** See Answer to Interrogatory No. 21.

**INTERROGATORY NO. 23.** If your answer to Request to Admit No. 14 is anything other than an unequivocal admission, please identify precisely the manner in which Petitioner objected regarding the fundamental fairness of the siting process and procedures. Please include the name of the individual making the objection, the date and time of such objection, and the specific content of such objection.

**ANSWER:** See Answer to Interrogatory No. 21.

**INTERROGATORY NO. 24.** 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.

**ANSWER:** 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).

**INTERROGATORY NO. 25.** 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.

**ANSWER:** 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).

**INTERROGATORY NO. 26.** Please identify any and all communications between TCH or any of its agents and attorneys, including but not limited to Mr. Larry Cohn and Mr.



Michael Blazer, and any Trustee or member of the Village of Round Lake Village Board at any time since June 21, 2013.

**ANSWER:** None other than what is reflected in the hearing record and occasional pleasantries during the hearing.

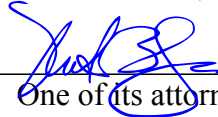
**INTERROGATORY NO. 27.** Please identify any and all communications between TCH or its agents or attorneys, including but not limited to Mr. Larry Cohn and Mr. Michael Blazer, and any waste company, transfer station operator, or other competitor to Groot concerning the Siting Application or the siting process or procedures.

**ANSWER:** At an unknown date in the past, Mr. Larry Cohn had a brief conversation with an employee of Waste Management, Inc., whose name Mr. Cohn does not recall, regarding the Groot proposal for a garbage transfer station in an attempt to be able to talk to a company executive in hopes of obtaining financial assistance in contesting the application. The attempt was unsuccessful as no such contact ensued and the matter was dropped by Mr. Cohn.

**INTERROGATORY NO. 28.** Please identify any and all changes in service agreements between TCH or any of its affiliates, including subsidiaries, parent companies, or business entities under the same ownership as TCH, and any waste company or transfer station operator since January 2013.

**ANSWER:** None.


Timber Creek Homes, Inc.

By:  \_\_\_\_\_  
One of its attorneys

Michael S. Blazer (ARDC No. 6183002)  
Jeffery D. Jeep (ARDC No. 6182830)  
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24 N. Hillside Avenue, Suite A  
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[mblazer@enviroatty.com](mailto:mblazer@enviroatty.com)  
[jdjeep@enviroatty.com](mailto:jdjeep@enviroatty.com)

**CERTIFICATION**

Under penalties as provided by Section 1-109 of the Illinois Code of Civil Procedure, the undersigned hereby certifies that he is the President of Timber Creek Homes, Inc., the Petitioner herein, and its duly authorized agent in this regard; that he has read the above and foregoing ANSWERS TO INTERROGATORIES and knows the contents thereof, and the same are true to the best of his knowledge, information and belief.



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Larry Cohn

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he caused a copy of PETITIONER'S ANSWERS TO INTERROGATORIES to be served on the following, via electronic mail transmission, on this 31<sup>st</sup> day of March, 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](mailto:Brad.Halloran@illinois.gov)

*For Groot Industries, Inc.*

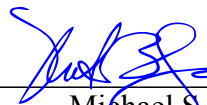
Charles F. Helsten  
Richard S. Porter  
Hinshaw and Culbertson  
100 Park Avenue  
Rockford, IL 61101-1099  
[chelsten@hinshawlaw.com](mailto:chelsten@hinshawlaw.com)  
[rporter@hinshawlaw.com](mailto:rporter@hinshawlaw.com)

Peggy L. Crane  
Hinshaw and Culbertson  
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Peoria, IL 61602  
[pcrane@hinshawlaw.com](mailto:pcrane@hinshawlaw.com)

*For the Village of Round Lake Park Village Board*      *For the Round Lake Park Board*

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[PKarlovics@aol.com](mailto:PKarlovics@aol.com)

Glenn Sechen  
The Sechen Law Group  
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Cedar Lake, IN 46303-9658  
[glenn@sechenlawgroup.com](mailto:glenn@sechenlawgroup.com)



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Michael S. Blazer  
One of the attorneys for  
Petitioner

**EXHIBIT B**

Thursday, May 15, 2014 at 8:49:12 AM Central Daylight Time

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**Subject:** Re: Depositions  
**Date:** Wednesday, May 7, 2014 at 2:13:02 PM Central Daylight Time  
**From:** Peter S. Karlovics  
**To:** Mike Blazer, Richard Porter, Glenn Sechen  
**Category:** 00614.1

Thanks Mike.

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

From: Mike Blazer  
To: Richard Porter  
To: Peter Karlovics  
To: Glenn Sechen  
Subject: Depositions  
Sent: May 7, 2014 2:08 PM

Gentlemen:

In response to the question after the dep yesterday, this is to confirm that we will not call Trustees Williams and McCarty as witnesses at the hearing. Based on our conversation, this will dispense with the need to depose them.

Mike

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](mailto:mblazer@enviroatty.com)

Web Site: [www.jeepandblazer.com](http://www.jeepandblazer.com)

Peter S. Karlovics  
LAW OFFICES OF RUDOLPH F. MAGNA  
Sent from my Verizon Wireless BlackBerry

**EXHIBIT C**

**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 )

**RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS**

Now comes petitioner, Timber Creek Homes, LLC (“TCH”), by its attorneys, Jeep & Blazer, LLC, and hereby submits its Response to the Request for Production of Documents served by respondent Groot Industries, Inc. (“Groot”).

**REQUEST NO. 1:**

Any and all documents relating to or purporting to show any alleged pre-adjudication of Groot's Siting Application by the Village or Village Board.

**RESPONSE:** See documents identified in TCH's Answers to Interrogatories, all of which are either in the record of the siting hearing or are the subject of TCH's Request to Admit served on the Village of Round Lake Park (“VRLP”) and the Round Lake Park Village Board (the “Village Board”). Investigation continues.

**REQUEST NO. 2:**

Any and all documents relating to or purporting to show any alleged bias in the siting process or procedure in this matter, including the deliberation and decision making process engaged in by the Village or the Village Board related to the Siting Application, either before or after the Village Board's decision on December 12, 2013.

**RESPONSE:** See Response to Request No. 1.

**REQUEST NO. 3:**



Any and all documents concerning or relating to any alleged lack of fundamental fairness of the siting hearing, procedure, process, or decision of the Village Board related to the Siting Application.

**RESPONSE:** See Response to Request No. 1.

**REQUEST NO. 4:**

Any and all documents relating to the alleged usurpation of the Village Board's authority by the hearing officer in the hearing, procedure, process, or decision of the Village Board related to the Siting Application, either before or after the Village Board's decision on December 12, 2013.

**RESPONSE:** See documents identified in TCH's Answer to Interrogatory No. 11, all of which are either in the record of the siting hearing or are the subject of TCH's Request to Admit served on VRLP and the Village Board. Investigation continues.

**REQUEST NO. 5:**

Any and all documents relating to the alleged failure of the Village Board to perform its statutory duty regarding the Siting Application, either before or after the Village Board's decision on December 12, 2013.

**RESPONSE:** See Response to Request No. 4.

**REQUEST NO. 6:**

All documents which purport to show any alleged *ex parte* or improper contacts by anyone with the Village or Village Board concerning the Siting Application.

**RESPONSE:** See Answer to Interrogatory No. 6.

**REQUEST NO. 7:**

All documents related to Petitioner's claim that the Village Board's decision was against the manifest weight of the evidence with respect to statutory criterion i.

**RESPONSE:** See documents identified in TCH's Answer to Interrogatory No. 13, all of which are in the record of the siting hearing.

**REQUEST NO. 8:**

All documents related to Petitioner's claim that the Village Board's decision was against the manifest weight of the evidence with respect to statutory criterion ii.

**RESPONSE:** See documents identified in TCH's Answer to Interrogatory No. 15, all of which are in the record of the siting hearing.

**REQUEST NO. 9:**

All documents related to Petitioner's claim that the Village Board's decision was against the manifest weight of the evidence with respect to statutory criterion iii.

**RESPONSE:** See documents identified in TCH's Answer to Interrogatory No. 17, all of which are in the record of the siting hearing.

**REQUEST NO. 10:**

All documents related to Petitioner's claim that the Village Board's decision was against the manifest weight of the evidence with respect to statutory criterion vi.

**RESPONSE:** See documents identified in TCH's Answer to Interrogatory No. 19, all of which are in the record of the siting hearing.

**REQUEST NO. 11:**

All documents related to Petitioner's claim that the Village Board's decision was against the manifest weight of the evidence with respect to statutory criterion viii.

**RESPONSE:** The following items are all in the record of the siting hearing:

1. Timber Creek Homes' Proposed Findings and Conclusions (C04188-C04190) and references cited therein.
2. Findings And Recommendations of the Hearing Officer (C04355.068-C04355.070) and references cited therein.
3. Transcript of Village Board vote on December 12, 2013 (C03889, C03890-C03891)
4. Village of Round Lake Park Board Meeting Minutes December 12, 2013 (C04524)
5. Village of Round Lake Park Resolution No. 13-09 (C04579-C04623)

**REQUEST NO. 12:**

All documents not provided pursuant to one of the Requests above, which relate to any issue raised in the Petition filed herein.

**RESPONSE:** Unknown at this time. Investigation continues.

**REQUEST NO. 13:**

Any and all documents or things set forth or referred to in TCH's Answers to Interrogatories, propounded herewith.

**RESPONSE:** To the extent this Request encompasses the subjects of Interrogatories 24 and 25, TCH objects to this Request on the same bases. All other documents are either in the record of the siting hearing or are the subject of TCH's Request to Admit served on VRLP and the Village Board.

**REQUEST NO. 14:**

Any and all documents related to any communications between TCH or any of its agents and attorneys, including but not limited to Mr. Larry Cohn and Mr. Michael Blazer, and any Trustee or member of the Village of Round Lake Village Board at any time since June 21, 2013.

**RESPONSE:** See Answer to Interrogatory No. 26.

**REQUEST NO. 15:**

Any and all communications between TCH or its agents or attorneys, including but not limited to Mr. Larry Cohn and Mr. Michael Blazer, between any waste company, transfer station operator, or other competitor to Groot concerning the Siting Application or the siting procedures and process, including the public hearing concerning the Application.

**RESPONSE:** See Answer to Interrogatory No. 27.

**REQUEST NO. 16:**

Any and all documents related to any change in service agreement between TCH or any of its affiliates, including subsidiaries, parent companies, or business entities under the same ownership as TCH, and any waste company or transfer station operator since January 2013.

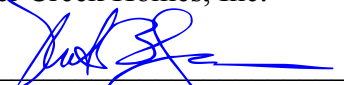
**RESPONSE:** See Answer to Interrogatory No. 28.

**REQUEST NO. 17:**

It is further requested that each party and/or his or its attorney in compliance with this request for production shall furnish an Affidavit stating whether the production is complete.

**RESPONSE:** See Certification.

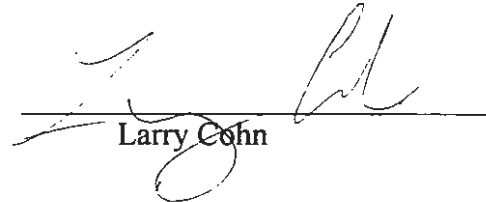
Timber Creek Homes, Inc.

By:   
One of its attorneys

Michael S. Blazer (ARDC No. 6183002)  
Jeffery D. Jeep (ARDC No. 6182830)  
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[jdjeep@enviroatty.com](mailto:jdjeep@enviroatty.com)

**CERTIFICATION**

Under penalties as provided by Section 1-109 of the Illinois Code of Civil Procedure, the undersigned hereby certifies that he is the President of Timber Creek Homes, Inc., the Petitioner herein, and its duly authorized agent in this regard; that he has read the above and foregoing RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS and knows the contents thereof, and to the best of his knowledge, information and belief states that production is complete insofar as it encompasses documents currently in the possession of or available to TCH.

  
Larry Cohn

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he caused a copy of PETITIONER'S RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS to be served on the following, via electronic mail transmission, on this 31<sup>st</sup> day of March, 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](mailto:Brad.Halloran@illinois.gov)

*For Groot Industries, Inc.*

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Richard S. Porter  
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[rporter@hinshawlaw.com](mailto:rporter@hinshawlaw.com)

Peggy L. Crane  
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*For the Village of Round Lake Park Village Board*     *For the Round Lake Park Board*

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Michael S. Blazer  
One of the attorneys for  
Petitioner