

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

TIMBER CREEK HOMES, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. 14-99
	)	(Pollution Control Facility
	)	Siting Appeal)
VILLAGE OF ROUND LAKE PARK, ROUND	)	
LAKE PARK VILLAGE BOARD and GROOT	)	
INDUSTRIES, INC.,	)	
	)	
Respondents.	)	

**NOTICE OF FILING**

PLEASE TAKE NOTICE that on April 22, 2014, there was filed electronically Respondent, GROOT INDUSTRIES, INC.'S REPLY IN SUPPORT OF MOTION TO QUASH SUBPOENA, a copy of which is hereby attached and served upon you.

Dated: April 22, 2014 Respectfully submitted,

On behalf of GROOT INDUSTRIES, INC.

/s/ Richard S. Porter

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**GROOT INDUSTRIES, INC.'S REPLY IN SUPPORT OF  
MOTION TO QUASH SUBPOENA**

NOW COMES the Respondent, Groot Industries, Inc. ("Groot"), and respectfully submits its Response to Petitioner's Motion for Expedited Review of Hearing Officer Order. For the reasons set forth in the Response of Respondent Round Lake Park Village Board ("Village Board"), which Groot hereby adopts and incorporates by reference, and as further set forth herein, the hearing officer's should be affirmed.

Petitioner issued a Subpoena for Deposition of Derke J. Price on April 8, 2014, which the Respondents moved to quash. On April 17, 2014, the hearing officer granted the Motions to Quash ("April 17 Hearing Officer Order ") for two separate reasons. The hearing officer first found that Petitioner had not articulated any persuasive reason why Mr. Price's deposition would produce or lead to relevant information. April 17 Hearing Officer Order at 5. The hearing officer then noted that Petitioner's subpoena was outside the scope of the discovery limits set by the hearing officer's April 7 discovery order ("April 7 Hearing Officer Order"). *Id.* The hearing officer noted that the April 7 Hearing Officer Order limited discovery to subjects related to entries in certain meeting minutes of the Village Board, which were the subject of Petitioner's Requests to Admit. *Id.* The hearing officer correctly granted Respondents' Motions to Quash; the PCB should therefore uphold the April 17 Hearing Officer Order.

In its Motion for Expedited Review of the April 17 Hearing Officer Order, Petitioner repeats the unpersuasive arguments it made in response to the Motions to Quash. Petitioner first engages in a flawed analysis of the Illinois Code of Professional conduct to speculate that Mr. Price must have confidential information related to the siting proceeding (while notably never arguing that this alleged confidential information is any way relevant to Petitioner's fundamental fairness claim). Pet'r's Resp. at 2-4. Groot adopts the Village Board's Response to Petitioner's Motion for Expedited Review, which articulates the gaping holes in Petitioner's analysis of the Code of Professional Conduct. The April 17 Hearing Officer Order should be affirmed on this basis.

Petitioner also claims in its Motion for Expedited Review that the Hearing Officer's April 7 Order is an incorrect interpretation of the PCB's order on discovery and that the April 17 Hearing Officer Order should be reversed because it relies on that incorrect interpretation. Petitioner's argument in this respect is ironic because in a pleading filed on April 11, 2014, in response to Groot's Motion for Expedited Review of the April 7 Hearing Officer Order, Petitioner asked the PCB to *uphold* the April 7 order. The plain language of the April 7 Hearing Officer Order limits Petitioner to discovery on subjects raised in entries on the meeting minutes attached to Petitioner's Requests to Admit. The PCB has already upheld the April 7 Hearing Officer Order as a correct interpretation of the PCB's order on discovery. PCB Order (April 17, 2014) ("The Board sustains the hearing officer's interpretation of the Board's April 3, 2014 order."). Petitioner's arguments as to why the April 7 Hearing Officer Order is (now) incorrect are not persuasive.

Petitioner's Subpoena to Mr. Price completely ignores the limitations set forth in the April 7 Hearing Officer Order, which has already been upheld by the PCB. Petitioner is effectively requesting reconsideration from the PCB of an issue that has already been decided.

Petitioner should not be permitted to repeatedly ignore the orders of the hearing officer and continue to push the boundaries of discovery already set in this matter, based on an ever-shifting case theory. Petitioner's continual pushing of the clear discovery limits set forth in this matter has caused the parties to waste considerable time and effort attempting to force compliance with these limitations. Petitioner's frank disregard of the discovery orders in place in this matter must be curtailed.

WHEREFORE, Respondent Groot Industries Inc. respectfully requests that the Pollution Control Board deny Petitioner's Motion for Expedited review and uphold the April 17 Hearing Officer Order.

Dated: April 22, 2014

Respectfully submitted,

On behalf of GROOT INDUSTRIES, INC.

/s/ Richard S. Porter

Richard S. Porter

One of Its Attorneys

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**AFFIDAVIT OF SERVICE**

STATE OF ILLINOIS                    )  
  ) SS  
COUNTY OF WINNEBAGO            )

The undersigned certifies that on **April 22, 2014**, a copy of the foregoing **Notice of Filing Groot Industries, Inc.'s Reply in Support of Motion to Quash Subpoena** was served upon the following:

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