

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

TIMBER CREEK HOMES, INC.,)	
)	
Petitioner)	
)	
v.)	No. PCB 2014-099
)	(Pollution Control Facility Siting Appeal)
VILLAGE OF ROUND LAKE PARK,)	
ROUND LAKE PARK VILLAGE BOARD))	
and GROOT INDUSTRIES, INC.,)	
)	
Respondents)	

NOTICE OF FILING

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PLEASE TAKE NOTICE that on or before March 3, 2014 before 4:30 p.m., I filed the attached RLP Reply re Motion to Strike TCH's Discovery Requests with the Clerk of the Illinois Pollution Control Board, copies of which are hereby served upon you by email.

By: Glenn C. Sechen
The Sechen Law Group, PC
Attorney for the
Village of Round Lake Park

Certificate of Service

The undersigned hereby attorney certifies that on the 3rd day of March, 2014, a copy of the above was filed and served by email, as agreed by counsel, upon the persons shown in the Service List:

Glenn C. Sechen
The Sechen Law Group, PC
Attorney for the
Village of Round Lake Park

Glenn C. Sechen
The Sechen Law Group, PC
13909 Laque Drive
Cedar Lake, IN 46303
312-550-9220
glenn@sechenlawgroup.com

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**VILLAGE OF ROUND LAKE PARK's REPLY RE
ITS MOTION TO STRIKE TCH's DISCOVERY REQUESTS**

The Village of Round Lake Park (sometimes referred to as Village Staff, RLP or VRLP) hereby replies to Timber Creek Homes, Inc.'s (TCH's) response regarding VRLP's Motion to Strike TCH's Discovery Requests propounded by TCH and in support thereof states as follows:

THERE IS NOTHING IN THE RECORD TO SUGGEST THAT VRLP HAD THE INTENT TO BE A CO-APPLICANT WITH GROOT INDUSTRIES, INC. TO DEVELOP A WASTE TRANSFER STATION.

TCH claims that VRLP's cross examination of the TCH Needs witness was replete with admissions of misconduct by VRLP. TCH attempts to tie that cross examination to some type of misconduct by members of the Village Board. However, there is nothing in TCH's Petition for Review, or the record itself, that shows that any type of misconduct occurred, either by VRLP counsel, or by the Village Board. TCH's

new claim of some type of collusion between Groot and VRLP is baseless and untrue. As noted by the Hearing Officer, who is supported by the record, none of this occurred.

What the record does show is VRLP's cross examination of TCH's Needs witness focused upon his opinion regarding the interplay between the various components of the cost of disposal, and his use of the term "business decisions" related to the "prudence" involved in making the determination of when to file an application in light of the Needs criterion.¹ It is this line of questioning that TCH seeks to turn into admissions of some sort of predetermination or collusion. As noted by the hearing officer, the questions were in the nature of hypothetical questions replete with the use of "of" and "if". *Eg.* Record C03221 (transcript page 105), C03237 (transcript page 121), also included in Exhibit A. Accordingly, nothing claimed by TCH occurred.

The strategy utilized by TCH would allow the loser in a siting hearing to file a Section 40.1 appeal, make baseless allegations of collusion, and seek discovery which invades the attorney – client relationship – all within the 120 day window authorized by the Legislature.² A fair reading of the record is required to see TCH's claim for what it is

¹ Performing a Section 39.2 Needs analysis was not within the scope of work TCH gave him. C03195, C03205 – 06. He only looked at need for the next 12 years. C03176, 3194 – 95. That witness simply disagreed with the timing of the filing of an application of this Application for the siting of a transfer stating saying only that he believes that there will be sufficient landfill capacity until 2027 later acknowledging that there are a lot of "business decisions" involved in the determination of when to file but adding that he didn't believe that it was "prudent" to file when you are confident that the applicable setback requirements can be met. C03196, C-3198 – 3201.

² TCH's requests asking the Board to authorize its invasion of the attorney – client relationship will take ethics counsel's involvement and it may not be possible for the Board to resolve those issues in this appeal. As to documents sought regarding Mr. Kleszynski, TCH claims that there is inconsistency between his testimony and his report. To the extent this is true, all of this was available to TCH and subject to cross examination below. There was and there is no evidence of any complicity with Groot and none would be required for any disagreement with the quality of TCH's case to take the form it did.

and return this appeal to its proper scope.³ To that end, VRLP has attached a highlighted copy of the relevant portions of the transcript contained in the Record as Exhibit A.⁴ Further, even TCH has admitted that the cross examination in question could be interpreted to have multiple meanings. C03223, Lines 11 -14. Simply put, nothing in the Record shows that VRLP decided that it was prudent to site a transfer station jointly with Groot.

WHEREFORE, Respondent, the Village of Round Lake Park, respectfully requests that the Pollution Control Board enter an order striking all of the discovery propounded by TCH and further asks this Board to dismiss the TCH appeal.

Respectfully submitted,
Village of Round Lake Park

By *Glenn C. Sechen*
One of Its Attorneys

Glenn C. Sechen
The Sechen Law Group, PC
13909 Laque Drive
Cedar Lake, IN 46303
312-550-9220

³ An objective review of the transcript in question shows that, as a matter of law, TCH's allegations should be disregarded and supports the striking of at least paragraph 7 of its Petition.

⁴ The excerpted transcripts in Exhibit are largely, but not completely consecutive pages of the transcript. The page numbers and record cites are in the lower right hand corner. A review of the complete transcript is encouraged. The highlights are largely in yellow and will not show up unless printed on a color printer or viewed on a color computer screen.

EXHIBIT A

1 Q. Sure. You might also find some advantage
2 in protecting yourself from future potential price
3 increases from the remaining in-county landfills?

4 MR. BLAZER: Also object to the form of the
5 question.

6 THE HEARING OFFICER: You may answer.

7 THE WITNESS: Look, these are all businesses.
8 The Village needs to make business decisions. The
9 hauler needs to make those business decisions. And
10 the landfills do. And that's a very big dynamic,
11 and people can choose to make those decisions at
12 one point in time or another point in time.

13 BY MR. SECHEN:

14 Q. Well, that's the point.

15 MR. BLAZER: I don't believe he is done with
16 the answer, Mr. Hearing Officer.

17 THE HEARING OFFICER: Mr. Thorsen, were you
18 done with your answer? I thought you were as well,
19 but --

20 THE WITNESS: I was going to finish with, I was
21 hired to determine if there was a need in the
22 service area at this time for a transfer station,
23 and my opinion is there is no need at this time for
24 a transfer station to serve the service area.

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1 BY MR. SECHEN:

2 Q. Mr. Thorsen, we're on a slightly different
3 question now, slightly different.

4 You mention it's a business decision, and
5 there may be some potential prudence involved in
6 protecting yourself from potential future
7 increases.

8 Do you have -- do you take issue with a
9 business decision made to do exactly that, site
10 transfer station?

11 MR. BLAZER: Objection. Asked and answered.
12 He just answered that.

13 THE HEARING OFFICER: Objection is sustained.
14 Also, I think we are starting to get a little far
15 afield, Mr. Sechen.

16 BY MR. SECHEN:

17 Q. Mr. Thorsen, is it accurate to say that
18 what you've testified to is sort of an overall
19 picture of Lake County and the Lake County solid
20 waste position, if you will, and the fact that
21 there's some capacity remaining in Lake County to
22 sometime in the future that's maybe a little bit
23 less than definite, is that correct?

24 MR. BLAZER: Object to the form of the

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1 question. It's also compound. Mischaracterizes.

2 THE HEARING OFFICER: I am going to sustain it
3 as to form. I'm not sure what, "it was a little
4 less than definite" meant, Mr. Sechen. I was with
5 you until that part.

6 BY MR. SECHEN:

7 Q. Let me just simply ask this, do you take
8 issue with some portion of Lake County finding it
9 necessary or prudent, if you will, to make a
10 business decision to site a landfill?

11 MR. BLAZER: Objection: Asked and answered and
12 relevance. Some portion of Lake County?

13 MR. CLARK: I'm going to also join in that
14 objection. The County isn't making any decisions
15 here or any portion of the County. It's the
16 Applicant that has an application before the
17 Village for local siting.

18 MR. SECHEN: Exactly.

19 THE HEARING OFFICER: Well, and I guess I'm
20 also lost what the siting of a landfill is at this
21 point in the question.

22 MR. SECHEN: Did I say landfill? Oh, I'm
23 sorry. I'm sorry.

24

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1 BY MR. SECHEN:

2 Q. Do you take issue with any portion of Lake
3 County making a business decision to site a
4 transfer station?

5 MR. BLAZER: Same objections, Mr. Hearing
6 Officer.

7 THE HEARING OFFICER: You may answer but --

8 THE WITNESS: No. I do not.

9 BY MR. SECHEN:

10 Q. So then you would have no issue with Round
11 Lake, the Village of Round Lake, my client -- Round
12 Lake Park, I'm sorry, and it's hauler finding it
13 prudent, if they do, to site a transfer station?

+++++

14 MR. BLAZER: Objection. Both relevance. And
15 now it's been asked and answered three times.

16 THE HEARING OFFICER: Well, it hasn't been
17 asked and answered, but we are -- we're getting
18 away from Criteria 1, which is really where we're
19 supposed to be, and I'm giving a pretty far field
20 here and I'm trying to tie this in.

21 MR. SECHEN: I don't think we are.

22 THE HEARING OFFICER: I think we are. We have
23 gone from need to prudence, and I'm not really sure
24 those are the same thing. And if you could tell me

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1 how they are, Mr. Sechen, I'll let you proceed.

2 MR. SECHEN: I think the comment that common
3 dictionary definition would lead you to believe
4 prudent -- you're sustaining the objection because
5 I used the word prudent instead of need?

6 THE HEARING OFFICER: Yes.

7 MR. SECHEN: I think that's completely wrong.

8 THE HEARING OFFICER: That's where we're at.

9 MR. SECHEN: If the objection is sustained,
10 I'll move on.

11 THE HEARING OFFICER: Yes, it is.

12 BY MR. SECHEN:

13 Q. Okay. Not the same question, Mr. Thorsen,
14 do you take issue with the Village of Round Lake
15 Park and its hauler finding it necessary, if they
16 do, to site a transfer station for whatever
17 business reasons they may have?
+++++++
++

18 MR. BLAZER: Objection. Relevance. It's not
19 Criteria 1.

20 THE HEARING OFFICER: Objection overruled.

21 MR. CLARK: I'm going to object as well. I
22 didn't know that the Village was an applicant in
23 this case.

24 MR. SECHEN: Village isn't. Village is making

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1 the decisions.

2 MR. CLARK: That was the question. Village and
3 Groot.

4 THE HEARING OFFICER: The objection is
5 overruled. You may answer.

6 MR. BLAZER: Just for the record, Mr. Hearing
7 Officer, I'm sorry.

8 THE HEARING OFFICER: Please.

9 MR. BLAZER: If Mr. Sechen is now saying that
10 the Village and Groot have already decided to site
11 this transfer station, then he had raised a
12 dramatically different issue in this case.

13 MR. SECHEN: That's not what I said.

14 THE HEARING OFFICER: Let me respond,
15 especially, because I heard -- I did not hear that
16 they had decided. I heard "if they decide," that
17 was the statement, that was the question I'm ruling
18 on. And if they decide that it's necessary, the
19 question is, if they decide it's necessary, do you
20 disagree with them? That's what I heard, and
21 that's the question that I think is prudent --
22 proper. Now, you almost got me saying prudent.
23 That's the proper question.

24 MR. SECHEN: I will keep this up.

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1 THE HEARING OFFICER: That is the question I
2 think is proper, and would you please answer it,
3 Mr. Thorsen.

4 THE WITNESS: The Village and Groot have the
5 power they see fit. However, I also opine that
6 there is no current need in the service area for a
7 transfer station at this time.

8 BY MR. SECHEN:

9 Q. So you take no issue with the Village
10 doing just that, but you find there is no need
11 because there's sufficient capacity numerically,
12 it's simply a mathematical exercise in the county?

13 MR. BLAZER: Object to the form of the
14 question. "Just that"? I have no idea what he's
15 talking about. I'd be shocked that the witness
16 does.

17 THE HEARING OFFICER: Does the witness
18 understand the question?

19 THE WITNESS: No.

20 THE HEARING OFFICER: Okay. You want to
21 rephrase it, Mr. Sechen?

22 BY MR. SECHEN:

23 Q. Well, you mention that these are all
24 **business decisions**.

1 Would you explain how business enters into
2 the picture?

3 A. Policies, costs. Primarily, costs.

4 Q. So **if it were** determined by a Village that
5 it were necessary to site a transfer station, any
6 village within this community or this county, for
7 costs reasons, would you take issue with that?

8 MR. BLAZER: Mr. Hearing Officer, I know my
9 brother Mr. Clark to the right here suggested that
10 I let Mr. Sechen hang himself, but I can't really
11 do that. **Either Mr. Sechen is suggesting the**
12 **Village has already made that decision or he's**
13 **asking a completely irrelevant question, now**
14 **multiple times.** Either way, it's objected to. If
15 it's the first, like I said, we have a very
16 different issue in this case. If it's the latter,
17 it's completely irrelevant.

18 THE HEARING OFFICER: Mr. Sechen, I'll let you
19 respond to that.

20 MR. SECHEN: You know, if the witness himself
21 mentioned the fact that this is really a **business**
22 **decision, I think I'm entitled to explore that.**

23 THE HEARING OFFICER: Well, I think what is
24 important, first of all, that you answer the first

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1 part of the two-part objection. That's the
2 objection I want to hear the answer to first. And
3 then we'll talk about the second part afterwards.

4 MR. SECHEN: But I -- at this point now, I've
5 forgotten what the first part is.

6 THE HEARING OFFICER: Mr. Blazer is making the
7 statement or the implication for lack of a better
8 word, and I'm sure there's a better one, that the
9 Village has already made the decision to site --

10 MR. SECHEN: Oh, that's ridiculous.

11 THE HEARING OFFICER: Well, that's I want you
12 to respond to first.

13 MR. SECHEN: Neither have they nor have I
14 suggested that they have.

15 THE HEARING OFFICER: Now, as to the business
16 decision, I will overrule the objection at this
17 point. Let's get it done. Move on. Because we
18 are, as we keep going, it's getting less and less
19 relevant in my mind.

20 BY MR. SECHEN:

21 Q. Do you recall what the question is,
22 Mr. Thorsen?

23 A. In general. But I'd like you to repeat
24 it.

1 MR. SECHEN: Could you read it back, please?

2 (Record read as requested.)

3 THE HEARING OFFICER: That question stands.

4 Please answer the question, Mr. Thorsen.

5 THE WITNESS: I personally would not take issue
6 with it. However, I have determined there is no
7 need at this time.

8 BY MR. SECHEN:

9 Q. No need, because mathematically there is
10 some capacity in the landfills in this county?

11 A. Both mathematically, and I believe the
12 cost would be less going to incoming landfills via
13 direct haul.

14 MR. PORTER: Objection. Foundation. He hasn't
15 done any analysis or study to justify such an
16 opinion. Move to strike.

17 THE HEARING OFFICER: Objection overruled.

18 BY MR. SECHEN:

19 Q. Well, you haven't done any analysis of the
20 cost, have you?

21 A. I qualified it by saying "I believe." I
22 did not say that it would definitely cause --

23 Q. So there's a certain amount of conjecture
24 involved?

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1 cross-examination, and those are, the report stands
2 for what it is, not for what it may or may not
3 purport to be. How about Exhibit 3, any objection?

4 MR. BLAZER: 22.

5 THE HEARING OFFICER: Sorry. Exhibit 22. The
6 IEPA landfill capacity data from August 2013.

7 Hearing no objection, TCH Exhibit 22 will
8 be admitted without objection.

9 Mr. Blazer, you said you had a statement?
10 I'm not sure what that may be, but I guess we'll
11 let you start.

12 MR. BLAZER: I'm saying this at this point,
13 Mr. Hearing Officer, only because I believe we're
14 required to do so, or I will waive this for appeal.

15 Based on Mr. Sechen's performance today,
16 it is apparent to us that this application -- or I
17 should say not Mr. Sechen, by the attorney for the
18 Village of Round Lake Park, it is apparent to us
19 that there has been a predetermining of this
20 application, the rules of fundamental fairness have
21 been violated. And I want to state that for the
22 record.

23 THE HEARING OFFICER: Okay. And when you say
24 the attorney for the Village of Round Lake Park, I

1 assume you're not talking about Mr. Karlovics?

2 MR. BLAZER: I absolutely am not talking about
3 Mr. Karlovics.

4 THE HEARING OFFICER: Let's get that straight
5 right now. Because he's done very little, if
6 anything, accept help us with the program.

7 MR. BLAZER: No. I'm talking --

8 THE HEARING OFFICER: But let me respond to
9 that, or I guess let me let Mr. Sechen respond
10 first, and then we will --

11 MR. KARLOVICS: I want to respond, too.

12 MR. SECHEN: I don't think there's any response
13 necessary, because it's ridiculous on its face.

14 THE HEARING OFFICER: Mr. Karlovics, if you
15 wish to respond, I'll allow you to.

16 MR. KARLOVICS: All I want to say very briefly
17 is that this Board has been committed to hear. And
18 there's no evidence whatsoever of any type of
19 predetermination whatsoever. What you have is
20 board members showing, listening to all evidence.
21 They have come here with no preconceived notions,
22 so there's no evidence whatsoever that this Board
23 has made any type of determination, and so we
24 object to Mr. Blazer's motion.

1 THE HEARING OFFICER: Mr. Blazer, I'll give you
2 a very quick reply to that.

3 MR. PORTER: Before he does so, may I make a
4 comment?

5 THE HEARING OFFICER: Please, you may. I'm
6 sorry, Mr. Porter, I apologize.

7 MR. PORTER: In addition to what Mr. Karlovics
8 has indicated, I'd like to point out Mr. Sechen is
9 not a decisionmaker. He's just an attorney. What
10 he says is not evidence. You have already warned
11 the decisionmaker of that fact. So this is just
12 simply objectors grabbing at straws and trying to
13 create issues which do not exist.

14 THE HEARING OFFICER: Anybody else wish to
15 weigh in on this?

16 Mr. Blazer, I will have to say that Mr. --
17 or excuse me Mr. Clark, Mr. Blazer has implied that
18 you agree with him. I haven't heard you agree with
19 him on the record, so I will let Mr. Blazer say his
20 reply, and we'll go from there.

21 MR. BLAZER: I'll stand on my prior comments.

22 THE HEARING OFFICER: Okay. I think there was
23 a motion in there somewhere.

24 MR. BLAZER: There actually was not.

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1 THE HEARING OFFICER: You made the statement --

2 MR. BLAZER: I don't think you'd be authorized
3 to grant any such motion anyway.

4 THE HEARING OFFICER: I don't think I would.

5 I will say that my observations of what
6 I've seen do not -- I would not agree with your
7 statement based on the observations I have seen.

8 I have seen Mr. Sechen make statements or
9 questions based on ifs, on assumptions, if
10 something were to occur, then what. I haven't
11 heard him say anything that something is a given to
12 occur that this Village Board, whatever decisions
13 they're going to make. And I have -- and I was
14 going to say this later, I may, but I will also say
15 it today, what's been pretty obvious to me is that
16 this Village Board has spent a lot of time here,
17 and we've seen a lot of the members here over the
18 past three days, at some probably inconvenient
19 times for all of them, and they have been paying
20 attention and asking for documents, in fact. So
21 I'm not saying you're disagreeing with that,
22 Mr. Blazer. That's just an observation from me. I
23 don't know that it needs a response, but if you
24 wish to, I'll give you a few seconds for a formal

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SERVICE LIST

CLERK AND DEPUTY CLERK, VILLAGE OF ROUND LAKE PARK

Karen Eggert, Clerk
Cindy Fazekas, Deputy Clerk
Village of Round Lake Park
203 E. Lake Shore Drive
Round Lake Park, IL. 60073
keggert@villageofroundlakepark.com
Cfazekas@RoundLakePark.us

**COUNSEL FOR THE VILLAGE BOARD
VILLAGE OF ROUND LAKE PARK**

Peter Karlovics
Magna & Johnson
495 N. Riverside Drive
Suite 201
P.O. Box 705
Gurnee, Illinois 60031
pkarlovics@aol.com

COUNSEL FOR TIMBER CREEK HOMES

Michael S. Blazer
Jeffery D. Jeep
Jeep & Blazer, LLC
24 N. Hillside Avenue
Suite A
mblazer@enviroatty.com
jdjeep@enviroatty.com

COUNSEL FOR GROOT INDUSTRIES

Charles F. Helsten
Richard S. Porter
Hinshaw Culbertson
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
chelsten@hinshawlaw.com
rporter@hinshawlaw.com

George Mueller
Mueller Anderson & Associates
609 Etna Road
Ottawa, IL 61350
george@muelleranderson.com

Peggy L. Crane
Hinshaw & Culbertson LLP
416 Main Street, 6th Floor
Peoria, IL 61602
pcrane@hinshawlaw.com