

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SUSAN M. BRUCE,)	
Complainant,)	PCB # 2015-139
v.)	(Citizens - Water Enforcement)
HIGHLAND HILLS SANITARY)	
DISTRICT,)	
Respondent.)	

NOTICE OF FILING

To: Lawrence A. Stein
Aronberg Goldgehn Davis & Garmisa
330 N. Wabash Avenue
Suite 1700
Chicago, Illinois 60611

PLEASE TAKE NOTICE that I have today filed with the Pollution Control Board the following document:

RESPONDENT'S MOTION FOR RECONSIDERATION AND CLARIFICATION OF THE POLLUTION CONTROL BOARD'S JUNE 2, 2016 ORDER REGARDING MOTION FOR PARTIAL SUMMARY JUDGMENT

a copy of which is hereby served upon you.

Respectfully submitted,



Heidi E. Hanson

Dated: August 25, 2016

Joseph R. Podlewski Jr.
Heidi E. Hanson
Podlewski & Hanson P.C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
(708) 784-0624

CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that I have served on this date the attached:

RESPONDENT'S MOTION FOR RECONSIDERATION AND CLARIFICATION OF THE
POLLUTION CONTROL BOARD'S JUNE 2, 2016 ORDER REGARDING
MOTION FOR PARTIAL SUMMARY JUDGMENT

upon the Clerk's Office On-Line, Illinois Pollution Control Board by electronic filing this day
before 4:30, and

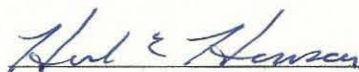
upon the following, by email transmission before 4:30:

Bradley Halloran, Hearing Officer at the email address of Brad.Halloran@illinois.gov.
(pursuant to 35 Ill Adm. Code 101.1060(d)),

Lawrence A. Stein at the email address of lstein@agdglaw.com
(pursuant to April 5, 2016 consent).

The number of pages in the email equals twenty-one (21) pages (including this Certificate) in the
motion and an additional twenty-six pages (26) in the attached affidavit and exhibits for a total
efiling of forty-seven (47) pages.

My email address is heh70@hotmail.com.



Heidi E. Hanson

Dated: August 25, 2016

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**RESPONDENT’S MOTION FOR RECONSIDERATION AND CLARIFICATION OF
THE POLLUTION CONTROL BOARD’S JUNE 2, 2016 ORDER REGARDING
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Respondent, HIGHLAND HILLS SANITARY DISTRICT (“District”), by and through its attorneys PODLEWSKI & HANSON P.C., respectfully requests that the Board reconsider and clarify its order of June 2, 2016, regarding its rulings on Highland Hills Sanitary District’s Motion for Partial Summary Judgment.

Respondent is presenting newly discovered evidence in the attached exhibits, in addition, it alleges that the Board overlooked facts in the record, and erred in applying existing law.

STANDARDS FOR RECONSIDERATION AND CLARIFICATION

Illinois Pollution Control Board Procedural Rule 101.902 (35 Ill. Adm. Code 101.902) provides that “[i]n ruling upon a motion for reconsideration, the Board will consider factors including new evidence, or a change in the law.” However, the Board has broad authority. It “is not limited to these factors and can take up a motion to reconsider on the basis that the Board erred in applying existing law.” *People v. Amsted Rail Company*, PCB 16-61 (May 19, 2016), slip op. at 1. See also *Chatham BP, LLC v. IEPA*, PCB 15-173 (Nov. 5, 2015), slip op. at 2. In addition, a

“motion to reconsider may also specify ‘facts in the record which were overlooked.’” *Id.*, at 2, citing *Wei Enterprises v. IEPA*, PCB 04-23 (Feb. 19, 2004), slip op. at 3.

“The Board’s rules and the Illinois Code of Civil Procedure do not explicitly allow for a motion for clarification. However, decisions in Illinois courts and before the Board...have recognized motions for clarification.” *Sierra Club et al. v. Illinois EPA, et al.*, PCB 15-189 (June 16, 2016), slip op. at 2.

RULINGS ON MOTION FOR PARTIAL SUMMARY JUDGMENT

The Board Could Not Have Previously Ruled on the Jurisdiction / Retroactivity Issue on June 4, 2015 and September 3, 2015 Because the Issue Was Not Raised Until November 3, 2015; Therefore, the Motion for Partial Summary Judgment Should Be Reconsidered.

In its motion for partial summary judgment, the District raised the issue of the Board’s jurisdiction to rule on Bruce’s allegation of a violation of a 1979 Board order in *Travieso* pursuant to 415 ILCS 5/31(d)(1). That section of the Illinois Environmental Protection Act was amended by Public Act 93-152 (effective July 10, 2003) to allow “any person” to file a complaint alleging a violation of “any Board order.” Because the 1979 *Travieso* order preceded Public Act 93-152’s grant of authority in 2003, the Board would have had to find that the grant of authority was retroactive in order to also find that it had jurisdiction to consider Bruce’s *Travieso* allegations.

The arguments are set out in detail in the Respondent’s Memorandum of Law in Support of Motion for Summary Judgment, pages 1-2, 7-10 and Highland Hills Sanitary District’s Reply to Objection to Motion for Summary Judgment, pages 3-6.

In response to the District’s argument that the Board lacked jurisdiction to hear violations of the *Travieso* order because the Illinois General Assembly’s 2003 grant of authority cannot be

applied retroactively, the June 2, 2016 order, slip op. at 4, merely states that the “Board has already ruled on this matter several times” referring in a footnote to its June 4, 2015 and September 3, 2015 orders. However, a close examination of those orders fails to reveal any such ruling. This is unsurprising because the retroactivity issue did not come before the Board until it was pled on November 3, 2015 as affirmative defense #6 of the District’s Answer to Amended Formal Complaint and Affirmative Defenses. The issue was not raised prior to November 3, 2015, therefore the Board could not have ruled on it before that date.

The District does not dispute that the Board has authority to rule on a nonparty allegation of violation of a Board order that was adopted after July 10, 2003, but that is not the case that Bruce has alleged.

If the Board rules on the *Travieso* cease and desist order without authority to do so, its ruling is null and void. “Lack of subject matter jurisdiction deprives the trial court of all power except to dismiss the action.” *Bradley v. City of Marion, Illinois*, 2015 IL App. (5th) 140267, ¶ 13. Lack of subject matter jurisdiction can be raised at any time. “Void judgments thus occupy a unique place in our legal system: to say that a judgment is void or, in other words, that it was entered without jurisdiction, is to say that the judgment may be challenged in perpetuity.” *People v. Castleberry*, 2015 IL 116916, ¶ 15, quoting *Steinbrecher v. LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 38.

As set forth in the *Travieso* Issue Table below, different issues relating to the *Travieso* cease and desist order were raised at various times and in various pleadings, which may have caused some confusion. The instant issue is designated as the Jurisdictional / Retroactivity issue on that table. The General Equity Issue is not included in the table.

Travieso Issues Table

Travieso Issue	District's Argument	First Brought Before the Board / Type of Pleading	Decision
Enforceability Issue	The cease and desist order cannot be enforced under 415 ILCS 5/45(e).	April 15, 2015 motion to dismiss initial complaint.	Decided in the District's favor. June 4, 2015.
Jurisdiction/Retroactivity Issue	Board lacks jurisdiction to decide <i>Travieso</i> allegations under 415 ILCS 5/31(d)(1).	November 3, 2015 as A.D #6.	*
		May 19, 2016 decision on merits requested in motion for partial summary judgment .	June 2, 2016 order, p.4, fn. 15, says Board ruled on this issue June 4, 2015 or Sept. 3, 2015.
Interpretation Issue	The cease and desist order should be interpreted as expiring when Mr. Travieso ceased residing at the property.	July 15, 2015 in motion to dismiss amended complaint.	Sept. 3, 2015 order found the complaint to be factually sufficient but this issue was not addressed.
		November 3, 2015 as A.D #4.	*
		May 19, 2016 decision on merits requested in motion for partial summary judgment.	June 2, 2016 order, p.4, fn. 15, says Board ruled on this issue June 4, 2015 or Sept. 3, 2015.

A. D. = affirmative defense

* The June 2, 2016 order found that the A. D. attacked the complaint's legal sufficiency.

Reconsideration of the striking of the affirmative defense was requested. There has not been a ruling on the merits of this issue.

It would be instructive to review the Board's record on several of the *Travieso* issues.

Bruce alleged in her January 15, 2015 initial complaint that the District had violated the *Travieso* cease and desist order, but she did not specify under what authority she sought to enforce the *Travieso* order. The District filed Respondent's Motion to Dismiss Complaint for Failure to Comply with Board Rules and to Dismiss in Part for Being Frivolous in which it, among other

matters, alleged that Bruce could not enforce the Travieso order pursuant to 415 ILCS 5/45(e) because she was not a party to that case. In its June 4, 2015 order, slip op. at 8, the Board stated:

...the Travieso order may not be “enforced” in this proceeding.

The Board does have authority, however, to find that the District violated the Travieso order, upon a proper showing of such a violation [under Section 31(d)(1)] of the Act....The Board agrees that the complaint does not identify what part of the Travieso order the District is alleged to have violated, how the District did so, or what relationship, if any, there is between complainant and Mr. Travieso. Thus, the Board rules that complainant’s claim for violation of the Travieso order is inadequately pled. In the amended complaint complainant is permitted to file, complainant may choose to abandon that claim, as her response proposes, *see* Resp. at 3, or re-plead it. (emphasis added.)

The Board dismissed the original complaint as frivolous. At this point Bruce had not made a proper showing of any allegation of violation, nor had she attempted to proceed under section 31(d)(1) so the Board did not have that allegation before it. It is clear from the Board’s last sentence that it was merely suggesting an alternative pleading option to Bruce. That does not constitute a ruling on the issue that the District has raised – whether the Board had the authority to take up a violation of an order entered before July 10, 2003.

On July 8, 2015, Bruce filed an Amended Formal Complaint alleging that the District was “violating the portions of the judgments of the Board in Travieso...that required Respondent to cease and desist from causing sewer backups...” Again, Bruce did not cite any authority for her allegation, thus it was unclear whether she was attempting to proceed under 415 ILCS 5/45(e) or 415 ILCS 5/31(d)(1). On July 15, 2015 the District filed a Motion to Dismiss the Amended Formal Complaint again alleging a lack of factual specificity. That motion also stated in paragraphs 7 and 8:

...there is an additional ground for dismissal.

8. ... Paragraph 7 of the Amended Complaint asserts that the order in Travieso, required respondent to "cease and desist from causing sewer backups at the complainant's location" and "complainant's property" (presumably referring to

Mrs. Bruce as the complainant) whereas the Travieso, order provides that Respondent shall cease and desist from violations of specific rules "in causing sewer backups at Complainant's residence" (presumably referring to Mr. Travieso as the Complainant). As in the earlier complaint, the amended complaint fails to "allege what relationship, if any, there is between complainant [Susan M. Bruce] and Mr. Travieso." June 4, 2015 PCB Order, page 8.

Paragraph 7 of the motion to dismiss dealt with the interpretation of the phrase "Complainant's residence" in the Board's 1979 *Travieso* order. The last sentence observed that Bruce had failed to comply with the cited and quoted Board order of June 4, 2015, and as a result it was not clear whether Mr. Travieso still resided at the property. The July 15, 2016 motion did not ask the Board to dismiss the claim on jurisdictional grounds, thus the question of jurisdiction and retroactivity was not before the Board when it ruled on that motion in September of 2015.

The Board's September 3, 2015 order, slip op. at 3 and 5, stated:

However, the applicable provision, § 45(e) of the Environmental Protection Act, allows only those individuals who were parties to the earlier enforcement case to seek enforcement of the Board's order... Furthermore, the original complaint did not say whether Ms. Bruce has any connection with the parties in *Travieso*. So, because the Board could not enforce *Travieso*, it found that claim frivolous. ... However, the Board noted that § 31(d)(1) of the Environmental Protection Act empowers it to instead find that Highland Hills violated *Travieso* without finding that Ms. Bruce is connected to the parties in *Travieso*.... The Board stated that if Ms. Bruce's amended complaint requested relief under this provision, then that claim would be properly pled. (emphasis added)

As the Board discussed in June, a Board order may only be enforced by parties to that proceeding. *See supra* p. 3. However, any person may allege a violation of a Board order. *Id.* Ms. Bruce's relationship to the parties to *Travieso* is not relevant to the revised claim, which is adequately pled.

Even though Bruce did not specifically request relief under 415 ILCS 5/31(d)(1) (declining to "request relief under this provision" as the Board suggested in its June 4, 2015 order) the Board must have interpreted the amended complaint to do so, otherwise it could not have found it to be adequately pled. Thus, for the first time on September 3, 2015 the Board had

before it an amended complaint which it presumably interpreted to contain sufficient facts to properly allege a violation pursuant to section 31(d)(1).

Even a complaint with sufficient facts to be properly pled may be subject to defenses, including jurisdictional defects. The question of jurisdiction pursuant to 31(d)(1) was not before the Board until it was raised as affirmative defense #6 on November 3, 2015 - two months after the two orders cited by the Board in its June 2, 2016 order as having resolved the issue.

The Board has never addressed the District's Jurisdiction / Retroactivity argument which was raised both as affirmative defense #6 (on November 3, 2015) and later in the motion for partial summary judgment. Neither of the two prior orders that the Board cites as "rulings" on this subject (see June 2, 2016 order, footnote 15) use the terms "jurisdiction", "retroactivity" or "prospectivity" and they make no attempt to discuss last year's Illinois Supreme Court ruling in *People v. J. T. Einoder*, 2015 IL 117193. In fact, the Board discussed no cases on this issue.

In short, the Board did not have the question of jurisdiction based on retroactive application of section 31(d)(1) presented to it until after the two prior orders it cites. Thus, it could not have ruled on it in those orders. The Board had the Interpretation Issue before it and may have confused it with the Jurisdictional / Retroactivity issue.

Respondent submits that the Board has erred as a matter of law and fact in its statement that it has "already ruled". Accordingly, the District requests that it: 1) consider Respondent's and Complainant's arguments as set forth in the relevant pleadings on this issue, 2) give them a full and proper hearing, 3) make and explain its decision, and, 4) if it concludes that it has jurisdiction, explain why its retention of jurisdiction on the *Travieso* allegations is not in contravention of the Illinois Supreme Court's 2015 ruling in *Einoder*. If the Board declines to

reconsider its previous ruling, Respondent asks that it clarify that ruling by explaining to the parties what its ruling was and what was the reasoning behind it.

The Board Has Not Previously Ruled on the Interpretation Issue; Therefore the District Requests That the Board Rule and Grant the Motion for Partial Summary Judgment.

The District argued¹ that the *Travieso* order should not be interpreted to apply to owners of the property after Mr. Travieso. The crux of its argument was that a cause of action (including one under 415 ILCS 5/31(d)(1)) would have ceased to exist after Travieso left the property, based on either one of two factors:

1) that the language of the 1979 cease and desist order did not support the interpretation that it applied to Bruce's property because the 1979 order referred to "Complainant's property" at a time when Complainant could only mean Mr. Travieso; or

2) that the Board, writing in 1979, could not have intended for the cease and desist order to survive beyond Mr. Travieso's ownership, because in 1979 the Board did not yet have the authority to allow persons not a party to the original case to pursue violations of its cease and desist orders. The 1979 order should be interpreted in accordance with the law at the time it was written, and if so interpreted it could not support Bruce's claim.

These are arguments that go to the interpretation of the cease and desist order – not to the Board's jurisdiction to hear those arguments.

The Board has never ruled on the merits of this argument, although it did find (on September 3, 2015) that the amended complaint's factual specificity was sufficient to survive the motion to dismiss and (on June 2, 2016) that when raised as an affirmative defense it attacked the complaint's legal sufficiency. The District asks that the Board review the arguments presented

¹ Respondent's Memorandum of Law in Support of Motion for Summary Judgment, pages 10-11 and Highland Hills Sanitary District's Reply to Objection to Motion for Summary Judgment, page 6 (noting that Bruce did not respond to that argument). Pursuant to 35 Ill. Adm. Code 101.500(d), non-response is deemed a waiver of objection.

to it on this issue, reach a decision on the merits of the interpretation of the cease and desist order on reconsideration and grant the motion for partial summary judgment on that basis.

The District Requests Clarification on the Status of the General Equity Defense.

The Board did not rule on the merits of the General Equity argument as grounds for the motion for partial summary judgment. That argument² stresses the difference between the problems that gave rise to the *Travieso* cease and desist order (sewer blockage, near weekly backups) and the 2010 and 2013 backups alleged in the instant case, as well as the general staleness of the *Travieso* order. It is possible that as discovery progresses and additional facts become known about the alleged 2010 and 2013 backups that this argument could be expanded upon with new evidence. The District is not asking for reconsideration at this time, but merely asks for clarification³ that the striking of affirmative defense #5 will not foreclose it from raising this argument as a defense at a later date.

The Motion for Partial Summary Judgment on the Issue of Whether The District Had a Treatment Works Should Be Reconsidered Because the Evidence in Support of the Motion Was Uncontroverted, and New Evidence Reveals Both That Bruce Had Sufficient Time to Investigate and That Her Investigation Showed That the District Does Not Own Or Operate a Treatment Works.

The treatment works issue was first raised by the District in its April 15, 2015 motion to dismiss. In response to that motion, the Board's June 4, 2015 order (slip op. at 8) informed Bruce that she would have to plead (and ultimately prove) that the District owns or operates a treatment works in order to prevail on her allegations of violations of 35 Ill. Adm. Code 306.201(a) and Chapter 3, Rule 601(a). The District does not own or operate a treatment works

² Respondent's Memorandum of Law in Support of Motion for Summary Judgment, pages 11-14 and Highland Hills Sanitary District's Reply to Objection to Motion for Summary Judgment, page 6-7.

³ "...[T]he parties are still free to address this issue at hearing. *Cole Taylor Bank v. Rowe Industries*, PCB 01-173 (June 6, 2002), slip op. at 7.

and moved for summary judgment on the strength of an affidavit from Mr. Sarno, a former president and current trustee of the Highland Hills Sanitary District. Bruce presented no contrary evidence but the Board denied the District's motion based on Bruce's statement that she needed additional time to investigate.

Bruce's objection to the District's motion for partial summary judgment (§ 2) stated:

The complainant has not had the opportunity to ascertain the truth of those allegations nor has she had the opportunity to obtain evidence to counter Mr. Sarno's averments in his affidavit. Under these circumstances it would be premature to render summary judgment based on the affidavit. The complainant will be seeking to take appropriate action to ascertain the truth of Mr. Sarno's averments promptly.

This is a facially insufficient response. "While the nonmoving party in a summary judgment motion is not required to prove his case, he must nonetheless present a factual basis which would arguably entitle him to a judgment." *Gauthier v. Westfall*, 226 Ill. App. 3d 213, 219, 639 N.E. 2d 994, 999 (2nd Dist 1994).

"[W] here a party moving for summary judgment files supporting affidavits containing well-pleaded facts and the party opposing the motion files no counteraffidavits, the material facts set forth in the movant's affidavits stand as admitted. If the opponent fails to controvert the proofs offered in support of the motion and the movant's showing of uncontradicted facts would entitle him to judgment as a matter of law, then summary judgment is proper."

East Side Fire Protection District v. City of Belleville, 221 Ill. App. 3d 654, 657, 582 N.E. 2d 755, 758 (5th District 1991).

Bruce's objection presents no facts and her argument and does not in any way support a denial of the District's motion. If anything, she is arguing for a continuance.

She claims she needs more time to investigate the "truth of the allegations." However, Bruce's characterization of the issue, as one that she only became aware of after she received the Sarno affidavit, is disingenuous. She was made aware that she would have to prove up this issue

by the June 4, 2015 Board's order - over a year ago. Furthermore, Bruce's response is not accurate. She cannot reasonably allege that she needed more time to pursue discovery because there were public documents available, and in her possession, that showed that the District did not have a treatment works.

If Bruce truly believed that additional investigation would allow her to contradict the Sarno affidavit then she should have requested more time to respond to the motion for partial summary judgment. She had the opportunity to do so at the May 4, 2016 Hearing Officer status conference, or she could have filed a written motion for additional time. (She is no stranger to such motions.) Instead her objection to the motion for partial summary judgment was that she had not had the "opportunity to obtain evidence" - a statement that was contradicted by documents she had in her possession at the time. The District is attaching those documents to this motion as newly discovered evidence. Bruce did not ask for more time from Hearing Officer Halloran because she knew that nothing more could be accomplished with additional time. She had already discovered by May 2, 2016 that the District does not own or operate a treatment works.

a. The Board Should Reconsider Its Ruling on Bruce's Objection and Treat the Objection as What it is - An Improper, Unjustified and Unsupported Motion for Continuance.

Illinois courts have been notably unsympathetic to those parties who objected to a motion for summary judgment, but had done nothing more than complain of lack of time without requesting a continuance, providing an affidavit pursuant to Illinois Supreme Court Rule 191(b), or making an offer of proof. Bruce has done none of these. See *Rogers v. Robson*, 74 Ill.App.3d 467, 392 N.E.2d 1365 (1979); *Gill v. Chicago Park District*, 85 Ill. App.3d 903, 407 N.E.2d 671 (1980); *Department of Financial & Professional Regulation v. Walgreen Co.*, 2012

IL App (2d) 110452, ¶ 21. See also the 2nd District Appellate Court's recent ruling in *Bank of America v Patchan*, 2015 IL. App (2d) 1040541-U, ¶¶ 22-26.⁴

By not granting the motion for partial summary judgment on first consideration, the Board has allowed two of Bruce's allegations of violation to go forward on the false premise that Bruce might be able to prove the existence of a treatment works that 1) the Board had (in 1974) ordered to be closed⁵, 2) the trustee of the alleged owner and operator of the alleged treatment works swears does not exist, and 3) the Complainant's own documents disprove.

If it lets its original order stand, the Board risks setting a problematic precedent by signaling to all litigants that may come before it, that a motion for summary judgment can easily be defeated by simply requesting an opportunity to keep looking for additional facts - regardless of how unrealistic it is that such facts might actually exist.

Discovery does not have to be closed in order for a motion for summary judgment to be ripe for decision. The June 2, 2016 order seems to suggest that motions for summary judgment should not be granted until after discovery is completed. However, that would contradict the Board's own rule, 35 Ill. Adm. Code 101.516(a), which states that a motion for summary judgment may be filed "[a]ny time after the opposing party has appeared (or after the expiration of time within which any party is required to appear)." It would serve the interests of all for the Board to determine early in the proceedings whether a Highland Hills Sanitary District treatment works exists, thus narrowing the issues and promoting efficient use of resources.

⁴ The 2nd District has ruled that unpublished opinions may be used as "an example of the court's reasoning and as a reasonability check." *In re: Estate of LaPlume*, 2014 IL App (2d) 103945, ¶¶ 23 - 24. It is for that purpose that the District cites *Bank of America v. Patchan*.

⁵ *In the Matter of DuPage County Wastewater Regionalization*, R70-17 (August 29, 1974), slip op. at 6-7.

On its initial consideration the Board allowed a plea for time, which should have been framed as a motion for continuance, to defeat a motion for summary judgment. As a motion for continuance, Bruce's plea for time would have been subject to some limitation. The Board or hearing officer would presumably have required her to respond by a date certain and the decision on the motion would have occurred at some point in the future. The Board, however, DENIED the motion for summary judgment on the basis that a litigant simply claimed to be unprepared to answer it. This does not expedite the matter or serve justice.

b. The Board Overlooked Evidence and Law in Deciding That Bruce's Claim That She Had Insufficient Time to Investigate Whether the District Owned or Operated a Treatment Works Should Defeat the Motion for Partial Summary Judgment.

The Board's record includes not only the Sarno affidavit but also pleadings and orders. 35 Ill. Adm. Code 101.202 and 101.516(b). Three of those provide additional evidence that the District does not own or operate a treatment works.

1) Bruce's arguments in her Motion to Strike Affirmative Defenses, paragraph 4, are inconsistent with her allegation that the District is treating its own sewage. She argues that the District should be held liable for the actions of Flagg Creek Water Reclamation District ("Flagg Creek WRD") - an argument that would be pointless unless Highland Hills Sanitary District was sending its sewage to Flagg Creek WRD for treatment.

2) The Board itself ordered the District to give up its treatment works and also ordered Hinsdale Sanitary District (now Flagg Creek WRD) to accept the Highland Hills Sanitary District's sewage. (A. D.'s #1, # 2, # 3, and #7 ¶¶ 6 -7.) *In the Matter of DuPage County Wastewater Regionalization*, R70-17 (August 29, 1974), slip op. at 6-7.

3) To save Bruce's case from her own general denials to the affirmative defenses, (which included denials of essential elements of her own case) the Board found on March 17,

2016 (slip op. at 2) that the factual allegations of the affirmative defenses were admitted. Those admitted affirmative defenses (#1, #2, #3 ¶¶ 7-8, 10-13 and #2 ¶22) alleged that the District does not own or own operate a treatment works. Furthermore, the Board gave Bruce an opportunity to amend her response to the admitted A.D.s and to deny any of them that were not true. Bruce did not do so.

Bruce's argument that she did not have sufficient time to investigate the motion for summary judgment is contradicted by the ease by which she could have conducted that investigation. The information that she could have found easily is evident from the Board's own rules and orders.

1) Ownership or operation of a treatment works requires an NPDES permit, public notice and extensive recordkeeping, all of which are public records available from the Illinois Environmental Protection Agency. 35 Ill. Adm. Code Part 309. Bruce could have obtained those records from that agency.

2) Flagg Creek Water Reclamation District is also a unit of local government, subject to NPDES recordkeeping, and required to keep publically available records on the disposition of Highland Hills Sanitary District's s sewage. 35 Ill. Adm. Code Part 309. Bruce could have obtained those records from Flagg Creek WRD.

3) In the November 3, 2015 Answer and Affirmative Defenses (A. D.s # 1- 3, and 7) Bruce was made aware of the existence and impact of the Board's order *In the Matter of DuPage County Wastewater Regionalization*, R70-17 (August 29, 1974) in which the Board ordered the District to give up its treatment works and to connect to Flagg Creek WRD (then Hinsdale Sanitary District). Bruce could have obtained a copy of that order from the Board's website.

Bruce had over a year (since the Board's June 4, 2015 order) to obtain the information she claims she lacks. If a Highland Hills Sanitary District treatment works existed it would be quick and easy to prove its existence by reference to publically available government files. In fact Bruce is very well aware that it does not exist, but rather than lose on this issue she pled for more time.

c. Newly Discovered Evidence Requires Reconsideration and Grant of the Motion for Partial Summary Judgment.

Bruce is aware that the District does not have a treatment works because she had already made use of the public documents that were available to her.

On May 2, 2016 (nine days before she filed her Objection to Motion for Partial Summary Judgment) Bruce and her attorney had in their possession documents that showed that Highland Hills Sanitary District's sewage was treated by Flagg Creek Water Reclamation District. She did not provide copies of those documents to the District until June 17, 2016, over six weeks later.

As set forth in the attached Affidavit of Joseph Podlewski, Bruce agreed to provide copies of "maps, blueprints, surveys, etc. relating to sewer lines on her property" to the District in April 2016 (Podlewski affidavit ¶¶4-7, 10 and Exhibits A and B). She did not provide them in a timely manner. As admitted in her attorney's June 17, 2016 email (page 1 of Group Exhibit F to the Podlewski affidavit) she had them in her possession at the inspection of the property which took place on May 2, 2016 (see May 4, 2016 Hearing Officer order and Podlewski affidavit ¶¶9 and 11). The Podlewski affidavit (¶¶4-18) details the District's struggle to obtain the promised copies. Bruce did not provide them until June 17, 2016 so the District was unable to use them to rebut her May 11, 2016 Objection to Motion for Partial Summary Judgment.

The documents that she eventually provided are marked as pages 3 through 11 of Group Exhibit F to the Podlewski affidavit. (Page numbers were added by Respondent for ease of

reference.) Group Exhibit F page 6 shows the location of the Highland Hills Sanitary District area outlined in red (see map key) in the southeast corner of a map of Lombard. The District's area is shown in pink on the maps in Group Exhibit F pages 5, 8, 10, and 11. (The District is not shown at all on the map in Group Exhibit F page 9.)

Group Exhibit page 5 shows a map of Lombard sewer basins and states that

There are 7 basins for sanitary and combined sewers. The north, middle and southwest sides of Lombard's sewers flow to the GWA trunk sewers that run along the river, ending at GWA's treatment plant. The southeast side flows southward to Flagg Creek's treatment plant in Burr Ridge.

There are only two options given on the map of Lombard for treatment of Lombard's sewage and neither of them is a Highland Hills Sanitary District treatment plant. Lombard sewage goes either to GWA (Glenbard Wastewater Authority) and flows west to the trunk line "along the river" shown on the map, or southeast to Flagg Creek's treatment plant in Burr Ridge. Group Exhibit pages 4 and 8 (read together) also show the direction of sewage flow-to-treatment in the south side of Lombard. The green arrow referenced on page 4 and shown on page 8 shows that flow is to the southeast of Lombard and the arrow also indicates that the sewage leaves the Highland Hills Sanitary District boundaries.

In summary, the documents provided by Bruce demonstrate that she was aware that there is no Highland Hills Sanitary District's sewage treatment plant because the District's sewage "flows southward to Flagg Creek's treatment plant in Burr Ridge."

The Podlewski affidavit and its exhibits are being offered to the Board not as additional proof that Highland Hills Sanitary District does not own or operate a treatment works. The Sarno affidavit is sufficient proof of that and it stands uncontradicted. Bruce offered nothing to oppose it. The new material is being offered instead to contradict Bruce's unsupported, unjustified, and unverified allegation that she needed more time to conduct her investigation.

She has had sufficient time. She did conduct an investigation. She had found the answer. She simply did not like the answer she found.

d. Summary

New evidence is now available to rebut Bruce's argument that she did not have the opportunity to obtain evidence. Bruce argued that she needed more time to investigate the allegations in the Sarno affidavit, but that argument is contradicted by her own pleading and by the fact that prior to the filing of her response to the District's motion she was in possession of documents which showed that Highland Hills sewage was treated by Flagg Creek's treatment plant.

Based on the uncontroverted evidence the Board should have granted the motion for summary judgment. The District asks the Board to reconsider its June 2, 2016 ruling on the basis of an error in law and overlooked evidence (as set forth above and in its prior pleadings⁶), as well as new evidence in the Podlewski affidavit, and to grant summary judgment to the District dismissing with prejudice the allegations that it violated 35 Ill Adm. Code 306.201(a) and Chapter 3, Rule 601(a).

Alternatively, if the Board does not grant the motion for summary judgment, the District asks that the Board vacate its ruling on this issue in light of the arguments and new evidence, and grant Bruce an extension of no more than 30 days in which to "continue to" investigate this sole issue and in which to revise her response to the motion for partial summary judgment on this issue if she so chooses.

⁶ See Respondent's Memorandum of Law in Support of Motion for Summary Judgment, pages 1-7, Sarno affidavit, and Highland Hills Sanitary District's Reply to Objection to Motion for Partial Summary judgment, pages 1-3.

CONCLUSION

The District seeks reconsideration of its motion for partial summary judgment. In that motion it argued that Bruce should not be allowed to allege violations of a 1979 Board order because the Board lacked jurisdiction to allow her, a nonparty to the original order, to pursue a violation of that order. The District also argued that by its own terms that order was no longer valid. The Board did not rule on either of these arguments, instead simply (and incorrectly) stating that it had already done so which would have been impossible given the fact that the arguments had not yet been raised at the time the Board claimed to have ruled on them.

The District also seeks reconsideration of the Board's denial of its motion for summary judgment on the question of whether it owns a treatment works. While one might reasonably assume that the District's former president would know whether or not the District owned a treatment works, the Board nonetheless acceded to Bruce's plea for more time to investigate. However, rather than grant her a limited continuance the Board improperly denied the motion for summary judgment. She had known for a year that she would need to prove that the District had a treatment works in order to prove two of her allegations, and the information she claimed to need would have been easily available through public records, some of which were on the Board's own website. Newly discovered evidence has shown that her plea was not made in good faith. She had already investigated the question and her own records show that Highland Hills Sanitary District's sewage was being sent to a treatment works owned by a different district, Flagg Creek Water Reclamation District.

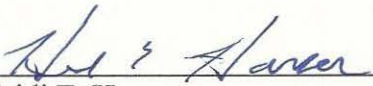
The District asks that the Board reconsider the new evidence and the evidence and law on which it based its ruling on first consideration. As U. S. Supreme Court Justice Jackson said upon concluding that justice required him to reverse his prior decision:

Precedent, however, is not lacking for ways by which a judge may recede from a prior opinion that has proven untenable...."The matter does not appear to me now as it appears to have appeared to me then." *Andrew v. Styrup*, 26 L.T.R. (N.S.) 704, 706.

McGrath v. Kristensen 349 U.S. 162, 178 (1950) (Justice Jackson concurrence, quoting Baron Bramwell).

WHEREFORE, for the reasons stated above, Respondent prays that the Board reconsider and clarify its June 2, 2016 order as that order regards the Motion for Partial Summary Judgment.

Respectfully submitted,



Heidi E. Hanson

Dated: August 25, 2016

Joseph R. Podlewski Jr.
Heidi E. Hanson
Podlewski & Hanson P.C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
(708) 784-0624

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SUSAN M. BRUCE)	
)	
Complainant,)	
)	
v.)	PCB # 2015-139
)	(Citizens - Water Enforcement)
HIGHLAND HILLS SANITARY)	
DISTRICT,)	
)	
Respondent.)	

AFFIDAVIT

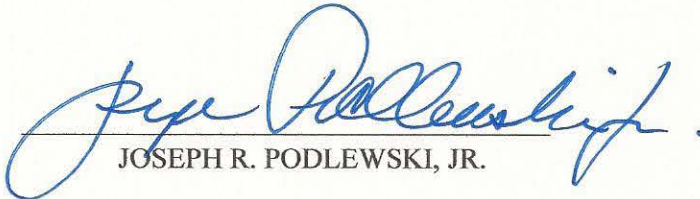
JOSEPH R. PODLEWSKI, JR., being first duly sworn upon oath, deposes and states as follows:

1. I am an attorney licensed to practice law in the State of Illinois, and am currently a shareholder in the law firm of Podlewski & Hanson P.C.
2. I have personal knowledge of the facts stated herein and, if sworn as a witness, can testify competently thereto.
3. I am one of the attorneys representing Respondent Highland Hills Sanitary District (the "District") in the above-captioned case.
4. On January 25, 2016, counsel for the District and Lawrence A. Stein, counsel for Complainant Susan M. Bruce ("Bruce"), agreed upon conditions for the District's inspection of Bruce's property. A true and correct copy of the "Agreed Terms of Inspection of Complainant Susan Bruce's Property by the Respondent Highland Hills Sanitary District" ("Inspection Agreement") is attached hereto and Exhibit "A".
5. Paragraph 3 of the Inspection Agreement provides as follows: "No later than seven (7) calendar days before the inspection, the District shall provide Ms. Bruce with an electronic copy of the District's Sewer Atlas. To the extent Ms. Bruce has any maps, blueprints, surveys, etc. relating to sewer lines on her property, they shall be provided to the District seven (7) calendar days prior to the inspection."
6. On April 20, 2016, I advised Mr. Stein by e-mail that the property inspection would occur on May 2, 2016. A true and correct copy of my e-mail to Mr. Stein is attached hereto as Exhibit "B". In that e-mail, I stated "[w]e look forward to receiving information from Mrs. Bruce satisfying conditions 2 and 3 of the Agreed Terms of Inspection no later than by close of business on Monday, April 25, 2016."

7. No documents or other information were received by District's counsel on or before April 25, 2016.
8. On April 28, 2016, counsel for the District again asked Mr. Stein to provide the District with the requested documents. A true and correct copy of counsel's April 28 e-mail to Mr. Stein is attached hereto as Exhibit "C".
9. On April 30, 2016, Mr. Stein advised District's counsel by e-mail that "[t]he documents will be present at the inspection." A true and correct copy of Mr. Stein's April 30 e-mail is attached hereto as Exhibit "D".
10. No documents were provided by Mrs. Bruce to the District *prior* to the May 2, 2016 inspection, as counsel for the parties had agreed more than three months earlier.
11. Mr. Stein and District counsel were present during the May 2, 2016 inspection. At that time Mr. Stein was in the possession of several pages of documents, which he showed to District's counsel. Although no copies of these documents were made available to the District during the inspection, Mr. Stein said that copies of these documents would be provided to the District.
12. Two days later, a hearing officer status conference was held. In his May 4, 2016 order, the hearing officer stated that "[t]he complainant stated that it will forward the requested documents, including a survey, to the respondent today."
13. No documents were received by District's counsel from Mr. Stein on May 4, 2016.
14. On May 13, 2016, counsel for the District reminded Mr. Stein by e-mail that the District had not yet received the requested documents he had agreed to provide in accordance with the hearing officer's May 4, 2016 order. A true and correct copy of counsel's May 13, 2016 e-mail to Mr. Stein is attached hereto as Exhibit "E". No response to this e-mail was received.
15. On June 1, 2016, another hearing officer status conference was held. In his June 1, 2016 order, the hearing officer stated: "Bruce stated that it will forward the documents that Highland Hills requested within 48 hours."
16. No documents were received by District counsel from Mr. Stein within 48 hours of the hearing officer's June 1, 2016 order.
17. On June 16, 2016, another hearing officer status conference was held. Mr. Stein did not participate. In his June 16, 2016 order, the hearing officer stated: "The complainant is also reminded again to provide the documents promised to the respondent numerous times."

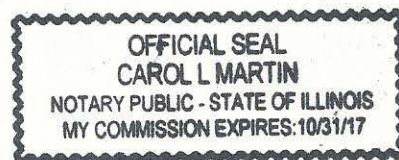
18. It was not until June 17, 2016, that Mr. Stein provided District counsel with the requested documents. A true and correct copy of Mr. Stein's June 17, 2016, e-mail to the District's counsel, along with true and correct copies of the documents provided by Mr. Stein to the District's counsel on June 17, 2016, is attached hereto as Group Exhibit "F".

FURTHER AFFIANT SAYETH NOT.


JOSEPH R. PODLEWSKI, JR.

Subscribed and Sworn to before me this 24th
day of August, 2016


Notary Public



**Agreed Terms of Inspection of Complainant Susan Bruce's Property by the Respondent
Highland Hills Sanitary District**

Bruce v. Highland Hills Sanitary District, PCB 15-139

January 25, 2016

1. The date of the inspection shall be proposed to Ms. Bruce no later than seven (7) calendar days before it is to occur, so that it can be done at a date and time of everyone's mutual convenience.
2. No later than seven (7) days before the inspection each party is to provide the other with the identities of the individuals, if then known, to be present during the inspection. For each individual attending the inspection in a representative capacity, the entity that the individual represents shall also be disclosed. If the identity of a particular individual is not then known, the identity of the entity to be represented by that individual shall be disclosed.
3. No later than seven (7) calendar days before the inspection, the District shall provide Ms. Bruce with an electronic copy of the District's Sewer Atlas. To the extent Ms. Bruce has any maps, blueprints, surveys, etc. relating to sewer lines on her property, they shall be provided to the District seven (7) calendar days prior to the inspection.
4. No later than seven (7) calendar days before the inspection, Ms. Bruce shall be provided with the intended scope of the inspection, what exactly is to be inspected, and by what means.
5. No later than seven (7) business days after a party receives the results of its inspection (including, but not limited to any still or moving audiovisual recordings made during the inspection and any other data collected during the inspection), those results shall be shared with the other party.
6. Both parties are allowed to have whatever professionals they wish present to observe and record the inspection.

EXHIBIT A

Electronic Filing - Received, Clerk's Office : 08/25/2016

Bruce v. Highland Hills SD, PCB 15-139

Joe Podlewski

Wed 4/20/2016 2:06 PM

To: lstein@agdglaw.com <lstein@agdglaw.com>;

Bcc: hhsd96@aol.com <hhsd96@aol.com>; crobicha@travelers.com <crobicha@travelers.com>; Heidi Hanson <heh70@hotmail.com>;

2 attachments (595 KB)

JRP--Agreed Terms of Inspection Bruce Property by Highland Hills SD (1-25-16).pdf; JRP--Highland Hills SD Sanitary Sewer Atlas.pdf;

Mr. Stein, the inspection of Mrs. Bruce's property (115 E. 14th Place, Lombard, IL) will proceed at 9:00 a.m. on Monday, May 2, 2016.

Per condition 2 of the January 25, 2016 Agreed Terms of Inspection (attached), the following individuals will be present at the inspection on behalf of the District:

Highland Hills Sanitary District (HHSD) Trustee James Worden
HHSD Utility Employee Bob Schoenke
HHSD Sewer Engineer Bruce Hill, P.E. - Frank Novotny & Associates, Inc.
Licensed Plumber, Joe Kud - All Plumbing and Sewer Services, Inc.
HHSD attorneys Joe Podlewski and Heidi Hanson - Podlewski & Hanson P.C.

A copy of the current HHSD Sewer Atlas is also attached, in accordance with condition 3 of the Agreed Terms of Inspection. We will transmit information satisfying condition 4 of the Agreed Terms of Inspection separately.

We look forward to receiving information from Mrs. Bruce satisfying conditions 2 and 3 of the Agreed Terms of Inspection no later than by close of business on Monday, April 25, 2016.

Joseph R. Podlewski, Jr.
Podlewski & Hanson P.C.
4721 Franklin Avenue, Suite 1500
Western Springs, Illinois 60558
Tel: 708-784-0624
Fax: 708-784-0627
jpodlewski@live.com
www.podhanlaw.com

**Notice from Podlewski & Hanson P.C.:

EXHIBIT B

Electronic Filing - Received, Clerk's Office : 08/25/2016

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In compliance with U.S. Treasury regulations, please be aware that any discussion of Federal tax issues in this communication was not intended or written to be used, and cannot be used, by any person (i) for the purpose of avoiding penalties that may be imposed by the Internal Revenue Service, or (ii) to promote, market or recommend to another party any matter addressed herein.

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PODLEWSKI & HANSON P.C.

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FW: Bruce v. Highland Hills SD, PCB 15-139

Heidi Hanson

Thu 4/28/2016 2:29 PM

To: Lawrence A. Stein <lstein@agdgllaw.com>; Halloran, Brad <brad.halloran@illinois.gov>;

Cc: Joe Podlewski <jpodlewski@live.com>;

2 attachments (595 KB)

JRP--Agreed Terms of Inspection Bruce Property by Highland Hills SD (1-25-16).pdf; JRP--Highland Hills SD Sanitary Sewer Atlas.pdf;

Dear Mr. Stein:

Pursuant to the January 25, 2016 inspection agreement, the parties were to provide each other with certain information 7 days prior to the inspection which we had agreed is to take place on Monday, May 2 at 9:00 a.m.

However, we have yet to receive any of the information you had agreed to provide us under the inspection agreement (quoted below).

We provided you with the information required of the District under the inspection agreement on April 20. (See the April 20 e-mail from Joe Podlewski to you below). We supplemented this information on April 23 and on April 25.

Please send the information you agreed to provide by April 25 immediately and confirm that there will be someone available at Mrs. Bruce's property to provide us with access.

Paragraphs 2 and 3 of the agreement state as follows:

2. No later than seven (7) days before the inspection each party is to provide the other with the identities of the individuals, if then known, to be present during the inspection. For each individual attending the inspection in a representative capacity, the entity that the individual represents shall also be disclosed. If the identity of a particular individual is not then known, the identity of the entity to be represented by that individual shall be disclosed.

3. No later than seven (7) calendar days before the inspection, the District shall provide Ms. Bruce with an electronic copy of the District's Sewer Atlas. To the extent Ms. Bruce has any maps, blueprints, surveys, etc. relating to sewer lines on her property, they shall be provided to the District seven (7) calendar days prior to the inspection. Finally, for your information we are copying Hearing Officer Halloran on this correspondence so he is aware of developments regarding the property inspection.

Heidi E. Hanson
Podlewski & Hanson
4721 Franklin Ave., Suite 1500
Western Springs, IL 60558
Tel: 708-784-0624
Fax: 708-784-0627
heh70@hotmail.com
www.podhanlaw.com

EXHIBIT C

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From: jpodlewski@live.com
To: lstein@agdglaw.com
Subject: Bruce v. Highland Hills SD, PCB 15-139
Date: Wed, 20 Apr 2016 14:06:43 -0500

Mr. Stein, the inspection of Mrs. Bruce's property (115 E. 14th Place, Lombard, IL) will proceed at 9:00 a.m. on Monday, May 2, 2016.

Per condition 2 of the January 25, 2016 Agreed Terms of Inspection (attached), the following individuals will be present at the inspection on behalf of the District:

Highland Hills Sanitary District (HHSD) Trustee James Worden
HHSD Utility Employee Bob Schoenke
HHSD Sewer Engineer Bruce Hill, P.E. - Frank Novotny & Associates, Inc.
Licensed Plumber, Joe Kud - All Plumbing and Sewer Services, Inc.
HHSD attorneys Joe Podlewski and Heidi Hanson - Podlewski & Hanson P.C.

A copy of the current HHSD Sewer Atlas is also attached, in accordance with condition 3 of the Agreed Terms of Inspection. We will transmit information satisfying condition 4 of the Agreed Terms of Inspection separately.

We look forward to receiving information from Mrs. Bruce satisfying conditions 2 and 3 of the Agreed Terms of Inspection no later than by close of business on Monday, April 25, 2016.

Joseph R. Podlewski, Jr.
Podlewski & Hanson P.C.
4721 Franklin Avenue, Suite 1500
Western Springs, Illinois 60558
Tel: 708-784-0624
Fax: 708-784-0627
jpodlewski@live.com
www.podhanlaw.com

****Notice from Podlewski & Hanson P.C.:**

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PODLEWSKI & HANSON P.C.

Electronic Filing - Received, Clerk's Office : 08/25/2016

Re: Bruce v. Highland Hills SD, PCB 15-139

Lawrence A. Stein

Sat 4/30/2016 2:08 PM

To: Heidi Hanson <heh70@hotmail.com>;

Cc: Halloran, Brad <brad.halloran@illinois.gov>; Joe Podlewski <jpodlewski@live.com>;

The complainant may be present at the inspection, too.

The documents will be present at the inspection.

On Apr 28, 2016, at 2:59 PM, Heidi Hanson <heh70@hotmail.com> wrote:

Thank you. When can we expect the documents?

Heidi

Heidi E. Hanson
Podlewski & Hanson
4721 Franklin Ave., Suite 1500
Western Springs, IL 60558
Tel: 708-784-0624
Fax: 708-784-0627
heh70@hotmail.com
www.podhanlaw.com

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This information block, the typed name of the sender or anything else in this message is not intended to constitute an electronic signature unless a specific statement to the contrary is included in this message.

From: LStein@agdglaw.com
To: heh70@hotmail.com; brad.halloran@illinois.gov
CC: jpodlewski@live.com
Subject: RE: Bruce v. Highland Hills SD, PCB 15-139
Date: Thu, 28 Apr 2016 19:43:34 +0000

Perry Bruce and I will be present for the inspection.

EXHIBIT D

Electronic Filing - Received, Clerk's Office : 08/25/2016

Lawrence A. Stein

lstein@agdglaw.com

< imaged2f5ca.JPG >

Aronberg Goldgehn / 330 N. Wabash Ave. / Suite 1700 / Chicago, IL 60611-3586

Direct: (312) 755-3133 / Fax: (312) 222-6399 / www.agdglaw.com

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From: Heidi Hanson [<mailto:heh70@hotmail.com>]

Sent: Thursday, April 28, 2016 2:29 PM

To: Lawrence A. Stein; Halloran, Brad

Cc: Joe Podlewski

Subject: FW: Bruce v. Highland Hills SD, PCB 15-139

Dear Mr. Stein:

Pursuant to the January 25, 2016 inspection agreement, the parties were to provide each other with certain information 7 days prior to the inspection which we had agreed is to take place on Monday, May 2 at 9:00 a.m.

However, we have yet to receive any of the information you had agreed to provide us under the inspection agreement (quoted below).

We provided you with the information required of the District under the inspection agreement on April 20. (See the April 20 e-mail from Joe Podlewski to you below). We supplemented this information on April 23 and on April 25.

Please send the information you agreed to provide by April 25 immediately and confirm that there will be someone available at Mrs. Bruce's property to provide us with access.

Paragraphs 2 and 3 of the agreement state as follows:

2. No later than seven (7) days before the inspection each party is to provide the other with the identities of the individuals, if then known, to be present during the inspection. For each individual attending the inspection in a representative capacity, the entity that the individual represents shall also be disclosed. If the identity of a particular individual is not then known, the identity of the entity to be represented by that

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individual shall be disclosed.

3. No later than seven (7) calendar days before the inspection, the District shall provide Ms. Bruce with an electronic copy of the District's Sewer Atlas. To the extent Ms. Bruce has any maps, blueprints, surveys, etc. relating to sewer lines on her property, they shall be provided to the District seven (7) calendar days prior to the inspection.

Finally, for your information we are copying Hearing Officer Halloran on this correspondence so he is aware of developments regarding the property inspection.

Heidi E. Hanson
Podlewski & Hanson
4721 Franklin Ave., Suite 1500
Western Springs, IL 60558
Tel: 708-784-0624
Fax: 708-784-0627
heh70@hotmail.com
www.podhanlaw.com

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From: jpodlewski@live.com
To: lstein@agdglaw.com
Subject: Bruce v. Highland Hills SD, PCB 15-139
Date: Wed, 20 Apr 2016 14:06:43 -0500

Mr. Stein, the inspection of Mrs. Bruce's property (115 E. 14th Place, Lombard, IL) will proceed at 9:00 a.m. on Monday, May 2, 2016.

Per condition 2 of the January 25, 2016 Agreed Terms of Inspection (attached), the following individuals will be present at the inspection on behalf of the District:

Highland Hills Sanitary District (HHSD) Trustee James Worden

HHSD Utility Employee Bob Schoenke

Electronic Filing - Received, Clerk's Office : 08/25/2016

HHSD Sewer Engineer Bruce Hill, P.E. - Frank Novotny & Associates, Inc.

Licensed Plumber, Joe Kud - All Plumbing and Sewer Services, Inc.

HHSD attorneys Joe Podlewski and Heidi Hanson - Podlewski & Hanson P.C.

A copy of the current HHSD Sewer Atlas is also attached, in accordance with condition 3 of the Agreed Terms of Inspection. We will transmit information satisfying condition 4 of the Agreed Terms of Inspection separately.

We look forward to receiving information from Mrs. Bruce satisfying conditions 2 and 3 of the Agreed Terms of Inspection no later than by close of business on Monday, April 25, 2016.

Joseph R. Podlewski, Jr.

Podlewski & Hanson P.C.

4721 Franklin Avenue, Suite 1500

Western Springs, Illinois 60558

Tel: 708-784-0624

Fax: 708-784-0627

jpodlewski@live.com

www.podhanlaw.com

**Notice from Podlewski & Hanson P.C.:

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PODLEWSKI & HANSON P.C.

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Lawrence A. Stein

lstein@agdglaw.com



Aronberg Goldgehn / 330 N. Wabash Ave. / Suite 1700 / Chicago, IL 60611-3586

Direct: (312) 755-3133 / Fax: (312) 222-6399 / www.agdglaw.com

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Bruce v HHSD, PCB 15-139, Bruce property inspection document exchange

Heidi Hanson

Fri 5/13/2016 3:50 PM

To: Lawrence A. Stein <lstein@agdglaw.com>;

Cc: Halloran, Brad <brad.halloran@illinois.gov>; Joe Podlewski <jpodlewski@live.com>;

8 attachments (3 MB)

Bruce v HHSD Photo 5-2-16 yard.png; Bruce v HHSD photo 5-2-16 structure 1.png; Bruce v HHSD photo 5-2-16 structure 2.png; Bruce v HHSD photo 5-2-16 side elevation.png; Bruce v HHSD photo 5-2-16 patio pipe.png; Bruce v HHSD 5-2-16 photo rear door threshold 1.png; Bruce v HHSD 5-2-16 photo rear door threshold 2.png; Bruce v HHSD 5-2-16 photo side patio retaining wall.png;

Mr. Stein,

We have not yet received the documents you were to provide prior to the May 2, 2016 visit to the Bruce's property.

In accordance with our property inspection agreement we are providing you a copy of the photos that were taken during the inspection.

We are also providing you with the names of the two additional people that attended the inspection.

- 1) Howard Heil, HHSD
- 2) Edward Cherven, All Plumbing and Sewer Services, Inc.

Heidi E. Hanson
Podlewski & Hanson
4721 Franklin Ave., Suite 1500
Western Springs, IL 60558
Tel: 708-784-0624
Fax: 708-784-0627
heh70@hotmail.com
www.podhanlaw.com

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EXHIBIT E

Electronic Filing - Received, Clerk's Office : 08/25/2016

G.E.X.F
p. 1

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[Close](#)

RE: Bruce v. Highland Hills

From: **Lawrence A. Stein** (LStein@agdglaw.com)
 Sent: Fri 6/17/16 12:37 PM
 To: heh70@hotmail.com (heh70@hotmail.com); jpodlewski@live.com (jpodlewski@live.com)
 Cc: Halloran, Brad (Brad.Halloran@illinois.gov)
 1 attachment
 Plat of Survey.pdf (1589.6 KB)

Counsel:

Attached are the documents we produced for your review at the inspection.

Larry Stein

Lawrence A. Stein

lstein@agdglaw.com



Aronberg Goldgehn / 330 N. Wabash Ave. / Suite 1700 / Chicago, IL 60611-3586
 Direct: (312) 755-3133 / Fax: (312) 222-6399 / www.agdglaw.com

[MY BIO](#) | [MY VCARD](#)

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From: Lawrence A. Stein
Sent: Friday, June 17, 2016 9:01 AM
To: heh70@hotmail.com; jpodlewski@live.com
Cc: Halloran, Brad
Subject: Bruce v. Highland Hills

Group Exhibit F.

Electronic Filing - Received, Clerk's Office : 08/25/2016

G. Ex. F
P. 2

Dear Ms. Hanson and Mr. Podlewski:

I am serving on both of you, and Mr. Halloran, accurate copies of the complainant's response to your first set of requests to admit.

The copy is attached to this email.

I have the original in my possession.

Larry Stein.

Lawrence A. Stein

lstein@agdglaw.com



Aronberg Goldgehn / 330 N. Wabash Ave. / Suite 1700 / Chicago, IL 60611-3586

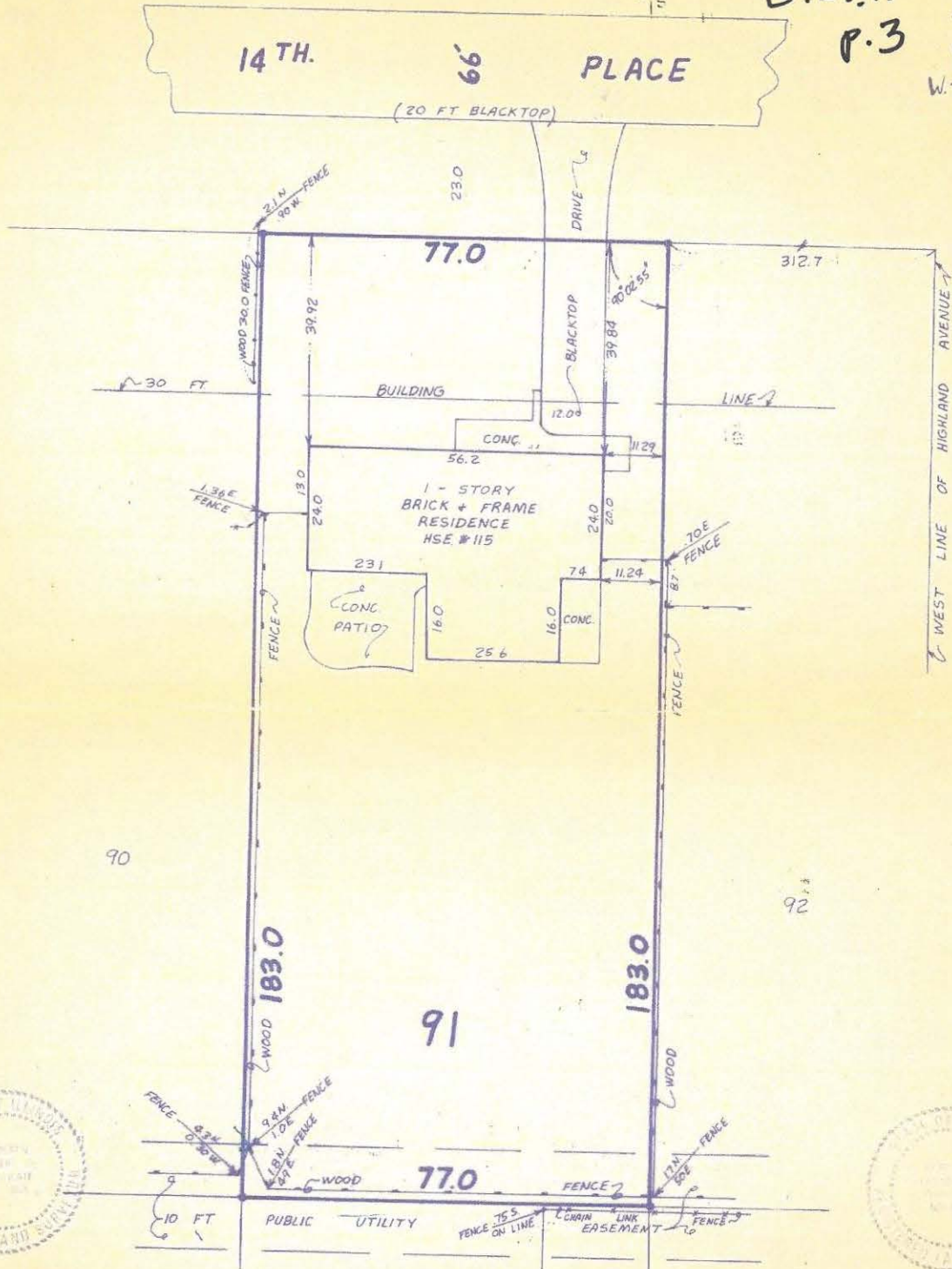
Direct: (312) 755-3133 / Fax: (312) 222-6399 / www.agdglaw.com

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OF LOT 91 IN PARISH HUGHES INC. SUBDIVISION, VILLAGE UNIT NO. 1, BEING A SUBDIVISION OF PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 24, 1954 AS DOCUMENT 721079, IN DU PAGE COUNTY, ILLINOIS.

G.E.F.
P.3



ORDERED BY: KALINICH, McCLUSKEY, SULLIVAN & BOYLAN - ATTORNEYS

ORDER NO. 88 B 120

FILE NO. 88186

STATE OF ILLINOIS }
COUNTY OF DU PAGE } SS

STATE OF ILLINOIS }
COUNTY OF DU PAGE } SS

THIS IS TO CERTIFY THAT I, AN ILLINOIS LAND SURVEYOR, HAVE SURVEYED THE PROPERTY DESCRIBED ABOVE AND THAT THE ANNEXED PLAT IS A CORRECT REPRESENTATION OF SAID SURVEY. GIVEN UNDER MY HAND AND SEAL AT WHEATON, ILLINOIS THIS 25TH DAY OF FEBRUARY A.D. 1988.

BUILDINGS LOCATED AS SHOWN ON THIS 25TH DAY OF FEBRUARY A.D. 1988

• IRON STAKE FOUND
• IRON STAKE SET

[Signature]
Illinois Land Surveyor No. 1002

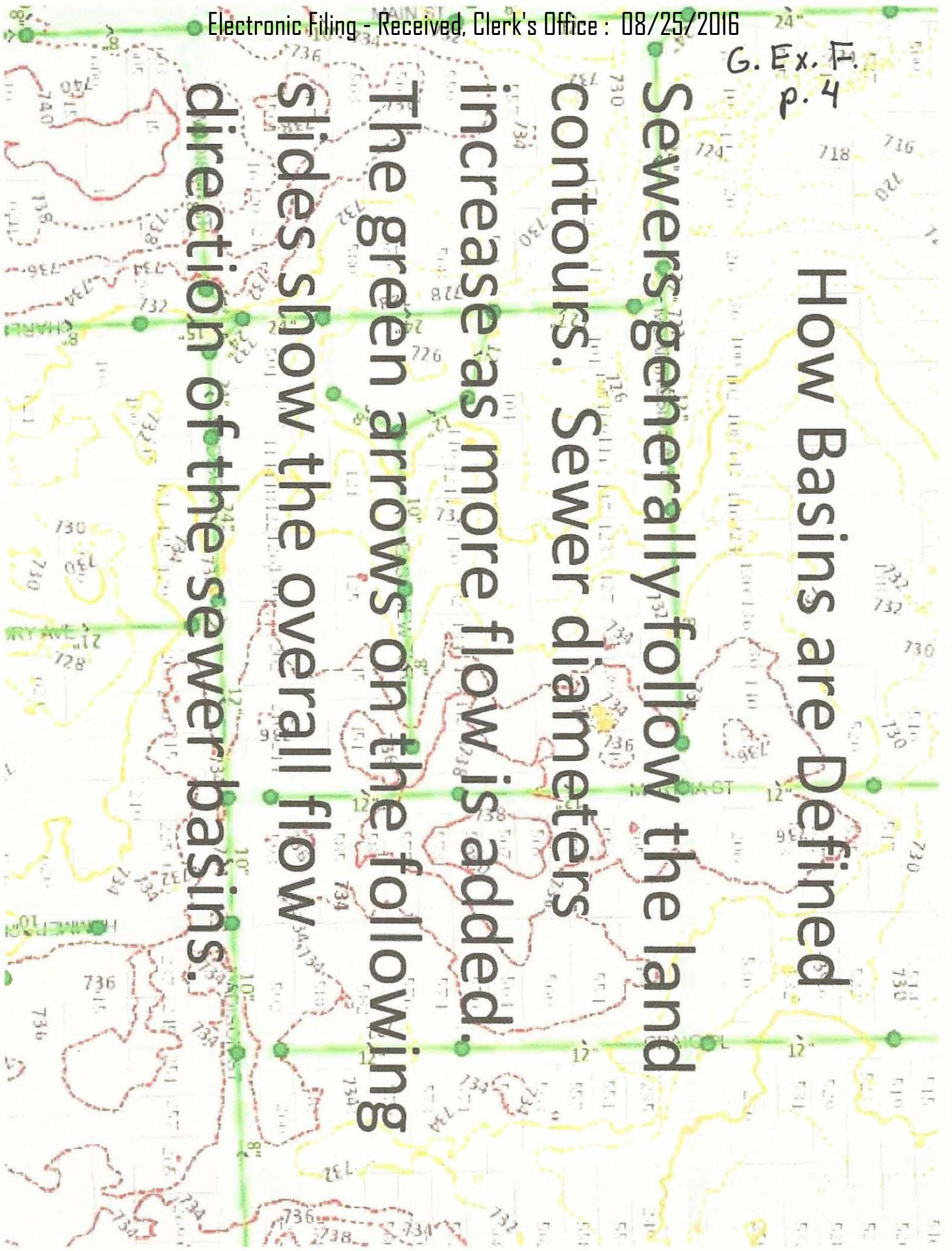
LAMBERT AND ASSOCIATES
LAND SURVEYORS
323 S. HALE ST. WHEATON, ILL.
PHONE 653-6331

[Signature]
Illinois Land Surveyor No. 1002
Refer to deed or Certificate of Survey for restrictions not shown on plat.
All dimensions are shown on plat and documents thereon.

How Basins are Defined

Sewers generally follow the land contours. Sewer diameters increase as more flow is added.

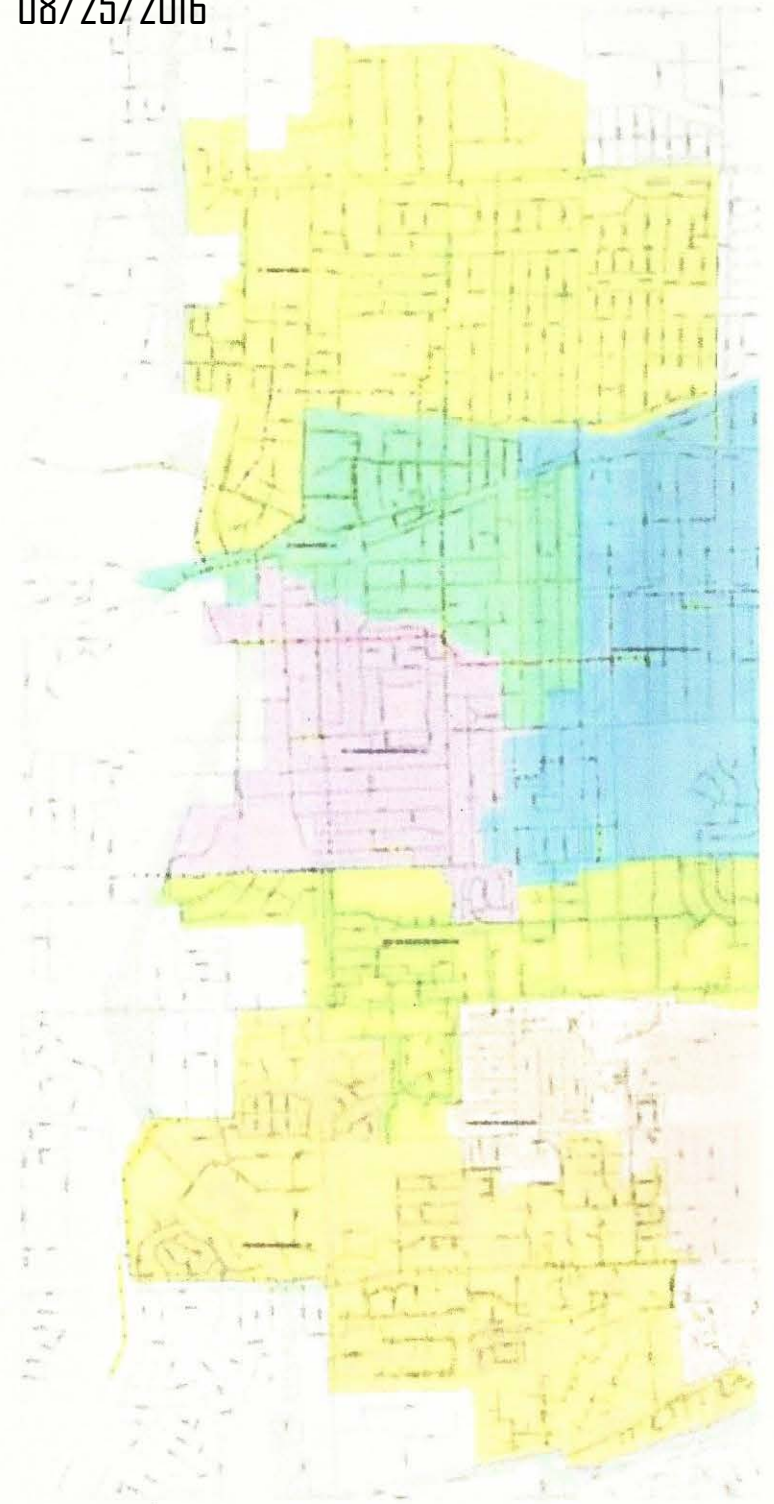
The green arrows on the following slides show the overall flow direction of the sewer basins.



G. Ex. F.
P. 5

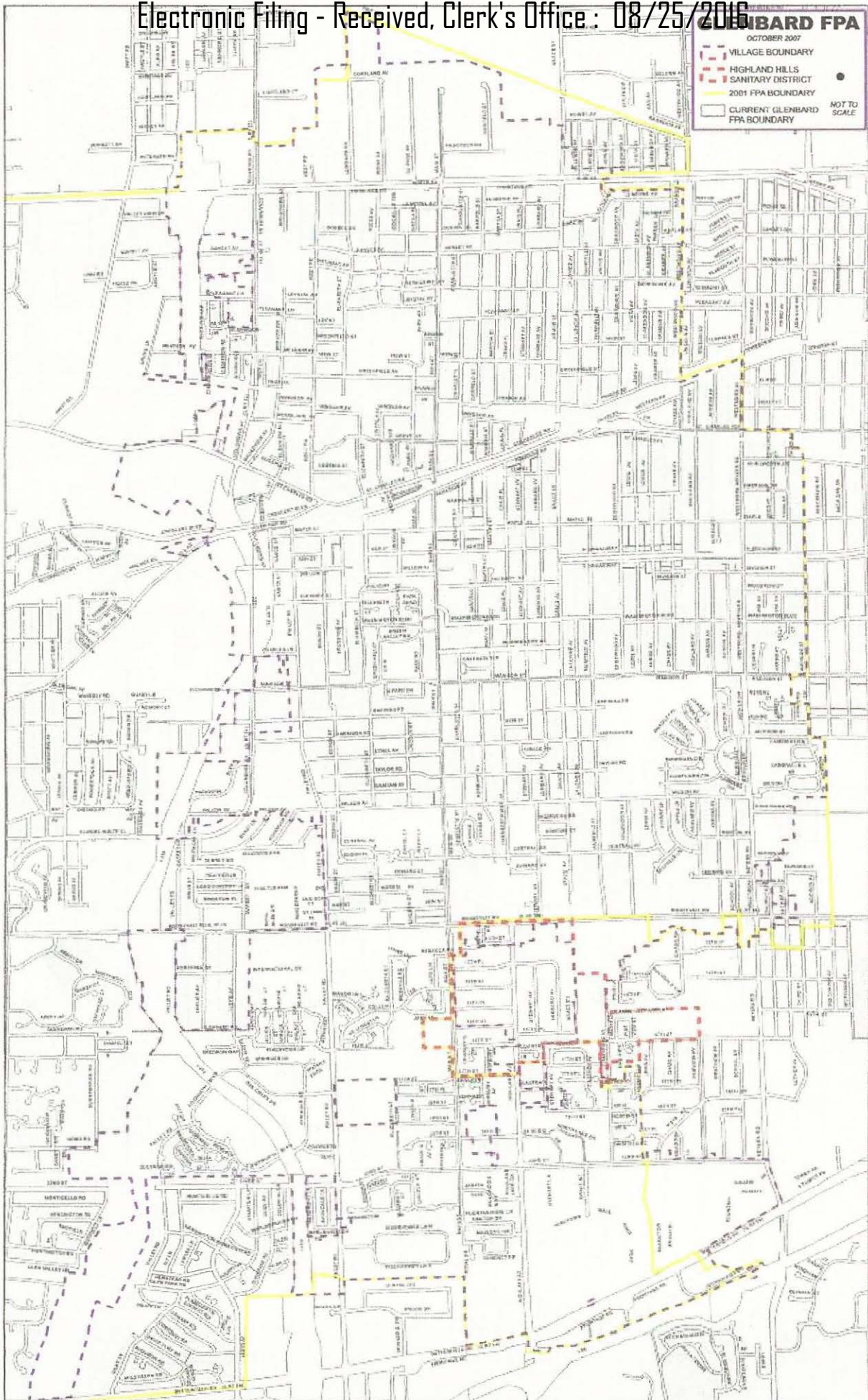
Sanitary/Combined Sewer Basins

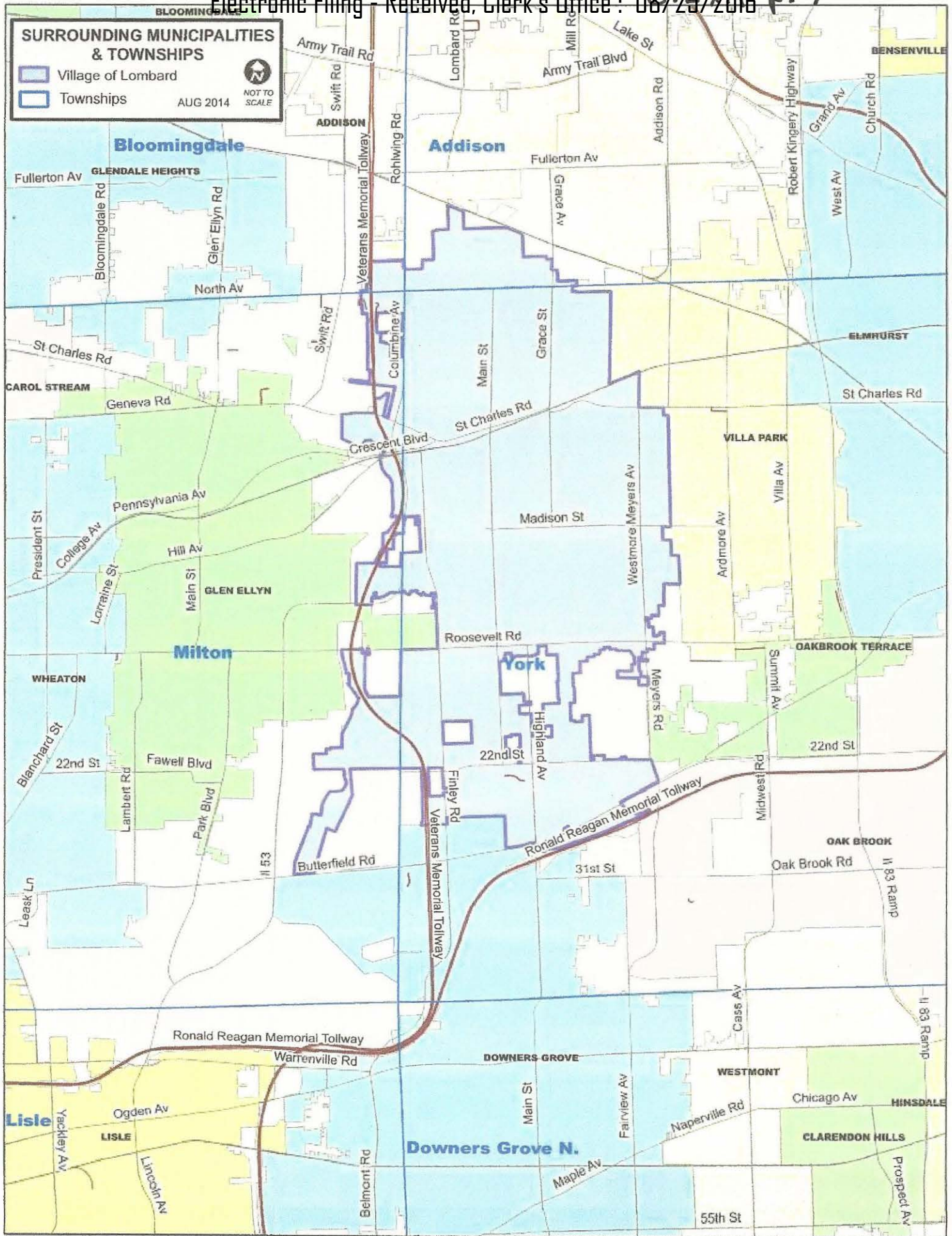
There are 7 basins for sanitary and combined sewers. The north, middle and southwest sides of Lombard's sewers flow to the GWA trunk sewers that run along the river, ending at GWA's treatment plant. The southeast side flows southward to Flagg Creek's treatment plant in Burr Ridge.



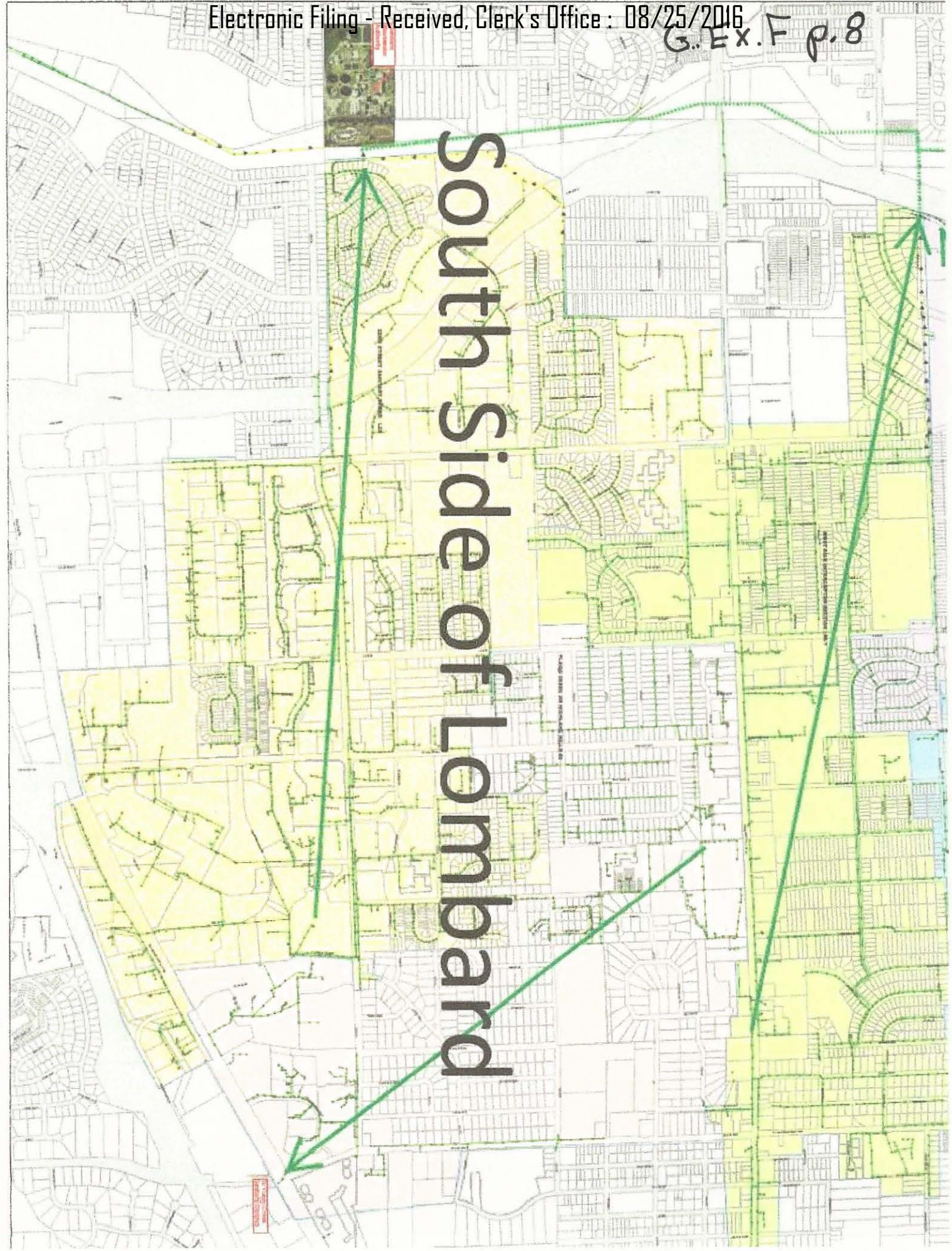
GLENBARD FPA
OCTOBER 2007
VILLAGE BOUNDARY
SANITARY DISTRICT
2001 FPA BOUNDARY
CURRENT GLENBARD FPA BOUNDARY
NOT TO SCALE

G.E.x.F
p-6



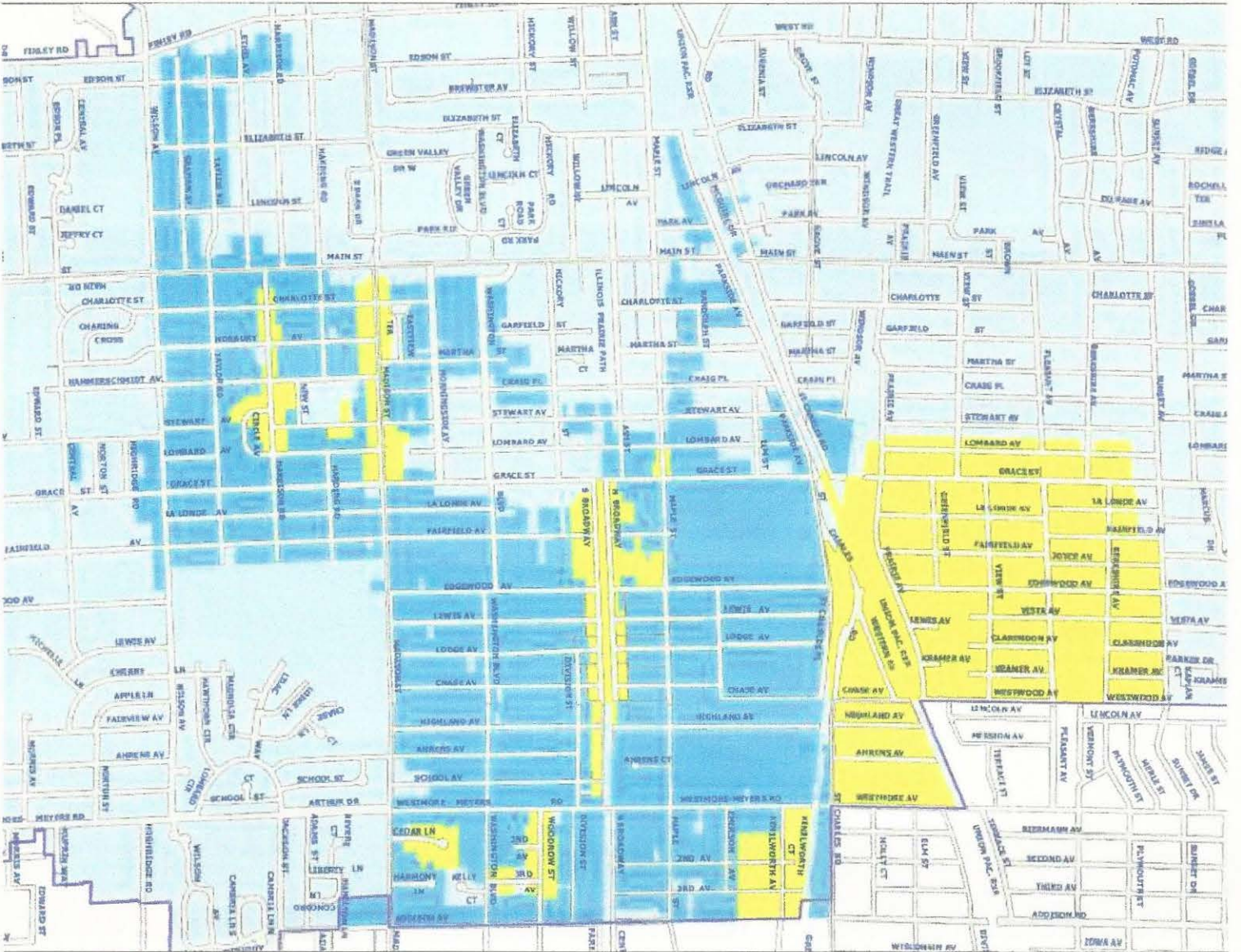


South Side of Lombard



**Combined
sewer areas in
yellow**

**Separated
storm sewer
but still
draining into a
combined
sewer in blue**

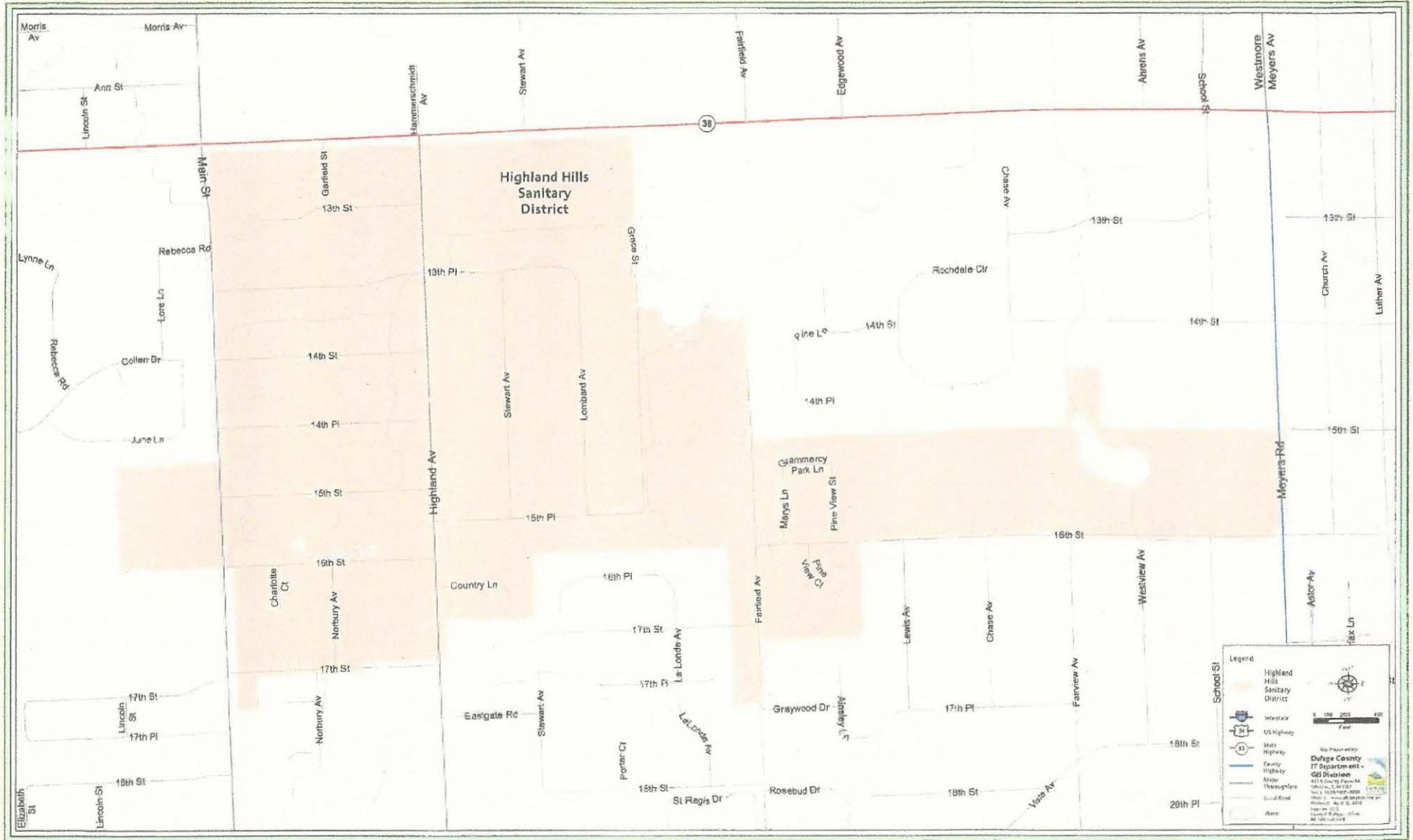


G.E.F.
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HIGHLAND HILLS SANITARY DISTRICT

DUPAGE COUNTY, ILLINOIS



G. Ex F
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HIGHLAND HILLS SANITARY DISTRICT
DUPAGE COUNTY, ILLINOIS

