

circumstances: when newly discovered facts require reconsideration of the original Order. 35
Ill. Admin. Code 101.902.

Petitioner's arguments regarding an alleged lack of diligence by Respondents in discovering the material facts related to actual notice of the siting application implicitly acknowledge that the Respondents did not in fact know of these material facts as of the time of the stipulation. Petitioner nonetheless argues that material facts should be ignored and urges the reliance on a stipulation that is now known to be inaccurate. This approach is counter to the PCB rules on reconsideration and should be rejected.

Petitioner's implications regarding the Henson Respondents' lack of diligence further beg the question whether, at the time the stipulated facts were being drafted, *Petitioner* had reason to know that the Gibsons had actual knowledge of the filing of the siting application. If Petitioner did not have such knowledge, then it is in no position to claim a lack of diligence by the Henson Respondents. If, on the other hand, Petitioner did know about the landowners' actual notice, then it negotiated stipulated facts in bad faith. In either case, public policy dictates that the PCB revisit its Order on summary judgment in light of the newly discovered evidence of actual notice.

Despite Petitioner's contention that actual notice is not relevant to the jurisdictional question, it nonetheless ironically argues that Respondents waived their actual notice argument because their counsel had *actual notice* of the PCB's ruling granting summary judgment. It is unclear what relevance Respondents' actual notice of the PCB's ruling has on the jurisdictional arguments raised in the Motion to Reconsider. As noted above, the landowners' actual notice of the proceeding was later-discovered evidence relevant to jurisdiction, which was not known to Respondents as of the time of the PCB's ruling. Thus, Respondents' actual notice of that ruling is simply not relevant to the present Motion.

Finally, Petitioner argues that Respondents' Motion should be denied because there is no affidavit from Mr. Gibson, the other landowner of the property at issue. The affidavit of Mr. Gibson is attached hereto as Exhibit 2.¹ This argument is therefore inapplicable. It is clear from the affidavits in support of Respondents' Motion that both landowners had actual notice of, and no objection to, the siting application.

WHEREFORE, for the reasons set forth herein and in their Motion to Reconsider, the Henson Respondents respectfully request that their Motion be granted and the Petitioner's motion for summary judgment be denied.

Dated: October 7, 2014

Respectfully submitted,

On behalf of HENSON DISPOSAL, INC and
TKNTK, LLC.

/s/ Richard S. Porter

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¹ Mrs. Gibson's Affidavit was attached to the Motion to Reconsider as Exhibit 1. For ease of reference, Mr. Gibson's Affidavit has been marked as Exhibit 2. Petitioner argues that the affidavits are insufficient because they do not comply with Supreme Court Rule 191. Petitioner states that the affidavit of Mrs. Gibson fails to provide facts or documentation sufficient to support it. The affidavits, however, contain sworn statements of facts made on the personal knowledge of the affiants. *See* Mot. Reconsid. Ex. 1; Reply Ex. 2. The landowners' affidavits establish through their sworn statements that they are the owners of the parcel at issue and that they subscribe to the *Pantagraph*. The landowners rely on their own personal knowledge, and are competent to testify to the admissible facts contained in their affidavits. They are not testifying in reliance on any documents which would be required to be attached to the affidavits.

AFFIDAVIT OF SERVICE

The undersigned certifies that on October 7, 2014, she served a copy of the foregoing Henson Disposal, Inc., and TKNTK, LLC's Reply in Support of Motion to Reconsider upon the following:

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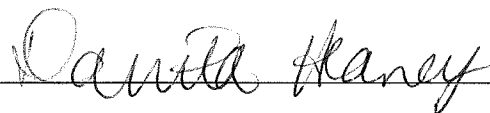
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by depositing a copy thereof, enclosed in an envelope, in the United States Mail at 100 Park Avenue, Rockford, Illinois 61105, proper postage prepaid, at or about the hour of 5:00 o'clock p.m., addressed as above.



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