

**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’ MOTION TO STRIKE
AND FOR NEGATIVE INFERENCE INSTRUCTION**

Timber Creek Homes, Inc. (“TCH”), as a Participant in the hearing on the above siting request, hereby submits its Motion to Strike the Cross-Examination of Michael MaRous (“MaRous”) conducted by counsel for Groot Industries, Inc. (“Groot”), and for the issuance of a negative inference instruction to be given to the Round Lake Park Village Board (the “Board”).

I. INTRODUCTION

TCH called MaRous as a witness with respect to Criterion 3 of the Siting Statute, 415 ILCS 5/39.2(a)(iii). MaRous is a highly qualified real estate appraiser with almost 40 years of experience. He is highly regarded in his field, and has received a number of honors and advanced designations. MaRous has vast experience, including over 1000 projects in Lake County with a combined value of over \$1 billion. He has also worked for well over 40 units of government, including a number in Lake County. MaRous has been qualified as an expert witness over 300 times in various settings and forums. (10/01/13 Hearing Transcript-1 at 14-19) MaRous has also done numerous market impact studies, including several involving waste facilities. This includes work for owners and operators of waste facilities. (10/01/13 Hearing Transcript-1 at 19-20)

MaRous confirmed makeup of the prevailing land uses within one mile of the proposed facility – 92% open space and residential and only 4% industrial. (10/01/13 Hearing Transcript-1 at 32-33) He also pointed out that Groot’s witness, Chris Lannert (“Lannert”) did not identify the 4% industrial as either light or heavy industrial uses. (10/01/13 Hearing Transcript-1 at 33)

MaRous concluded that, given the actual character of the surrounding community (which Lannert mischaracterized), and the transfer station's actual operating conditions (which Lannert did not take into account), minimization of the impact on the character of the surrounding area, including the Timber Creek community which is just over 1000 feet away, has not been adequately addressed. (10/01/13 Hearing Transcript-1 at 29-30)

With respect to Peter Poletti (“Poletti”), Groot’s appraiser, MaRous pointed out that the character of the surrounding area must be taken into account in the context of a Criterion 3 analysis. (10/01/13 Hearing Transcript-1 at 38) But Poletti relied on Lannert’s mischaracterization for that information. MaRous concluded that Poletti had not demonstrated compliance with Criterion 3, particularly as to minimization of impacts on the very close Timber Creek community. Ultimately, given the defects in both reports, MaRous concluded that neither Lannert nor Poletti had demonstrated compliance with Criterion 3. (10/01/13 Hearing Transcript-1 at 48-49)

MaRous’ testimony regarding the character of the surrounding area, including the nature of the uses, was unrebutted. Lannert mischaracterized it based on improper speculation, and Poletti relied on Lannert. Doubtless because of that fact, Groot’s counsel attempted to artificially undermine MaRous’ credibility. That effort is the subject of this Motion.

II. GROOT’S COUNSEL ATTEMPTED TO ASSAIL MAROUS’ CREDIBILITY ON THE BASIS OF FALSE EVIDENCE

It is well established that a siting authority is not free to disregard the unrebutted testimony on the substantive siting criteria.¹ See *Industrial Fuels & Resources/Illinois, Inc. v. Illinois Pollution Control Board*, 227 Ill.App.3d 533, 548 (1st Dist. 1992) See also *CDT Landfill Corporation v. City of Joliet*, PCB 98-60, 1998 WL 112497, Slip Op. Cite at 12-13, 18-19, 21

¹ Groot itself acknowledged this fundamental concept in its recently-filed Response to Special Conditions Proposed By Participants.

(IPCB March 5, 1998), affirmed 305 Ill.App.3d 1119 (3rd Dist.), appeal denied 185 Ill.2d 619 (1999)

Apart from having MaRous reconfirm his unrebutted opinions, and the bases for them, the cross-examination by Groot's counsel devolved into counsel's effort to undermine MaRous' credibility by using false or fabricated "facts". This effort involved three principal subjects:

1. MaRous had testified that he had done work in connection with the McCook Landfill. Groot's counsel falsely asserted that there is no McCook Landfill, in an apparent effort to suggest that MaRous was fabricating testimony. (10/01/13 Hearing Transcript-1 at 72-74)
2. MaRous' report mentioned a quarry operation in the vicinity of the Bluff City Transfer Station, one of the "comparables" used by Poletti. (TCH Exhibit 8, p. 14) Groot's counsel claimed that the quarries are "played out and no longer being mined", in an effort to suggest that there are "mistakes" in MaRous' report. (10/01/13 Hearing Transcript-1 at 121-122)
3. MaRous' report also mentioned a "fuel storage tank" in the area of the Elburn Waste Transfer Station, another of the comparables used by Poletti. (TCH Exhibit 8, p. 12-13) Groot's counsel asserted that the subject tank is "an irrigation holding tank that services the adjacent golf course", again in an effort to establish "mistakes". (10/01/13 Hearing Transcript-1 at 71-72)

What does the hearing record actually reflect regarding these attempts to undermine MaRous' credibility? It was established on redirect that the McCook Landfill does in fact exist. (10/01/13 Hearing Transcript-2 at 27-28) See also *Illinois Investment Trust No. 92-7163 v. American Grading Co.*, 562 F.3d 824 (7th Cir. 2009) The same is true for the quarry operation near Bluff City. (10/01/13 Hearing Transcript-2 at 28-29)

As for the “tank”, TCH’s counsel objected to the assertion by Groot’s counsel, pointing out that the assertion assumed facts not in evidence. The Hearing Officer allowed the questioning to continue after Groot’s counsel represented that, “Oh, we’ll get that fact.” (10/01/13 Hearing Transcript-1 at 71) But the hearing record is now closed, and Groot’s counsel never did “get that fact”.

Groot’s counsel sought to artificially undermine MaRous’ credibility, and the impact of his testimony, by fabricating “errors” in MaRous’ background and opinions. Such unseemly conduct, clearly calculated to prejudice the Board, cannot be countenanced.

In accordance with the authority granted to the Hearing Officer pursuant to §160.06(A) of the Round Lake Park Siting Ordinance, TCH therefore requests that the cross-examination by Groot’s counsel be stricken from the record. But that does not itself “unring the bell”. Groot has now (consciously) left the impression that “errors” by MaRous negatively impacted his credibility. Such an impression is both prejudicial to TCH, and fundamentally unfair, particularly given the fabricated “basis” from which it derives. TCH therefore further requests that the Hearing Officer instruct the Board that it may infer that the actual evidence underlying the cross-examination would be adverse to Groot.

Respectfully submitted,

Timber Creek Homes, Inc.

Michael S. Blazer
Jeffery D. Jeep
Jeep & Blazer, LLC
24 N. Hillside Avenue, Suite A
Hillside, IL 60162
(708) 236-0830
E-mail:
mblazer@enviroatty.com
jdjeep@enviroatty.com

By:  _____
One of its attorneys

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' MOTION TO STRIKE AND FOR NEGATIVE INFERENCE INSTRUCTION to be served on the following, via electronic mail, on this 8th day of November, 2013:

Hearing Officer

Phillip A. Luetkehans
Schrott, Luetkehans & Garner, LLC
105 E. Irving Park Rd.
Itasca, IL 60143
pluetkehans@slg-atty.com

For the Village of Round Lake Park

Peter S. Karlovics
Law Offices of Rudolph F. Magna
495 N Riverside Drive, Suite 201
Gurnee, IL 60031-5920
PKarlovics@aol.com

Glenn Sechen
The Sechen Law Group
13909 Laque Drive
Cedar Lake, IN 46303-9658
glenn@sechenlawgroup.com

For Groot Industries, Inc.

Charles F. Helsten
Richard S. Porter
Hinshaw and Culbertson
100 Park Avenue
Rockford, IL 61101-1099
chelsten@hinshawlaw.com
rporter@hinshawlaw.com

For the Solid Waste Agency of Lake County

Larry M. Clark
700 N. Lake Street
Suite 200
Mundelein, Illinois 60060-1353
larrymclark55@sbcglobal.net

George Mueller
Mueller Anderson, P.C.
609 Etna Road
Ottawa, IL 61350
815-431-1500 I 815-431-1501
george@muelleranderson.com

For the Village of Round Lake

Stephen Grossmark
TRESSLER LLP
233 South Wacker Drive, 22nd Floor
Chicago, Illinois 60606-6399
sgrossmark@tresslerllp.com

Participants

Brian Smith
harleybuddhal@sbcglobal.net



Michael S. Blazer