

ILLINOIS POLLUTION CONTROL BOARD
January 23, 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) timely filed a petition asking the Board to review a December 12, 2013 decision of the Village of Round Lake Park (Village) granting siting with conditions to Groot Industries, Inc. (Groot). *See* 415 ILCS 5/40.1(a) (2010); 35 Ill. Adm. Code 101.300(b), 107.204. The Village granted Groot's application to site a pollution control facility at 201 Porter Drive in Round Lake Park, Lake County.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), before the Illinois Environmental Protection Agency can issue a permit to develop or construct a new or expanding pollution control facility, the permit applicant must obtain siting approval for the proposed facility from the local government (*i.e.*, the county board if in an unincorporated area or the governing body of the municipality if in an incorporated area). If the local government denies siting or approves siting with conditions, the siting applicant may appeal the local government's decision to the Board. *See* 415 ILCS 5/39(c), 40.1(a) (2010); 35 Ill. Adm. Code 107.

In this case, TCH appeals on the grounds that the Village's procedures used to reach its siting decision were fundamentally unfair and the Village's decision was against the manifest weight of the evidence. For the reasons below, the Board accepts the petition for hearing.

THIRD-PARTY APPEAL

Section 40.1(b) of the Act (Act) (415 ILCS 5/40.1(b) (2010)) allows third parties to appeal a local government decision granting approval to site a pollution control facility if the third parties participated in the local government's public hearing and are so located as to be affected by the proposed facility. *See* 415 ILCS 5/40.1(b) (2010); 35 Ill. Adm. Code 107.200(b). The petition for review must, among other things, specify the grounds for appeal and include a copy of the local government's siting decision. *See* 35 Ill. Adm. Code 107.208. The third party must file the petition within 35 days after the local government approves siting. *See* 415 ILCS 5/40.1(b) (2010); 35 Ill. Adm. Code 107.204. Unless the Board determines that the third party's

petition is “duplicative or frivolous,” the Board will hear the petition. 415 ILCS 5/40.1(b) (2010); 35 Ill. Adm. Code 107.200(b).

TCH’s petition states that it participated in the Village public hearings and that it is so located as to be affected by the proposed facility. TCH specifies the grounds for the appeal and includes a copy of the Village’s siting decision. The petition meets the content requirements of 35 Ill. Adm. Code 107.208. TCH also filed its petition within 35 days after the Village approved siting.

HEARING AND DECISION DEADLINE

An action before the Board is duplicative if it is “identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Adm. Code 101.202. An action before the Board is frivolous if it is “a request for relief that the Board does not have the authority to grant” or “fails to state a cause of action upon which the Board can grant relief.” *Id.* No evidence before the Board indicates that this action is duplicative or frivolous. The Board accepts TCH’s petition for hearing.

TCH has the burden of proof. *See* 415 ILCS 5/40.1(b) (2010); 35 Ill. Adm. Code 107.506. Hearings will be based exclusively on the record before the Village, except that, if relevant, evidence may be introduced on (1) the local government’s jurisdiction over the siting application and (2) the fundamental fairness of the procedures used by the local government in reaching its decision. *See* 415 ILCS 5/40.1(b) (2010); Land & Lakes v. IPCB, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3d Dist. 2000). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.1(a), (b) (2010)), which only Groot may extend by waiver (35 Ill. Adm. Code 107.504; *see also* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, the Groot “may deem the site location approved.” 415 ILCS 5/40.1(a) (2010). Currently, the decision deadline is May 10, 2014, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 107.504. The Board meeting immediately before the decision deadline is scheduled for May 2, 2014.

VILLAGE’S RECORD

The Village must file the entire record of its proceedings within 21 days after the date of this order. *See* 35 Ill. Adm. Code 107.302. The record must comply with the content and certification requirements of 35 Ill. Adm. Code 107.304, 107.308. TCH must pay to the Village the cost of preparing and certifying the record. 415 ILCS 5/39.2(n) (2010); 35 Ill. Adm. Code 107.306.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 23, 2014 by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board