

MAY 20 2014

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

May 20, 2014 *b*

TIMBER CREEK HOMES, INC.,)	
)	
Petitioner,)	
)	
v.)	
)	PCB 14-99
VILLAGE OF ROUND LAKE PARK,)	(Pollution Control Facility
ROUND LAKE PARK VILLAGE BOARD)	Siting Appeal)
and GROOT INDUSTRIES, INC.,)	
)	
Respondents.)	
)	

HEARING OFFICER ORDER

On May 12, 2014, I issued an order regarding the Village's and the Village Board's privilege logs. In brief, I held that:

Here, neither the Village Board nor the Village attempted to show why the privilege attaches to the withheld documents. Neither makes any argument nor sets forth any facts that would prove the existence of an attorney-client privilege, despite settled authority requiring the party claiming privilege to meet the burden of establishing that privilege applies. In addition, neither advances any claim that the communication are limited to a control group of the Village Board and the Village, even though each is an organization rather than a natural person. Hearing Officer Order at 3 (May 12, 2014).

The Village Board and the Village have failed to argue, establish or set forth any reasons for such disclosures to be privileged and exempt from discovery pursuant to attorney-client privilege, including a control group scenario. I therefore find that the Village Board and the Village must disclose the requested information. By finding that the attorney-client privilege has not been established, the Village Board's and the Village's reliance on the rule of confidentiality necessarily falls. *Id.* at 4

On May 13, 2014, the Village of Round Lake Park (Village) and the Round Lake Park Village Board (Village Board) filed a motion to reconsider hearing officer order dated May 12, 2014 (Mot.). On May 15, 2014, Timber Creek Homes, Inc. (TCH) filed its response (Resp.).

Village and Village Board Motion to Reconsider

In summary, the Village Board and the Village cite to 65 ILCS 5/3.1-45-5 and 65 ILCS 5/3.1-35-90 and state that “[f]or the RLPVB and VRLP, the control group [includes] the village president, village trustees, and the village clerk” and argue that they did identify the control group when they “identified the control group in its statement that listed communications are between the ‘Round Lake Park Village Board and its Attorney’.” Mot. at 2¹. Therefore, they argue, the attorney-client privilege attached. *Id.*

TCH Response

In response, TCH argues that the Village Board and the Village “belatedly assert[s] in present Motion that the emails are between counsel and VRLP’s control group, and are subject to the attorney/client privilege.” Resp. at 2. TCH further argues that “communications are not automatically privileged simply because they were made to or from an attorney. The proponent of the privilege must establish that the communications entailed ‘confidential legal advice’.” *Id.* TCH argues that “[n]either VRLP nor the Village Board make any effort to meet their burden of proof with respect to any specific communication.” *Id.*

Ruling

I have reviewed the Village Board’s and the Village’s motion to reconsider. I am unconvinced that I should reconsider the May 12, 2014 Hearing Officer order. In ruling on a motion for reconsideration, factors to be considered are new evidence or a change in the law, to conclude that the decision was in error. 35 Ill. Adm. Code 101.902. The Board has observed that the purpose of a motion for reconsideration is “to bring to the court’s attention newly discovered evidence . . . , changes in the law or errors in the [Board’s] previous application of existing law.” Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156, slip op. at 2 (Mar. 11, 1993).

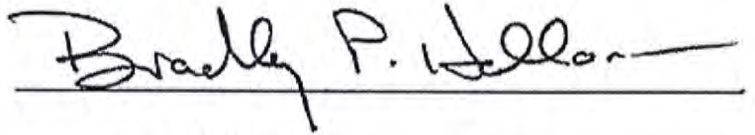
I find that the Village Board and the Village provide no basis for reconsideration. The Village Board and the Village did not attempt to demonstrate that the attorney-client privilege applied to the communications identified in the privilege logs, and their arguments on reconsideration regarding the scope of the control group come too late. Moreover, as petitioner observes, the Village Board and Village do not, even belatedly, address the remaining elements required for privilege to attach to any of the submitted documents.

In short, the Village Board and the Village present no newly discovered evidence or a change in the law, and do not show that I erred in applying the existing law in rejecting their privilege claims. Accordingly, the Village Board’s and the Village’s motion to reconsider is denied in its entirety.

¹ The Village Board and the Village failed to paginate their motion.

Procedural rules provide that parties may seek Board review of discovery rulings pursuant to 35 Ill. Adm. Code 101.616 (e). The parties are reminded that the filing of any such appeal of a hearing officer order does not stay the proceeding. In statutory decision deadline cases, such as at bar, the hearing officer must manage the case to insure that discovery, hearing and briefing schedules allow for Board deliberation and a timely decision of the case as a whole.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Bradley P. Halloran". The signature is written in a cursive style and is positioned above a solid horizontal line.

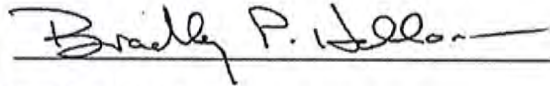
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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on May 20, 2014, to each of the persons on the service list below.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on May 20, 2014:

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A handwritten signature in black ink, reading "Bradley P. Halloran", is written over a horizontal line.

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