

1 ILLINOIS POLLUTION CONTROL BOARD  
 2 February 10, 2005

3 VILLAGE OF LAKE BARRINGTON, )  
 4 CUBA TOWNSHIP, PRAIRIE RIVERS )  
 5 NETWORK, SIERRA CLUB, BETH )  
 6 WENTZEL and CYNTHIA SKRUKRUD, )  
 7 Petitioners, )  
 8 vs. ) PCB 05-55  
 9 ILLINOIS ENVIRONMENTAL ) (Third-Party NPDES  
 10 PROTECTION AGENCY and ) Permit Appeal-Water)  
 11 VILLAGE OF WAUCONDA, )  
 12 Respondents. )  
 13 \_\_\_\_\_ )  
 14 SLOCUM DRAINAGE DISTRICT OF )  
 15 LAKE COUNTY, ILLINOIS, )  
 16 Petitioner, )  
 17 vs. ) PCB 05-58  
 18 ILLINOIS ENVIRONMENTAL ) (Third-Party NPDES  
 19 PROTECTION AGENCY and VILLAGE ) Permit Appeal-Water)  
 20 OF WAUCONDA, )  
 21 Respondents. )  
 22 \_\_\_\_\_ )  
 23 AL PHILLIPS, VERN MEYER, )  
 24 GAYLE DEMARCO, GABRIELLE )  
 25 MEYER, LISA O'DELL, JOAN )  
 26 LESLIE, MICHAEL DAVEY, NANCY )  
 27 DOBNE, MIKE POLITIO, WILLIAMS )  
 28 PARK IMPROVEMENT ASSOCIATION, )  
 29 MAT SCHLUETER, MYLITH PARL )  
 30 LOT OWNERS ASSOCIATION, )  
 31 DONALD KREBS, DON BERKSHIRE, )  
 32 JUDY BRUMME, TWIN POND FARMS )  
 33 HOMEOWNERS ASSOCIATION, )  
 34 JULIA TUDOR and CHRISTINE )  
 35 DEVINEY, )  
 36 Petitioners, )  
 37 vs. ) PCB 05-59  
 38 ILLINOIS ENVIRONMENTAL ) (Third-Party NPDES  
 39 PROTECTION AGENCY and ) Permit Appeal-Water)  
 40 VILLAGE OF WAUCONDA, ) (Consolidated)  
 41 Respondents. )



1 A P P E A R A N C E S:

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ILLINOIS POLLUTION CONTROL BOARD

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100 West Randolph Street

Suite 11-500

4

Chicago, Illinois 60601

(312) 814 - 8917

5

BY: MR. BRADLEY P. HALLORAN, Hearing Officer

6

(847) 526 - 9202

7

BY: MR. JAY GLENN

8

Appeared on behalf of 05-59;

9

MAYER, BROWN, ROWE & MAW, LLP,

190 South LaSalle Street

10

Chicago, Illinois 60603-3441

(312) 782 - 0600

11

BY: MS. PERCY L. ANGELO

12

Appeared on behalf of the Petitioners

Lake Barrington and Cuba Township in

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05-55;

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LAW OFFICES OF BONNIE MACFARLANE, P.C.,

106 West State Road

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Post Office Box 268

Island Lake, Illinois 60042

16

(847) 487 - 0700

BY: MS. BONNIE MACFARLANE

17

Appeared on behalf of the Petitioner

Slocum Drainage District of Lake County,

18

Illinois;

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

1021 North Grand Avenue East

20

P.O. Box 19276

21

Springfield, Illinois 62794-9276

(217) 782 - 5544

22

BY: MR. SANJAY K. SOFAT

23

Appeared on behalf of the Illinois

Environmental Protection Agency;

24

L.A. REPORTING (312) 419-9292

## 1 A P P E A R A N C E S:

2 TOTAL ENVIRONMENTAL SOLUTIONS  
3 631 East Butterfield Road  
4 Suite 315  
5 Lombard, Illinois 60148  
6 (630) 969 - 3300  
7 BY: MR. WILLIAM D. SEITH

8  
9 Appeared on behalf of the  
10 Village of Wauconda.

11

12

## 13 ALSO PRESENT:

14 Ms. Carol Seith  
15 Mr. Robert J. Devery  
16 Mr. Toby Frevert  
17 Ms. Loraine Ray  
18 Mr. Donald Krebs  
19 Mr. Dan Quick  
20 Ms. Jean Vonder Haar

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1 HEARING OFFICER HALLORAN: Good  
2 morning everyone, thanks for coming. My name  
3 is Bradley Halloran, I'm a hearing officer  
4 with the Illinois Pollution Control Board,  
5 I'm also assigned to this matter and this  
6 matter is, it's a consolidated case,  
7 PCB 05-55, which is Village of Lake  
8 Barrington, et al. versus the IEPA and the  
9 Village of Wauconda; PCB 5-58 Slocum Drainage  
10 District of Lake County, Illinois versus the  
11 IEPA and the Village of Wauconda; the third  
12 case is Al Phillips, et al. otherwise known  
13 as the residents group versus the IEPA and  
14 the Village of Wauconda and that designated  
15 number is PCB 5-59.

16 This is a third-party NPDES permit  
17 appeal - water. It's approximately 9:00  
18 o'clock on February 10th of the year 2005.

19 Are there any members of the  
20 public present that are not affiliated with  
21 any of the parties in this matter?

22 Hi, and your name?

23 MS. RAY: My name is Loraine Ray, I'm  
24 not part of the litigation.

1 HEARING OFFICER HALLORAN: Okay.

2 Well, do you plan to make a statement or a --

3 MS. RAY: No, I do not.

4 HEARING OFFICER HALLORAN: -- public  
5 comment? Okay. Thank you. We're going to  
6 run this hearing such as it is pursuant to  
7 Section 105 subpart B and Section 101 subpart  
8 F of the Board's procedural provisions, and  
9 also I want to note for the record that this  
10 hearing was noticed up pursuant to  
11 Section 101.602.

12 This hearing is intended to  
13 develop a record for the Pollution Control  
14 Board, I will not be making the ultimate  
15 decision in the case, that's up to the  
16 Pollution Control Board to look at the  
17 transcript, the record and any post-hearing  
18 briefs and then render its decision.

19 My job is to ensure an orderly  
20 hearing, a clear record and to rule on any  
21 evidentiary matters that may arise. And with  
22 that said, Mr. Glenn, would you like to  
23 introduce yourself?

24 MR. GLENN: Good morning, Mr. Hearing

1 Chairman, my name is Jay Glenn, I'm the  
2 attorney for 05-59.

3 HEARING OFFICER HALLORAN: Thank you,  
4 Mr. Glenn. Ms. Macfarlane?

5 MS. MACFARLANE: My name is Bonnie  
6 Macfarlane, and I am the attorney for the  
7 Slocum Drainage District of Lake County,  
8 Illinois.

9 HEARING OFFICER HALLORAN: Thank you.  
10 Ms. Angelo?

11 MS. ANGELO: Good morning, Mr. Hearing  
12 Officer, my name is Percy Angelo, I'm the  
13 attorney for Lake Barrington and Cuba  
14 Township in 05-55. I'd like to mention that  
15 I have with me this morning Jean Vonder Haar  
16 who is trustee of the Village of Lake  
17 Barrington and involved in this permit  
18 proceeding from the beginning on behalf of  
19 the village.

20 I've also been directed by  
21 Mr. Albert Ettinger, who's the attorney for  
22 the environmental group petitioners in 05-55,  
23 to appear this morning for Sierra Club,  
24 Prairie Rivers Network and the other

1 environmental group petitioners solely for  
2 the purpose of agreeing to the briefing  
3 process, which the parties have discussed as  
4 the way they're going to proceed in this  
5 matter. Thank you.

6 HEARING OFFICER HALLORAN: Thank you,  
7 Ms. Angelo. Mr. Sofat?

8 MR. SOFAT: Good morning, Mr. Hearing  
9 Officer. My name is Sanjay Sofat and I  
10 represent the Illinois EPA in this matter.

11 HEARING OFFICER HALLORAN: Mr. Seith?

12 MR. SEITH: Good morning. William  
13 Seith on behalf of the Village of Wauconda,  
14 and I have with me here today Mr. Dan Quick  
15 who is the village administrator for the  
16 Village of Wauconda.

17 HEARING OFFICER HALLORAN: Thank you,  
18 Mr. Seith. On February 7th and 8th we had  
19 prehearing conferences -- telephonic  
20 prehearing conferences and it's my  
21 understanding that none of the parties here  
22 today are going to present any witnesses and  
23 basically are going to file post hearing  
24 briefs citing their record and file that with



1 the Board.

2 It is also my understanding that  
3 there was an agreed upon briefing schedule,  
4 and I had an order put out yesterday and  
5 faxed to the parties, I hope they received  
6 them, but the agreed briefing schedule is as  
7 follows: Simultaneous opening briefs are due  
8 to be filed on or before February 28th, 2005  
9 and simultaneous reply briefs are due to be  
10 filed on or before March 7th, 2005. The  
11 mailbox rule will not apply to either the  
12 filing with the Board or to each of the  
13 respective parties; in other words, by those  
14 dates mentioned, the parties and the Board  
15 have to have the briefs physically in  
16 possession of them at that time.

17 Was that the agreement as well  
18 between the parties?

19 MR. SOFAT: Yes.

20 HEARING OFFICER HALLORAN: Mr. Glenn?

21 MR. GLENN: Mr. Hearing Chairman, we  
22 also agreed that among the parties we are  
23 going to overnight mail it so it will be  
24 simultaneous delivery on all the parties also

1 as well as the Illinois Pollution Control  
2 Board.

3 HEARING OFFICER HALLORAN: Okay.  
4 Understood. Thank you.

5 MR. GLENN: Thank you.

6 HEARING OFFICER HALLORAN: With that  
7 said, I open the floor of any comments, any  
8 other issues. I think Mr. Sofat has one but  
9 let's go to the petitioners first. Any other  
10 things to say? So basically the petitioners  
11 have rested their case in chief?

12 Go ahead, Ms. Macfarlane.

13 MS. MACFARLANE: Mr. Hearing Officer,  
14 will we be formally today entering into the  
15 record -- into the transcript the actual  
16 record?

17 HEARING OFFICER HALLORAN: The record  
18 is already in -- the transcript, I believe,  
19 is already in the record, is that my  
20 understanding? I think Mr. Sofat --

21 MS. MACFARLANE: Well, what I'm asking  
22 is for purposes of referral that whatever the  
23 page numbers are, that it be entered into  
24 evidence today, the record.

1 HEARING OFFICER HALLORAN: Yes. The  
2 record that has been filed with the Board  
3 thus far?

4 MS. MACFARLANE: Yes.

5 HEARING OFFICER HALLORAN: Or so far.  
6 Yes.

7 MS. MACFARLANE: Yes.

8 HEARING OFFICER HALLORAN: Yes, it  
9 is --

10 MS. MACFARLANE: Okay. Thank you.

11 HEARING OFFICER HALLORAN: -- in the  
12 record.

13 MS. MACFARLANE: Thank you.

14 HEARING OFFICER HALLORAN: Mr. Sofat?

15 MR. SOFAT: Yes. The Agency would  
16 like to introduce this exhibit as Hearing  
17 Officer Exhibit No. 1, and this is -- these  
18 are the documents that the Agency filed  
19 pursuant to Hearing Officer's order, I think,  
20 February 3rd, 2005.

21 HEARING OFFICER HALLORAN: Okay. The  
22 petitioners have seen this?

23 MR. SOFAT: They have already received  
24 this.

1 HEARING OFFICER HALLORAN: Okay.

2 MR. SOFAT: This is your copy, Hearing  
3 Officer's copy and the Board's copy.

4 HEARING OFFICER HALLORAN: Okay. And  
5 you mentioned at one of the prehearing  
6 conferences you had an objection to my order  
7 of --

8 MR. SOFAT: Well, we have stated those  
9 objections in this document.

10 HEARING OFFICER HALLORAN: Okay.

11 MR. SOFAT: But we are filing the  
12 documents that we had.

13 HEARING OFFICER HALLORAN: All right.  
14 All right. There is a -- I'm taking it as  
15 Hearing Officer Exhibit No. 1, and I'll  
16 accept it into evidence.

17 MR. SOFAT: Thank you.

18 HEARING OFFICER HALLORAN: Along with  
19 Hearing Officer Exhibit No. 1 there is an  
20 attached document submitted pursuant to the  
21 Hearing Officer order dated February 3rd,  
22 2005 and attached are the, I guess, documents  
23 from the IEPA's record. So that will be  
24 admitted into evidence.



1 part of the record, it's a report that's  
2 titled Preliminary Design Report Supplement  
3 that was filed by Bonestroo, Devery &  
4 Associates, engineers and architects, on  
5 behalf of the Village of Wauconda back in  
6 '03.

7 On page 832 of the record, there  
8 is a reference in the first paragraph to a  
9 prior report that was prepared on May 30th,  
10 2003 titled a Preliminary Design Report in  
11 support of the Village of Wauconda's request.  
12 In my review of the record last night, I was  
13 unable to locate a copy of the report that's  
14 referred to here on page 832, and Mr. Devery  
15 and I just looked through the three volumes  
16 again to see if we could locate it and we  
17 can't seem to find it. As a consequence, I  
18 would like to reserve the right to ask  
19 Mr. Sofat to add that document to the record  
20 if, in fact, it is part of the Agency's  
21 files. We believe it to have been filed with  
22 the Agency in support of the application and  
23 if it's not already in the record, and we'll  
24 try to confirm that by the end of the day

1           today, we'd like to make sure that it is made  
2           part of the record.

3                       HEARING OFFICER HALLORAN: Mr. Sofat?

4                       MR. SOFAT: I guess I will go back and  
5           see whether or not it was part of our files  
6           and whether somebody has misplaced it. I  
7           mean, my guess is I guess it's somewhere but  
8           not in the files that I had access to, so ...

9                       And if I have it, I will be filing  
10          that with the Board and everybody else saying  
11          that we have found it.

12                      MR. SEITH: If we could, Mr. Hearing  
13          Officer, I'd like until the end of the day  
14          today, today is February 10th, to make a  
15          final determination with respect to that, get  
16          with Mr. Sofat and hopefully by the end of  
17          the day tomorrow, if it is, in fact, in the  
18          Agency's files, we can make sure it's  
19          overnighted out to everybody and made part of  
20          the record.

21                      HEARING OFFICER HALLORAN: Okay. So  
22          overnight, they would get it -- well,  
23          weekend --

24                      MR. SEITH: Tomorrow is a state

1 holiday.

2 MR. SOFAT: Oh, yeah.

3 MR. SEITH: So it may have to be at  
4 the end of the day Monday, Mr. Hearing  
5 Officer.

6 HEARING OFFICER HALLORAN: Petitioners  
7 have any comment to what just transpired?

8 MR. GLENN: Yes. Jay Glenn on behalf  
9 of the resident group. Of course this  
10 request is prejudicial in that the record was  
11 supposed to have been closed some time ago  
12 and we have continued an ongoing discovery  
13 process. Here we are at the hearing, we  
14 don't have the document that they're talking  
15 about and it is extraordinarily difficult for  
16 me. The hearing officer may recall that we  
17 filed a motion seeking a certification from  
18 the Illinois Environmental Protection Agency  
19 that all the documents had to have been  
20 turned over. The hearing officer saw fit not  
21 to enter that order.

22 It is at this point we would like  
23 to know what other documents that Mr. Sofat  
24 or the Illinois Environmental Protection



1 Agency might have that is relevant to the  
2 discussions that the Illinois Pollution  
3 Control Board is going to -- the decision the  
4 Illinois Pollution Control Board is going to  
5 make, and we're -- we don't know, we were  
6 told that all of the documents were in his  
7 possession. We went to Springfield and  
8 reviewed all the documents that the Illinois  
9 Pollution Control Board said that existed on  
10 his desk and these documents were not there  
11 and now you have the Village of Wauconda  
12 advising the Illinois Pollution Control Board  
13 that the document was forwarded to the  
14 Illinois Pollution -- Illinois Environmental  
15 Protection Agency, they have it in their  
16 files and they have not produced it, and the  
17 third party appellant believes that we're  
18 being prejudiced by this type of dilatory  
19 activity and very honestly almost  
20 contemptible activity by the Illinois  
21 Pollution Control Board -- I mean, by the  
22 Illinois Environmental Protection Agency.

23 I honestly don't know what else we  
24 could do to try to get a full and complete

1 and honest record. We've gone to  
2 Springfield, we've made the motions; I don't  
3 know what else we can do. Thank you.

4 HEARING OFFICER HALLORAN: Thank you,  
5 Mr. Glenn. Ms. Macfarlane, anything?

6 MS. MACFARLANE: Yes. I would like to  
7 also indicate that I concur with Mr. Glenn's  
8 statements, and I would like to add that at  
9 this point I would like to have a copy of  
10 this report as soon as possible.

11 I've already begun drafting my  
12 brief and it seems to me that if I have to  
13 wait, you know, several more days, certainly  
14 into Monday, that this prejudices my being  
15 able to draft a proper brief for review for  
16 the Board. I'm -- I'm rather -- I have also  
17 gone through the three binders, there are  
18 other pages that are blank that have been  
19 number stamped that appear to have documents  
20 that have been -- that are missing, and I  
21 would like to list those and make sure that  
22 we have all of those documents.

23 There are -- this is just not the  
24 first time that this has occurred. We have

1 had now, Mr. Sofat has produced on three  
2 separate occasions, additional documents that  
3 appear to have been in the record.  
4 Certainly, the latest order by this Hearing  
5 Officer that dictated that the IEPA should  
6 provide all of the documents that were in the  
7 record with respect to prior violations by  
8 the Village of Wauconda and whether or not  
9 they were considered by the Agency or not  
10 considered by the Agency, and I don't believe  
11 that the IEPA has complied with that order.  
12 Thank you.

13 HEARING OFFICER HALLORAN: Ms. Angelo,  
14 anything to add?

15 MS. ANGELO: Only that we understand  
16 we're going to be getting a copy of the  
17 document if it's in the Agency's files within  
18 the next day or so and on that basis we have  
19 no objection.

20 HEARING OFFICER HALLORAN: Mr. Seith?

21 MR. SEITH: Your Honor, we -- the  
22 Village of Wauconda is able to provide the  
23 parties with a courtesy copy of the document  
24 I'm referring to by the end of the day today.

1 We will make sure everybody has that  
2 document, it won't obviously be part of the  
3 official record but at least everybody will  
4 have a copy of the document I'm referring to  
5 by the end of the day today.

6 HEARING OFFICER HALLORAN: How many  
7 pages do you suspect?

8 MR. DEVERY: It's about 20 pages.

9 HEARING OFFICER HALLORAN: So the fax  
10 machines will be able to handle that, 20  
11 pages? Your -- Mr. Glenn and Ms. Macfarlane,  
12 your objections are so noted and they are in  
13 the record and the Board will take a look at  
14 your objections. However, this is a  
15 time-sensitive case; in other words, we have  
16 only a certain amount of time that it has to  
17 go forward and the Board has to make its  
18 decision. Ms. Macfarlane?

19 MS. MACFARLANE: For purposes of  
20 referring to such a document in the briefs,  
21 it will need to be paginated for purposes of  
22 referral.

23 MR. SEITH: And we understand that,  
24 your Honor --

1 HEARING OFFICER HALLORAN: Okay.

2 MR. SEITH: -- and that's why we'll  
3 work with the Agency to make sure if it is,  
4 in fact, part of their record, that it is  
5 produced expeditiously with page numbers,  
6 with Bates numbers.

7 HEARING OFFICER HALLORAN: And,  
8 Mr. Sofat, I would direct you if, in fact, it  
9 is in the record, that you have it filed with  
10 the Board and to the petitioners on or before  
11 February 14th, that would be -- that would be  
12 Monday and it's got to be no mailbox rule, I  
13 mean it's got to be filed. I'm a little  
14 concerned about the multiple supplements to  
15 the record that's ongoing in this case.

16 MR. SOFAT: The 14th is a Monday I  
17 think and tomorrow is a holiday so I can mail  
18 that on the 14th overnight, which means that  
19 it will be there the 15th in the morning.

20 HEARING OFFICER HALLORAN: All right.

21 MR. SOFAT: And of course I have to go  
22 back and see whether or not we have this  
23 report, I will have to find out from the  
24 people who were involved in getting those

1 reports so it's not that the Agency that I  
2 have the report and I didn't file it, that's  
3 not what's going on here, I hope everybody  
4 understands that.

5 MR. SEITH: And I do apologize,  
6 Mr. Hearing Officer, for the lateness of this  
7 request, I've just realized it last night  
8 that it's not in the record.

9 HEARING OFFICER HALLORAN: Okay. And  
10 that's fine and I'm not saying there's any  
11 kind of bad faith, but I am a little  
12 concerned about what the record is and, you  
13 know, where the contents are and is it a full  
14 record, complete record, I don't know. But  
15 the petitioners -- yes, Mr. Glenn.

16 MR. GLENN: My -- I was led to believe  
17 that the Village of Wauconda had forwarded to  
18 the IEPA, is that a correct -- they have --  
19 Mr. Devery's here, he drafted the thing, I  
20 mean did you send it to the Illinois  
21 Environmental Protection Agency?

22 MR. DEVERY: Yes, it was sent to the  
23 IEPA.

24 MR. GLENN: All right. That answers

1 the question then. That clearly answers the  
2 question that it has been submitted to the  
3 Illinois Environmental Protection Agency,  
4 that's number one; number two, it has not  
5 been produced. So I'd just like to get  
6 that -- those -- that on the record. Thank  
7 you.

8 HEARING OFFICER HALLORAN: Thank you,  
9 Mr. Glenn. Okay. With that said, Mr. Seith,  
10 the Village of Wauconda, will be faxing a  
11 courtesy copy to the petitioners by the end  
12 of the day today and I assume that everybody  
13 is familiar with each other's fax numbers,  
14 facsimiles. Mr. Sofat, February 15th,  
15 Tuesday --

16 MR. SOFAT: Yes.

17 HEARING OFFICER HALLORAN: -- you'll  
18 be mailing it overnight on the 14th?

19 MR. SOFAT: I will be overnighting on  
20 the 14th.

21 HEARING OFFICER HALLORAN: To all  
22 parties, including the Board?

23 MR. SOFAT: Yes.

24 HEARING OFFICER HALLORAN: And I do

1 note that the Board will note the objections  
2 submitted by the petitioners here today and  
3 prior. And I do -- before I close again,  
4 under contract, the transcript will be due,  
5 let's see, Margaret, what was that? That was  
6 eight business days so it will be due  
7 February 21st but the 21st is a holiday so I  
8 don't assume the Board will get it before the  
9 22nd of February and at that time it will be  
10 listed on the web site and you can print it  
11 off from our web site from there, and I'll  
12 make sure that as soon as we get it, the  
13 clerk will scan it into the computer.

14 Anything else before we really  
15 close this time? All right. Thanks again.

16 MS. MACFARLANE: I'm sorry, your  
17 Honor. I'm sorry. The date, and I'm sorry,  
18 the date that the record actually closes?  
19 That's a question.

20 HEARING OFFICER HALLORAN: It will  
21 actually close on March 7th, that's when the  
22 reply briefs are due.

23 MS. MACFARLANE: Thank you.

24 HEARING OFFICER HALLORAN: Thank you.



1           Okay.

2                       MR. SEITH:  Thanks.

3                       MR. SOFAT:  Thanks.

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1 STATE OF ILLINOIS )

2 ) SS.

3 COUNTY OF L A K E )

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6 I, MARGARET MAGGIE JANKOWICZ, CSR,

7 do hereby state that I am a court reporter doing

8 business in the City of Chicago, County of Lake, and

9 State of Illinois; that I reported by means of

10 machine shorthand the proceedings held in the

11 foregoing cause, and that the foregoing is a true

12 and correct transcript of my shorthand notes so

13 taken as aforesaid.

14

15

16

\_\_\_\_\_

17

Margaret Maggie Jankowicz, CSR

18

Notary Public, Lake County, Illinois

19

20 SUBSCRIBED AND SWORN TO

before me this \_\_\_ day

21 of \_\_\_\_\_, A.D., 2005.

22

\_\_\_\_\_

23

Notary Public

24