

**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**

ATTORNEYS FOR APPELLANTS:

**GEORGE C. PATRICK**  
**SCOTT A. PYLE**  
Crown Point, Indiana

ATTORNEYS FOR APPELLEES:

**JOHN P. REED**  
**KENNETH D. REED**  
Abrahamson Reed & Bilse  
Hammond, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

THE LAKE COUNTY INDIANA BOARD )  
OF ZONING APPEALS, THE LAKE COUNTY )  
INDIANA PLAN COMMISSION, NED )  
KOVACHEVICH, and THE OFFICE OF )  
THE LAKE COUNTY SURVEYOR, )

Appellants-Defendants, )

vs. )

JAMES C. THORN and PAMELA J. THORN, )

Appellees-Plaintiffs. )

No. 45A05-0509-CV-531

---

APPEAL FROM THE LAKE CIRCUIT COURT  
The Honorable Lorenzo Arredondo, Judge  
Cause No. 45C01-0411-PL-256

---

**October 19, 2007**

**OPINION ON REHEARING - NOT FOR PUBLICATION**

**ROBB, Judge**

Lake County Board of Zoning Appeals, Lake County Surveyor's Office, Lake County Plan Commission, and Ned Kovachevich (collectively, "Lake County") have petitioned for rehearing of this court's decision in *Lake County Bd. of Zoning Appeals et al. v. Thorn*, No. 45A05-0509-CV-531 (Ind. Ct. App., July 6, 2007). We grant the petition for the sole purpose of addressing Lake County's assertion that there is a factual error in the opinion.

One of the issues on appeal was whether the trial court properly denied Lake County's motion to withdraw and amend its admissions. On May 6, 2005, the Thorns served Requests for Admissions on the Surveyor's Office, the Plan Commission, and Kovachevich. On August 8, 2005, the Thorns filed a motion seeking an order on the admissions, alleging that responses to the requests for admissions had not been filed by any party as of that date. Lake County opposed the motion and later sought leave to withdraw and amend its admissions. The trial court denied Lake County's motion and entered an order deeming the matters to which the admissions were sought admitted and conclusively established. In appealing the trial court's denial of its motion, Lake County asserted that the Surveyor's Office had filed a timely response to the requests for admissions and argued that the Surveyor's Office's timely response should also apply to the Plan Commission and Kovachevich. We noted that the pages of the appendix to which Lake County directed our attention in support of the Surveyor's Office's timely response did not contain such response, and neither did any other page of the appendix pursuant to our independent review. Slip op. at 20 n.17.

On rehearing, Lake County contends that the court's "erroneous factual conclusion was due to a scrivener's error by counsel." Appellants' Petition for Rehearing at 3. Lake County asserts that "[i]t cannot be disputed that the Surveyor did timely respond to the

requests for admission because counsel for Thorn admitted this very fact in open court.” Id. (emphasis in original). When the Thorns’ counsel was presented for the first time with the Surveyor’s Office’s alleged response at the start of the hearing on the injunction, he said, “[A]pparently the surveyor did answer their request for admissions in a timely fashion.” R. at 39:11-22. Lake County claims, based solely on this statement by the Thorns’ counsel, that the record supports its assertion that the Surveyor’s Office made a timely response and that it is “manifestly unfair” that the timely responses of one part of Lake County government cannot be relied upon by another part of Lake County government. Appellants’ Pet. for Reh’g at 3.

Based upon the circumstances of the Thorns’ counsel’s statement, the equivocal nature of the statement, and the fact that nothing else in the record supports the timely filing of responses by the Surveyor’s Office, we cannot accept Lake County’s assertion that “it cannot be disputed” that the Surveyor timely responded. Id. Our independent review of the record disclosed that there were no responses in the record, nor was there a notation in the record showing the filing of such responses, and Lake County still has not directed us to any such responses or notation, let alone a reference to the date such responses were allegedly filed. We therefore stand by our statement that the record does not support Lake County’s assertion that the Surveyor’s Office filed timely responses to the Thorns’ requests for admissions.

Moreover, even if we took the Thorns’ counsel’s statement as proof that such responses were filed, Lake County’s attempts to apply the Surveyor’s Office’s responses to the request submitted to the Plan Commission and Kovachevich are not well-taken. A party

cannot be bound by a co-party's response to requests for admissions. See Shoup v. Mladick, 537 N.E.2d 552, 553 (Ind. Ct. App. 1989) ("Requests for admission of facts addressed to one defendant are not binding upon a co-defendant. [Trial Rule] 36 admissions apply to and bind the answering party, not a co-defendant."). If a party cannot be bound by a co-party's response it does not consider favorable to its position, it likewise should not be benefited by a co-party's response because it neglected to file its own.

In all respects, we affirm our original opinion.

RILEY, J., and MAY, J., concur.