

ILLINOIS POLLUTION CONTROL BOARD
April 3, 2014

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

ORDER OF THE BOARD (by D. Glosser):

On January 10, 2014, Timber Creek Homes, Inc. (TCH) filed a petition (Pet.) asking the Board to review a December 12, 2013 decision of the Village of Round Lake Park (Village) and the Round Lake Park Village Board (Village Board). That decision granted siting, with conditions, for a waste transfer station to Groot Industries, Inc. (Groot). *See* 415 ILCS 5/40.1(a) (2012); 35 Ill. Adm. Code 101.300(b), 107.204. The transfer station is located at 201 Porter Drive in Round Lake Park, Lake County.

On March 21, 2014, TCH filed a motion asking the Board for an expedited review of a hearing officer order entered on March 20, 2014. The hearing officer allowed for responses to be filed by March 28, 2014, and a reply by March 31, 2014. On March 28, 2014, the Village (V. Resp.), Village Board (V.B. Resp.) and Groot (G. Resp.) all filed a response to the motion. On March 31, 2014, TCH filed a reply (Reply) along with a motion for leave to file a reply¹.

For the reasons discussed below, the Board denies TCH's motion and affirms the hearing officer's order.

ARGUMENTS

Timber Creek Homes, Inc.

TCH argues that evidence of pre-filing collusion is relevant to fundamental fairness and evidence provided in response to a request to admit indicates "respondents' collusive scheme began some time in 2008". Mot. at 5. TCH claims that the hearing officer arbitrarily limited discovery, contrary to the facts of this case. TCH asserts that the limitation will result in irreparable prejudice to TCH, and TCH will not be able to obtain a full hearing before the Board. Mot. at 9.

¹ The Board notes that the hearing officer gave leave to file the reply on March 25, 2014, so the motion for leave is moot.

In its reply, TCH argues that respondents have admitted “a vast number” of contacts and communications prior to the filing of the landfill siting application. Reply at 2. TCH claims that respondents’ refusal to provide discovery on these contacts and communications “present a virtually insurmountable obstacle to TCH’s right to a full and fair hearing” before the Board. Reply at 4. TCH also argues that respondents have supplied no specific basis for limiting discovery. Reply at 9.

Village Of Round Lake Park

The Village opposes TCH’s request to overrule the hearing officer. The Village argues that the Board should preclude discovery of TCH’s “manufactured claim” V. Resp. at 4. The Village argues that TCH’s discovery requests are “unrealistic and improper”. *Id.* at 5. The Village argues that TCH invented a conspiracy and equates TCH’s appeal for a larger scope of discovery to turning a “fishing expedition into a witch hunt.” *Id.*²

Round Lake Village Board

The Village Board opposes TCH’s motion and argues that Section 101.616(a) of the Board rules provides that only relevant information is available for discovery. V.B. Resp. at 2, citing 35 Ill. Adm. Code 101.616(a). Further, the Village Board notes that Section 101.616(b), gives the hearing officer the authority to allow or deny requests for discovery when parties cannot agree on the scope of discovery. *Id.*, citing 35 Ill. Adm. Code 101.616(b). The Village Board then points to Section 101.616(d), which gives the hearing officer the authority to limit, condition, or regulate discovery to prevent unreasonable expense, or harassment. *Id.*, 35 Ill. Adm. Code 101.616(d).

The Village Board argues that the law stated above, along with the “exaggerations and misrepresentations” made by TCH within their motion, is a strong basis to back the hearing officer’s decision to limit the discovery. V.B. Resp at 12. The Village Board requests that the Board affirm the hearing officer’s order, and grant the Village Board any other relief as this Board deems just and proper. *Id.*

Groot Industries, Inc.

Groot asks that the hearing officer’s order be affirmed, noting that the requested documents and information seeks information from 2008 to the present and about other facilities. G. Resp. at 2-3. Groot cites to the Board’s rules on discovery and argues that the standards do not allow “an unlimited license to seek” a “broad swath of documents”. G. Resp. at 3-4, citing 35 Ill. Adm. Code 101.616 (a), (b), and (d). Groot argues that discovery must be narrowed and can only seek relevant information. G. Resp. at 4.

Groot argues that TCH has not pled collusion, and TCH is attempting to revisit prior decisions by the Village. G. Resp. at 4. Groot opines that the law does not support TCH’s discovery requests and the information sought is not relevant or discoverable. G. Resp. at 5, 7.

² The Board notes that the Village also asks in its response that the Board reconsider the March 20, 2014 denial of the motion to dismiss and strike. The Board will not rule on that request as the argument has not been properly briefed by the parties.

DISCUSSION

As noted by the hearing officer, the purpose of discovery is to uncover all relevant information and information calculated to lead to relevant information. *See* 35 Ill. Adm. Code 101.616(a). On appeal of a municipality's decision to grant or deny a siting application, the Board generally confines itself to the record developed by the municipality. 415 ILCS 5/40.1(b) (2012). However, the Board will hear new evidence relevant to the fundamental fairness of the proceedings where such evidence lies outside the record, including pre-filing contacts. *See Land and Lakes Co. v. PCB*, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3d Dist. 2000). Pre-filing contacts may be probative of prejudgment of adjudicative facts, which is an element to be considered in assessing a fundamental fairness allegation. *American Bottom Conservancy (ABC) v. Village of Fairmont City*, PCB 00-200, slip op. at 6 (Oct. 19, 2000). Further, the courts have indicated that fundamental fairness refers to the principles of adjudicative due process and a conflict of interest itself could be a disqualifying factor in a local siting proceeding if the bias violates standards of adjudicative due process. *E & E Hauling v. PCB*, 116 Ill. App. 3d 586, 596, 451 N.E.2d 555, 564 (2nd Dist. 1983), *aff'd* 107 Ill. 2d 33, 481 N.E.2d 664 (1985). The manner in which the hearing is conducted, the opportunity to be heard, whether *ex parte* contacts existed, prejudgment of adjudicative facts, and the introduction of evidence are important, but not rigid, elements in assessing fundamental fairness. *Hediger v. D & L Landfill, Inc.*, PCB 90-163, slip op. at 5 (Dec. 20, 1990).

The hearing officer order states:

Respondents' objections to TCH's discovery requests that seek information pertaining to Groot's other transfer stations or facilities are sustained.

It appears that TCH first became aware of its theory of collusion during the siting hearing, when Mr. [Dale] Kleszynski [an expert for the Village] was being cross-examined. TCH Resp. at 3. To that end, I find that a reasonable time period to seek pre-filing contacts is the day that Mr. Kleszynski was retained by the Village to assist with the transfer station that is the subject of this appeal, to June 21, 2013, the date the siting application was filed. The date of Mr. Kleszynski's retention is not readily apparent from the record or the pleadings.

Respondents' objections to TCH's pre-filing discovery requests from March 1, 2008 are sustained.

For the reasons above, I find that the time frame for all discovery requests, including pre-filing, is from the date Mr. Kleszynski was retained by the Village to December 12, 2013, the date Groot was granted siting. Hearing Officer Order at 5 (Mar. 20, 2014).

In choosing a date for limiting discovery, the hearing officer determined that the date that Mr. Kleszynski was retained was appropriate. The hearing officer was not willing to allow TCH to seek discovery of material from prior siting decisions. The Board agrees with the hearing officer. Discovery is intended to uncover all relevant information and information calculated to

lead to relevant information. 35 Ill. Adm. Code 101.616(a). The Board is unconvinced that information concerning prior activities of the Village, Village Board and Groot in prior siting proceedings is relevant.

TCH in its arguments relies on materials, which include meeting minutes, provided to TCH during discovery to argue that the hearing officer's decision was incorrect. The Board has reviewed TCH's arguments and the summary of the material provided in discovery. The Board is not persuaded that those materials establish that additional materials, relevant to this siting appeal, would be uncovered if TCH were allowed to seek discovery of materials from 2008. The Board notes that TCH may continue discovery, as allowed by the hearing officer, concerning documents provided during discovery.

The Board finds that the hearing officer correctly limited the scope of discovery in the March 20, 2014 hearing officer order and sustains the hearing officer's decision.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 3, 2014 by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board