

**BEFORE THE VILLAGE BOARD OF THE VILLAGE OF ROUND LAKE PARK
SITTING AS POLLUTION CONTROL FACILITY SITING AUTHORITY**

IN RE:)
)
APPLICATION FOR LOCAL SITING) 03 -01
APPROVAL FOR GROOT INDUSTRIES)
LAKE TRANSFER STATION)

**TIMBER CREEK HOMES’ RESPONSE TO CO-APPLICANT’S
MOTION TO STRIKE**

Now comes Timber Creek Homes, Inc. (“TCH”), as a Participant in the hearing on the above siting request, and for its Response to the Motion to Strike TCH’s previously-filed Motion to Strike the Cross-Examination of Michael MaRous (“MaRous”) filed by the Village of Round Lake Park (“RLP”), the previously undisclosed co-applicant in this siting proceeding, states:

1. It is noteworthy that the other co-applicant, Groot Industries, Inc. (“Groot”), has not itself responded to TCH’s Motion. Groot has instead left that task to its surrogate – counsel for RLP. It is of course difficult to conceive of a credible response that Groot could submit – the “bases” for the cross-examination of MaRous were, after all, fabricated. What could Groot say? Oops? So Groot has left the job to its surrogate, who is evidently not so constrained by the facts or the rules.

2. RLP first asserts that TCH’s motion is “untimely”. (RLP Motion, ¶1) This ignores the Hearing Officer’s scheduling order. As noted in TCH’s Motion, Groot’s counsel failed to provide any factual basis for its fabricated cross-examination during the siting hearing. Having nevertheless claimed that, “Oh, we’ll get that fact”, Groot had until November 1 to do so – and they did not. Based on that failure, TCH filed its Motion immediately following confirmation that the record of this hearing was closed, and before the Hearing Officer’s November 8 deadline for follow-up submissions.

3. The timing of TCH's Motion is not unlike the "response" to proposed conditions filed by Groot on October 31. But of course we have seen no "timeliness" objection from Groot's surrogate with respect to that filing.

4. RLP next questions the Hearing Officer's authority to provide the RLP Board with a negative inference instruction. (RLP Motion at ¶2) TCH's Motion cites to the Hearing Officer's authority pursuant to §160.06(A) of the RLP Siting Ordinance. Contrary to RLP's assertion, which ignores its own Siting Ordinance, §160.06(A) expressly provides the Hearing Officer with the following authority:

- a. To make decisions concerning the admission of evidence.
- b. To make decisions concerning the manner in which the hearing is conducted.
- c. To make all rulings in accordance with fundamental fairness and statutory and constitutional requirements.
- d. To prepare proposed findings of fact and conclusions of law following the adjournment of the Public Hearing.

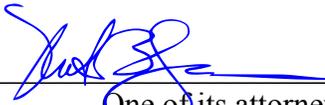
5. Finally, RLP takes one last swipe at TCH's witnesses, broadly assailing their credibility and asserting that none of them "held up well on cross-examination". (RLP Motion at ¶3) The record of this proceeding tells a different story. But more to the point, this gratuitous deviation beyond the scope of TCH's Motion is simply further evidence of what became clear during the siting hearing – that RLP is Groot's previously undisclosed co-applicant, and that the job of RLP's counsel was to foster a predetermined result.

6. TCH's Motion is both timely and proper given the fabricated "bases" for Groot's cross-examination of MaRous. For these reasons, and those set forth in TCH's Motion, TCH

requests that the Hearing Officer deny RLP's Motion, strike Groot's cross-examination of MaRous, and provide a negative inference instruction to the RLP Board.

Respectfully submitted,

Timber Creek Homes, Inc.

By:  _____
One of its attorneys

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CERTIFICATE OF SERVICE

In Re: Application For Local Siting Approval
For Groot Industries Lake Transfer Station
03-01

The undersigned hereby certifies that he caused a copy of the above and foregoing TIMBER CREEK HOMES' RESPONSE TO CO-APPLICANT'S MOTION TO STRIKE to be served on the following, via electronic mail, on this 13th day of November, 2013:

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